

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF)	DIA NO: 03DPHMB007
THE STATEMENT OF CHARGES)	CASE NO: 02-93-096
AGAINST:)	
)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
ROBERT E. LACHMAN, M.D.)	DECISION AND ORDER
)	
RESPONDENT)	

TO: ROBERT E. LACHMAN, M.D.

On May 28, 2003 at 2:00 p.m., a hearing was held before the Iowa Board of Medical Examiners (Board) concerning the request for reinstatement filed by Robert E. Lachman, M.D. (Respondent). The hearing was held in the Board Conference Room, 400 SW 8th Street, Des Moines, Iowa. The Respondent appeared in person and was represented by attorney Brent D. Rosenberg. The state was represented by Theresa O'Connell Weeg, Assistant Attorney General. The following members of the Board presided at the hearing: Dale Holdiman, M.D., Chairperson; Bruce Hughes, M.D.; Dana Shaffer, D.O.; Carole Frier, D.O.; Mary Hoppa, M.D.; John Brinkman, M.D.; Susan Johnson, M.D.; Janece Valentine and Sally Schroeder, Public Members. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing and was instructed to prepare their written decision, in accordance with the deliberations. The hearing was closed to the public at the election of the Respondent, pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter.

At the close of the hearing, the state submitted a brief on the legal issues, and the record was held open for the Respondent's brief. After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2003), to deliberate their decision.

THE RECORD

The record includes the Respondent's Application For Reinstatement Of His Privileges To Practice; Reinstatement Hearing Order; testimony of the witnesses; State Exhibits 1-4; Respondent Exhibits 1-11, and the briefs of the parties.

FINDINGS OF FACT

1. The Respondent was issued license number 28529 to practice medicine and surgery in Iowa on January 24, 1992, as recorded in the permanent records of the Board. On November 4, 1996, the Board issued a Final Order permanently revoking the Respondent's Iowa medical license, following a hearing before a panel of the Board and an appeal hearing to the full Board. The Board's Final Order included extensive Findings of Fact, which will not be reiterated but are included in this record. The Board found that the Respondent made inappropriate comments to female staff, had inappropriate physical contact with female staff, behaved inappropriately toward patients, improperly delegated functions to others, failed to maintain appropriate records, failed to utilize appropriate medical practices, and breached patient confidentiality. (State Exhibit 1)

2. The Respondent petitioned for judicial review of the Board's Final Order. The district court affirmed the Board's decision. Although the district court found that some of the Board's specific findings of fact were not supported by substantial evidence, the district court concluded that there still remained "an overwhelming and pervasive number of incidents and different types of conduct which were supported by substantial evidence and which supports the action taken by the Board." (Respondent Exhibit 3; Exhibit 3, p. 20)

The Respondent appealed the district court's ruling to the Iowa Court of Appeals. The Court of Appeals affirmed the district court on November 30, 1998, finding substantial evidence in the record to support each category of misconduct found by the Board. The Court further found that remand for a reconsideration of the sanction was neither necessary nor appropriate. (State Exhibit 2) On January 29, 1999, the Iowa Supreme Court denied the Respondent's request for further review. (State Exhibit 3)

3. After the revocation of his medical license, the Respondent remained in Marshalltown. He had a number of serious medical problems and was hospitalized on several occasions between 1996 and 1999. The Respondent reports that he has taken 465 hours of continuing medical education (CME) since 1999. He further reports that he has engaged in soul searching and sensitivity training. (Testimony of Respondent)

4. From August 27 through August 30, 2001, the Respondent submitted to a comprehensive psychiatric evaluation at the Behavioral Medical Institute (BMI) of Atlanta. A number of tests were administered, and there were five to six hours of clinical interviews. On September 12, 2001, BMI submitted its Summary of Evaluation, which was authored by Tracey L. Irvin, M.D.

a. Dr. Irvin's evaluation summary concludes that it would be inappropriate to consider reinstatement of the Respondent's medical license when he has failed to initiate any therapeutic process to better understand the complaints against him in the five years since his license was revoked. (Respondent Exhibit 4, p. 14)

b. Dr. Irvin further notes the Respondent's unwillingness to accept any significant responsibility for the complaints against him, stating that rather than take steps to rehabilitate himself, the Respondent has focused on various explanations for why the accusations against him were incorrect. (Respondent Exhibit 4, p. 14)

(Respondent Exhibit 4)

5. At his reinstatement hearing, the Respondent presented the testimony and written report of Gerald J. Sarwer-Foner, M.D. (See Curriculum Vitae, Respondent Exhibit 1) Dr. Sarwer-Foner examined the Respondent over a four-hour period on November 10, 2001 and reviewed a number of records, including the September 12, 2001 summary of the psychiatric evaluation at BMI. On January 7, 2003, Dr. Sarwer-Foner submitted a written Summary of Evaluation to the Respondent's attorney.

In his written summary and in testimony at the hearing, Dr. Sarwer-Foner indicated that he believes that the Respondent can return to practice, without any threat or danger of recurrence of past misconduct. Dr. Sarwer-Foner concluded that the Respondent did not have any condition or defect that should preclude him from practicing medicine and recommended that he be reinstated.

Dr. Sarwer-Foner had known the Respondent since 1989, when the Respondent was a resident at the Wayne State University Medical School, Department of Psychiatry and Behavioral Neurosciences. Dr. Sarwer-Foner was the Chief of the Department at the time and supervised the Respondent. Dr. Sarwer-Foner describes the Respondent's work in the residency program at Wayne State as "more than satisfactory." The Respondent and Dr. Sarwer-Foner did not have an ongoing relationship after the Respondent completed his residency in 1991. Dr. Sarwer-Foner did not feel that his former relationship with the Respondent in the residency program affected his ability to be objective, but the Board felt that the prior relationship between the Respondent and Dr. Sarwer-Foner did make him less objective. (Testimony of Gerald J. Sarwer-Foner, M.D.; Respondent Exhibits 1-2)

6. The Respondent also presented the expert testimony of Shervert H. Frazier, M.D. (See Curriculum Vitae, Respondent Exhibit 6) Dr. Frazier is currently the director of continuing postgraduate education at McClain Hospital in Belmont, Massachusetts and is a practicing psychiatrist. Dr. Frazier was not previously acquainted with the Respondent, but has previously worked with Dr. Sarwer-Foner. Dr. Frazier evaluated the Respondent over a two-day period on November 28-29, 2001, but did not prepare a written report. He reviewed the psychiatric evaluation from BMI and some of the disciplinary records, including the district court's ruling on judicial review.

Dr. Frazier concluded that the Respondent is not mentally ill and has no major personality defects. In his opinion, many of the Respondent's problems stemmed from being a young, unmarried, and inexperienced physician in a small town. Dr. Frazier believes that the Respondent has learned from his mistakes, and is ready to return to the practice of medicine. Dr. Frazier recommends some supervision of the Respondent's practice by

another physician, who is not a psychiatrist. (Testimony of Shervert H. Frazier, M.D.; Respondent Exhibit 6)

CONCLUSIONS OF LAW

The parties present two issues to the Board. The first is apparently an issue of first impression: whether an order of permanent revocation is in fact permanent, thereby preventing a licensee from ever having the medical license reinstated. Both parties have briefed this issue. The second issue is whether this Respondent is entitled to reinstatement because the reasons for the permanent revocation of his medical license no longer exist, and it is in the public interest for his license to be reinstated.

I. Applicable Law

Iowa Code section 148.9 (2003) provides:

148.9 Reinstatement

Any person whose license has been suspended, revoked or placed on probation may apply to the board of medical examiners for reinstatement at any time and the board may hold hearings on any such petition and may order reinstatement and impose terms and conditions thereof and issue a certificate of reinstatement to the director of public health who shall thereupon issue a license as directed by the board.

This same statutory provision has been in effect since prior to the Board's final order permanently revoking the Respondent's medical license. Iowa Code section 148.9 (1995), (1997), (1999), (2001).

The Board has promulgated the following rule governing reinstatements:

653-12.40(17A) Reinstatement. Any person whose license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, has been revoked, or suspended by the board, may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension.

12.40(1) If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the director's order or the date of voluntary surrender.

12.40(2) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the respondent's license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement shall be subject to the same rules of procedure as other cases before the board.

12.40(3) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

12.40(4) An order of reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law, and must be based upon the affirmative vote of not fewer than six members of the board. The order for reinstatement shall be published as provided in subrule 12.39 (17A)...

II. Discussion

A. Does A Permanent Revocation Preclude Any Future Application For Reinstatement?

The November 4, 1996 Final Order of the Board permanently revoked the Respondent's medical license. The Board's Final Order was affirmed on appeal by the district court and by the Iowa Court of Appeals, although it does not appear from the

court's decisions that the specific issue of whether a revocation of a medical license can be permanent was raised on appeal. The Iowa Supreme Court denied the Respondent's request for further review.

The state urges the Board to enforce the permanent revocation on several grounds. The state argues that the Board's permanent revocation has been fully reviewed and affirmed on appeal; that reinstatement should be denied under the doctrine of claim preclusion because the Respondent has had full opportunity to litigate whether his reinstatement should be permanent; and that permanent revocation is authorized by law. The state cites to relevant case law, however none of the cases cited by the state construe the Board's statute and rule and therefore are controlling on this issue.

The Respondent argues that the plain language of the statute and the board's reinstatement rule permit any licensee whose license has been revoked to apply for reinstatement. Both are silent as to whether a license can be permanently revoked with no opportunity for reinstatement. The Respondent further argues that neither his pursuit of judicial review of the Board's final order nor the doctrine of claim preclusion should prohibit him from seeking reinstatement because the issues in the judicial review proceeding are different from the issues on an application for reinstatement.

The Board considered the arguments and legal authorities cited by the parties, but was unable to agree whether or not Iowa Code section 148.9 and 653 IAC 12.40 permit it to permanently revoke a license, without any possibility of reinstatement. At a minimum, an order of permanent revocation signifies that the prior Board did not feel that the particular licensee could be rehabilitated, and is entitled to great weight and serious consideration if/when a future Board considers an application for reinstatement. During the Board's deliberations on this legal issue, it became clear that even if the Board considered this case on the merits, the Respondent would not prevail. Since the Board was unable to reach a consensus on the legal issue and this Respondent was accorded a full hearing on his Application for Reinstatement, the Board elected to decide this particular case on the merits.

B. Whether The Respondent Has Satisfied The Requirements of 653 IAC 12.40(3)?

The Respondent failed to establish, by a preponderance of the evidence, that the basis for the permanent revocation of his license no longer exists or that it is in the public interest for his license to be reinstated. 653 IAC 12.40(3).

The Respondent's permanent revocation was based on numerous professional and ethical violations involving all aspects of his psychiatric practice: inappropriate comments to female staff; inappropriate physical contact with female staff; inappropriate behavior toward patients; inappropriate record keeping practices, billing practices, and delegation of functions; and breaches of patient confidentiality. The Respondent has violated the major tenets of psychiatry.

The Board agrees that the reinstatement hearing is not an opportunity to relitigate the Final Order of the prior Board. The prior Board heard and observed all of the witnesses, made credibility determinations, and issued detailed findings of fact based on their review of the entire record, not isolated portions of the record. The Respondent had a full opportunity to present any relevant evidence in his defense at the time of his hearing. If the Respondent suffered from any condition that interfered with his ability to present a defense, that issue should have been raised in a timely manner at the hearing or immediately following the hearing in an application for rehearing.

The Respondent failed to present any convincing evidence that he has addressed the issues leading to the revocation of his license or that he has been rehabilitated. Although the Board issued its final decision in November 1996 and the Iowa Court of Appeals affirmed the decision in November 1998, the Respondent has never been in therapy and did not undergo any evaluation until he went to the Behavioral Medicine Institute of Atlanta (BMI) in August 2001. The resulting evaluation report, authored by Tracey L. Irvin, M.D., concluded that the Respondent must "demonstrate an acceptance of the numerous criticisms against him" and must "initiate a therapeutic process to prevent similar complaints in the future" followed by another assessment to determine if reinstatement is appropriate.

Following the BMI evaluation, the Respondent sought separate evaluations from two psychiatrists, one of whom had supervised the Respondent while he was in residency. Although the Respondent has not had any counseling or therapy and neither psychiatrist provided therapy to the Respondent, they both concluded that he is now fit to return to practice. Dr. Sarwer-Foner testified that the Respondent has "reflected thoroughly," "admitted failure in some areas," "has addressed issues" and has "made progress in understanding his response to what happened." Dr. Frazier testified that the Respondent has admitted some of the things he was accused of and has shown insight and remorse. Dr. Frazier further stated that in his opinion, a lot of the Respondent's problems stemmed from being a young, inexperienced, unmarried physician in a small town.

In fact, the Respondent was over forty years old when he began his medical practice in Marshalltown and had been a practicing pharmacist before attending medical school. His violations cannot be explained by his youth, inexperience, marital status, or the size of the town where he practiced. Moreover, the opinions of Dr. Sarwer-Foner and Dr. Frazier were at least partially based on their own personal opinions that the Respondent did not assault a co-worker, contrary to the Board's Final Order.

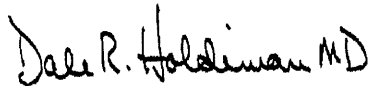
At the reinstatement hearing, the Respondent testified that he "accepted" all of the "allegations" against him except the allegation of assault of a co-worker. However, the Respondent's testimony demonstrated that he does not have a clear understanding of his ethical and professional obligations as a psychiatrist, that he has little insight into the cause or reasons for his actions in Marshalltown, and that he does not accept responsibility for his violations. Moreover, the Respondent has taken no serious steps towards rehabilitation. The Respondent testified that he has done "soul searching" and has taken "sensitivity classes." The Respondent has had many long distance telephone conversations with Dr. Frazier. The Respondent describes Dr. Sarwer-Foner as an "advisor" and has never paid him for his services. There was no therapeutic physician-patient relationship established between the Respondent and Dr. Sarwer-Foner. The Respondent also testified that he has met with other psychiatrists at lunch, and he has learned from discussing "vignettes" with them. None of these activities are a substitute for intensive therapy within an

established physician/patient relationship. The Respondent has failed to establish that the basis for the permanent revocation of his license no longer exists or that it is in the public interest for his license to be reinstated.

ORDER

IT IS THEREFORE ORDERED, that the application for reinstatement filed by Robert E. Lachman, M.D. is **DENIED**.

Dated this 18th day of July, 2003.



Dale Holdiman, M.D., Chairperson
Iowa Board of Medical Examiners

cc: Theresa O'Connell Weeg, Assistant Attorney General
Brent D. Rosenberg, Attorney for Respondent

Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of this order.

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE
COMPLAINT AND STATEMENT
OF CHARGES AGAINST

ROBERT E. LACHMAN, M.D.,

Respondent

DIA DOCKET NO. 95DPHMB 27
CASE NO. 02-93-096

FINAL ORDER OF THE
BOARD ON APPEAL

On June 25, 1996, a panel of the Iowa Board of Medical Examiners issued a proposed Decision in the above-captioned case. On July 3, 1996, the Respondent filed a Notice of Appeal from the Proposed decision. The hearing on the appeal was scheduled following the preparation of the transcript. Briefs were filed by the Respondent and the state. The state provides suggested findings of fact.

The Respondent by motion requested the opportunity to present additional evidence. The motion was denied since the Respondent was not able to demonstrate that the additional evidence could not have reasonably been obtained prior to the hearing. The Respondent further requested the opportunity for 90 minutes of time for oral argument. The Respondent's and the state's time for argument was expanded from 10 minutes to 15 minutes each.

The appeal hearing was held before the Board on October 30, 1996, at approximately 10:00 a.m. One Board member did not participate in the decision. Allen Zagoren, D.O. was absent. The Respondent was represented by Barry S. Kaplan of Marshalltown, Iowa. The state was represented by Theresa O'Connell Weeg, Assistant Attorney General. Both parties were allowed 15 minutes for oral argument.

The Board deliberated its decision in closed session, pursuant to Iowa Code section 21.5(1)(f). Having considered the arguments made by the parties, the briefs, state's proposed findings, and the record before the panel, the Board voted in open session to amend the findings of facts to include those suggested by the State; which are incorporated as Exhibit 1 and replace those in the panel decision; and approve the decision of the Panel with the amended findings of fact in its entirety.

ORDER:

IT IS THEREFORE ORDERED, that the Proposed Decision of the Panel, issued in case No. 02-93-096, on June 25, 1996, as AMENDED to include amended findings attached hereto as exhibit one is AFFIRMED.

The Respondent's MEDICAL LICENSE (No. 28529) issued by the Iowa Board of Medical Examiners on January 24, 1992, is PERMANENTLY REVOKED.

DATED THIS 4th day of November, 1996.

Teresa A Mock MD

Teresa A. Mock, MD, Secretary
Iowa Board of Medical Examiners
1209 East Court Avenue
Des Moines, IA 50319-0180

Attachment: Exhibit 1

cc: Barry S. Kaplan
Fairall, Fairall, Kaplan, Hoglan, Condon & Klaessy
34 South First Avenue
Marshalltown, IA 50158

Theresa O'Connell Weeg and Heather L. Adams
Assistant Attorneys General
Department of Justice
Hoover Building
LOCAL 50319

Iowa Board of Medical Examiners
Executive Hills
1209 East Court Avenue
LOCAL 50319

EXHIBIT 1

Final Order of Board on Appeal

The Findings of facts to the Panel decision dated June 25, 1996, are as follows (replacing the prior findings in their entirety):

1. The Respondent was issued license number 28529 to practice medicine and surgery in Iowa on January 24, 1992, as recorded in the permanent records in the office of the Board. The Respondent's license is current and will next expire on November 1, 1996. (Board file).

2. The Respondent graduated from medical school in the Dominican Republic in 1985 and began a residency at a hospital in Wilkes Barre, Pennsylvania. The Respondent resigned from that program due to concerns of the residency program with Respondent's inability to concentrate and excessive daytime sleepiness and snoring. Respondent subsequently entered a residency program at Wayne State University on July 1, 1988. Respondent completed the residency program in July of 1991. (Testimony of Respondent in deposition; State Exhibit A).

3. Documentation submitted to the Board in support of Respondent's application for medical licensure includes several letters of recommendation from physicians. Later correspondence from these physicians indicated that they had not in fact signed a letter in support of Respondent. (State's Exhibits DD and Exhibit EE).

4. Prior to attending medical school, Respondent practiced as a pharmacist in Florida. While practicing, Respondent was the subject of a complaint that he was practicing medicine without a license. Respondent also received warnings from the hospital where he was employed for writing checks on closed accounts. (State's Exhibits DD and EE).

5. The Respondent's first position after completion of his residency was at the Marshalltown Medical and Surgical Center (MMSC), where he assumed the medical directorship of the inpatient psychiatric unit in July of 1992. At MMSC, Respondent was responsible for hiring and supervising a multidisciplinary team of mental health care providers. This team included a team leader (Respondent), a therapist, two social workers, a nurse manager, and a substance abuse counselor. (Testimony of L.L.; Deposition of Respondent).

6. On April 1, 1993, Respondent was given the option of resigning from his position with MMSC or facing termination. (State Exhibit F). The MMSC cited numerous grounds for requesting the Respondent resignation, including the number of complaints the hospital had received regarding various aspects of Respondent's behavior and performance. These complaints included the following:

complaints from several physicians about the lack of time Respondent was actually spending with patients; complaints from members of the hospital staff about Respondent's frequent violations of patient confidentiality; and complaints from several female members of the hospital staff regarding sexually suggestive statements Respondent had made to them. (State's Exhibits F and P).

7. Respondent resigned from MMSC on June 30, 1993. (Testimony of Respondent; State Exhibit F).

8. On July 19, 1993, a memorandum from four staff persons who worked closely with Respondent was submitted to a hospital administrator at MMSC. That memorandum detailed numerous situations in which these staff persons expressed concern about Respondent's behavior and professional practices during the time he was employed at MMSC. (State Exhibit G).

9. The Respondent was employed at the Ellsworth Community Hospital in Iowa Falls, Iowa, on August 16, 1993. (Testimony of Respondent in Deposition). While at Ellsworth, Respondent did not operate within the multidisciplinary team concept but rather was hired as an additional psychiatrist to concentrate in the outpatient arena. (Testimony of W.S.).

10. Respondent's employment with Ellsworth Hospital was terminated on April 22, 1994, and the two parties are involved in litigation over an alleged breach of contract issue. At the time of his termination, the hospital had received numerous complaints about Respondent's behavior and performance, including the following: complaints from numerous patients and from mental health care providers that Respondent was not seeing patients for the period of time that he was charging; complaints from members of the hospital staff and from mental health care providers outside the hospital about Respondent's frequent violations of patient confidentiality; and complaints from several patients about the specificity and intensity of sexual questions they were being asked by Respondent. (Testimony of W.S.; State's Exhibits E and H).

11. An extensive investigation of this matter was conducted by Frederick P. Nichols, Board investigator. Investigator Nichols initiated the investigation in June of 1993 on the basis of two complaints received by the Board. In the course of his investigation, Investigator Nichols interviewed over thirty individuals, including the Respondent, patients of Respondent, co-workers of Respondent, management personnel from both Marshalltown and Ellsworth, and other physicians. (Testimony of Nichols; State Exhibit E).

12. A psychiatric peer reviewer appointed by the Board reviewed the investigative material and Respondent's medical records. The peer reviewer issued a report on August 1, 1995, which indicated Respondent violated minimum standards of accepted and prevailing standards of acceptable and prevailing practice of medicine and surgery in a number of areas. (State's Exhibit K).

Inappropriate Comments to Female Staff.

13. a) The Respondent frequently made statements to female staff members about his sexual relationships and sexual activities. These statements included detailed descriptions of sexual situations. Many of the situations Respondent described included sexual activities with women who were employed at the hospital and with whom the female staff members were familiar. (Testimony of L.L.; State's Exhibit G).

b) It was inappropriate and unethical for Respondent to describe his sexual relationships and activities to female staff members. Respondent's comments caused the staff members to be embarrassed and uncomfortable, a situation in which patient care is potentially compromised. (Testimony of L.L.; Testimony of Dr. Nissen; State Exhibit K).

14. a) The Respondent frequently made sexually explicit statements to female staff members about patient's bodies and about other co-workers' bodies. (Testimony of L.L.; State's Exhibit X, Statement of C.A.K.; State's Exhibit G).

b) It is unethical and highly inappropriate to discuss female patients' or co-workers' bodies in a sexually explicit manner, especially in light of Respondent's position as lead of the multi-disciplinary team. Further, such comments are degrading, demeaning, and demoralizing and could result in staff members being unwilling to share pertinent patient information with Respondent due to their concerns that such information may be misused. Hence, the statements by Respondent about patients' bodies could have a direct effect on patient care. (Testimony of Dr. Nissen).

15. On one occasion, the Respondent showed sexually suggestive photographs of one of his partners to two female patients. The Respondent also showed these photographs to L.L. (Testimony of L.L.; State's Exhibit G).

16. The Respondent instructed his female staff members never to speak to anyone in administration at the hospital and never to speak with other physicians. The Respondent also told Ms. L.L. that the surest way to be unemployed was to question a doctor's ethics. These directives made the staff reluctant to go to the administration with complaints about the Respondent. (Testimony of L.L.; State's Exhibit G).

Inappropriate Physical Contact with Female Staff.

17. a) The Respondent on several occasions requested that female staff members hug him. Respondent would make these requests at the morning staff meetings. The female staff member was then expected to get up from her seat and walk around Respondent's desk, at which point Respondent from his chair would pull the staff member near his body so that Respondent's head would have contact with the woman's breasts. These hugs made the staff members extremely uncomfortable. (Testimony of L.L.; State's Exhibit X; Statement of

C.A.K.; State's Exhibit G).

b) Respondent would also touch the female staff members while on the unit. This touching included hugs and holding hands. (Testimony of L.L.; State's Exhibit G).

c) It was inappropriate and unethical for the Respondent to request that his female staff members hug him. Such requests are degrading, demeaning, and utterly unnecessary. Respondent used his position of power and his physical presence to intimidate and dominate his female staff and to gratify his won personal needs. (Testimony of Dr. Nissen; State's Exhibit K).

18. a) The Respondent had sexual or romantic relationships with several of his co-workers. (Testimony of L.L.; Testimony of Respondent in deposition; State's Exhibit G). Respondent repeatedly made detailed comments about these sexual relationships to other female members of the staff. (Testimony of L.L.; State's Exhibit G).

b) Respondent acted inappropriately and unethically in engaging in several sexual or romantic relationships with female co-workers and in repeatedly describing these relationships to other female staff members. (Testimony of Dr. Nissen).

19. On two separate occasions, Respondent sexually assaulted a female co-worker. Prior to these assaults, Respondent and this co-worker had a working relationship at the hospital.

a) Respondent invited this co-worker to his home, and when the co-worker was seated on a sofa, the Respondent pulled the co-worker to the floor and immobilized her by wedging her body between his body and the sofa. Respondent kissed her, and bit and pinched her breasts. The co-worker repeatedly told Respondent that he was hurting her, and told him repeatedly to stop. She physically attempted to stop him, but Respondent responded by pushing his arm underneath the co-worker's body to further immobilize her. The co-worker repeatedly stated she had to go to the bathroom, and Respondent subsequently stood up to allow her to move. While in the bathroom, the co-worker stated she was stunned and felt disbelief that a psychiatrist was acting in this manner. (Testimony of co-worker; State's Exhibit I).

b) When she returned from the bathroom, Respondent grabbed her and again pulled her onto the floor. He removed her clothing, and continued to pinch and bite her breasts. Respondent did not remove any of his clothing. Respondent placed his hand in the co-worker's vagina in an aggressive and painful manner that was painful to the co-worker. Respondent performed oral sex on the co-worker in an aggressive and painful manner. She repeatedly told Respondent that he was hurting her, but Respondent did not stop after she made these statements. Sexual intercourse did not occur. (Testimony of co-worker; State's Exhibit I).

c) The co-worker observed red marks, and later bruises, on her breasts and upper abdomen. She did not report her injuries to

anyone. She did not seek medical care because of the professional embarrassment in seeking care from the same hospital she worked at. She did not report Respondent's behavior to anyone at the hospital because she had voluntarily gone to his home, and because she believed it was important for the hospital, and for her job, to have a successful psychiatrist at the hospital (Testimony of co-worker; State's Exhibit I).

d) The co-worker attempted to talk to Respondent at the hospital regarding the assault. He refused to talk about this, and made no response when she advised him she had bite marks and bruises on her body from him. The co-worker asked to meet with Respondent in a public place, but he refused. She then agreed to meet him at his home. When she arrived, she took a few steps into his home when he pulled her by the arm to the bedroom, when he began to sexually assault her. The co-worker immediately realized she had made a mistake in going to his home. While she verbally resisted him, she did not physically resist him because she knew from previous experience that she could not. Respondent removed his clothes, and then removed her clothes. He rubbed his genitals against hers, and forced her to perform oral sex on him. Respondent did not ejaculate. Respondent then ceased his sexual activity. (Testimony of co-worker; State's Exhibit I).

e) Respondent and the co-worker had an uneventful working relationship from this time on. (Testimony of co-worker; State's Exhibit I).

f) Respondent did not testify at hearing regarding these assaults. In his deposition, Respondent denied he sexually assaulted the co-worker. He stated that the co-worker was indeed present in his home on the two occasions in question, but that he had no sexual contact with her whatsoever. He stated he had no idea why she would make allegations of sexual assault against her. (Testimony of Respondent in deposition).

g) The panel concludes that the co-worker was a credible witness. She gave specific and detailed description of Respondent's home and the assaultive behavior. She confided to several person's, including two friends and her gynecologist's physician assistant, that she had been sexually assaulted by Respondent shortly after the assaults occurred. She provided reasonable explanations for her failure to report the assaults to law enforcement, and to seek medical assistance at the hospital on the dates of the assaults. She had obvious difficulty in testifying about this experience. The panel can discern no apparent motive for the co-worker to make false allegations of sexual assault against Respondent. (Testimony of co-worker; State's Exhibits F, I, S, T, U, and V).

h) Respondent's denial of the co-worker's allegations is not credible. The evidence presented at hearing, including information from Respondent's employment as a pharmacist and the apparently falsified letters of recommendation submitted in support of his application for licensure, establish that Respondent has a long history of making false or misleading statements. Respondent's

denial of numerous other allegations of misconduct made by several other persons in this proceeding also raise serious questions regarding his credibility. For instance, hospital administrators in two separate hospitals, several co-workers at MMSC, numerous patients, and a job applicant being interviewed by Respondent all made allegations that Respondent breached physician-patient privilege on many occasions. Respondent denied all these allegations in their entirety. These allegations will be discussed in greater detail below. However, the number of complaints made and the large and diverse number of complainants persuades the Board that Respondent is not credible when he denies allegations of breach of confidentiality, and similarly is not credible when he denies he sexually assaulted a co-worker on two separate occasions.

Inappropriate Behavior Toward Patients.

20. a) The Respondent made repeated statements to female patients which were inappropriate due to the sexual nature of the comments. Respondent would frequently make comments to patients regarding their bodies, including telling female patients that they had nice or voluptuous breasts, beautiful hips, and beautiful bodies. (Testimony of L.L.; State's Exhibits E and G).

b) On one occasion, Respondent made comments of a sexual nature to a female patient in the presence of an individual who was applying for a position at the hospital. The applicant described the statements as clear boundary violations due to their sexual innuendo. (Testimony of S.D.; State's Exhibit E).

c) These types of comments were inappropriate and unethical. (Testimony of Dr. Nissen; State's Exhibit K).

21. a) The Respondent would frequently hug female patients, many of whom had histories of sexual abuse. This contact was observed by female staff members. In addition, numerous patients informed the Board investigator of this contact. (Testimony of L.L.; State's Exhibits E and K; Testimony of C.A.K.).

b) The Respondent's initiation of touching and hugging of female patients with backgrounds of sexual abuse was inappropriate and unethical. The Respondent was, through such contact, gratifying his own personal needs and was failing to consider the histories of these patients and the potential harmful impact of his conduct upon them. (Testimony of Dr. Nissen).

22. While at Ellworth, the Hospital received frequent complaints from patients that Respondent spent an inordinate amount of time on questions relating to sexual activities and sexual relationships. The patients were concerned both with the specificity and intensity of the questions. These concerns were supported by staff members who were present during evaluations. (Testimony of W.S.; State's Exhibit H).

23. On one occasion, Respondent was counseling a child with the child's mother present. During this session, Respondent asked the

child's mother details about her personal life and if she would be interested in dating him. This conduct is inappropriate and unethical. (Testimony of W.S.).

Improper Delegation of Functions; Inappropriate Record Keeping and Practices.

24. a) While at MMSC, Respondent delegated to his staff therapist and social worker the responsibility of performing psychiatric evaluations. These evaluations included the mental status exam, a medical history, surgical history, psychiatric history, and diagnosis. (Testimony of L.L.; Testimony of Dr. Nissen; State's Exhibit E).

b) Respondent's delegation of the responsibility of performing psychiatric evaluations violates the standard of care for psychiatrists in the state of Iowa. Delegating this responsibility could adversely impact patient care as non-physician providers do not have the medical training necessary to perform the psychiatric evaluation. (Testimony of Dr. Nissen; State's Exhibit K).

25. a) Respondent did complete psychiatric evaluations while practicing at Ellsworth Hospital in Iowa Falls, Iowa. These evaluations were frequently inadequate due to the generic and boilerplate language contained in the evaluation. Respondent's failure to adapt the boilerplate language to the specific patient frequently resulted in evaluations which were clearly inaccurate and erroneous. This rendered the evaluations worthless. (Testimony of W.S.; State's Exhibits H and R).

b) An independent peer review of Respondent's outpatient and inpatient records was conducted while Respondent was employed with Ellsworth Hospital. This review indicates that Respondent's evaluations are substandard due to the generic nature of the evaluations. The review also indicates that inappropriate questions were asked in the evaluations, for example, asking a young child about his sexual history or use of IV drugs. The review further states that in most cases the diagnosis contained in the evaluation was not substantiated. (State's Exhibit R).

26. a) While at MMSC, Respondent delegated to his staff therapist and social work the responsibility for completing discharge summaries. These summaries included discussion of medical issues such as lab results. The staff was not comfortable completing discharge summaries, nor did the staff feel competent to perform the summaries. (Testimony of L.L.; State's Exhibit E).

b) Respondent's delegation of the responsibility of completing discharge summaries violates the standard of care for psychiatrists in the state of Iowa. The physician must document medications given, side effects or interactions, laboratory tests and results, and other medical information. Therapists and social workers do not have the medical training to complete this information. Delegating this responsibility could adversely impact patient care due to the fact that many of these patients are re-

admitted, and it is important to have accurate information contained in the discharge summary to use as background in making treatment decisions about the patient upon readmission. (Testimony of Dr. Nissen; State's Exhibit K).

27. a) The Respondent dictated progress notes which were inappropriately generic and boilerplate. Respondent's progress notes frequently failed to include any patient-specific information such as references to which medications the patient was prescribed, the dosages of medications, side effects of medications, changes in dosages, and justifications for changes. Respondent's progress notes frequently failed to include any indication of Respondent's treatment plan for patients and whether the patient was progressing with the treatment plan. (Testimony of Dr. Nissen; State's Exhibits E and R).

b) Respondent's failure to include patient-specific information could adversely impact patient care because nurses and other mental health care providers would not have an adequate understanding of a patient's status and progress from reviewing Respondent's notes. In addition, Respondent's failure to keep patient-specific notes would impact the accuracy and completeness of the information contained in a patient's discharge summary. (Testimony of Dr. Nissen; State's Exhibits K and R).

28. a) The Respondent engaged in dishonest billing practices. Respondent frequently billed patients for sessions when he did not in fact see the patient. Respondent frequently billed for more time than he actually spent with patients. Complaints regarding Respondent's billing were received from numerous patients at MMSC and Ellsworth Hospital, as well as from physicians at these facilities and mental health care providers in outpatient locations. (Testimony of L.L.; Testimony W.S.; State's Exhibits E, F and H).

b) Respondent's billing practices violated the standard of care for psychiatrists in Iowa. (Testimony of Dr. Nissen; State's Exhibit K).

29. a) The Patient Care Evaluation Committee at MMSC repeatedly expressed concern to Respondent about the adequacy of his medical recordkeeping, including psychiatric evaluations, progress notes, and discharge summaries. (State's Exhibit F).

b) Respondent's hospital privileges at MMSC were repeatedly suspended due to his failure to timely complete medical records. Respondent repeatedly refused to respond to several efforts by MMSC to resolve these problems. (State's Exhibit F).

Breaches of Patient Confidentiality.

30. a) Respondent revealed to his staff members and to members of hospital administration confidential information about hospitalized patients that was not necessary for patient treatment. Respondent would repeatedly reveal information about the sexual relationships of his patients that had no relevance to the treatment of those patients. Respondent also repeatedly revealed to his staff

members confidential information disclosed to him by patients in his private practice when those staff members were in no way involved in the treatment of those patients. (Testimony of L.L.; State's Exhibits G, P and Q; Deposition of R.C; Deposition of S.T.).

b) Respondent revealed confidential information that was not necessary for patient treatment to the president of Ellsworth Hospital. Respondent revealed information about well-known individuals that he treated in Marshalltown to the president of Ellsworth Hospital when the president had no reason to be involved with those patients. Respondent also discussed at a medical staff meeting the details of one of his patient's sexually transmitted disease with individuals who were not involved in the care of this patient. (Testimony W.S.; State's Exhibits E and H).

c) On one occasion, Respondent discussed a patient's marital difficulties over a lunch with a local businessman and an applicant for a job at MMSC. Respondent discussed details of the couple's marital difficulties with the businessman, who was familiar with the couple. (Testimony of S.D.; State's Exhibit E).

d) Respondent's comments on patients' sexual activities for purposes other than furthering patient care are highly inappropriate and unethical. These comments represent an inappropriate use of confidential information to gratify Respondent's own needs. Further, these types of comments would have a devastating impact on patient care should the patient become aware that Respondent was violating their trust in such a manner. (Testimony of Dr. Nissen).

Credibility issues.

31. Respondent argues that some of the state's witnesses were not credible. The board has reviewed the testimony of these witnesses, and believes that any credibility issues are insignificant when considered in light of the number of staff persons, patients, physicians, and hospital administrators who reported concerns about Respondent's behavior. These reports were highly consistent with each other, and the fact they were received from several independent sources makes them highly credible.

32. Two other hospital staff persons testified on Respondent's behalf at the hearing, and their testimony often contradicted the testimony and written statements of the State's witnesses. (Testimony of S.N. and D.D.). The Board concludes the testimony of these witnesses is not credible. S.N. made prior inconsistent statements regarding Respondent's behavior to Investigator Nichols, and had previously submitted written documentation to the hospital administration expressing concern about Respondent's management of a patient. (State's Exhibits E and G). D.D. did not work as closely with Respondent as did other staff persons who complained about Respondent.

33. In addition, several physicians testified on Respondent's behalf as character witnesses. (Depositions of Dr. F.P.; Dr. C.L and

Dr. H.G.). The Board concludes those physicians did not have sufficient information on which to base an accurate opinion regarding Respondent's character or professional practice.

34. The Board seriously questions the credibility of the Respondent for a number of reasons. First, several ethical concerns arose in the course of Respondent's prior practice as a pharmacist. (State's Exhibits DD and EE). Second, serious questions exist regarding documentation submitted to the Board in support of Respondent's application for licensure. Several letters of recommendation from physicians were included in that documentation. Subsequent letters received from those physicians state the signatures contained on the letters of recommendation are not theirs. (State's Exhibits DD and EE). Third, an overwhelming number of complaints about Respondent were received from patients, staff members, hospital administrators, physicians and others. These complaints corroborate each other in many respects. Respondent denies all the allegations contained in these complaints. Respondent's blanket denials are not credible in light of the overwhelming evidence to the contrary.

35. Finally, and importantly, Respondent's conduct at the hearing raised serious concerns about his ability to safely practice medicine. At hearing, Respondent could not remember significant events. He repeatedly failed to respond to questioning from his own counsel, who was unable to complete direct examination. Cross-examination by the State was attempted, but Respondent again could not answer questions, even though Respondent's own counsel indicated that the questions were clear. After several breaks were taken, Respondent's counsel requested a continuance because of Respondent's inexplicable behavior, but Respondent repeatedly stated he wanted the hearing to continue. At the conclusion of the hearing, as the record was being closed, Respondent loudly demanded that everyone sit down because he wanted to speak. He then said only that: "There's more evidence in this case over the last two and a half years. I've thought about it a lot, and it's messed up." The Respondent's aberrant conduct raises very serious concerns regarding Respondent's ability to respond to the needs of his patients and the demands of his professional practice.

FILE

STATE OF IOWA
BEFORE THE BOARD OF MEDICAL EXAMINERS

In the Matter of the
Complaint and Statement
of Charges against

ROBERT E. LACHMAN, M.D.,
Respondent

DIA Docket No. 95DPHMB027
No. 02-93-096

ORDER ON APPLICATION FOR
EXTENSION OF ORAL ARGUMENT
TIME AND PRESENTATION OF
NEW OR ADDITIONAL EVIDENCE

IA. BOARD OF MEDICAL EXAMINERS
96 OCT 25 AM 11:11

This matter is scheduled for presentation to the Board on October 31, 1996 beginning at 9:15 a.m., at the Merle Hay Holiday Inn, 5000 Merle Hay Road, Des Moines, Iowa.

The Respondent on October 8, 1996, filed an application for extension of oral argument and a request to present new or additional evidence. The State of Iowa, through the Attorney General, files a resistance. Based on the review of the briefs and law the following is ordered:

New or Additional evidence

The request is denied. A review of the proposed new evidence indicates that such evidence was or should have been available prior to the hearing. The Respondent fails to establish that any of the proposed new or additional evidence could not have reasonably been obtained prior to the hearing.

Request for Additional argument time

The request for 90 minutes is denied. The Respondent through briefs has ample opportunity to present to the Board any issues desired. The Board provides all parties the opportunity to make a 10 minute oral argument.

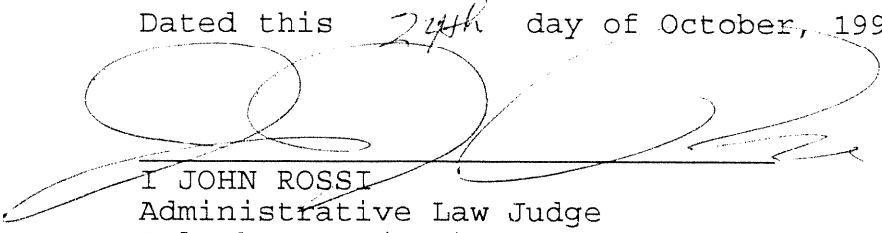
The Attorney General has no objection to extending the oral argument to 15 minutes each. The review of the agenda of the Board indicates that the additional 5 minutes each would not disrupt its schedule and therefore, the argument time will be extended to 15 minutes each.

ORDER:

The request by the Respondent to present additional evidence is denied.

Oral arguments are extended to 15 (instead of 10) minutes for each of the parties.

Dated this 24th day of October, 1996.



I JOHN ROSSI
Administrative Law Judge
Telephone: (515) 224-4450

IJR

cc: Barry S. Kaplan
Fairall, Fairall, Kaplan, Hoglan, Condon & Klaessy
34 South First Avenue
Marshalltown, IA 50158

Theresa O'Connell Weeg and Heather L. Adams
Assistant Attorneys General
Department of Justice
Hoover Building
LOCAL 50319

Iowa Board of Medical Examiners
Executive Hills West
LOCAL 50319

STATE OF IOWA
BEFORE THE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE
COMPLAINT AND STATEMENT
OF CHARGES AGAINST

DIA NO. 95DPHMB-27
NO. 02-93-096

ROBERT E. LACHMAN, M.D.

Respondent

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER
OF THE PANEL

TO: ROBERT E. LACHMAN, M.D.

PROCEDURAL SUMMARY

On October 19, 1995, the Iowa Board of Medical Examiners (Board) directed its Executive Director to file a Complaint and Statement of Charges against Robert E. Lachman, MD (Respondent).

The charges include the following:

1. Over the past several years the Respondent provided substandard psychiatric medical care to some patients by practices including:
 - a. Dictating progress notes on patients he had not seen.
 - b. Deferring the responsibility of the dictation of some medical records to subordinates rather than doing the dictation himself.
 - c. Failing to maintain complete and timely medical records.
2. Over the past several years the Respondent engaged in conduct contrary to good morals and in unethical conduct as referred to in 653 IAC 13.10(1) and 13.10(5) by:
 - a. Making sexually suggestive remarks to female patients.
 - b. Making sexually offensive physical contact with female co-workers.
 - c. Telling co-workers explicit details of his sexual activities.
 - d. Showing co-workers sexually suggestive photographs of a sexual partner.

The above charges allegedly violated the following parts of Iowa Code section 147.55: 147.55(2), 147.55(3), 147.55(8); the following part of Iowa Code section 148.6(2): 148.6(2)(i).

Iowa Administrative Code sections allegedly violated include: 653 IAC 12.4(2)(b), 653 IAC 12.4(2)c, 653 IAC 12.4(2)d, 653 IAC 12.4(3), 653 IAC 12.4(3)a, 653 IAC 12.4(3)b, 653 IAC 12.4(3)c, 653 IAC 12.4(13), 653 IAC 12.4(15) and 653 IAC 12.4(28).

The hearing was held before a three member panel of the Board on March 28 and 29 and was reconvened on May 2 and 3, 1996 in Des Moines, Iowa, in the conference room, 1209 East Court Avenue. Some witnesses testified by video deposition and by telephone with the consent of all parties.

The Board panel included James Collins, M.D.; Eddie D. DeHaan, M.D.; and Laura Stensrud, public member. The Respondent appeared and was represented by Barry Kaplan, a Marshalltown, Iowa, Attorney. The State was represented by Theresa O'Connell Weeg and Heather L. Adams, Assistant Attorneys General. The hearing was recorded by a certified court reporter and was closed to the public pursuant to Iowa Code section 272C.6(1). I. John Rossi, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided and was instructed to prepare this proposed decision of the panel, in accordance with their deliberations.

THE RECORD

The record includes the Complaint and Statement of Charges, Respondent's document that denies the charges and request for hearing, request for closed hearing, the testimony of witnesses called by the State, by the Respondent and the following exhibits:

State's Exhibits

- A. Licensure information
- B. Complaint report, 3/5/93
- C. Supplemental Complaint report, 4/14/93
- D. Investigative report, 8/30/94
- E. Interview summaries
- F. Marshalltown Medical and Surgical Center (MMSC) records
- G. MMSC records
- H. Ellworth Municipal Hospital records
- I. Interview summary, C.D. 1/29/96
- J. C/V, William M. Nissen, M.D.
- K. Peer review report, 8/1/95
- L. Patient records, D.T.
- M. Patient records, D.T.
- N. Patient records, K.C.
- O. Remaining patient records
- P. Deposition, R.C.

- Q. Deposition, S.T.
- R. Peer review report, Ellsworth Municipal Hospital
- S. Statement, S.G.
- T. Statement, S.H.
- U. Statement, D.E.
- V. Statement, D.R.
- W. Memo from Denny Carr to Weeg dated 3/13/96
- X. Memo from Weeg to Carr dated 3/27/96
- Y. Memo from Carr to Weeg dated 3/27/96
- Z. The Clinician's Thesaurus pages 42 and 66
- AA. ACP Volume 16, Professional Boundaries in Psychiatric Practice
- BB. Correspondence, 8/22/80, involving Respondent
- CC. Certificate of Dr. A.R., dated 4/12/85
- DD. Iowa Medical Board file on Respondent
- EE. Report of Investigator B.J. dated March 22, 1996

Respondent's Exhibits

- 1. Quakerdale document for L.L., January 27, 1996
- 2. Civil Rights complaint for L.L., March 21, 1994
- 3. Assessment documents
- 4. Billing sheet
- 5(1). E. Memo (same as Y above)
- 5(2). B. Memo (interview on March 24, 1996)
- 6. M. Memo (interview on March 24, 1996)
- 7. Lafayette Clinic forms
- 8. S.N. Deposition (video taped two tapes)
- 9. Ellsworth Hospital doctors request for resignation for W.S., December 12, 1995
- 10. R.C. recommendation for Dr. Lachman, June 2, 1993
- 11. C. letter to S. and Dr. Lachman, August 23, 1993
- 12. B. Letter of recommendation, June 1, 1993
- 13. B. Memo (same as W above).
- 14. L. resignation letter, (no date-effective June 18, 1993)
- 15. L. records, 1992
- 16. Letters of recommendations for Dr. Lachman from patients and others, dated in 1996
- 17. Memo of Dr. T. dated December 30, 1992
- 18. Deposition of H. G.(video taped)
- 19. Deposition of P.G.(video taped)
- 20. Deposition of Dr. P.(video taped)
- 21. Deposition of Dr. L.(video taped)
- 22. Deposition of Dr. H. G.(video taped)
- 23. Deposition of D.J. (video taped)
- 24. Deposition of R.J.(video taped)
- 25. Deposition of Dr. D. E. (video taped)
- 26. Miscellaneous documents, Dr. Lachman patients
- 27. Newspaper article, Iowa Falls, April 17, 1996
- 28. Physician's orders from September 1992
- 29. Report card form for MMSC

30. Psychiatric Program, Ellsworth Municipal hospital covering Dr. Lachman in March and April 1994
31. Dr. Lachman deposition, March 26, 1996

State witnesses (identity is kept confidential unless employed or with the Board of Iowa Medical Examiners) called included: L.L., C.M., Dr. William M. Nissen, W.S, S.D. and Fredrick P. Nichols. Respondent witnesses included: S.N. (by video deposition and telephone conference), H.G., P.G., Dr. P., Dr. L., Dr. H.G., D.J., R.J., Dr. D.G., D.D., D.P. and K. L. The Respondent was the last witness called. During direct examination, the attorney for the Respondent requested a recess. During the recess he and Ms. Weeg stipulated to place into the record a deposition of the Respondent in lieu of further direct examination. During cross-examination of this witness, the attorney for the Respondent (Mr. Kaplan) made a motion to continue the case because of his perception that his client was not able to continue the interrogation because of his apparent inability to respond to some of the questions asked. Ms. Weeg, for the State, objected to a continuance. The Administrative Law Judge requested to ask several questions of the Respondent. The Respondent indicated that he wished to proceed with the hearing. Based on this statement and the purpose of cross examination, the motion was denied. Cross examination continued as well as questions by the panel and the hearing was concluded.

FINDINGS OF FACT

1. The Respondent is a licensed physician pursuant to Chapter 147, Code of Iowa. He was issued license number 28529 to practice medicine and surgery on January 24, 1992. The license was scheduled to expire on November 1, 1996.
2. The Respondent graduated from medical school in the Dominican Republic in 1985 and was involved in a residency program at a hospital in Wilkes Barre, PA. He resigned from that program because of health matters and subsequently entered a residency program at Wayne State University, effective July 1, 1988 and completed in July 1991. The Respondent is board eligible in psychiatry. The Respondent was a pharmacist prior to going to medical school.
3. The Respondent's first position after completion of his residency was at the Marshalltown Medical and Surgical Center (MMSC) where he assumed the medical directorship of the inpatient psychiatric unit in July 1992. The Respondent on April 1, 1993, after several complaints, was asked to resign or in the alternative would be discharged from MMSC. The Respondent did resign effective June 30, 1993. Numerous complaints were cited by the hospital including: failure to dictate history and physicals within 24 hours of admission and discharge summaries within 72 hours of discharge (the admitting privileges of the Respondent were

suspended and reinstated on several occasions) (Exhibit F); concern of charting and use of generic notes; allegation of sexual assault on a patient in March 1993; and overbilling patients.

4. The Respondent was employed at the Ellsworth Community hospital in Iowa Falls, Iowa, from August 16, 1993 until April 22, 1994. There presently is litigation between the Respondent and this hospital over an alleged breach of contract. Complaints filed with the hospital included: Respondent was not spending enough time with his patients, sexual harassment complaint-female friend of male patient was asked inappropriate question, clocking of time spent with patients was questioned-instances where charge was for 30 minutes when time with patient was 10 minutes or less, hugging of female workers and discussion of confidential patient information with F.C. (a non medical person).

5. An investigation was conducted by Investigator Fredrick P. Nichols beginning in June 1993 and concluded on August 30, 1994. That investigation was initiated because of two anonymous complaints made in March of 1993 against the Respondent. The investigation included contacts with the Respondent, medical management personnel at two hospitals, patients of the Respondent, employees of the hospitals and members of the public.

6. The Board on March 21, 1995, asked a member of the psychiatric peer review committee to review and evaluate investigative material and medical records with regard to the professional competency of the Respondent. The Report of the member dated August 1, 1995, found evidence that the Respondent willfully and repeatedly departed from or failed to conform to the minimum standards of acceptance and prevailing practice of medicine and surgery in the state of Iowa. Instances cited included: (a) inappropriate behavior toward co-workers, including sexual matters, (b) possible inappropriate behavior toward patients, (c) numerous medical record violations (untimely reports), (d) use of staff personnel and social workers to do his medical paper work and (e) improper billing records. There was insufficient evidence of any overmedication activity.

7. The evidence presented at the hearing supports the findings of the investigation and the member of the peer committee. The Respondent indicates a denial to each and every matter that deviates from the minimum standards of acceptance and prevailing practice. His denials are questioned based on past matters including discrepancies in his application for admission to enter into a post-graduate residency submitted to the Educational Commission for Foreign Medical Graduates in 1984 (Exhibit EE) and writing bad checks while in Florida practicing as a pharmacist at Indian Rivers. The evidence of S.N. by video deposition and telephone wherein she appears to be defending the actions of the Respondent is discounted. Statements that she gave to investigator

Nichols which were presented much nearer the alleged events are credited over her current recollections.

8. The Respondent is a charismatic person. Some of his patients consider him an excellent physician and confided in him. Some coworkers and peers believed in him and had no complaints. The Respondent attributes his problems to using a management style that he defends, but that has not been adopted by his peers in the communities where he practices. It is not the management style but the behavior of the Respondent that generates most of the complaints. In the period from July 1992 to April 22, 1994, there were many instances where co-workers, patients and the public did complain about the Respondent. The complaints are well founded and are not isolated incidents. In addition, medical professionals at the two hospitals had complaints about inadequacy of records, lateness of records, overbilling of patients and inappropriate activity with patients, co-workers and the public.

9. The complaints of inappropriate activity toward patients, staff and the public are substantially denied by the Respondent. Respondent claims the evidence does not show an error of judgement on his part. The Respondent appears to have taken no remedial action to eliminate or minimize those complaints. Specifically, the Respondent is found to have engaged in and continues to engage in the following conduct:

a. Breaches of confidentiality.

(1) There are instances where the confidentiality of patients was compromised by the Respondent. He gave confidential information to individuals who were not involved in the medical treatment of such patients. This activity is verified by interviews by Investigator Nichols. This was not an isolated incident but occurred on numerous occasions.

(2) The Respondent discussed patients with medical staff and administration staff even though such discussion was not necessary for the medical treatment of the patients. Such activity is inappropriate and is a breach of the doctor-patient relationship.

b. Inappropriate behavior to patients.

(1) The Respondent has on several occasions hugged patients when such activity was not appropriate. Most of the hugging occurred with female patients. The Respondent has patients who had histories of sexual abuse. As a result the touching and hugging activity, if any, should have been held to an absolute minimum.

This type of activity is verified from interviews of patients, statements of medical workers and other staff people. One patient stated that Dr. Lachman often hugged his female patients. One

patient indicates that Dr. Lachman spent more time with female patients than with male patients. Some of the hugging involved placement of the Respondent's head in inappropriate places.

(2) The Respondent on one occasion asked a female friend of a male patient about her sexual frequency with the male patient even though the female friend had no sexual relationship with the patient.

(3) The Respondent on one occasion attempted to date the mother of a patient while there was a doctor-patient relationship in existence.

c. Inappropriate behavior with staff personnel.

(1) The Respondent had a sexual confrontation with a staff person at his home. The Respondent denies any activity, but this panel believes the testimony of the staff person who alleges sexual assault. This abuse caused numerous bruises. The staff person confided the assault activity to others within a short time of actual assault. The Respondent has a history of giving half truths or even not telling the truth when requested. His response to questions dealing with letters of recommendations that were not made by the individuals who had allegedly signed the letters, demonstrates that the Respondent knows more about certain matters than he wishes to tell.

(2) The Respondent admits to dating two staff people during the time he was at the MMSC facility. The Respondent told other staff people of activities going on between himself and others. This included statements of sexual activity. Such behavior compromised the professional relationships between the members of the psych team at MMSC.

(3) The Respondent on many occasions expected female medical staff to hug him. Apparently on occasions the hugs included contact with parts of the body that the women considered inappropriate. The Respondent, as the supervisory person, should not make any such requests of his subordinates. Such activity is considered demeaning and unnecessary.

(4) The Respondent on several occasions told staff explicit details of his sexual activity and showed photographs of a sexual partner. Some of the photographs were suggestive and not appropriate for view at the hospital.

(5) There was a pattern established whereby the Respondent used his professional status and supervisory capacity to exploit coworkers and others for favors, including those of a sexual nature.

(6) One witness for the Respondent now appears to minimize the activities of the Respondent. When she was interviewed by the board investigator she affirmed certain activities were going on. This panel credits the initial comments made to the investigator over her most recent statements. Because of the passage of time, she may not have as vivid a recollection now as at the time of interviews. She affirmed the information of other staff people presented to the MMSC in a July 19, 1993 memo (Exhibit G)

d. Inappropriate medical treatment and practices.

(1) Billing practices. The Respondent engaged in dishonest billing practices. Patients were billed for hospital visits that were not seen on the date reflected in the billing. Patients were billed for more time than actually was spent with them. This information is verified by staff personnel, testimony of a peer reviewer, hospital administration personnel and others.

(2) Failure to perform psychiatric evaluations that a physician is required to perform. The Respondent admits to allowing his team to perform psychiatric evaluations.

(3) Delays in completing medical records. The Respondent on many occasions lost privileges until he brought all his records up to date. He was derelict in getting the records completed on the time schedule expected of all physicians.

(4) The Respondent dictated progress notes on patients he had not seen and also used "generic" language that peers indicate should have included more specific detail.

REASONING AND CONCLUSIONS OF LAW

In the statement of charges the Respondent was given notice of certain activities. In accordance with the findings of fact, the panel determines that the Respondent has violated Iowa Code section 147.55(2), 147.55(3), 147.55(8) 148.6(2)i (willful or repeated violation of lawful rule or regulation adopted by the board . . . including 653 IAC 12(4)(2)(b), 4(2)(c) and 4(2)(d), 653 IAC 12.4(3)(a), 4(3)(b) and 4(3)(c), 653 IAC 12.4(13) and 653 IAC 12.4(15) and 653 IAC 12.4(28).

Iowa Code section 147.55(2), (3) and (8) in part provide:

A license to practice a profession shall be revoked or suspended when the licensee is guilty of any of the following acts or offenses: . . .

(2) Professional incompetency...

(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct...

(8) Willful or repeated violations of the provisions of this act.

The actions of the Respondent in repeatedly overbilling his patients, in repeatedly allowing other staff people to perform activities that are a physician's responsibility, in repeatedly failing to maintain current medical records at the hospitals, in repeatedly breaching patient confidentiality, and in repeatedly engaging in inappropriate behavior toward patients, staff personnel and members of the public that included sexual matters, demonstrate violations of Iowa Code section 147.55(2), (3) and (8). Also Iowa Code section 148.6(2)i and the cited sections of the Iowa Administrative Code have been violated by the repeated acts of the Respondent.

Iowa Code section 148.6(2)i provides in part:

Pursuant to this section, the board of medical examiners may discipline a licensee who is guilty of any of the following acts or offenses:

(i) Willful or repeated violation of lawful rule or regulation adopted by the board

653 IAC 12.2 provides methods of discipline. Part of that section provides:

The board has authority to impose the following disciplinary sanctions: (1) revocation of license...

653 IAC 12.3 provides factors that may be considered by the board in determining the nature and severity of the disciplinary sanctions to be imposed. They include:

(1) The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care. (2) The facts of the particular violation. (3) Any extenuating circumstances or other countervailing considerations. (4) Number of prior violations or complaints. (5) Seriousness of prior violations or complaints. (6) Whether remedial action has been taken. (7) Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.

653 IAC 12.4(2)(b), 4(2)(c) and 12.4(2)(d) provide:

Professional incompetency. Professional incompetency includes but is not limited to:

(b) A substantial deviation by the physician from the standards of learning or skill ordinarily possessed and

applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances.

(c) A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances.

(d) A willful or repeated departure from or the failure to conform to the minimal standard of acceptable or prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in the state of Iowa.

653 IAC 12.4(3)(a), 4(3)b) and 4(3)(c) provide:

Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

(a) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a physician in the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy, and includes any representation contrary to their legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare and may operate to the injury of another.

(b) Engaged in unethical conduct includes, but is not limited to, a violation of the standards and principles of medical ethics and code of ethics set out in rules 13.10 and 13.11, as interpreted by the board.

(c) Practice harmful or detrimental to the public includes, but is not limited to, the failure of a physician to possess and exercise that degree of skill, learning and care expected of a reasonable prudent physician acting in the same or similar circumstances in this state or when a physician is unable to practice medicine with reasonable skill and safety to patients as a result of a mental or physical impairment or chemical abuse.

653 IAC 12.4(13) provides:

Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in which proceeding actual injury to a patient need not be established; or the committing by a physician of an act contrary to honesty, justice or good morals, whether the same is committed in the course of their practice or otherwise, and whether committed within or without the state.

653 IAC 12.4(15) provides:

Willful or repeated violation of lawful rule or regulation adopted by the board.

653 IAC 12.4(28) provides:

Violating any of the grounds for the revocation or suspension of a license listed in Iowa Code sections 147.55 and 148.6.

The preponderance of the evidence demonstrates that the Respondent provided substandard psychiatric medical care to a number of his patients and engaged in a pattern of repeated inappropriate conduct activities. The violations are further aggravated by the Respondent's continued denial of matters that this panel determines occurred.

The violations, especially those of a sexual nature, necessitate serious disciplinary action. There is more present here than a failure to maintain the minimum standards of acceptable and prevailing practice of medicine. The practices subject to complaint and established are harmful and detrimental to the public. In addition past activities of the Respondent demonstrate that he is not candid and truthful about his personal and professional activities.

The panel recommends the permanent revocation of the Respondent's license.

DECISION AND ORDER

IT IS THEREFORE ORDERED, that the Respondent's MEDICAL LICENSE (No. 28529 issued by the Iowa Board of Medical Examiners on January 24, 1992) is PERMANENTLY REVOKED.


IT IS FURTHER ORDERED, in accordance with 653 IAC 12.51, that the Respondent shall pay a disciplinary hearing fee of \$75.00. In addition, the Respondent shall pay any costs certified by the executive director and reimbursable pursuant to subrule 12.51(3).

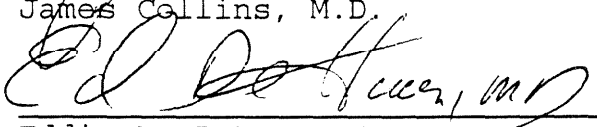
All fees and costs shall be paid in the form of a check or money order payable to the state of Iowa and delivered to the department of public health, within thirty days of the issuance of a final decision.


In accordance with 653 IAC 12.50(29), a proposed decision becomes a final decision unless appealed to the Board by a party adversely affected by serving a notice of appeal on the Executive Director within thirty (30) days after service of this proposed decision. The Board may also review a proposed decision on its own motion.

DATED this 25TH day of June, 1996.

THE PANEL


James Collins, M.D.


Eddie D. DeHaan, M.D.


Laura Stensrud, Public Member

cc: Barry S. Kaplan
Fairall, Fairall, Kaplan, Hoglan, Condon & Klaessy
34 South First Avenue
Marshalltown, IA 50158

Theresa O'Connell Weeg and Heather L. Adams
Assistant Attorneys General
Department of Justice
Hoover Building
LOCAL 50319

Iowa Board of Medical Examiners
Executive Hills West
LOCAL 50319

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

ROBERT E. LACHMAN, MD, RESPONDENT

No. 02-93-096

STATEMENT OF CHARGES

COMES NOW Ann M. Martino, PhD, Executive Director of the Iowa Board of Medical Examiners (the Board), on October 19, 1995, and at the direction of the Board files this Statement of Charges against Robert E. Lachman, MD (the Respondent), a physician licensed pursuant to Chapter 147 of the Code of Iowa and alleges:

1. That James D. Collins, Jr., MD, Chairperson; Laura J. Stensrud, Vice Chairperson; Edra E. Broich, Secretary; James M. Catherine, MD; Eddie D. DeHaan, MD; Mary C. Hodges; Dale R. Holdiman, MD; Teresa A. Mock, MD; Donna M. Norman, DO; and Roger F. Senty, DO, are the duly appointed, qualified and acting officers and members of the Board.

2. That the Respondent was issued license number 28529 to practice medicine and surgery in Iowa on January 24, 1992.

3. That the Respondent's license is valid and will next expire on November 1, 1996.

4. That over the past several years the Respondent provided substandard psychiatric medical care to some patients by practices including:

- A. Dictating progress notes on patients he had not seen;
- B. Deferring the responsibility of the dictation of some medical records to subordinates rather than doing the dictation himself; and
- C. Failing to maintain complete and timely medical records.

5. That over the past several years the Respondent engaged in conduct contrary to good morals and in unethical conduct as referred to in 653 IAC 13.10(1) and 13.10(5) by:

- A. Making sexually suggestive remarks to female patients;
- B. Making sexually offensive physical contact with female co-workers;
- C. Telling co-workers explicit details of his sexual activities; and,
- D. Showing co-workers sexually suggestive photographs of a sexual partner.

6. That the Board is authorized to take disciplinary action against the Respondent pursuant to the provisions of section 147.55, 147.55(2), 147.55(3), 147.55(8), 148.6(1) 148.6(2) and 148.6(2)i of the 1995 Code of Iowa and 653 IAC 12.4, 12.4(2), 12.4(2)b, 12.4(2)c, 12.4(2)d, 12.4(3), 12.4(3)a, 12.4(3)b, 12.4(3)c, 12.4(13), 12.4(15) and 12.4(28), which state in whole or part:

147.55 - Grounds. A license to practice a profession shall be revoked or suspended when the licensee is guilty of any of the following acts or offenses:

147.55(2) - Professional incompetency.

147.55(3) - Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct
...

147.55(8) - Willful or repeated violations of the provisions of this Act.

148.6(1) - The medical examiners, after due notice and hearing in accordance with Chapter 17A, may issue an order to discipline a licensee for any of the grounds set forth in section 147.55, Chapter 272C, or this subsection.

148.6(2) - Pursuant to this section, the board of medical examiners may discipline a licensee who is guilty of any of the following acts or offenses:

148.6(2)i - Willful or repeated violation of lawful rule or regulation adopted by the board ...

653-12.4 - Grounds for discipline. The Board may impose any of the disciplinary sanctions set forth in rule 12.2, including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

653-12.4(2) - Professional incompetency. Professional incompetency includes but is not limited to:

653-12.4(2)b - A substantial deviation by the physician from the standards of learning and skill ordinarily possessed and applied by other physicians ... in the state of Iowa acting in the same or similar circumstances;

653-12.4(2)c - A failure by a physician ... to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician ... in the state of Iowa acting in the same or similar circumstances;

653-12.4(2)d - A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery ... in the state of Iowa.

653-12.4(3) - Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public...

653-12.4(3)a - Knowingly making deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to an intentional perversion of the truth, either

orally or in writing, by a physician in the practice of medicine and surgery ... and includes any representation contrary to their legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare and may operate to the injury of another.

653-12.4(3)b - Engaging in unethical conduct includes, but is not limited to, a violation of the standards and principles of medical ethics and code of ethics set out in rules 13.10 ... as interpreted by the board.

653-12.4(3)c - Practice harmful or detrimental to the public includes, but is not limited to the failure of a physician to possess and exercise that degree of skill, learning and care expected of a reasonable prudent physician acting in the same or similar circumstances in this state ...

653-12.4(13) - Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery ... in which proceeding actual injury to a patient need not be established; or the committing by a physician of an act contrary to honesty, justice or good morals whether the same is committed in the course of their practice or otherwise ...

653-12.4(15) - Willful or repeated violation of lawful rule or regulation adopted by the board.

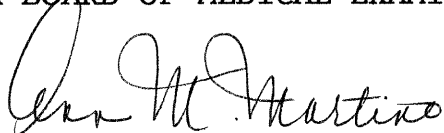
653-12.4(28) - Violating any of the grounds for revocation or suspension of a license listed in Iowa Code sections 147.55 and 148.6.

WHEREFORE the undersigned charges that pursuant to the provisions of the statutes and Iowa Administrative Code rules set out herein the Respondent is subject to disciplinary action . The undersigned prays that the Board enter an order fixing a time and place of hearing for the Statement of Charges. The undersigned further prays that upon final hearing the Board enter its

STATEMENT OF CHARGES
Robert E. Lachman, MD
No. 02-93-096

finding of fact and decision to revoke, suspend or otherwise discipline the Respondent's Iowa medical license and for such other relief as the Board deems just in the premises.

IOWA BOARD OF MEDICAL EXAMINERS



Ann M. Martino, PhD, Executive Director
1209 East Court Avenue
Des Moines, Iowa 50319-0180
Telephone: (515) 281-5171

DMC/* 10-18-95

a8\Lachman.CS