



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

PUBLIC

August 25, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

W. Ford Duane, Esq.
Hannah Estes & Ingram
37 N. Orange Avenue #300
Orlando, Florida 32801

Muhammad Islam, M.D.
aka M. Sirajul Islam, M.D.
715 Oak Commons Boulevard
Kissimmee, Florida 34741

Muhammad Islam, M.D.
Aka M. Sirajul Islam, M.D.
2900 17th Street
St. Cloud, Florida 34769

RE: In the Matter of Muhammad Islam, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-188) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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

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


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

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

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

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

Sincerely,

A handwritten signature in cursive script that reads "Sean D. O'Brien".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

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

IN THE MATTER

OF

MUHAMMAD ISLAM, M.D.

(a/k/a M. Sirajul Islam, M.D.)

DETERMINATION

AND

ORDER

BPMC #04-188

COPY

A Notice of Referral Proceeding and Statement of Charges, both dated February 4, 2004, were served upon the Respondent, **MUHAMMAD ISLAM, M.D. (a/k/a M. Sirajul Islam, M.D.)**. **JERRY WAISMAN, M.D., M.D.**, Chairperson, **ARSENIO G. AGOPOVICH, M.D.** and **MR. MICHAEL WALKER**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on May 20, 2004, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent appeared in person and by **W. FORD DUANE, ESQ.**.

Evidence was received and transcripts of these proceedings were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d), based upon actions that would have constituted misconduct in New York, had they been committed here, pursuant to subdivisions (17), (20) and (31). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

J. Roderick Hundley, M.D. (by telephone)¹
Raymond M. Pomm, M.D. (by telephone)
Muhammad Islam, M.D.

¹ Respondent's witnesses testified by telephone, and certified under oath, notarized in Florida after the hearing was concluded, that the certified transcripts of their testimony reflected an accurate representation of their truthful testimony.

FINDINGS OF FACT

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

1. **MUHAMMAD ISLAM, M.D.**, the Respondent, was authorized to practice medicine in New York State on July 22, 1983, by the issuance of license number 155211 by the New York State Education Department (Ex. 4).
2. On August 27, 2003, the State of Florida Board of Medicine (hereinafter "the Florida Board") accepted a consent agreement incorporating some changes to an original consent agreement previously agreed to by Respondent and the Florida Department of Health. Pursuant to the ultimate consent agreement, Respondent agreed to accept discipline by the board (which included a \$20,000 fine; 5 years' probation, including monitoring by another physician; the use of a female chaperone while seeing female patients; fulfillment of a two-year contract the Physicians Resource Network (PRN) to address sexual boundary issues; continuing education in the area of professional boundaries, and the payment of costs) in order to resolve an administrative complaint against him that he had "...exercised influence within the patient-physician relationship for the purpose of engaging in sexual activity" and that he had fondled the patient's breast and kissed her during her recovery from surgery. In the consent agreement, Respondent neither admitted nor denied these allegations (Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Florida Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(d), in that the conduct described in the Florida administrative complaint that lead to the consent order would have constituted misconduct in New York, had it been committed here, under:

- New York Education Law §6530(17) (exercising undue influence on a patient);
- New York Education Law §6530(20) (engaging in conduct evidencing moral unfitness to practice medicine); and
- New York Education Law §6530(31) (patient abuse);

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case establishes that Respondent agreed to accept discipline by the Florida Board, as set forth above, after he was accused by the Florida Department of Health of engaging in sexual activity involving a patient recovering from surgery. The

imposition of discipline by the Florida Board against Respondent under these circumstances justifies a finding of misconduct in New York State.

Accordingly, the only issue that can be addressed in this decision is the penalty to be imposed in New York State for this misconduct. It is noted in this regard that Respondent at the instant hearing attempted to deny wrongdoing with respect to the patient covered by the Florida Order, but the Hearing Committee is bound by the imposition of discipline by the Florida Board pursuant to Public Health Law §230(10)(p). Therefore, all such testimony was disregarded by the Hearing Committee.

The Hearing Committee concludes that the imposition of probation requiring compliance with the Florida probationary terms, or under terms comparable to those imposed by the Florida Board should Appellant relocate to New York to practice, accompanied by a \$1,000 fine, is the appropriate penalty in this case. This conclusion is based in part upon Respondent's testimony regarding his compliance with the Florida Order and terms of probation, as well as his credible assurance that he will endeavor to be a "good man" for the rest of his life.

Respondent's testimony was supported by the testimony of J. Roderick Hundley, M.D., the psychiatrist seeing Respondent pursuant to the PRN contract, who opined, based upon his sessions with Respondent, and Respondent's compliance with his PRN contract and avoidance of further difficulties, that Respondent represents no threat to patients. This testimony by Dr. Hundley was corroborated by the testimony of Raymond Pomm, M.D., the Medical Director of the PRN Program, who testified in addition that Respondent's probation affords great protection for patients and that there is a minimal risk of recurrence of problems of the sort that led to the Florida Order.

The Hearing Committee agrees that the extensive protections of the type set forth in the Florida Order are sufficient to safeguard Respondent's patients from future acts of sexual misconduct and to allow him to demonstrate that he can be trusted to safely engage in the practice of medicine beyond his probationary period.

The terms of Respondent's New York probation are set forth in the attached order.

ORDER

IT IS HEREBY ORDERED THAT:

1. **MUHAMMAD ISLAM, M.D.** (aka M. Sirajul Islam, M.D.) will serve a term of **PROBATION OF FIVE (5) YEARS** from the effective date of the Florida Final Order.
2. A **FINE** in the amount of **ONE THOUSAND DOLLARS (\$1000.00)** is assessed against the Respondent. Payment of the fine shall be due within 60 days of the effective date of this order. The Respondent shall make payment to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 1258, Empire State Plaza, Albany, New York 12237.
3. The **TERMS OF PROBATION** are as follows:
 - A. Respondent shall comply fully with the Final Order of the Florida Board, dated August 27, 2003, and the incorporated Consent Agreement, and any extension or modification thereof. Respondent shall provide a written authorization for the Florida Board to provide the Director of OPMC with any/all information or documentation as requested by OPMC to enable OPMC to determine whether Respondent is in compliance with the Florida Order. Respondent shall submit quarterly a signed Compliance Declaration to the Director of OPMC, which truthfully attests whether he has been in compliance with the Florida Order during the declaration period specified.
 - B. Respondent shall make full payment of the fine set forth above by the prescribed date. In addition to constituting a violation of probation, any failure to make such payment shall be subject to all provisions of law relating to debt collection by the State of New York. This includes, but is not limited to, the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection, and non-renewal of permits or licenses (Tax Law §171(27), State Finance Law §18; CPLR §5001; Executive Law §32).
 - C. If, during the period of his probation, the Respondent chooses to resume practice in New York, he must provide thirty (30) days prior written notice concerning his intention, by registered or certified mail, return receipt requested, to the Board, addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Hedley Park Place, 433 River Street - Fourth Floor, Troy, New York 12180-2299. Said notice is to include a full description of any employment and practice since the date

of this hearing, as well as a listing of professional and residential addresses and telephone numbers within or without New York State. The notification must also list any and all investigations, charges, convictions or disciplinary actions against him by any local, state or federal agency, institution or facility to which Respondent has been subjected at any time.

- D. Respondent shall, in the course of practicing medicine in New York State, refrain from making any sexually suggestive or otherwise inappropriate comments to any patient, and refrain from engaging in any actions of a sexual nature in the presence of any patient.
- E. If, during the period of his probation, the Respondent relocates to New York to practice, he shall comply with any continuing treatment recommendations to which he is still subject under his Florida PRN contract. Respondent shall notify OPMC at the address set forth above of the name and address of the proposed treating practitioner, who shall be subject to approval by the Director of OPMC.
- F. Respondent shall, in the course of practicing medicine in New York State, examine and/or treat any female patient only in the presence of a chaperone. The chaperone shall be a female licensed or registered health care professional or other health care worker, shall not be a family member, personal friend, or in a professional relationship with Respondent which could pose a conflict with the chaperone's responsibilities. The chaperone shall be proposed by Respondent and subject to the written approval of the Director of OPMC.
- G. Prior to the approval of any individual as chaperone, Respondent shall cause the proposed chaperone to execute and submit to the Director of OPMC an acknowledgment of her agreement to undertake all of the responsibilities of the role of chaperone. Said acknowledgment shall be made upon a form provided by and acceptable to the Director. Respondent shall provide the chaperone with a copy of the Order and all of its attachments and shall, without fail, cause the approved chaperone to:
- Report quarterly to OPMC regarding her chaperoning of Respondent's practice.
 - Report within 24 hours any failure of Respondent to comply with the Order, including, but not limited to, any failure by Respondent to have the chaperone present when required, any sexually suggestive or otherwise inappropriate comments by Respondent to any patient, and any actions of a sexual nature by Respondent in the presence of any patient.
 - Confirm the chaperone's presence at each and every examination and treatment of a female patient by Respondent, by placing her name, title and date in the patient record for each and every visit, and by maintaining a separate log, kept in her own possession, listing the patient name and date of visit for each and every patient visit chaperoned.

- Provide copies of this log to OPMC at least quarterly and also immediately upon the Director's request.

- H. Respondent shall, in the course of practicing medicine in New York State, do so only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection of records and other documents maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC. The monitor shall also interview the chaperone to verify Respondent's compliance with the terms of this order.
- I. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
- J. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
- K. Respondent shall, in the course of practicing medicine in New York State, obtain, and thereafter maintain, medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice in New York State.
- L. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
- M. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
- N. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

- O. If Respondent commences the practice of medicine in New York State, the period of probation shall thereafter be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
- P. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
- Q. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
- R. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

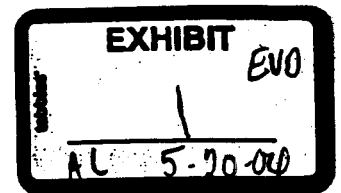
This ORDER shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

DATED: New York, New York
Aug. 20, 2004


JERRY WAISMAN, M.D.
Chairperson

ARSENIO G. AGOPOVICH, M.D.
MR. MICHAEL WALKER

APPENDIX 1



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

IN THE MATTER OF MUHAMMAD ISLAM, M.D., aka M. SIRAJUL ISLAM, M.D. CO-03-12-5783-A	NOTICE OF REFERRAL PROCEEDING
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TO: MUHAMMAD ISLAM, M.D., aka M. SIRAJUL ISLAM, M.D.
 715 Oak Commons Blvd.
 Kissimmee, FL 34741

 MUHAMMAD ISLAM, M.D., aka M. SIRAJUL ISLAM, M.D.
 2900 17th Street
 St. Cloud, FL 34769

PLEASE TAKE NOTICE THAT:

 An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 17th day of March 2004, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

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

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

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before March 8, 2004.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before March 8, 2004, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

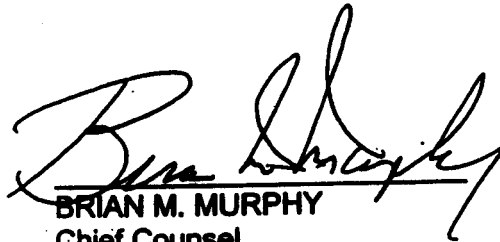
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days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

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

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

DATED: Albany, New York

February 4, 2004



BRIAN M. MURPHY

Chief Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

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

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
MUHAMMAD ISLAM, M.D., aka M. SIRAJUL ISLAM, M.D.
CO-03-12-5783-A

STATEMENT
OF
CHARGES

MUHAMMAD ISLAM, M.D., aka M. SIRAJUL ISLAM, M.D., the Respondent, was authorized to practice medicine in New York state on July 22, 1983, by the issuance of license number 155211 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 27, 2003, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), placed Respondent on five (5) years indirect probation, imposed a \$20,000.00 administrative fine and \$3,603.00 administrative costs of investigation, required him to enter into a two (2) year PRN contract addressing sexual boundaries, including an evaluation by a psychiatrist approved by PRN, to have a female employee present in the room when examining female patients, and to complete the Florida Medical Association on line course "Professional Boundaries: Maintaining Ethical Relationships" or an equivalent course approved by the Florida Board, based on sexual misconduct and exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity, in that he fondled a patient's breast more than one time and kissed the patient while the patient was in a hospital recovery room.

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

1. New York Education Law §6530(17) (exercising undue influence on the patient);
2. New York Education Law §6530(20) (moral unfitness); and/or


3. New York Education Law §6530(31) (willfully harassing, abusing, or intimidating a patient either physically or verbally).

SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

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

DATED July 4, 2004
Albany, New York


BRIAN M. MURPHY
Chief Counsel
Bureau of Professional Medical Conduct