

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
FROM THE ALASKA STATE MEDICAL BOARD**

In the Matter of:	)	
	)	
FRANK J. ILARDI, M.D.,	)	
	)	
Respondent.	)	OAH No. 10-0114-MED
<hr style="width: 35%; margin-left: 0;"/>	)	Board Case No 2850-10-002

**DECISION**

**I. Introduction**

*A. Summary*

Frank J. Ilardi, M.D. is a psychiatrist by training who once held a license to practice medicine in Alaska. In 2006, during the course of a disciplinary hearing on allegations of serious misconduct, he voluntarily surrendered that license, thereby terminating the disciplinary proceeding. He has applied for re-licensure. Following an initial denial of his application by the State Medical Board on January 22, 2010, Dr. Ilardi has sought and received a formal hearing on the application. This decision concludes, based on the evidence gathered at the hearing, that he has not carried his burden of demonstrating his fitness for licensure and that, in any event, the Board is precluded by statute from restoring Dr. Ilardi’s license because of the circumstances under which he surrendered it.

*B. Burden of Proof*

The 2006 proceeding was a disciplinary matter commenced by an accusation document. Had that case proceeded to a resolution by the Board, the Division of Corporations, Business and Professional Licensing (“Division”) would have had the burden of proof to show that Dr. Ilardi committed the violations of which he was accused.<sup>1</sup> The 2010 proceeding is in a different posture. Dr. Ilardi holds no current license; he is seeking issuance of a new license. Alaska Law provides that he has the burden of proof to show, by a preponderance of the evidence, that he is entitled to the license he seeks.<sup>2</sup>

*C. Evidence Received and Considered*

At the hearing, Dr. Ilardi submitted one document, marked as Exhibit 1, which was the transcript of a deposition he gave in May of 2010. It was admitted without objection or

---

<sup>1</sup> AS 44.62.460(e)(1).  
<sup>2</sup> AS 44.62.460(e)(2).

limitation. He did not offer additional testimony of his own, nor testimony of other witnesses, as part of his case in chief, but he testified during the hearing at the request of the Division. For its part, the Division offered Dr. Ilardi's testimony, background testimony from two agency witnesses, and expert testimony from Columbia University psychiatrist Richard Krueger. At the Division's request, the numbered agency record (pages 1-976) and Division exhibits A-F were admitted without objection and without limitation.<sup>3</sup>

As noted above, there was a partial hearing on disciplinary charges against Dr. Ilardi in 2006. Several witnesses testified at that time, including two alleged victims of misconduct by Dr. Ilardi. That hearing, up to its adjournment, has been transcribed, and the transcript is part of the record in this case.<sup>4</sup> I (the administrative law judge assigned to this case) also presided at that partial hearing, and I had the opportunity to observe witness demeanor at that time. As it happens, however, I have almost no recollection of the 2006 session: I surmise that since the matter became moot almost as soon as it began and I was very busy with other cases at the time, I retained little of what I had observed. Therefore, none of the findings of fact in this decision will be based on credibility judgments drawn from personal observation of witnesses in 2006. The sole source of any findings drawn from the 2006 proceedings is the written record of those proceedings.

## **II. Facts**

Dr. Frank Ilardi received his first medical license from Tennessee in 1969. He became board-certified in psychiatry in 1973. Including his residency, he appears to have practiced in the field for more than 35 years. He was licensed at various times in fourteen states and at least three foreign countries.<sup>5</sup> His Alaska medical license dates from 1989.<sup>6</sup> Prior to the matters that gave rise to this case, the record indicates that he never had any disciplinary problems with any licensing authority, nor any malpractice claims.<sup>7</sup>

---

<sup>3</sup> In addition to these items, the Division moved for admission of a set of investigative notes that were not on the Division's exhibit list. Dr. Ilardi objected on a number of grounds and the objection was sustained.

The hearing in this case was held under the Administrative Procedure Act (APA). Pursuant to AS 44.62.460(d), there can be some restrictions on the use of hearsay in APA proceedings. In this case, the prehearing order established that the parties would need to make a timely hearsay objection if they wished to rely on those restrictions. Scheduling Order (April 23, 2010) at 4. Neither party made such an objection to the other party's evidence, and hence all evidence that was admitted was admitted without restriction.

<sup>4</sup> R. 620-921.

<sup>5</sup> R. 925-930, 957.

<sup>6</sup> R. 481.

<sup>7</sup> Ilardi testimony; licensing file; Ex.1 (Ilardi Deposition) at 16.

Dr. Ilardi became a staff psychiatrist at North Star Hospital in Anchorage in approximately 2000.<sup>8</sup> In the 2002-2003 period, a nurse who has been called L.H. was on staff at the hospital. Dr. Ilardi worked with her but did not supervise her. He denies that he was in a position of authority over her.<sup>9</sup>

During the winter of 2002-2003, L.H. told Dr. Ilardi on multiple occasions that she felt depressed.<sup>10</sup> As Dr. Ilardi described it:

She did say those things many times though, that she was depressed, that she felt like killing herself, that she missed her husband and was very angry at him because he divorced her. I think he was a urologist, by the way. I'm not sure. And she acted very depressed.<sup>11</sup>

At Dr. Ilardi's invitation, L.H. met with him about treatment for her problem. By his assessment, "This was a severely depressed woman who I thought was on the verge of doing some serious harm to herself."<sup>12</sup> He gave her some samples of the drug Paxil.<sup>13</sup> L.H. had misgivings about taking Paxil, and she returned the drug. "[F]eeling that this was a seriously-depressed woman and that I already stuck my toe . . . into this situation," Dr. Ilardi then prescribed Wellbutrin.<sup>14</sup> These circumstances created a doctor-patient relationship between Dr. Ilardi and L.H.<sup>15</sup> Dr. Ilardi denies, however, that L.H. was his patient.<sup>16</sup>

Dr. Ilardi related at the hearing that L.H. "seduced" him.<sup>17</sup> He described himself (not L.H.) as having been "particularly vulnerable" at the time.<sup>18</sup> According to Dr. Ilardi, a "sexual" relationship with L.H. continued over the course of about four episodes consisting of her performing fellatio, her masturbating him to orgasm, and him fondling her genitalia through clothes.<sup>19</sup> Dr. Ilardi emphasized the last activity in his short closing argument at the end of the hearing, stating:

The matter of my relationship with one of these women, L.H., was one in which this lady worked, and by that I mean it's not a simple thing. You

---

<sup>8</sup> Ex. 1 (Ilardi deposition) at 23.

<sup>9</sup> Division's questioning of Ilardi.

<sup>10</sup> Ex. 1 (Ilardi deposition) at 28.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 30.

<sup>13</sup> *Id.* at 31.

<sup>14</sup> *Id.* at 33-34.

<sup>15</sup> Cross-exam of Krueger (recording at 1/1:02:00ff); R. 860 (2006 testimony of Dr. Mardones). In a determination not wholly derivative of the prior Alaska proceeding, the New York State Board for Professional Medical Conduct has also made a factual finding, in a contested hearing, that L.H. was Dr. Ilardi's patient. R. 134-135.

<sup>16</sup> Division's questioning of Ilardi.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

seem to think well, it's very simple. It was not. And she also bends the truth in stating that I masturbated her. In fact I didn't. I did touch her, but I didn't masturbate her, there's a big difference in that, would you not agree, Ms. Horetski?<sup>20</sup>

(In the above quotation, references to "she" are to the Division's attorney, while "her" is L.H.) Dr. Ilardi said in his 2010 testimony that the activity "was no big deal."<sup>21</sup> He said that he and L.H. were "just, like, having fun."<sup>22</sup> Dr. Ilardi said that L.H. wanted a broader social relationship with him, but he restricted their activities to the sexual encounters at work.<sup>23</sup>

L.H. herself has given an entirely different account of this sexual relationship, wherein on two occasions Dr. Ilardi exposed himself to her, masturbated in her presence, and tried to force her to gratify him.<sup>24</sup> L.H. testified about this matter in 2006, but not in 2010.

It has also been alleged that in June of 2003 Dr. Ilardi engaged in an assault of a sexual nature against D.B., a mental health technician at North Star with whom Dr. Ilardi did not have a doctor-patient relationship. Dr. Ilardi denies assaulting D.B. D.B. testified against Dr. Ilardi in 2006,<sup>25</sup> but she did not testify in the present hearing.

It is hard to be confident in resolving differing accounts after seven years have passed and without the benefit of live testimony from two of three relevant witnesses.<sup>26</sup> As will be discussed more fully below, however, resolution of these factual issues is entirely unnecessary to decide this case.

In mid-2003 L.H. and D.B. made complaints to the administration of North Star Hospital, and on June 28, 2003 the hospital's medical director suspended Dr. Ilardi's privileges pending an investigation.<sup>27</sup> After this investigation had been pending for a few business days, Dr. Ilardi wrote to the hospital to withdraw from the hospital's staff.<sup>28</sup> He stated that the reason for his

---

<sup>20</sup> Ilardi closing rebuttal.

<sup>21</sup> Division questioning of Ilardi at 3/50:00.

<sup>22</sup> Id. at 3/50:30.

<sup>23</sup> Division's questioning of Ilardi.

<sup>24</sup> R. 662-667.

<sup>25</sup> Her transcribed testimony begins at R. 718. As noted in Part I, the ALJ has essentially no independent recollection of this testimony or how it was delivered and can rely only on the transcript.

<sup>26</sup> The ALJ will refrain from making credibility determinations under these circumstances when it is not necessary to do so. Were it necessary to do so, however, it would be difficult to find that Dr. Ilardi has sustained his burden of proving that his version is the more credible. At the 2010 hearing, Dr. Ilardi focused much of his denial on the claim that he had erectile dysfunction and "I can't do" the things he is alleged to have done. This claim is undermined by his own account of the sexual relationship with L.H.

<sup>27</sup> Ex. A, E.

<sup>28</sup> Ex. B.

withdrawal was “the present Medicaid restrictions” on the number of reimbursed patient visits per week.<sup>29</sup>

As required by law, the hospital reported the suspension of Dr. Ilardi’s privileges to the staff of the State Medical Board.<sup>30</sup> A board investigation ensued that resulted, two and a half years later, in the filing of an accusation seeking revocation of Dr. Ilardi’s license on the basis of Dr. Ilardi’s interactions with L.H. and D.B.<sup>31</sup> A formal evidentiary hearing on that accusation convened on August 28, 2006. L.H., D.B., and other witnesses adverse to Dr. Ilardi testified and were cross-examined by Dr. Ilardi’s attorney.<sup>32</sup> On the second day of the hearing, while the Division was still presenting its case against Dr. Ilardi, Dr. Ilardi’s counsel asked to suspend the proceedings in order to discuss an agreed resolution with the Division’s counsel.<sup>33</sup> Dr. Ilardi then voluntarily surrendered his license.<sup>34</sup> In the surrender document, Dr. Ilardi acknowledged “that before my license to practice as a doctor in Alaska can be reinstated, I will have to prove to the . . . Board that I am competent to resume practice, and am able to do so with skill and safety.”<sup>35</sup> He did not admit or deny wrongdoing.<sup>36</sup> The disciplinary case against Dr. Ilardi was discontinued.

All of Dr. Ilardi’s licenses in other jurisdictions have either lapsed through nonrenewal or have been terminated involuntarily because of the loss of his Alaska license (or, prior to that, because of the pendency of charges in Alaska).<sup>37</sup> One jurisdiction, the State of New York, conducted a formal hearing regarding the Alaska allegations. In the New York proceeding the Alaska charges had to be accepted as true. The New York authorities independently determined that Dr. Ilardi had not, as of 2007, demonstrated that he had been rehabilitated.<sup>38</sup>

Since surrendering his license in Alaska, there is no evidence that Dr. Ilardi has received treatment for any sexual compulsion or other mental disorder other than depression. At the hearing, Dr. Ilardi presented no witnesses who had evaluated him.

---

<sup>29</sup> *Id.*

<sup>30</sup> Direct testimony of Gallant.

<sup>31</sup> R. 609-617. Dr. Ilardi’s Alaska license had lapsed for nonrenewal by this time, but it remained subject to revocation.

<sup>32</sup> *See* R. 620-920.

<sup>33</sup> R. 919. Dr. Ilardi subsequently withdrew his request for a hearing, and the case was returned from this office to the State Medical Board. *See* Order Vacating Hearing, OAH No. 06-0149-MED (Aug. 31, 2006).

<sup>34</sup> R. 923.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Ex. 1 (Ilardi deposition) at 16; licensing file. There may have been an additional ground for revocation in New Zealand, but the circumstances of the loss of that license are not fully documented in the file.

<sup>38</sup> R. 130-137.

Dr. Ilardi has told the Board that he takes “full responsibility for getting myself into a situation where I brought shame not only to myself but to my profession.”<sup>39</sup> At the 2010 hearing he described his conduct with L.H. and D.B. as “poor judgment.”<sup>40</sup> He has not elaborated on these statements in any significant way, and one cannot tell exactly what it is about his conduct—parts of which he has elsewhere described as “no big deal” and “just having fun”—he regards as deficient. He is emphatic that in his entire career, he has never had any deficiency in the “safe” practice of medicine.<sup>41</sup>

### III. Discussion

Parts A through C below discuss three wholly independent bases on which Dr. Ilardi’s application is subject to denial.

#### A. *A Statute Prevents Reinstatement of Dr. Ilardi’s License*

The final sentence of Alaska Statute 08.64.334, which governs the voluntary surrender of medical licenses, provides explicitly that “a license may not be returned to the licensee if the voluntary surrender resulted in the dropping or suspension of civil or criminal charges against the physician.” By the time Dr. Ilardi voluntarily surrendered his Alaska license, civil charges were pending against him in a disciplinary proceeding before the State Medical Board.<sup>42</sup> His offer to surrender the license caused the disciplinary proceeding on those charges to be terminated in mid-hearing. By its plain terms, AS 08.64.334 prohibits the Board from issuing a new license to Dr. Ilardi.

The prohibition in AS 08.64.334 is not irrational. Assembling and presenting evidence bearing on disputed allegations becomes increasingly difficult as time passes. Memories fade, witnesses move away or lose interest, and the documentary record degrades through the operation of retention schedules. If a licensee could sidestep a disciplinary proceeding soon after the alleged events occur, simply by surrendering his or her license, and then contrive to litigate the matter afresh years later after the balance of available proof might well have shifted, the public’s interest in ensuring a safe profession could be compromised.

---

<sup>39</sup> R. 27 (underlining in original).

<sup>40</sup> Ilardi’s sworn statement at hearing at 3/1:15:00ff.

<sup>41</sup> *Id.*

<sup>42</sup> The allegations in the 2006 accusation were civil charges. The consensus of courts seems to be that while administrative discipline cases such as this one are not civil “actions,” they are quasi-criminal civil “proceedings.” *E.g., Unnamed Physician v. Commission on Medical Discipline*, 400 A.2d 396, 400 (Md. 1979) (cited with approval in *Smith v. State, Bd. of Dental Examiners*, 1984 WL 908389 (Alaska 1984)). As such, their charges—which can lead to a variety of sanctions, including punishments such as the imposition of substantial fines—would be “civil . . . charges” under AS 08.64.334.

The present case illustrates this problem: in 2006, a broad array of witnesses were assembled to testify about Dr. Ilardi's conduct. Dr. Ilardi halted that presentation in mid-stream. Now, four years later, he asks for a determination that the evidence contradicting his own account of the events at issue is too weak to be believed. The logical time to weigh the strength of the evidence, however, would have been 2006, not 2010.

Nonetheless, in this particular case there is some reason to be concerned about the application of AS 08.64.334's last sentence. When he surrendered his license, Dr. Ilardi seems to have been presented with the Division's standard surrender document, which has the surrendering licensee acknowledge that "I . . . understand that before my license to practice as a doctor in Alaska can be reinstated, I will have to prove to the . . . Board that I am competent to resume practice, and am able to do so with skill and safety."<sup>43</sup> This recital implies that reinstatement is not impossible.

If the Division or its legal representatives indeed led Dr. Ilardi to believe that his surrender was not final and that his license could potentially be reinstated, it is conceivable that the Division would be prevented from taking a different position now. The basis under which the Division might be constrained from relying on AS 08.64.334 is the doctrine of equitable estoppel, which can come into play when a member of the public has reasonably acted in reliance on misinformation provided by the government. To be able to rely on this doctrine, Dr. Ilardi would have to prove each of the following elements:

- (1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.<sup>44</sup>

If these four elements were present, the Division could be estopped to contend—that is, precluded by equity from contending—that the statement it made was false, and it might have to live by that statement. In this case, however, Dr. Ilardi's proof falls short of establishing at least the first two of the elements. Without more information on the circumstances surrounding the use of the standard surrender document, it is not possible to conclude that the "I . . . understand" language, though certainly suggestive of a right to reapply, rose all the way to the level of a statement by the Division that reinstatement could occur if Dr. Ilardi proved competence to

---

<sup>43</sup> R. 923. The surrender document uses the same language as numerous other surrender documents for medical professionals found in the public collection of such materials maintained in the library of the Office of Administrative Hearings. *E.g.*, Surrenders of License in Case Nos. 2800-08-001, 2808-08-001, and 2800-09-011.

<sup>44</sup> *Crum v. Stalnacker*, 936 P.2d 1254, 1256 (Alaska 1997) (applying this test for estoppel against the government in a Teachers' Retirement System case).

resume practice. More fundamentally, Dr. Ilardi was represented by attorney Thomas Van Flein in the 2006 proceeding. Without evidence to the contrary, one must surmise that, in negotiating the surrender of his client's license, Van Flein was aware of the single legal provision directly addressing voluntary surrender of medical licenses and that he advised his client about its prohibition on reinstatement. If Dr Ilardi received such advice from his attorney, he could not have placed "reasonably reliance" on any contrary implication in the Division's boilerplate surrender document.

Because estoppel has not been established, the final sentence of AS 08.64.334 precludes Dr. Ilardi from receiving a new license in Alaska.

*B. Dr. Ilardi Has Not Shown that He Is Competent to Practice*

Independent of the absolute prohibition on relicensure in its last sentence, AS 08.64.334 provides that a surrendered "license may not be returned unless the board determines, under regulations adopted by it, that the licensee is competent to resume practice." The Board's regulations do not directly define competence, but they do define its converse, incompetence. Under 12 AAC 40.970, for purposes of AS 08.64 "'professional incompetence' means lacking sufficient knowledge, skills, or professional judgment in the field or practice in which the physician . . . engages, to a degree likely to endanger the health of his or her patients." Hence, to demonstrate professional "competence," Dr. Ilardi must show that he has sufficient "professional judgment" that the health of his patients will not be endangered. If he fails to make that showing, the Board has no discretion to grant him a license.

In this case the evidence established that Dr. Ilardi had a physician-patient relationship with L.H. By his admission, moreover, L.H. "was a severely depressed woman who I thought was on the verge of doing some serious harm to herself."<sup>45</sup> Nonetheless, he engaged in multiple sexual encounters with her.<sup>46</sup> Dr. Krueger's testimony established that this is egregiously unprofessional behavior for a psychiatrist; he noted especially the large power differential between a psychiatrist and his patient, a differential that effectively makes all sexual relations between them nonconsensual.<sup>47</sup> Such relations are a violation of the *Principles of Medical*

---

<sup>45</sup> Ex. 1 (Ilardi deposition) at 30.

<sup>46</sup> Regardless of whose account of the sexual encounters is believed, there was more than one of them and they took place under degrading circumstances that would be particularly likely to lead to emotional distress for the less empowered person involved, L.H.

<sup>47</sup> Cross-exam of Krueger.



*Ethics of the American Medical Association*,<sup>48</sup> which have been adopted as part of Alaska law through a Board regulation.<sup>49</sup> As the American Psychiatric Association has determined in translating the Principles of Medical Ethics to the psychiatric arena, avoiding this kind of patient exploitation is “particularly important [for a psychiatrist] because of the essentially private, highly personal, and sometimes intensely emotional nature of the relationship established with the psychiatrist.”<sup>50</sup>

Dr. Ilardi still does not grasp the seriousness of his misconduct. He continues to deny that L.H. was his patient, and he continues to contend that his relations with her were “no big deal.” This demonstrates poor professional judgment that continues to the present. The poor judgment is of a type that could endanger the health of a future patient.

Because he has not demonstrated that he has sufficient professional judgment to avoid harming patients, Dr. Ilardi cannot be granted a license.

*C. Dr. Ilardi Should Not Be Licensed Because of Disciplinary Violations*

Alaska Statute 08.64.240(b) authorizes the Board to refuse a license to any applicant for any reason for which the Board could impose a disciplinary sanction under AS 08.64.326. Under the latter statute, the conduct detailed above is subject to discipline. Alaska Statute 08.64.326(a)(9) authorizes discipline for “sexual contact . . . or attempted sexual contact with a patient outside the scope of generally accepted methods of examination or treatment,” unless there was a marriage or romantic relationship already in place when the person became a patient. The contact Dr. Ilardi describes with L.H. was sexual contact,<sup>51</sup> was not in the scope of generally accepted psychiatric practice, and occurred after Dr. Ilardi began treating L.H.<sup>52</sup>

Whether to deny a license on the basis of conduct subject to discipline is—in contrast to the two mandatory reasons for denial in III-A and III-B above—a matter within the Board’s discretion. In this case, that discretion should be exercised for denial. For the reasons explored above, the misconduct at issue is very serious, and the physician does not appreciate its seriousness, leaving him at risk to reoffend.

---

<sup>48</sup> *Id.*; see also American Psychiatric Ass’n, *The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry* (2001), Section 1-1 (“A psychiatrist shall not gratify his/her own needs by exploiting the patient.”).

<sup>49</sup> 12 AAC 40.955(a).

<sup>50</sup> American Psychiatric Ass’n, *The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry* (2001), Section 1-1.

<sup>51</sup> See 12 AAC 40.990(b)(2)(A) (“causing the patient to touch . . . the licensee’s . . . genitals”).

<sup>52</sup> Alternatively, the same interactions as they are described by L.H. also fall within the coverage of this statute. See, e.g., R. 657-658, 697-698.

*D. Other Contentions*

Because grounds A and B above deprive the Board of discretion to grant Dr. Ilardi a license, and because ground C provides a compelling basis for denial even if the Board had discretion to grant the license, it is unnecessary to evaluate the additional grounds for denial the Division has argued.<sup>53</sup>

**IV. Conclusion**

Dr. Ilardi has failed to meet his burden of proof of demonstrating that he is eligible to receive, and ought to receive, a license to practice as a physician in Alaska. Accordingly, the initial denial of his license of January 22, 2010 will not be disturbed.

DATED this 23<sup>rd</sup> day of July, 2010.

By: Signed  
Christopher Kennedy  
Administrative Law Judge

**Adoption**

The Alaska State Medical Board adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 28<sup>th</sup> day of October, 2010.

By: Signed  
Signature  
Jean M. Tsigonis, M.D.  
Name  
Chair  
Title

[This document has been modified to conform to technical standards for publication.]

---

<sup>53</sup> These include alternative factual bases for discretionary denial under AS 08.64.326 that would require resolution of the differing testimony of witnesses in the 2006 proceeding. In addition, the Division has contended that the license ought to be denied as a matter of discretion under AS 08.64.240(b) in conjunction with AS 08.64.326(a)(13) in light of Dr. Ilardi's loss of licenses in other jurisdictions. This last contention may be problematic because the license actions elsewhere were largely or entirely derivative from the Alaska surrender; there is no unequivocal evidence in the record of independent misconduct in other jurisdictions.