

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF HEALTH  
BOARD OF MEDICAL LICENSURE AND DISCIPLINE  
THREE CAPITOL HILL  
PROVIDENCE, RHODE ISLAND 02908**

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**IN THE MATTER OF:**

**Bryan Guilfoyle, M.D.,**

**License Number MD 8830**

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**DECISION**

**I. INTRODUCTION**

The above entitled matter came for hearing before a hearing committee<sup>1</sup> of the Board of Medical Licensure and Discipline (“Board”) pursuant to an order entitled Grounds for Denial for Reinstatement issued by the licensing committee of the Board to Bryan Guilfoyle, M.D. (“Respondent”) on or about June 21, 2011. A hearing was held on July 8 and 12, 2011 with both parties represented by counsel. The parties timely filed briefs by August 26, 2011.

**II. JURISDICTION**

The Board has jurisdiction over this matter pursuant to R.I. Gen. Laws § 5-37-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, *Rules and Regulations for the Licensure and Discipline of Physicians*, and *Rules and Regulations of the Department of Health Regarding Practices and Procedures Before the Department of Health and Access to Public Records of the Department of Health*.

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<sup>1</sup> On July 6, 2011, pursuant to R.I. Gen. Laws § 5-37-5.2, Michael Fine, M.D., Director of the Department of Health designated three (3) members of the Board of Medical Licensure and Discipline to act as a hearing panel for the purposes of adjudicating this matter. The committee members are Patrick Barry, Esquire, Richard Iacobucci, M.D., and Joan Crawley. See the Department’s Exhibit One (1).

### **III. ISSUE**

Whether the Respondent met the requirements set forth in the Administrative Decision (“Decision”) dated December 31, 2002 regarding the conditions to be met by Respondent in order to be re-licensed as a physician after the suspension of his license as a physician. See Department’s Exhibit Three (3) (Administrative Decision).

### **IV. MATERIAL FACTS AND TESTIMONY**

The Respondent testified on his behalf. He testified that he was aware that under the Decision, he could have applied for re-licensure in June, 2004 but he did not apply then because he had cancer in 2005 and 2006. He testified that since October, 2010, he has received sobriety treatment from Bruce Freeman (“Freeman”) and has been subjecting himself to random urine tests twice a week that are “ETG” testing so the test is accurate for 72 hours. He testified he has not taken a drink since 2005. He testified he has worked as a limousine driver since 2003 in Massachusetts. He testified that during his years as a limousine driver, he has not been stopped for drunk driving and has not received any discipline or any complaints.

The Respondent testified that since he has been out of the medical profession he has been taking online continuing medical education (“CME”). See Respondent’s Exhibits One (1), Two (2), and Three (3). He testified that he has not engaged in any patient care since his license suspension and he agreed that if he was re-licensed, he would need further testing and training. He testified in the last nine (9) years he has been trying to meet the Decision’s requirements for re-licensure and has engaged in psychiatric rehabilitation and drug and alcohol screenings in order to satisfy said requirements.

The Respondent testified that he has attended Eagle Heights Church weekly in Massachusetts for approximately three (3) years in its sobriety program that is similar to Alcoholics Anonymous (“AA”) but with religious convictions. He provided a letter from the church pastor regarding his participation. See Respondent’s Exhibit Four (4). The Respondent testified that his treatment with Freeman has helped him with his sobriety and that sobriety is the most important factor to prove for his reinstatement. He testified that he is now mentally and emotionally capable to engage in practice of medicine.

Freeman testified on behalf of the Respondent. He testified that he has a mixed practice consisting of addiction and family treatment and also performs evaluations for the Federal government so he has a Federal designation as a substance abuse professional. He testified he has a BS in Social Work and a Master’s in Social Work. See Respondent’s Exhibit Five (5) (resume).

Freeman testified that he first saw the Respondent on November 3, 2010 and took his case history. He testified that they met once a week for the first couple of months and then every other week and the Respondent was subjected to alcohol testing. He testified that the Respondent has had negative screens, has been actively involved in his recovery, never missed an appointment, and is working. He testified that that he would give the Respondent a positive prognosis for his recovery. He testified he does not think the Respondent would be a risk to himself or the public. See Respondent’s Exhibits Six (6) (Freeman’s letter and results of drug and alcohol tests between November, 2010 and June, 2011), Seven (7), Eight (8), and Nine (9) (tests).

On cross-examination, Freeman testified that he wrote the letter at the Respondent’s request and had been seeing him for about three (3) months at the time. He

testified that in the course of evaluating the Respondent, he relied on the Respondent's history and does not have any other evidence besides the Respondent's own history for what happened in the last nine (9) years. He testified that the Respondent had a couple of drug tests but most were for alcohol and that he would tell the Respondent to go for testing and the Respondent would make his own arrangements for testing. He testified that he is not familiar with the Respondent's clinical skills as a doctor.

On cross-examination,<sup>2</sup> the Respondent testified regarding his medical history and training and his job at Kent County Hospital where he had privileges and was set up in private practice. He testified that the Decision addressed issues that arose during his time at Kent County Hospital. He testified that the Decision requires him to engage in psychiatric rehabilitation treatment to address practice deficiencies, be alcohol and drug free as evidenced by participating in random screenings, and undergo re-training in patient case management. He testified that what he reported to Freeman was not exactly true in that he was not alcohol free for nine (9) years but slipped about the time he had cancer. He testified that he did tell Freeman about it but Freeman probably forgot about those incidents when writing his letter. He testified about treatment he received prior to the Decision. He testified that he was involved in AA for about ten (10) years and found the Eagle Church more helpful because of its relationship with God.

The Respondent testified that in 2009 he wrote a letter to Dr. Robert Crausman, the head of the Medical Board, about being reinstated and Dr. Crausman told him to pay specific attention to the items in the Decision. See Department's Exhibit Ten (10) (Respondent's letter and response thereto). He testified that he informed Dr. Crausman that it had been recommended to him (Respondent) that he perform a residency in another

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<sup>2</sup> The Respondent's testimony was also treated in part as direct examination by the Department for its case.

field. He testified that he has submitted to random drug and alcoholic screenings as required by the Decision but never asked the Board about the screenings.

On redirect examination, the Respondent testified that he has four (4) recent drug screenings. See Respondent's Exhibits Six (6) through Nine (9) (drug tests for 11/8/10, 10/21/10, 9/22/10, 10/1/10). He testified that he is not aware of any clinical retraining programs but that he has continued his medical education by taking the online CME's. On re-cross examination, the Respondent testified that he did not contact the Board regarding how to comply with the Decision in terms of retraining programs.

## V. DISCUSSION

### A. Arguments

In closing, the Board argued that the Respondent has not complied with the Decision and presented no evidence that he complied. The Department further argued that the Respondent was reminded of the Decision's conditions in 2009 and to contact the Board regarding how to comply and the Respondent failed to do so. The Board argued that the Respondent's treatment with Freeman does not fall under the required psychiatric care and that Respondent did not undergo random drug screenings but rather the screenings were performed at the Respondent's discretion. Finally, the Board argued that in the last ten (10) years, the Respondent has been out of the medical profession and received no training.

In closing, the Respondent argued that the Respondent has maintained his sobriety, was honest about his relapses in the early stages of recovery, and has been employed since 2003 as a limousine driver. The Respondent argued that he regrets past misdeeds and is currently under the care of a licensed Social Worker and that he is

engaged in psychiatric rehabilitation and has accepted responsibility for his past problems. The Respondent argues that the Board is dwelling on the type of treatment taken as opposed as to the results. As to the results of treatment, the Respondent argued that he is sober and his prior disciplinary issues were brought about by his substance abuse so he is now free of those issues. Finally, the Respondent argued that he would agree to continued compliance and conditional license.

**B. Whether the Respondent Should be Re-licensed**

The Decision found the Respondent had taken various actions that constituted unprofessional conduct. See R.I. Gen. Laws § 5-37-5.1. As a result, the Decision suspended the Respondent's license for eighteen (18) months and found that the Respondent could apply for re-licensure subject to the following three (3) conditions:

- a) has or is engaged in psychiatric rehabilitation treatment to address his practice deficiencies as well as his failure to accept responsibility;
- b) that he is alcohol and drug-free as evidenced by participation in random screenings;
- c) that he has undergone retraining in the areas of patient case management and patient recordkeeping. See Decision, p. 16.

The basis for the licensing committee's Grounds for Denial of Restatement (Department's Exhibit Two (2)) was twofold: noncompliance with the Decision and being out of the practice of medicine since 2001.

The Decision specifically required the Respondent to obtain psychiatric treatment – in other words treatment from a psychiatrist (a medical doctor) - to address his practice deficiencies and failure to accept responsibility. The Respondent presented no evidence that he undertook any psychiatric treatment subsequent to the Decision that addressed such issues. The Respondent argued that the Board's denial was focused on the type of treatment rather than results. However, the Decision specifically required psychiatric

treatment to address specific areas. The Respondent's evidence is that he received treatment regarding sobriety with Freeman, a social worker. Not only is Freeman not a psychiatrist, but the Respondent is required to receive psychiatric treatment regarding his practice deficiencies and failure to accept responsibility.

The Respondent participated in a sobriety program and sobriety treatment and some alcohol and drug screenings. However, the drug screenings were few and not random in that the Respondent chose when to take a drug screening.

The Respondent has taken numerous online CME courses but has not provided evidence in retraining in the areas provided for in the Decision.<sup>3</sup>

Based on the forgoing, the hearing committee finds that the Respondent has not complied with the Decision and in particular with the psychiatric treatment requirement and that he has been out of the practice of medicine for almost ten (10) years.<sup>4</sup>

## **VI. FINDING OF FACTS**

1. The Respondent's license as a physician was suspended for eighteen (18) months by the Decision dated December 31, 2002.
2. The Decision conditioned any re-licensure of the Respondent on certain conditions set forth in the Decision.
3. The Respondent applied for re-licensing but provided no evidence of complying with Decision's requirements.
4. The facts contained in Section IV and V are reincorporated by reference herein.

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<sup>3</sup> The Respondent was notified in 2009 that he should speak to the Board regarding how best to try to comply with the Decision. The Respondent did not follow this advice.

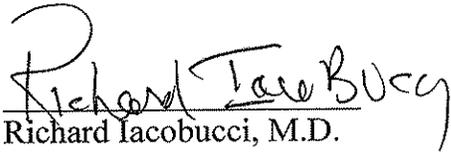
<sup>4</sup> The Committee also finds that nothing precludes the Respondent from applying in future for re-licensure but obviously such re-licensure is still subject to the conditions set forth in the Decision.

**VII. ORDER**

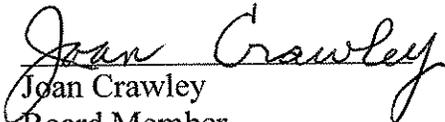
Based on the forgoing, the Board hereby orders the following:

Pursuant to the Grounds for Denial of Reinstatement and based on the findings and conclusions set forth herein, the Respondent's application for re-licensure as a physician is hereby denied.

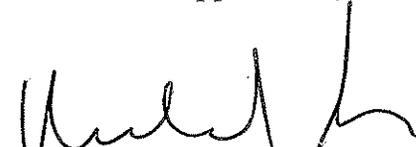
Entered this 12<sup>TH</sup> day of October, 2011.

  
Richard Iacobucci, M.D.  
Board Member

  
Patrick Barry, Esquire,  
Board Member

  
Joan Crawley  
Board Member

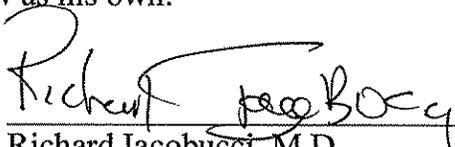
Ratified and approved by the Director of the Department of Health

  
Michael Fine, M.D.

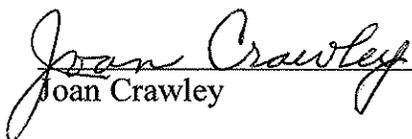
Patrick Barry, Esquire, hereby represents that he read the transcript for the hearing, reviewed the evidence in the administrative record, and adopts the summary of testimony, findings of facts, and Conclusions of Law as his own.

  
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Patrick Barry, Esquire

Richard Iacobucci, M.D. hereby represents that he read the transcript for the hearing, reviewed the evidence in the administrative record, and adopts the summary of testimony, findings of facts, and Conclusions of Law as his own.

  
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Richard Iacobucci, M.D.

Joan Crawley hereby represents that she read the transcript for the hearing, reviewed the evidence in the administrative record, and adopts the summary of testimony, findings of facts, and Conclusions of Law as his own.

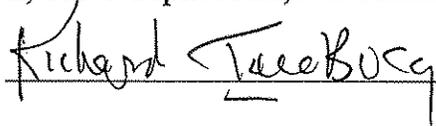
  
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Joan Crawley

### NOTICE OF APPELLATE RIGHTS

**PURSUANT TO R.I. GEN. LAWS § 5-37-7, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT WITHIN THIRTY (30) DAYS AFTER THE DECISION OF THE DIRECTOR BY SERVING THE DIRECTOR WITH A NOTICE OF APPEAL AND FILING SUCH NOTICE IN SUPERIOR COURT. APPEALS ARE GOVERNED BY THE ADMINISTRATIVE PROCEDURES ACT, R.I. GEN. LAWS § 42-35-1 *et seq.***

### CERTIFICATION

I hereby certify on this 12<sup>th</sup> day of October, 2011 that a copy of the within Decision and Notice of Appellate Rights was sent by first class mail, postage prepaid to James P. Howe, Esquire, 4879 Tower Hill Road, Wakefield, RI 02879 by hand-delivery to Bruce McIntyre, Esquire, Department of Health, Three Capitol Hill, Providence, RI 02908.

  
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Richard Iacobucci