

STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

DEPARTMENT OF HEALTH
HEALTH SERVICES REGULATION

vs.

JOAQUIM PIRES
RADIOGRAPHER

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: A.H. FILES NO. (HSR) 2005-27
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ADMINISTRATIVE DECISION

This matter came on for hearing before an Adjudication Officer of the Department of Health (hereinafter "State" or "Department") upon allegations that on June 18, 2005, while employed at Rehabilitation Hospital of Rhode Island, the Respondent sexually assaulted two females who had accompanied patients to the hospital on that date.

Pursuant to R.I. Gen. Laws, § 5-68-10 (6,7 and 8), the State has moved for revocation of the Respondent's certificate of registration as a radiographer.

**TRAVEL OF THE CASE AND
SUMMARY OF THE EVIDENCE**

This case initially came to light within the Department of Health via contact from the North Smithfield Police Department relative to two (2) complaints that had been made against the Respondent. As a result of the police department's initiative, the Department commenced an investigation into the activities of the Respondent on the date in question. Upon completion of the investigation, the Department issued an Administrative Hearing Notice advising Respondent of the charges against him and establishing a hearing date of August 16, 2005. Prior to that date, Respondent's legal

counsel requested a continuance of the hearing upon the condition that the Respondent would not engage in employment as a radiographer pending the outcome of the administrative hearing. On that basis, the continuance was granted, and the Respondent ceased work as a radiographer (State's 2).

The hearing in this matter commenced on October 19, 2005 at which time the State presented its first witness, M.C., a 40-year old female from the City of Woonsocket, R.I. The witness' testimony was at time rambling and often confusing, but the Hearing Officer could discern the following details. The witness was approximately 5 ½ months pregnant when she accompanied her fiancée to an MRI session at Rehabilitation Hospital of Rhode Island on June 18, 2005. She testified in pertinent part that she asked to be permitted to stay with her fiancée while he underwent the MRI. The Respondent did not object. The patient was placed in the MRI machine in the MRI room. The witness and the Respondent retired to the adjacent room where the Respondent operated and monitored the progress of the MRI with MRI computer equipment and visually through a window in the room through which the patient can be viewed while undergoing the MRI. The witness testified that when she entered the "viewing" room with the Respondent, he closed and locked the door behind them. She sat on a chair near the window through which she could see her fiancée. The fiancée was in the MRI tube and could not see her or anything outside the tube. The witness testified that within a short time the Respondent approached her and told her that she was beautiful. He then forcefully kissed her. She testified that she "giggled", not knowing what else to do, although she felt "trapped and threatened". The witness stated that she was clothed in a floor length dress in anticipation of an event that she and her fiancée were attending after the MRI. The

witness further testified that the Respondent then pressed himself against her body and she could feel that his penis was erect. The witness told the Respondent that he could lose his job, but he continued his advances. The witness stated that the Respondent put his hands up her dress, touching her crotch, buttocks, legs and stomach. He attempted to remove her pantyhose and penetrate her, but the witness fought him off, ripping her pantyhose and injuring her finger in the process. Eventually, the witness attempted to assuage the Respondent, telling him that the facility was not the “proper place” and offering to meet him the following Saturday. He acquiesced in that and let her go.

Upon completion of the MRI, the witness and her fiancée left the facility. The witness testified that she was stunned, “shaken” and felt “ashamed”. She did not immediately tell her fiancée what happened for fear that he would become violent with the Respondent. She did, however, tell him the following day, and on June 20, 2005, the witness reported the matter to the North Smithfield Police.

On cross-examination, the witness did admit that she suffers from bi-polar disorder, including panic attacks for which she takes prescribed medications. She is unemployed and receives social security disability benefits.

The State’s second witness, S.M., also a female approximately in her mid-thirties, testified as to her encounter with the Respondent. S.M. testified that she went to Rehabilitation Hospital of Rhode Island on June 18, 2005 with her boyfriend, who was scheduled for an MRI on that day. The boyfriend did not wish to go to the hospital alone, so she agreed to attend the MRI session with him. S.M.’s boyfriend has since passed away. The witness testified that upon reaching the hospital, they were greeted by the Respondent who introduced himself as “Jackie”. They believed him to be a doctor at that

time. The witness than testified that her boyfriend was placed in the MRI chamber in a room adjacent to the one that she and “Jackie” were in where she could see the MRI through a viewing window in the room. The witness stated that she initially sat in a chair that was against the wall in the room. The Respondent then called her over to the window so she could observe the conduct of the MRI. He then told her that she was a pretty girl and began to fondle her. The witness said she was wearing a short skirt. She testified that the Respondent placed his hand on her leg and moved it up to her “private area”. He kept his hand on her leg and also began touching her breasts. He then forced the witness to touch his erect penis through his pants. When she attempted to fend him off, the Respondent told the witness that if she did not cooperate, he would shut off the oxygen in the MRI chamber. The Respondent told the witness that he wanted to have sex with her. The witness testified that the Respondent took a condom out of a drawer and placed it on the desk in front of them. The witness played along with the Respondent somewhat, asking him if she could use the bathroom within the office in order to freshen up, as she had not taken a shower yet that day. The witness testified that she stayed in the bathroom as long as she could in order to avoid the Respondent. However, when she emerged from the bathroom, he continued his advances. She told him that she had her menstrual period, and he felt up to her crotch for the sanitary pad. The witness believes that but for her period, the Respondent would have raped her. Eventually, the MRI was completed and the witness was permitted to leave the room. Later that day, the witness attempted to report the incident to the Pawtucket Police who informed her that the appropriate agency was the North Smithfield Police Department. She phoned North

Smithfield that day and went in person to file her complaint on the following day, June 19, 2005.

On cross-examination, the witness testified that she is unemployed and that she receives social security disability benefits related to a thyroid condition, back problems and anxiety.

Respondent's counsel challenged the witness' statement that she and her boyfriend believed the Respondent to be a doctor. However, the witness was adamant that the Respondent told them that he was a primary care physician.

The State's first witness, M.C. testified specifically that she was not acquainted with S.M. and that she had never met or spoken with her. There is no evidence on the record to suggest that either of these two women knew each other or knew about the charges that each had filed with the North Smithfield Police Department. The evidence deduced at hearing would indicate that S.M.'s boyfriend's MRI appointment was approximately between 10:00am-11:00am on June 18th and M.C.'s fiancée's appointment was sometime between 11:00am and 12 noon.

As part of his defense, the Respondent presented testimony from a secretary who has worked with the Respondent in excess of one year. She testified that she has never received a complaint about the Respondent. Further, she testified that some repeat patients have requested that the Respondent personally perform their MRIs.

A second witness, an MRI technician, testified that she has known the Respondent for 22 years and has worked with him for many years. She is the Respondent's supervisor when he is working at Alliance Imaging (a secondary place of employment for the Respondent). The witness testified that there have never been any complaints lodged

against the Respondent, especially none of a sexual nature. Had there been complaints, it would have been the witness' job to investigate them.

Respondent also presented testimony from a private investigator who the Respondent had hired in connection with the charges against him. The witness attempted to discredit one of the State's witnesses by testifying that her boyfriend had been arrested in 1979 for breaking and entering. No connection between that incident and the present charges against the Respondent was put forth. The private investigator testified as to the type of furniture and its placement within the Respondent's computer/office room. The purpose of the testimony was to cast doubt on S.M.'s testimony with respect to the "desk drawer" from which the Respondent produced the condom. The investigator stated that there was no desk with a drawer when he surveyed the premises on February 28, 2006. Additionally, he stated that there was no desk with a drawer in the room when his partner visited the scene sometime in October of 2005.

The Respondent testified in his own behalf. He stated that he has been continuously employed as a radiologic technician for the past 15 years. The Respondent recounted the events of June 18, 2005. He said that he performed 8 MRIs on a total of 7 patients on that date. He remembered the witnesses very well. He testified that he first met with S.M. She was with her boyfriend who was the MRI patient. Respondent testified that he initially saw them in the corridor of the facility and that they looked lost and drunk. The patient was required to answer a few questions prior to the MRI. In attempting to get the necessary information, the Respondent noted that the couple seemed not to understand the questions being asked and that they responded with slurred speech. He further stated that while the patient was undergoing the MRI in the equipment room,

S.M. was seated with him in the computer room. The Respondent testified that S.M. sat in a chair in the room swaying back and forth talking incoherently to herself. The Respondent did agree that the witness asked to use the bathroom because she felt dirty and wanted to clean up. He stated that she was in the bathroom for approximately 20 minutes when he called in to her. She emerged from the bathroom and the Respondent noted that S.M. had washed her face, combed her hair and applied lipstick. However, Respondent stated that the lipstick was haphazardly applied so that it exceeded the lip line and protruded on to her face. The Respondent testified that S.M. then told him that she had no money and that she had stopped at her mother's house for \$20, but that her mother refused to give it to her. The Respondent testified that at the end of the test, the couple left the area. He denied telling them that he was a doctor and stated that he always wears a badge with his name on it that identifies him as a radiologic technician. On cross-examination, the Respondent stated that although he knew that the patient and S.M. were drunk, he nevertheless proceeded with the MRI. He said that the procedure protocol does not require him to refuse administration of the MRI due to intoxication of the patient.

The Respondent also remembered M.C., whose fiancée's appointment followed his encounter with S.M.

Respondent testified that the patient was quiet but that M.C. commenced talking immediately. The Respondent testified that while the patient was undergoing the MRI, the witness hovered by the glass observation window, asking the Respondent repeatedly whether he was sure that the patient would be okay and telling the Respondent several times that the patient was a "good provider". The Respondent said he was puzzled by

M.C.'s statements to him since he knew that the patient was receiving public assistance. The Respondent completely denied engaging in any inappropriate activity with M.C. He stated that when the MRI was finished, the patient and M.C. thanked him for being "so nice" and they left the building. The Respondent did agree with the witness' testimony that they had a discussion about the two tattoos on her wrist (which she showed him) and a third tattoo on her "butt" which she indicated she was not going to show him.

The Respondent testified that he was contacted at work by the police on the following Monday. He testified that they originally called him at work and asked him to report to the station to retrieve some paperwork found in the facility parking lot that appeared to belong to him. He declined to go to the police station, saying that he was working. Within an hour of that phone conversation, the police appeared at Open MRI of Rhode Island and arrested the Respondent for sexual assault. The Respondent testified that he was held from approximately 3:00pm until 9:30pm that night when his son and brother came to get him.

The Respondent testified that he is on leave from his job and that he has suffered much embarrassment and anxiety as a result of the charges being filed against him. He stated that since June of 2005, he has been under a doctor's care for stress and anxiety. The Respondent testified that since June he has had a prescription for alprazolam and he has had one for Viagra since 2001.

On cross-examination, the Respondent stated that he had never met either of the complainants before and that he had no idea why they would make up these stories to the police. He agreed that it was a "strange coincidence".

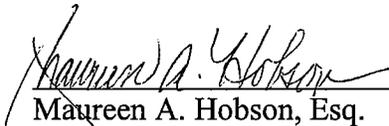
CONCLUSION

While the testimony provided by the female complainants was at times fragmented and difficult to follow, it appears clear to this Hearing Officer that some type of sexual encounter occurred between the Respondent and these two women on June 18, 2005. The Respondent provided testimony designed to contradict the statements made by the women, but he could offer no reason as to why they would make up such a story. In the end analysis, it is not credible to believe that two women who did not know each other and who lived in different cities, would coincidentally and maliciously contact the North Smithfield Police to file reports of sexual abuse on the part of the Respondent, occurring on the exact same day, if in fact, no abuse had taken place. Accordingly, the Hearing Officer is constrained to give more weight to the testimony of the women, albeit that their testimony was difficult to discern.

Having made the determination that sexual abuse did transpire while the Respondent was conducting MRIs of patients in the next room, the Hearing Officer turns next to R.I. Gen. Laws § 5-68-10 to determine whether discipline is appropriate in this case pursuant to that section. The Administrative Hearing Notice charges the Respondent with sexually assaulting the two women in violation of § 5-68-10 (6,7,8). Section 5-68-10 (8) refers to unprofessional conduct on the part of a licensee. It cannot be denied that the actions on the part of the Respondent with respect to the complaining witnesses constitutes unprofessional conduct, especially in light of the fact that the actions occurred within the Respondent's employment and while he was supposed to be monitoring patients who were undergoing MRIs in the next room.

Based upon the evidence, the Respondent's license as a radiologic technician is hereby **REVOKED** retroactive to August 16, 2005, the date upon which the Respondent was ordered not to practice as a radiographer pending the outcome of this hearing.

Entered this 17TH day of April, 2006.


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If you are aggrieved by this final agency order, you may appeal this final order to the Rhode Island Superior Court within thirty (30) days from the date of mailing of this notice of final decision pursuant to the provisions for judicial review established by the Rhode Island Administrative Procedures Act, specifically, R.I. Gen. Laws § 42-35-15.

CERTIFICATION

I hereby certify that I have mailed a copy of the Administrative Decision by regular mail, postage prepaid, to Kenneth J. Shea, Esquire, P.O. Box 1301, Providence, RI 02901 on this 17th day of April 2006.

