

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

RUSSEL J. AUBIN, D.O., :
Appellant :

v. :

C.A. No.: 05-6645

DAVID R. GIFFORD, M.D., M.P.H., :
in his capacity as Director of the Rhode :
Island Department of Health, and the :
RHODE ISLAND DEPARTMENT OF :
HEALTH, :
Appellees :

DECISION

INDEGLIA, J. Russel J. Aubin, D.O. (“Appellant”) appeals from a decision of the Rhode Island Board of Medical Licensure and Discipline (“Board”) revoking his license to practice medicine in this state due to unprofessional conduct in violation of G.L. 1956 § 5-37-5.1. The Appellant seeks to have the Board’s decision reversed and his license to practice reinstated. This Court has jurisdiction over this administrative appeal pursuant to G.L. 1956 § 42-35-15.

FACTS AND TRAVEL

On December 29, 2004, the Board received notice that Kent County Hospital in Warwick, Rhode Island, had suspended the Appellant, a doctor of osteopathy and a practicing anesthesiologist, from its medical staff following an investigation into allegations that the Appellant had sexually molested a patient—a twenty-one-year-old female college student undergoing knee reconstruction surgery (“Patient A”). (Tr.

2/18/05 at 70.) The Appellant had provided anesthesia during her operation on December 23, 2004. (Tr. 2/18/05 at 70.)

After a preliminary investigation pursuant to sec. 5-37-8, the Rhode Island Director of Health issued an order summarily suspending appellant's license to practice medicine in this state, effective January 11, 2005.¹ As required by statute, the Appellant received a hearing to appeal the Director's decision. The hearing commenced on February 18, 2005 and continued over a total of twelve sessions held on various dates over the next six months. The final evidentiary session of the hearing occurred on August 17, 2005.

Testimony of Patient A

Patient A first encountered the Appellant in the preoperative anesthesia unit on the morning of the actual surgical procedure. During their meeting, Patient A elected to receive a spinal anesthetic, which would leave her conscious during surgery. (Tr. 2/18/05 at 78-79.) Although the Administrative Decision notes that Patient A "chose to receive a spinal anesthetic so she would remain awake during the procedure" (Administrative Decision at 3), the record indicates that Patient A did not choose the spinal anesthetic because of any particular preference to stay conscious for her surgery. (Tr. 2/18/05 at 103.) Hospital staff moved Patient A to the operating room where she alleged surgeon

¹ The Director's Summary Suspension Order also included charges that the Appellant violated professional boundaries by asking a patient on a date and engaged in unprofessional conduct by asking a female hospital employee to view pornography with him on a hospital computer. The parties involved presented testimony to the Hearing Officer and Hearing Committee on both additional charges. However, the Board declined to rule on either matter. For the purposes of the decision now on appeal, the Hearing Officer and the Hearing Committee focused solely on the charge that the Appellant sexually molested a patient. Accordingly, this Court will consider only those portions of the record that address the molestation charge.

Danny E. Humbyrd, M.D. commenced the surgical procedure. During the procedure, Patient A was wearing a blue johnny² while lying flat on a surgical table with her legs extended. (Tr. 2/18/05 at 75, 77.) Hospital staff placed a vertical surgical drape between Patient A and the surgeons. (Tr. 2/18/05 at 76.) This drape was located at or around Patient A's navel and extended to a height of approximately one and a half feet above Patient A so as to preclude her from seeing the surgeons and vice versa. (Tr. 2/18/05 at 76.) The initial part of the surgery involved an arthroscopic³ examination of Patient A's knee. (Tr. 2/18/05 at 78.) One of the surgeons had the surgical drape lowered during the arthroscopic procedure, so Patient A could see that part of the surgery on a television monitor. (Tr. 2/18/05 at 78-79.) The Administrative Decision noted that someone removed this monitor, but Patient A did not testify to this fact. (Administrative Decision at 4.)

Patient A testified that she was awake, alert, and speaking to Dr. Humbyrd during the arthroscopic procedure. (Tr. 2/18/05 at 78.) At this point in the surgery, the Appellant was with Patient A at the head of the table on her side of the surgical drape. (Tr. 2/18/05 at 83.) After the surgeons completed the arthroscopic portion of the operation, hospital staff raised the surgical drape so that Patient A could not see the more invasive portion of the surgery. (Tr. 2/18/05 at 86.) Patient A stated that once hospital staff had repositioned

² johnny: a short-sleeved collarless gown with an opening in the back for wear by persons (as hospital patients) undergoing medical examination or treatment. Merriam-Webster's Medical Dictionary (Merriam-Webster, Inc.), available at <http://dictionary.reference.com/browse/johnny> (last accessed Dec. 7, 2006).

³ arthroscopy: medical procedure involving the use of a surgical instrument for the visual examination of the interior of a joint (as the knee). Merriam-Webster's Medical Dictionary (Merriam-Webster, Inc.), available at <http://dictionary.reference.com/browse/arthroscopy> (last accessed Dec. 7, 2006).