



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

January 22, 1996

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dianne Abeloff, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001

Vincent Anthony Giannattasio, M.D.
2890 Santa Barbara Drive
Brookfield, Wisconsin 53005-3712

Vincent Anthony Giannattasio, M.D.
161 W. Wisconsin Avenue #4125
Milwaukee, Wisconsin 53203

RE: In the Matter of Vincent Anthony Giannattasio, M.D.

Dear Ms. Abeloff and Dr. Giannattasio: Effective Date: 01/29/96

Enclosed please find the Determination and Order (No. 96-9) 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.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts

NEW YORK STATE DEPARTMENT OF HEALTH

is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

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.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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.

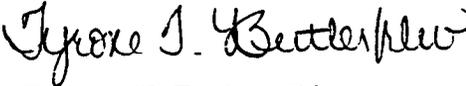
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

IN THE MATTER
OF
VINCENT ANTHONY GIANNATTASIO, M.D.

DETERMINATION
AND
ORDER
BPMC-96-9

THOMAS J. SINATRA, M.D., (Chair), WARREN R. BETTY, M.D. and
TRENA DE FRANCO duly designated members of the State Board for Professional
Medical Conduct, served as the Hearing Committee in this matter pursuant to
§230(10) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, served
as the Administrative Officer.

The Department of Health appeared by DIANNE ABELOFF, ESQ.,
Associate Counsel.

Respondent, VINCENT ANTHONY GIANNATTASIO, M.D., did not
appear personally and was not represented by counsel.

A Hearing was held on January 10, 1996. Evidence was received and
examined. A Transcript of the proceeding was made. After consideration of the
record, the Hearing Committee issues this Determination and Order, pursuant to the
Public Health Law and the Education Law of the State of New York.

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. (§230 et seq. of the Public Health Law of the State of New York [hereinafter "P.H.L."])

This case, brought pursuant to P.H.L. §230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty (if any) to be imposed on the licensee¹ (Respondent).

Respondent, VINCENT ANTHONY GIANNATTASIO, M.D., is charged with professional misconduct within the meaning of §6530(9)(d) of the Education Law of the State of New York ("Education Law"), to wit: "professional misconduct ... by reason of having disciplinary action taken by a duly authorized professional disciplinary agency of another state, for conduct, which conduct, would, if committed in New York State constitute professional misconduct under the Laws of New York State. (Petitioner's Exhibit # 1 and §6530[9][d] of the Education Law).

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to §6530(9)(d) of the Education Law, must determine: (1) whether Respondent had some disciplinary action taken or instituted against him by a duly authorized professional disciplinary agency of another state and (2) whether Respondent's conduct on which the disciplinary action was taken would, if committed in New York State, constitute professional misconduct under the laws of New York State.

¹ P.H.L. §230(10)(p), fifth sentence.

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Unless otherwise noted, all Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice medicine in New York State on September 8, 1959 by the issuance of license number 082848 by the New York State Education Department (Petitioner's Exhibits # 1 & # 2)²

2. The Respondent is not currently registered with the New York State Education Department to practice medicine (Petitioner's Exhibit # 1).

3. Yvonne R. Gilbert personally served a Notice of Referral Proceeding, a Statement of Charges and Hearing Rules on Respondent on November 28, 1995 at 9:15 A.M. at 2890 Santa Barbara Dr., Brookfield, Wisconsin (Petitioner's Exhibit # 1).

² refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit).

4. The Medical Examining Board of the State of Wisconsin ("Wisconsin Board") is a state agency charged with regulating the practice of medicine pursuant to the laws of the State of Wisconsin (Petitioner's Exhibit # 3).

5. On May 26, 1994, Susan M. Berg, an investigator for the State of Wisconsin, filed a complaint with the Wisconsin Board charging Respondent with 3 separate counts of having sexual relationships with 3 separate patients, under Respondent's care and treatment (Complaint 91 MED 434, 92 MED 042 and 93 MED 027) (Petitioner's Exhibit # 3).

6. On January 26, 1995, Respondent signed a stipulation consenting to the issuance and entry of a Final Decision and Order of the Wisconsin Board (LS-9406101-MED) (Petitioner's Exhibit # 3).

7. As a result of the issuance of Final Decision and Order LS-9406101-MED by the Wisconsin Board, Respondent surrendered his license to practice medicine in the State of Wisconsin (Petitioner's Exhibit # 3).

8. The Hearing Committee accepts the Findings of Fact of the Wisconsin Board and adopts same as its own Findings of Fact. The Wisconsin findings, issued in its Final Decision and Order LS-9406101-MED is annexed hereto as appendix II and is incorporated herein.

9. Respondent had sexual contact with 3 of his patients. Some of these sexual contacts occurred during therapy or treatment sessions in Respondent's office (Petitioner's Exhibit # 3).

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the following Factual Allegations, from the November 16, 1995 Statement of Charges, are SUSTAINED ³:

- Paragraph A : (4 - 5)
- Paragraph A.1. : (4 - 6)
- Paragraph A.2. : (4 - 9)
- Paragraph A.3. : (4 - 9)

The Hearing Committee further concludes, based on the above Factual Conclusion, that the SPECIFICATION OF CHARGES on the second page of the Statement of Charges is SUSTAINED

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was found guilty of improper professional practice and of professional misconduct by the State of Wisconsin and his conduct in Wisconsin would constitute professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

³ The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation.

I. Service of Charges and of Notice of Referral Proceeding

P.H.L. §230(10)(d) requires that the Charges and Notice of Hearing be served on the licensee personally, at least twenty (20) days before the Hearing. If personal service cannot be made, due diligence must be shown and certified under oath. After due diligence has been certified, then, the Charges and Notice of Hearing must be served by registered or certified mail to the licensee's last known address, at least fifteen (15) days before the Hearing.

From the affidavit submitted, personal service of the Notice of Referral Proceeding and the Statement of Charges on Respondent was made on November 28, 1995. Personal service occurred more than 20 days before the Hearing and therefore was proper and timely.

II. Professional Misconduct under §6530(9)(d) of the Education Law.

The Wisconsin Board is a duly authorized professional disciplinary agency. In May 1994, the State of Wisconsin, through the Wisconsin Board instituted disciplinary action against Respondent.

The record establishes that Respondent committed professional misconduct pursuant to §6530(44)⁴ of the Education Law.

In the January 26, 1995 Final Decision and Order, the facts and conclusions establish that Respondent, while in the practice of psychiatry, had sexual contact with 3 separate patients on numerous occasions.

⁴ Each of the following is professional misconduct... In the practice of psychiatry, (a) any physical contact of a sexual nature between licensee and patient ...

Taking the findings of the Wisconsin Board as true, the Hearing Committee finds that the record establishes that Respondent had sexual relations with three of his patients.

Respondent's role of psychiatrist and role of sexual partner were incompatible. The two roles played by Respondent could not co-exist without damaging the therapeutic process (potentially causing harm to the patient) or influencing the therapeutic decisions made by Respondent (also, potentially, causing harm to the patient). The Respondent deviated from accepted psychiatric standards by having sexual relations with his patients.

The Hearing Committee finds that Respondent's conduct in Wisconsin, would, if committed in New York State, constitute professional misconduct under §6530(9)(d) of the Education Law.

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties;

(8) a course of education or training; (9) performance of public service and (10) probation.

Since Respondent did not appear at this proceeding, he was not subject to direct or cross-examination nor to questions from the Hearing Committee in this proceeding. Therefore the Committee is bound by the documentary evidence presented.

The record clearly establishes that Respondent committed significant violations of Wisconsin Laws. Respondent's lack of integrity, character and moral fitness is evident in his course of conduct.

The Hearing Committee concludes that if this case had been held in New York, on the facts presented about the pattern of sexual relationships with his patients, it would have resulted in a unanimous vote for revocation of Respondent's license.

The Hearing Committee has noted that the State of Wisconsin has revoked Respondent's license and Ordered that Respondent be prohibited from ever reapplying for a license to practice medicine and surgery in its State. The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the health and welfare of patients in New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED THAT:

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED**, and
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

DATED: New York, New York
January 19, 1996


THOMAS J. SINATRA, M.D., (Chair),

WARREN R. BETTY, M.D.
TRENA DE FRANCO

Vincent Anthony Giannattasio, M.D.
2890 Santa Barbara Dr.
Brookfield, Wisconsin

Vincent Anthony Giannattasio, M.D.
161 W. Wisconsin Ave, # 4125
Milwaukee, WI 53203

Dianne Abeloff
Associate Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001

APPENDIX I

IN THE MATTER

OF

VINCENT ANTHONY GIANNATTASIO, M.D.

STATEMENT
OF
CHARGES

VINCENT ANTHONY GIANNATTASIO, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 8, 1959, by the issuance of license number 082848 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about May 26, 1994 the Wisconsin Medical Examining Board charged the Respondent, a psychiatrist, with having a sexual relationship with three of his patients, during treatment, in violation of Wis. Adm. Code Sec. MED. 10.02(2)(h) and sec. 448.02(3), stats.
1. On or about January 26, 1995, a Stipulation was signed by the Respondent and his attorney where in it was agreed that Final Decision and Order L59406101-MED be issued.
 2. Final Decision and Order L59406101-MED, of the medical Examining Board, dated January 26, 1995, sets forth findings of fact stating that Respondent had sexual contact with three patients in his office during treatment sessions. The order further concludes that Respondent is guilty of unprofessional conduct as

defined by Wis. Stats. sec. 448.02(3) and Wis. Admn. code sec. Med 10.02(2)(h).

3. Pursuant to said Order, Respondent surrendered his license to practice medicine in the state of Wisconsin and he was prohibited from ever again reapplying for a medical license in that state.

SPECIFICATION OF CHARGES

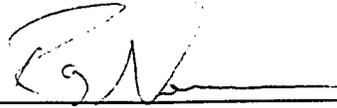
SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1995) by having his or her license practice medicine revoked, suspended or having other disciplinary action taken, having his or her application of a license refused, revoked or suspended or having voluntarily or other wise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, would constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530[44]) , in that Petitioner charges the facts in:

- 1) Paragraph A, 1-3.

DATED: November 16, 1995
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
VINCENT A. GIANNATTASIO, M.D., : LS-9406101-MED
RESPONDENT. :

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Vincent A. Giannattasio, M.D.
161 W. Wisconsin Ave., #4125
Milwaukee, WI 53203

Wisconsin Medical Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. That Vincent A. Giannattasio, M.D., Respondent, (DOB: 6/13/33) is currently licensed and registered to practice medicine and surgery in the state of Wisconsin, pursuant to license# 14874, which was first granted on January 14, 1964.
2. That the Respondent's last address registered with the Department of Regulation and Licensing is 161 W. Wisconsin Avenue, #4125, Milwaukee, WI 53203.
3. That Respondent specializes in psychiatry.
4. That on June 18, 1975 Patient I began seeing Respondent in his professional capacity for treatment of depression, which treatment continued until February of 1978.
5. Beginning approximately the first of September, 1975 Respondent and Patient I began having sexual contact in Respondent's office at treatment sessions.

6. That on March 12, 1976, Patient II began seeing Respondent in his professional capacity, for relationship issues. Their professional relationship continued until February of 1980.

7. Respondent and Patient II first had sexual intercourse on January 3, 1978 during a therapy session. They continued to have sexual intercourse until the relationship ended.

8. Patient III began seeing Respondent for therapy in early 1981, and the professional relationship continued until October, 1981.

9. Respondent and Patient III began having sexual contact at therapy sessions in the office which continued until the end of the professional relationship.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction over this matter pursuant to sec. 448.02(3), Wis. Stats.

2. The Wisconsin Medical Examining Board has authority to enter into this stipulated resolution of this matter pursuant to sec. 227.44(5), and 448.02(5), Wis. Stats.

3. That Respondent having had sexual contact with patients I, II, and III, while they were Respondent's psychiatric patients, constitutes unprofessional conduct as defined by sec. 448.02(3), Wis. Stats., and Wis. Adm. Code sec. MED 10.02(2)(h).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the surrender by Vincent A. Giannattasio, M.D. of his license to practice medicine and surgery in the state of Wisconsin is hereby accepted, effective February 28, 1995.

IT IS FURTHER ORDERED that Vincent A. Giannattasio is hereby prohibited from ever reapplying for a license to practice medicine and surgery in the state of Wisconsin.

Dated in Madison, Wisconsin this 26th day of January, 1995.



Clark O. Olsen, M.D.
Chairperson
Medical Examining Board

JRZ:daw
ATY:FLG1190