

**State of New Hampshire
Board of Medicine
Concord, New Hampshire**

In the Matter of:
Roger Ian Hardy, M.D.
License No. 8890
(Adjudicatory Proceedings)

Docket No. 14-01

**ORDER OF EMERGENCY LICENSE SUSPENSION
AND NOTICE OF HEARING**

1. RSA 329:18-b; RSA 541-A:30, III, and New Hampshire Board of Medicine Administrative Rule (“Med”) 409.01 authorize the New Hampshire Board of Medicine (“Board”) to suspend a license to practice medicine for no more than one hundred twenty (120) days pending completion of an adjudicatory proceeding, in cases involving imminent danger to life or health. In such cases, the Board must commence a hearing not later than 10 days after the date of the emergency order. If the Board does not commence the hearing within 10 days, the suspension order shall be automatically vacated. *See*, RSA 541-A:30, III. The Board may not continue such a hearing without the consent of the licensee to the continuation of the emergency suspension. *See*, RSA 329:18-b and Med 409.01. Postponement of the proceeding is prohibited unless the licensee agrees to continue the suspension pending issuance of the Board’s final decision. *See*, RSA 329:18-b and Med 409.01.

2. Roger Ian Hardy, M.D. (“Dr. Roger Ian Hardy, MD” or “Respondent”), holds an active license, No. 8890, issued on February 3, 1993, to practice medicine in the State of New Hampshire. Respondent most recently practiced medicine in Reading, Massachusetts.

3. The Board has received information indicating that the continued practice of medicine by Dr. Hardy poses an imminent threat to life, safety and/or health, which warrants the temporary suspension of Dr. Hardy's license to practice medicine pending a hearing on whether

permanent and/or temporary disciplinary sanctions should be imposed. An investigation was conducted and a Report of Investigation was provided to the Board.

4. In support of this *Order of Emergency License Suspension and Notice of Hearing*, the Board alleges the following facts:

A. On January 21, 2014, Respondent resigned his license to practice medicine in the Commonwealth of Massachusetts while under investigation by the Massachusetts Board of Registration in Medicine (“Massachusetts Board”). On January 22, 2014, the Massachusetts Board approved Respondent’s resignation, effective that day. The investigation concerned allegations that on multiple occasions Respondent touched patients in the following inappropriate and sexual manner:

- i. It is alleged that in 2011, Respondent rubbed Patient 1’s genitalia and digitally penetrated her vagina.
- ii. It is alleged that in 2003, Respondent inappropriately irrigated Patient 2’s clitoris.
- iii. It is alleged that Respondent used excessive and unnecessary irrigation on the clitoris of Patient 3 while Patient 3 was anesthetized.
- iv. It was alleged that Respondent touched the breast of Patient 4 while this patient was still under the effects of anesthesia.
- v. It was alleged that Respondent touched the breast of a female staff member.

- B. The alleged conduct may constitute a violation of M.G.L. Ch. 265, Sec. 22(b) and/or M.G.L. Ch. 265, Sec. 13H.
- C. On March 11, 2014, Respondent's license to practice medicine was summarily suspended by the Maine Board of Licensure in Medicine after it determined that Respondent presented an imminent danger to his patients. A hearing regarding the summary suspension of Respondent's license was scheduled for April 8, 2014. At the request of Respondent, the hearing was continued until July 8, 2014.
- D. It appears from information discovered that Respondent still has privileges at a New Hampshire hospital. Furthermore, in communications with the Board, Respondent has indicated that he does not wish to give up his license to practice medicine in New Hampshire.

5. Based upon the above information, the Board finds that the case involves imminent danger to life and/or health. Further, the Board believes there is a reasonable basis for both immediately suspending Respondent's license on a temporary basis, and for commencing an expedited disciplinary proceeding against Respondent pursuant to RSA 329:18-b, 541-A:30, III, and Med 409.01.

6. The purpose of this proceeding will be to determine whether Respondent has engaged in professional misconduct contrary to RSA 329:17, VI and RSA 329:18-b, which warrants the continued imposition of a temporary license suspension, the imposition of permanent disciplinary sanctions, or both. The specific issues to be determined in this proceeding are:

- A. Whether Respondent committed professional misconduct by touching patient(s) in a sexual manner, in violation of RSA 329:17, VI (d); and/or
- B. Whether Respondent committed professional misconduct by inappropriately touching the breast of a female staff member, in violation of RSA 329:17, VI (d);
- C. If any of the above allegations are proven, whether and to what extent, Respondent should be subjected to one or more of the disciplinary sanctions authorized by RSA 329:17, VII.

7. While RSA 329:18-a requires that the Board furnish Respondent at least 15 days notice of allegations of professional misconduct and the date, time and place of an adjudicatory hearing, RSA 541-A:30, III and Med 409.01 require the Board to commence an adjudicatory hearing within ten (10) days after the date of an immediate, temporary license suspension order.

8. The Board intends to complete this adjudicative proceeding within the one hundred twenty (120) day time period provided by RSA 329:18-b and Med 409.01.

Accordingly, neither the date of the initial evidentiary hearing nor the date for concluding this proceeding shall be postponed or extended unless Respondent agrees to continue the suspension period pending issuance of the Board's final decision in this matter. *See* RSA 329:18-b, 541-A:30, III, and Med 409.01.

THEREFORE, IT IS ORDERED that Respondent's New Hampshire license to practice medicine is immediately suspended until further order of the Board; and,

IT IS FURTHER ORDERED that an adjudicatory proceeding be commenced for the purpose of resolving the issues articulated above pursuant to RSA 329:17; 329:18-a; 329:18-b; 541-A:30, III; and Med 409.01. To the extent that this order or the Board's rules do not

address an issue of procedure, the Board shall apply the New Hampshire Department of Justice Rules, Part 800; and,

IT IS FURTHER ORDERED that Roger Ian Hardy, M.D. shall appear before the Board on April 28, 2014 at 6:00 p.m., at the Board's office located at 121 South Fruit Street, Concord, N.H., to participate in an adjudicatory hearing and, if deemed appropriate, be subject to sanctions pursuant to RSA 329:17, VII; and,

IT IS FURTHER ORDERED that if Respondent elects to be represented by counsel, at Respondent's own expense, said counsel shall file a notice of appearance at the earliest date possible; and,

IT IS FURTHER ORDERED that Respondent's failure to appear at the time and place specified above may result in the hearing being held *in absentia*, or the imposition of disciplinary sanctions without further notice or an opportunity to be heard, or both; and,

IT IS FURTHER ORDERED that Michelle Heaton, Esq., 33 Capitol Street, Concord, N.H., 03301 is appointed to act as Hearing Counsel in this matter with all the authority within the scope of RSA Chapter 329 to represent the public interest. Hearing Counsel shall have the status of a party to this proceeding; and,

IT IS FURTHER ORDERED that Mark Sullivan, P.A., President, or any other person whom he may designate, shall act as presiding officer in this proceeding; and,

IT IS FURTHER ORDERED that any proposed exhibits, motions or other documents intended to become part of the record in this proceeding, be filed by the proponent with the Board, in the form of an original and eleven (11) copies, and with an additional copy mailed to any party to the proceeding, and to Lynmarie Cusack, Counsel to the Board, N.H. Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301. All responses or objections to such

motions or other documents are to be filed in similar fashion within ten (10) days of receipt of such motion or other document unless otherwise ordered by the Board; and,

IT IS FURTHER ORDERED that a witness and exhibit list and any proposed exhibits, pre-marked for identification only, shall be filed with the Board no later than three (3) days before the date of the hearing. Respondent shall pre-mark his exhibits with capital letters, and Hearing Counsel shall pre-mark her exhibits with Arabic numerals; and,

IT IS FURTHER ORDERED that unless good cause exists, all motions shall be filed at least three (3) days before the date of any hearing, conference, event or deadline which would be affected by the requested relief, except any motion seeking to postpone a hearing or conference, which shall be filed at least ten (10) days before the hearing or conference in question; and,

IT IS FURTHER ORDERED that the entirety of all oral proceedings be recorded verbatim by the Board. Upon the request of any party made at least ten (10) days prior to the proceeding or conference or upon the Board's own initiative, a shorthand court reporter shall be provided at the hearing or conference and such record shall be transcribed by the Board if the requesting party or agency shall pay all reasonable costs for such transcription; and,

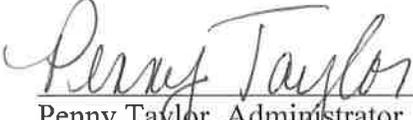
IT IS FURTHER ORDERED that all documents shall be filed with the Board by mailing or delivering them to Penny Taylor, Administrator, N.H. Board of Medicine, 121 South Fruit Street, Concord, New Hampshire 03301; and

IT IS FURTHER ORDERED that routine procedural inquiries may be made by contacting Penny Taylor, Administrator, N.H. Board of Medicine, at (603) 271-1205, but that all other communications with the Board shall be in writing and filed as provided above. *Ex parte* communications are forbidden by statute and the Board's regulations; and,

IT IS FURTHER ORDERED that a copy of this Notice of Hearing shall be served upon Respondent by certified mail addressed to the office address he supplied to the Board in his latest renewal application as well as Respondent's attorney. See, RSA 329:18, VI, Med. 409.01 (c) and RSA 329:16 (f). A copy shall also be delivered to Hearing Counsel.

BY ORDER OF THE BOARD/*

Dated: April 23, 2014


Penny Taylor, Administrator
Authorized Representative of the
New Hampshire Board of Medicine

/* Louis Rosenthal, M.D., Board Member, recused.