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

Karen Schimke
Executive Deputy Commissioner

March 3, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ann Hroncich, Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza-Sixth Floor
New York, New York 10001

Earle F. Alexander, M.D.
368 Clermont Avenue
Brooklyn, New York 11238

RE: In the Matter of Earle F. Alexander, M.D.

Effective Date: 03/10/95

Dear Ms. Hroncich and Dr. Alexander:

Enclosed please find the Determination and Order (No. 95-45) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 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/slw

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

IN THE MATTER OF EARLE F. ALEXANDER, M.D.	DETERMINATION AND ORDER BPMC-95-45

The Hearing Committee, composed of Naomi Goldstein, M.D., Chairperson, Randolph Manning and Benjamin Wainfeld, M.D., was duly designated and appointed by the Commissioner of Health of the State of New York pursuant to New York Public Health Law § 230, subd. 10(e). Eugene A. Gaer, Esq., Administrative Law Judge, served as Hearing Officer for the Committee.

The Committee, each member of which has considered the entire record in this matter, hereby renders its decision with regard to the charges of professional misconduct filed against Earle F. Alexander, M.D. (the "Respondent"). All findings, conclusions and dispositions herein are unanimous.

STATEMENT OF CHARGES

Respondent has been charged by Petitioner Department of Health (the "Petitioner" or the "Department") with the following seven types of professional misconduct, under the definitions contained in New York Education Law § 6530:

Engaging in conduct in the practice of medicine which evidences moral unfitness to practice medicine

(§ 6530, subd. 20) (first and second specifications);

Practicing the profession fraudulently (§ 6530, subd. 2) (third and fourth specifications);

Willfully harassing, abusing or intimidating patients, either physically or verbally (§ 6530, subd. 31) (fifth and sixth specifications);

Practicing the profession with negligence on more than one occasion (§ 6530, subd. 3) (seventh specification);

Practicing the profession with gross negligence (§ 6530, subd. 4) (eighth and ninth specifications);

Failing to maintain a record for each patient which accurately reflects his evaluation and treatment of the patient (§ 6530, subd. 32) (tenth and eleventh specifications);

Engaging in physical contact of a sexual nature with a patient in the practice of psychiatry (§6530, subd. 44) (twelfth and thirteenth specifications).

These allegations relate to Respondent's treatment of two patients at certain times between 1983 and 1993. The charges are

more particularly set forth in the Notice of Hearing and Statement of Charges (the "Notice" and "Statement"), a copy of which is attached hereto as Appendix 1.

RECORD OF PROCEEDINGS

Notice of Hearing and Statement of Charges dated:	September 22 and 23, 1994
Pre-hearing Conference:	October 6, 1994
Hearing dates:	October 19, 1994 November 9, 1994 December 19, 1994
Deliberation date:	December 19, 1994
Place of Hearing:	New York State Department of Health 5 Penn Plaza New York, New York 10001
Petitioner represented by:	Ann Hroncich, Esq. Associate Counsel Bureau of Professional Medical Conduct 5 Penn Plaza New York, New York 10001
Respondent was not represented by counsel.[1]	

[1]In pre-hearing proceedings Respondent was represented by Rafael Gonzalez, Esq., who withdrew from this matter on the morning of the first scheduled hearing date, October 19, 1994. The hearing was then adjourned without calling any witnesses in order to permit Respondent (who was present in the building where the hearing was held) to obtain a new lawyer. Thereafter no attorney ever appeared for Respondent, who declined to attend any of the following hearings himself.

WITNESSES

Petitioner called three witnesses:

Patient A	Fact Witness
Patient B	Fact Witness
Silvia Olarte, M.D.	Expert Witness

Respondent called no witnesses, did not testify and did not attend any hearing when testimony was taken.

FINDINGS OF FACT

The following findings of fact were made after review of the entire record by the Committee. Citations indicate evidence found persuasive by the Committee in arriving at the finding. "Tr." citations are to the transcript of the hearing. "P.Ex." and "R.Ex." citations are to the exhibits introduced by Petitioner and Respondent. Evidence which conflicted with any finding of the Committee was considered and rejected.

General Findings

1. Respondent was authorized to practice medicine in the State of New York on October 24, 1969, by the issuance of License No. 105080 by the Department of Education (P.Ex. 2, p. 2) and remained licensed thereafter. As of the date of the hearings he was current in his registration with the Department of Education

for the purpose of practicing medicine in the State. P. Ex. 2, p. 6.

2. During the period 1983-93 Respondent practiced as a psychiatrist on the staff of Interfaith Medical Center, 555 Prospect Place, Brooklyn, New York ("Interfaith"). R.Ex. A, p. 2; cf. Tr. 36-37, 119-20, 201, 234; P.Ex. 3, pp. 1, 23; P.Ex. 4, pp. 1, 8.

3. During the period 1983-93 Respondent resided in a house at 368 Clermont Avenue, Brooklyn, New York (the "House"). Respondent used part of the House as an office at which he treated patients. Tr. 48, 110, 122-23; cf. R.Ex. A, p. 1.

4. On September 26, 1994, Respondent was duly served with the Notice and Statement. Ex. 1, Affidavit of Service.

Findings as to Patient A

5. Patient A first sought psychiatric treatment at Interfaith in July 1982 when he was 19. P.Ex. 3, p. 16; cf. Tr. 36. He has continued to receive psychiatric treatment at Interfaith until the present. Tr. 91-92. At various times the diagnoses of his condition have included "atypical psychosis," "schizoaffective disorder," "gender identity disorder" and "schizophrenia chronic paranoid type." P.Ex. 3, pp. 21, 24, 285, 318, 325, 331, 338-39.

6. Patient A has generally received psychotherapy as an outpatient, but during the time he was being treated by Respondent he was hospitalized at Interfaith for periods ranging between a week and a month in 1987, 1989 and 1991. P.Ex. 3, pp. 320, 331-33.[2] He was hospitalized again immediately following the termination of his treatment by Respondent. See Finding of Fact 20, infra.

7. Patient A had never known Respondent prior to meeting him as a patient at Interfaith. Tr. 91. The initial Interfaith hospital record of direct treatment of Patient A by Respondent (other than signatures by Respondent in a supervisory capacity) is dated January 12, 1984. P.Ex. 3, p. 37. Thereafter Patient A saw Respondent in order to have his prescriptions renewed on an average of at least once a month until August 1993 (except for the period October 1985-December 1986). P.Ex. 3, pp. 4-14; Tr. 93.

8. In the first years following 1984, Patient A was receiving psychotherapy from a psychologist at Interfaith. His visits to Respondent, all of which were also at Interfaith, were primarily for the purpose of reviewing his medications. Respondent would have brief discussions with the patient about his progress as a basis for deciding whether to continue or alter

[2]Patient A was also treated at other hospitals during this period. See Tr. 37, 112-13; P.Ex. 3, pp. 26, 331, 336-39, 396.

his medication. Tr. 37-38; P.Ex. 3, pp. 4-14.

9. After a time the sessions at Interfaith became more substantive as Patient A felt an improvement once he was able to discuss his sexual problems with Respondent. Tr. 39-40.

10. In the period 1992-93, Respondent prescribed psychotropic medications for Patient A, including Prolixin Decanoate, Triavil and Elavil. P.Ex. 3, pp. 11-14. See Tr. 271-73.

11. In 1991 or 1992, Respondent began the practice of closing therapy sessions with Patient A at Interfaith by hugging him tightly around his full body for a few seconds to a minute. Tr. 40-42. On one occasion Patient A became aroused during the embrace and experienced an erection. At the next session he told this to Respondent who replied that he too had experienced an erection. Tr. 41-42, 110-11. Until he stopped treating Patient A, Respondent continued to embrace him at the close of the majority of the sessions at Interfaith. Tr. 40-41.

12. On one occasion in or about the summer of 1992, Respondent administered an injection to Patient A's buttocks.[3] When Patient A pulled down his pants Respondent told him he "had

[3]Ordinarily the injection was administered by a nurse at the Hospital, but this time she was unavailable. Tr. 42.

a nice rear end" and admired his underwear. Tr. 42-43.

13. For about six or seven months in 1991 and 1992 Patient A also attended group sessions on Thursday evenings in the basement of Respondent's House, which was the area used as an office. Tr. 43, 46, 51, 94-95, 110. All members of the group were men. Tr. 83. Respondent never charged Patient A for the group sessions, but Patient A regarded them as therapy sessions at which Respondent acted as the therapist. Tr. 95-96, 107.

14. Various issues were discussed at the sessions, including problems with sexual identity and marriage. The sessions usually lasted about three hours and ended with all participants, including Patient A and Respondent, hugging each other. Tr. 43-47.

15. One evening in or about spring 1992 Patient A called Respondent at home because he wanted to discuss some of his problems with his therapist. Tr. 47-48, 52, 75-77; see also Tr. 60-61.[4] Respondent invited Patient A to the House. After Patient A arrived, Respondent drank beer and served Patient A

[4]Although Patient A had been seeing Respondent for some years, he had only recently been given Respondent's home telephone number. This was the first time he ever called it. Tr. 75-76.

creme de menthe. Tr. 53-54; see also Tr. 77-78, 99-100.[5]

16. Respondent and Patient A then went up to Respondent's bedroom where Respondent first undressed and then persuaded Patient A to undress. Respondent and Patient A then got into bed together. While in bed there was contact between their penises and Respondent put his mouth on Patient A's penis. That evening Respondent also rubbed Patient A's entire body with oil and took a nude photograph of Patient A, which he gave to the patient to keep. Tr. 55-59, 104-05, 112.

17. In the following months until June 1993, Patient A repeatedly accepted Respondent's invitations to visit his House, often two or three times a week. Tr. 64-65. Sometimes Respondent served Patient A creme de menthe and twice Respondent provided marijuana which both he and Patient A smoked. Tr. 66, 87-88. On ten to twelve of these visits Respondent and Patient A went to bed together and Respondent engaged in intimate oral and anal sexual contact with Patient A, including anal intercourse on two occasions. Tr. 63-65, 100-01.

18. During part of this period Patient A was doing volunteer work at Interfaith and used to stop by Respondent's office at

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[5]Patient A estimated that on this evening he drank about as much creme de menthe as would fill a coffee mug. Tr. 53. The patient testified that he had previously drunk alcohol socially, but that this evening it made him feel woozy. Tr. 82-83.

that hospital almost daily. Tr. 60-61. Patient A would discuss his sexuality concerns with Respondent, both at Interfaith and when he visited Respondent at his House. Respondent tried to reassure Patient A, who continued to regard Respondent as his therapist. Tr. 66-68, 78, 91-92.

19. In June 1993 one of the members of the evening group noticed that Patient A was becoming depressed. This led Patient A to bring his sexual relationship with Respondent to the attention of another therapist at Interfaith, who reported Patient A's experiences to superiors at that hospital. They in turn reported Respondent to the Office of Professional Medical Conduct ("OPMC"). Tr. 68-69, 71, 79, 93-94; P.Ex. 3, pp. 235-36. Shortly afterward Patient A, accompanied by Patient B and another member of the evening group, went to discuss the situation with Respondent, who advised Patient A to state that his descriptions of Respondent's actions were hallucinations. Tr. 69-70.

20. By August 1993 Patient A's treatment by Respondent was terminated, but the patient required further hospitalization because of confusion, depression and suicidal impulses, which another Interfaith staff psychiatrist described as stemming from his "sexual involvement with his treating psychiatrist." P.Ex. 3, pp. 385, 445-48; see also Tr. 71-72, 112-14.

Findings As To Patient B

21. Patient B first sought psychiatric treatment at Interfaith in April 1983 when he was 21. P.Ex. 4, p. 3. His first meeting with Respondent took place the next month when Respondent began treating him at Interfaith as an outpatient for problems primarily relating to drug abuse. Id., pp. 7-8; Tr. 119-21, 123, 234.

22. In August 1983 Patient B lost his health benefits. His treatment by Respondent at Interfaith then ceased but Respondent began treating him at the House. Tr. 122, 202-03; cf. P.Ex. 4, p. 12.

23. Patient B continued to receive psychotherapy from Respondent at the House until some time in 1986. Tr. 125, 147. For part of this time Respondent charged fees, but eventually he treated Patient B without charging fees. Tr. 124-25, 203-04.

24. During the period 1983-86 Respondent had a practice of beginning and ending each weekly therapy session with Patient B by hugging him tightly. Tr. 125-26. Often their penises would touch and sometimes Patient B or Respondent would have an erection. Patient B and Respondent did not discuss these erections, but a co-therapist who was sometimes present teased Patient B about the way his penis touched Respondent's during

their embraces. Tr. 126-28, 233-34. Gradually Patient B and Respondent started kissing each other (with tongues in each other's mouths) while they embraced. Tr. 140. In later years Respondent and Patient B also sometimes embraced and kissed at the end of their meetings. See Tr. 162.

25. Patient B's session with Respondent was usually the last of the day, ending around 7:00 or 8:00 p.m. After the session he and Respondent would often do push-ups and other exercises together in a gym in Respondent's basement. Sometimes they exercised wearing shorts or underwear and other times they were both nude. Tr. 128-29, 221.

26. Patient B also attended evening group sessions in the office area in Respondent's House. Tr. 130. This group eventually broke up. Tr. 133. In 1984 group sessions were twice held in the nude. Tr. 131-32. At the end of group sessions, including those held in the nude, members of the group would embrace each other and Respondent. Tr. 134, 233.

27. At some time in 1984 Patient B and Respondent started jogging together and Respondent suggested that Patient B have dinner at the House and stay over. Tr. 137-38. Respondent invited Patient B into the living part of the House and they took a bath together and rubbed each other's bodies with oil. Then they engaged in oral and anal intercourse with each other.

Tr. 140-43.

28. The practice of exercising together in the nude, bathing together and rubbing each other's bodies with oil continued until late in 1985. In the same period, Respondent and Patient B had sexual relations from 10 to 13 times in Respondent's House, either in the bedroom, the basement or the office area. Tr. 146, 160. Once Patient B and another member of the group went upstate with Respondent for a weekend at a house belonging to a relative of Respondent's. Patient B and Respondent had sexual relations on that trip. Tr. 146-47.

29. Throughout this period Patient B regularly discussed his emotional, sexual and drug problems with Respondent, whom he continued to regard as his therapist. Tr. 144-46, 204-05. A time came when Respondent told Patient B that he could not do anything more for him because the patient's drug problem was out of control. Respondent helped Patient B find an apartment, but Patient B was unable to maintain it. Tr. 147-48.

30. A little later in 1986 Patient B telephoned Respondent to tell him how serious his problems were. At Respondent's suggestion Patient B gained admission to a longterm inpatient drug treatment program. While at that facility, Patient B infrequently spoke to Respondent by telephone. Tr. 148-49.

31. About a year after Patient B entered the treatment program, he visited Respondent on a weekend pass. He stayed over in Respondent's House and they again had sexual intercourse. Tr. 149.

32. Patient B successfully completed the drug treatment program and his employment situation stabilized. See Tr. 117-19, 149-50, 205-06. In the period 1988-90 he continued to see Respondent and stayed at the House two or three times when they again bathed together and rubbed each other's bodies with oil. Tr. 160. From time to time during this period Patient B had individual therapy sessions with Respondent, for which he was not charged. Patient B spoke to Respondent by telephone nearly every day and regarded Respondent more as a friend than as a therapist. Tr. 163-64; cf. Tr. 156.

33. Once during this period Patient B and Respondent engaged in group sex with the co-therapist and another man, who subsequently reported Respondent to OPMC. In 1990 OPMC tried to interview Patient B about this report. After discussing the matter with Respondent, Patient B declined to answer OPMC's inquiry. Tr. 150-53; see also Tr. 171.

34. In 1991 Respondent told Patient B that he wanted to start a new group and Patient B accepted his invitation to participate. Tr. 150-53. Although Patient B was not charged any

fees, he regarded this as a therapy group in which he was a patient; Respondent tended to act as if Patient B was a co-therapist, however. See Tr. 150, 154-55, 162-63, 205-06.[6] This group met first on Tuesday evenings and later on Thursday evenings; it was sometimes attended by Patient A. Tr. 153, 155. In 1991 or 1992 Patient B also had a few individual therapy sessions with Respondent, but was not charged for them. See Tr. 162-64, 221.

35. The group which Patient B started attending in 1991 sometimes discussed holding sessions in the nude but never did so. Tr. 154, 156. They also discussed having nude photographs taken of group members. Tr. 156-57. Once during the period May-July 1992 Patient B went to the home of another group member to pose in the nude for a photographer. While there, Patient B called Respondent, who brought an erotic film to help arouse Patient B sexually while posing for the photographs. Then the photographer took nude pictures of Patient B and Respondent. Tr. 157-60; cf. Tr. 223-24.

36. Over the years Patient B and Respondent went to a number of social events together. Patient B was Respondent's guest at a professional dinner, at a birthday party for Respondent's mother,

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[6]Because Patient B had experience as a certified professional counselor, Respondent considered asking the other group members to pay Patient B, but the idea was not acted upon. Tr. 117-18, 163, 207.

on a one-day cruise (where they were accompanied by Patient B's mother and girlfriend) and on at least one other trip upstate. Tr. 161. They knew each other's families. Tr. 164. When Patient B's father died, Respondent bought Patient B a suit to wear to the funeral. Tr. 230.

37. Patient B eventually grew concerned that several members of the group, including Patient A, had serious psychiatric problems which might be worsened by participating in the kinds of discussions held in the group. Tr. 154-56, 165. Patient B himself was experiencing depression, for which Respondent prescribed medication. Tr. 165-66.[7]

38. In September 1993 Respondent told Patient B about Patient A's contacts with OPMC. Tr. 167-68. This led to Patient B's discovery that Respondent had been having sexual relationships with Patient A and other members of the group. Tr. 169-70, 176, 207-08. Patient B thought that Respondent should apologize to the group members with whom he had sexual contact, and was disappointed that Respondent's main concern seemed to be fear of losing his license, not the effect his conduct might have had on his patients. Tr. 174-78, 211-12, 226-27.

[7]Earlier in 1993 Respondent had prescribed an antibiotic for Patient B. P.Ex. 5; Tr. 166.

Findings As To Professional Standards

39. It is recognized by the psychiatric profession, both as matter of professional ethics and as a matter of competent medical practice, that it is not proper for a psychiatrist to have sexual contact with a patient.[8] Because the therapeutic relationship fosters intimacy and dependency by the patient, it is essential to the patient's treatment that there be clear and well-defined boundaries within which the patient can feel secure throughout the relationship. Tr. 248-51, 277, 298, 300-02.

40. It is recognized by the psychiatric profession, both as matter of professional ethics and as a matter of competent medical practice, that it is not proper for a psychiatrist to have prolonged or repeated physical contact with a patient, such as embracing or kissing. Such contact creates a substantial danger of inducing sexual arousal and confusion on the part of the patient. Tr. 265-69, 278, 297, 299-300.

41. It is recognized by the psychiatric profession as a matter of competent medical practice that, as an essential element to the patient's treatment, there be clear and well-defined boundaries on which the patient can rely throughout the relationship. Each of the following is a violation of such

[8]All Findings As To Professional Standards are based on the credible testimony of the Department's expert witness.

essential boundaries: exercising or bathing with a patient, drinking alcohol with a patient, photographing (or being photographed with) a patient in the nude or visiting with a patient socially in the psychiatrist's home or elsewhere outside the psychiatrist's office. Tr. 248-51, 277, 298-99. The failure to establish regular treatment terms such as length, scheduling or cost of sessions also tends to weaken essential boundaries. Tr. 251-56, 303-05.

42. It is recognized in the psychiatric profession that group therapy is subject to substantially the same constraints as individual therapy. It is not proper for a practitioner leading a therapy group to disregard the boundaries set forth above, including the restrictions on socializing outside therapy sessions, or to encourage members of the group to disregard those boundaries among themselves. Tr. 256-62, 289-92, 297. It is not proper to hold group sessions in the nude, even in situations where the therapist may be trying to help patients deal with sexual identity conflicts, because nudity fosters feelings of intimacy which are excessive in a therapeutic setting and which may constitute a serious overstepping of the boundaries necessary for effective treatment. Tr. 278-82, 305-06.

CONCLUSIONS AS TO FACTUAL ALLEGATIONS

General Conclusions

Two key issues are presented by the evidence: Were there sexual contacts between Respondent and Patients A and B? If there were, did they occur in the course of a physician/patient relationship? Both of these issues require careful scrutiny of the witnesses' credibility.[9] Beyond this the evidence of Respondent's failure to maintain treatment boundaries raises serious questions about Respondent's competence.

The Department's factual case consisted primarily of live testimony by two patients. No written records were introduced with respect to the sessions (either individual or group) held at Respondent's House. This absence of written evidence may account for small variances in detail between the witnesses' recollections and the text of the Department's allegations. At the same time it tends to undermine the recordkeeping charges. Some corroboration of the witnesses' testimony was, however, provided by tape recordings (P.Exs. 7-B, 7-C, 8-B) made by Patient B of two telephone conversations he had with Respondent and of one he had with Respondent's former attorney. See Tr. 189-91; cf. P.Exs. 9, 10.

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[9]Citations to the record in the Findings of Fact which are applicable to the corresponding Conclusions are not repeated.

In addition the Department introduced expert testimony by a psychiatrist who has published scholarly work in the area of sexual abuse of patients by mental health professionals. Tr. 247; see also P.Ex. 11. Among other things, this expert was able to confirm that Respondent's behavior with respect to Patient A and Patient B did not meet acceptable professional standards and indeed harmed those patients. Tr. 306-08.

Respondent rested his entire defense on an unsworn written statement (R.Ex. A), delivered to the Committee near the end of the last hearing day, which generally denied the charges and attempted to cast doubt on Patient B's credibility. He declined to attend the rescheduled hearings where testimony was taken or to be represented at them. Consequently the Committee could not subject his written statement to cross-examination. While the Committee is sensitive to protecting the rights of an absent party, it cannot withhold judgment on duly admitted evidence.

Viewing that evidence as a whole, the Committee finds that Respondent had sexual contact with Patient A and with Patient B. The testimony of these two witnesses was internally consistent and mutually corroborative, often with respect to minor details. Cf., e.g., Tr. 48-51 with Tr. 138-40. Each witness's demeanor was candid and honest, and was not without regret over inculpating a person whom the witness had once admired. See Tr. 78, 114, 121, 171, 210-12, 217, 230-32.

Furthermore the evidence establishes that these contacts arose in the course of the physician/patient relationship. Each of these witnesses first encountered Respondent as a hospital-based psychiatrist at a facility where the witness had sought treatment. In the initial phase of the relationship Respondent charged fees for seeing each witness. While Respondent did not charge fees for the group sessions and claims to have considered them a form of "service to the community in which I live" (R.Ex. A, p. 3; cf. Tr. 216-17), each of these witnesses regarded them as therapy sessions under the direction of his psychiatrist.[10]

Whether the relationship with either Patient A or Patient B ever ceased to be that between a physician and a patient might be a point of contention, but the Committee finds that each relationship always bore physician/patient characteristics requisite for subjecting Respondent's conduct to inquiry by a professional disciplinary body.

With respect to Patient A, Respondent continued to see him at Interfaith and to prescribe psychotropic medications throughout the period covered by the charges.

With respect to Patient B, where the relationship was more

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[10]Respondent later expressed regrets at not charging for these sessions. See P.Ex. 10, pp. 5-9, 16.

complex, there may have been times when they interacted as mentor (or father-figure) and protege, or as friends, but even then Patient B participated from time to time in individual or group therapy sessions and received prescriptions from Respondent. All of Respondent's contacts with Patient B grew out of the therapeutic relationship. Even though he early stopped charging this patient fees, there was never a point in time when Respondent indicated to him that the professional relationship was ended and only a personal relationship continued. See Tr. 286-89, 304-05.

It was a serious deficiency in Respondent's competence as a practitioner that he permitted the boundaries between the professional and the personal to be effaced, with resulting adverse effects upon his patients. Tr. 296-300, 305-08.

Patient A

Patient A was a young man who suffered from serious psychiatric problems which required continuous medication and therapy as well as periodic hospitalizations at Interfaith and elsewhere. As accurately summarized in Paragraph A of the Statement, he was initially seen by Respondent only at Interfaith during the period 1984-91. It was not until the period 1991-93, when Patient A was treated at both Interfaith and the House, that Respondent crossed the line into unacceptable behavior.

The introductory subparagraph of Paragraph A.1 states:

> In the course of ongoing psychotherapy, and purportedly but not in fact for a proper medical purpose, Respondent touched Patient A inappropriately.

It cannot be disputed that the cited physical contacts occurred during the time when Respondent was engaged in "ongoing psychotherapy" with this patient, and that they were inappropriate. See Tr. 262-69. But the evidence of Respondent's intent, as conveyed to Patient A, is not clear enough to draw a firm conclusion about his "purported[] purpose." Subject to that qualification, **Paragraph A** and the **initial subparagraph of Paragraph A.1** are **SUSTAINED.**

Subparagraph A.1.a states:

> From approximately 1991/1992 to August 1993, while Patient A was Respondent's patient, Respondent engaged in sexual activity with Patient A with a frequency of approximately once a week to once every two weeks.

The evidence establishes that Respondent's sexual contacts with Patient A grew directly out of their therapeutic relationship, but the dates and frequency recalled by the patient were not as extensive as the cited allegation. He testified that the sexual contacts began in spring 1992 and

continued until June 1993 and that, while he visited Respondent's House as often as two or three times a week, intimate sexual contacts occurred on ten to twelve occasions. See Findings of Fact 15-17, supra. As so limited, **Subparagraph A.1.a** is **SUSTAINED.**

Subparagraph A.1.b alleges that Respondent had a practice, during 1992 and January-August 1993, of hugging Patient A with a full body embrace as part of "each" therapy session, and that "on at least one of these occasions, both Respondent and Patient A had an erection."[11]

These allegations were all credibly testified to by Patient A, except that the embraces were at the close of the sessions, not at the commencement (as connoted by the Department's use of the word "greeted"), and the embraces occurred, not at "each" of the sessions, but at "the majority." Tr. 40-41. As so limited, **Subparagraph A.1.b** is **SUSTAINED.**

Subparagraph A.2.a alleges that Respondent once inappropriately admired Patient A's underwear and buttocks while administering an injection. Subparagraph A.2.c alleges that

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[11]The Department's expert testified that, as "a nonverbal gesture of intense intimacy," a full body embrace "brings the relationship into a personal level." It is therefore a "boundary violation" to make this a regular practice. Moreover, it is the responsibility of the therapist to minimize the possibility that physical contact will lead to sexual arousal. Tr. 265-69, 278, 296-97.

Respondent took nude photographs of Patient A at the House "in approximately the spring or summer of 1993." (Patient A, however, recalled a single nude photograph taken in 1992. See Tr. 52, 58-59, 104-05, 112.) The patient's testimony as to these acts was convincing, as was the testimony of the Department's expert that they were professionally inappropriate. Tr. 269-71, 274-75, 298. **Subparagraphs A.2.a** and (subject to the noted qualification) **A.2.c** are **SUSTAINED.**

Subparagraph A.2.b alleges that from approximately 1991 to 1993 Respondent inappropriately drank alcoholic beverages with Patient A at the House "despite the fact that Patient A was taking psychotropic medication which Respondent prescribed to him" and that they also sometimes smoked marijuana there.

Patient A's testimony confirming these allegations (for 1992 and 1993 -- see Tr. 52-53, 66) is credible and partially corroborated by Patient B's testimony that he once saw Patient A pour himself vodka at the House. Tr. 155-56. The impropriety of giving a patient marijuana needs no discussion. As to the alcoholic beverages, Patient A discounted the possibility that he had a drinking problem and stated that he was aware (from reading warning labels) of possible adverse interactions between his medication and liquor, which he believed were limited to drowsiness. Tr. 83, 109.

Nonetheless there could have been deleterious consequences to encouraging a psychiatric patient to mix alcohol and medication. Tr. 271-73. Serving a patient alcohol also opened the possibility of more serious trespasses over the physician/ patient line. See Tr. 298. The patient testified that most of his sexual encounters with Respondent were accompanied by drinking alcohol or smoking marijuana together. Tr. 66. **Subparagraph A.2.b** is **SUSTAINED.**

Subparagraph A.2.d relates to summer 1993 after Patient A discussed some of the foregoing events with another therapist at Interfaith. It alleges that Patient A was depressed and suicidal and that Respondent instructed him to tell any investigator asking about their sexual contacts that he had been hallucinating when describing their relationship. This testimony was credible in itself and was partially corroborated by hospital records and the testimony of Patient B. Cf. P.Ex. 3, pp. 235-36; Tr. 167-70, 174-79.

Patient A's depressed condition and suicidal feelings at this time were linked by more than one therapist to the negative impact of his relationship with his treating psychiatrist. P.Ex. 3, pp. 385, 387, 396, 401-02. Beyond this, there can be no justification for advising a patient not to tell the truth, much less to mischaracterize his prior accurate reports as "hallucinations." Tr. 275-76. **Subparagraph A.2.d** is

SUSTAINED.

Paragraph A.3 alleges that Respondent failed to make or keep records of the group sessions held at his House. No records of these sessions were introduced at the hearing, but there was also no proof that the Department had ever demanded to see Respondent's records and no evidence of how he replied to any such demand. Accordingly, **Paragraph A.3** is **NOT SUSTAINED.**

Patient B

Patient B was a 21 year old seeking help for drug abuse when he first met Respondent at Interfaith in 1983. After a few months of treatment by Respondent at the hospital, he began individual therapy at Respondent's House, concurrently with participation in group therapy sessions which also met at the House until some time in 1985 or 1986.

Their relationship continued on one or another basis, including participation by Patient B in another therapy group during 1991-93, until he began cooperating with OPMC's investigation of Respondent in 1993. The dates recited in the Statement are not entirely consistent, but the evidence establishes the allegations that Respondent treated Patient B in

the years 1983-86 and 1990-93.[12] **Paragraph B** is **SUSTAINED.**

Because the contacts between Respondent and Patient B arose from, and always retained the elements of, a physician/patient relationship, the Department has a valid basis for alleging that

> In the course of ongoing psychotherapy, and purportedly but not in fact for a proper medical purpose, Respondent touched Patient B inappropriately.

As with the like allegations concerning Patient A, the evidence of how Respondent expressed his intent to Patient B is too unclear to draw a firm conclusion about the "purported[] purpose" of his conduct toward Patient B. Subject to that qualification, the **initial subparagraph of Paragraph B.1** is **SUSTAINED.**

Subparagraph B.1.a alleges that while Patient B was Respondent's patient in the years 1984-89, they engaged in oral and anal sex on approximately 13 occasions. The testimony of Patient B, which the Committee finds credible, confirms this allegation. **Subparagraph B.1.a** is **SUSTAINED.**

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[12]The recital of dates in Paragraph B should have been more inclusive. The succeeding subparagraphs of the Statement correctly specify that there were also contacts between Respondent and Patient B in the years 1986-90 (although the opportunity to meet was necessarily very limited in the months in 1986-88 when Patient B was in a residential treatment program).

Subparagraph B.1.b alleges:

> Respondent ended each individual and group therapy session by hugging Patient B; on several of those occasions, both Respondent and Patient B had an erection.

Patient B's testimony, which was credible, could have supported a wider allegation. He stated that, in addition to the above actions, the individual sessions (especially during the 1984-86 period) both began and ended with embraces, and that eventually he and Respondent also began kissing. See Findings of Fact 24 and 26, supra. The impropriety of such actions has already been noted. See Footnote 11, supra. **Subparagraph B.1.b** is **SUSTAINED.**

Subparagraph B.2.a alleges that in approximately 1985/86 Respondent inappropriately held "some of the group therapy sessions with Patient B and other male members of the group in the nude" and that at the conclusion they all embraced in the nude. These practices would not have been considered acceptable even for well articulated sex therapy objectives. Tr. 278-82. Patient B testified specifically that there were two nude group sessions in 1984, but he did not testify that there were any thereafter. Subject to that qualification, **Subparagraph B.2.a** is **SUSTAINED.**

Subparagraphs B.2.b, B.2.c and B.2.d are all predicated on

the assertion that the acts enumerated therein occurred when Patient B was Respondent's patient. Specifically, Subparagraph B.2.b charges that in summer 1993 Respondent encouraged and participated in a nude photography session with Patient B at the home of another group member. Subparagraph B.2.c charges that at various times Respondent and Patient B exercised together in the nude, bathed together and rubbed each other's bodies with oil. Subparagraph B.2.c charges that at various times Respondent had Patient B accompany him to various social and professional events and, at his invitation, to sleep over in Respondent's guest room.

The testimony of Patient B establishes that all of the foregoing actions occurred, although the photographic session was in 1992. Tr. 159-60. The Committee also concludes that, as reviewed by the Department's expert witness, all of these acts were inappropriate. All of them had the effect of erasing the boundary between the therapeutic and the personal which is a prerequisite of sound psychiatric practice. Tr. 282-86, 297-99. Patient B, who is now a mature man with a successful career in a counseling profession, has testified that he experienced feelings of depression, confusion and guilt as a result of Respondent's conduct. Tr. 178-79, 211-14, 226-27, 230-32; cf. Tr. 307-08.

Subparagraphs B.2.b (as qualified), **B.2.c** and **B.2.d** are **SUSTAINED.**

Paragraph B.3 alleges that Respondent failed to make or keep records of Patient B's individual therapy sessions held at Respondent's office and of Patient B's participation in group sessions held at the House. However, Patient B's Interfaith files do contain notes of Respondent's sessions with him (P.Ex. 4, pp. 7-12), which the Department's expert stated were acceptable. Tr. 262, 295-96. Furthermore, as with Patient A, the Department neither introduced any records of the group sessions nor showed that it had ever demanded to see such records. **Paragraph B.3** is **NOT SUSTAINED.**

DISPOSITION OF SPECIFICATIONS

The foregoing Findings and Conclusions demonstrate that Respondent exploited these patients for his own sexual gratification. Accordingly, the Committee has determined that the evidence sustains the charges of moral unfitness to practice medicine and sexual contact with a patient in the course of practicing psychiatry.

These facts also support the conclusion that Respondent willfully abused and intimidated his patients. There was insufficient development of the grounds for characterizing Respondent's actions as "harassment" of these patients; the Committee has therefore determined that the Fifth and Sixth Specifications should be limited so as to exclude that term.

The Committee has also determined that Respondent committed negligence on more than one occasion and gross negligence within the meanings of those terms. In the context of professional discipline, "negligence" is the "deviation from accepted standards" or "from good and accepted medical practice." Matter of Morfesis v. Sobol, 172 A.D.2d 897, 898, 567 N.Y.S.2d 954, 955-56 (3d Dep't), app. den., 78 N.Y.2d 856, 574 N.Y.S.2d 937 (1991). "Gross negligence" is "a single act of negligence of egregious proportions or multiple acts of negligence that cumulatively amount to egregious conduct." Matter of Rho v. Ambach, 74 N.Y.2d 318, 322, 546 N.Y.S.2d 1005, 1007 (1989).

By permitting professional relationships to become intimate sexual relationships, Respondent failed to exercise the ordinary care expected of a licensed psychiatrist. It is apparent that Respondent lost all perspective on these patients once their treatment left the hospital setting. As they described their treatment, Respondent's failures here were of an intensity and duration that can be considered "egregious."

The Committee has also determined that the evidence presented by the Department did not establish the charges of fraudulent practice of medicine or faulty recordkeeping.

The Committee has entered the following Dispositions of the Specifications of Charges:

FIRST AND SECOND SPECIFICATIONS (moral unfitness to practice medicine):

SUSTAINED

THIRD AND FOURTH SPECIFICATIONS (fraud):

NOT SUSTAINED

FIFTH AND SIXTH SPECIFICATIONS (harassing, abusing or intimidating patients):

SUSTAINED AS TO ABUSE AND INTIMIDATION;
NOT SUSTAINED AS TO HARASSMENT

SEVENTH SPECIFICATION (negligence on more than one occasion):

SUSTAINED

EIGHTH AND NINTH SPECIFICATIONS (gross negligence):

SUSTAINED

TENTH AND ELEVENTH SPECIFICATIONS (inaccurate recordkeeping):

NOT SUSTAINED

TWELFTH AND THIRTEENTH SPECIFICATIONS (sexual contact with a patient in the practice of psychiatry):

SUSTAINED

ORDER

The Committee, by unanimous vote, has determined that the following penalty should be, and it hereby is,

ORDERED that the license to practice medicine of Respondent **EARLE F. ALEXANDER, M.D.**, shall be **REVOKED.**

Dated: New York, New York
March 2, 1995

By: Naomi Goldstein MD
NAOMI GOLDSTEIN, M.D.
(Chairperson)

Randolph Manning
Benjamin Wainfeld, M.D.

APPENDIX 1

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

IN THE MATTER OF EARLE F. ALEXANDER, M.D.	NOTICE OF HEARING

TO: EARLE F. ALEXANDER, M.D.
368 Clermont Avenue
Brooklyn, New York 11238

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990 and Supp. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 19th day of October, 1994, at 10:00 in the forenoon of that day at 5 Penn Plaza, Sixth Floor, New York, New York 10001 and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce

witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and you may cross-examine witnesses and examine evidence produced against you.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Administrative Law Judge's Office, Empire State Plaza, Tower Building, 25th Floor, Albany, New York 12237, (518-473-1385), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990 and Supp. 1994), you may file an answer to the Statement of Charges not less than ten days prior to the date of the hearing. If you wish to raise an affirmative defense, however, N.Y. Admin. Code tit. 10, Section 51.5(c) requires that an answer be filed, but allows the filing of such an answer until three days prior to the date of the hearing. Any answer shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a

qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO THE OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW SECTION 230-a (McKinney Supp. 1994). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York

, 1994

CHRIS STERN HYMAN,
Counsel

Inquiries should be directed to: Ann Hroncich
Associate Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001
Telephone No.: 212-613-2615

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

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IN THE MATTER	:	STATEMENT
OF	:	OF
EARLE F. ALEXANDER, M.D.	:	CHARGES

----------X

EARLE F. ALEXANDER, M.D., the Respondent, was authorized to practice medicine in New York State on October 24, 1969, by the issuance of license number 105080, by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 to December 31, 1994, at 368 Clermont Avenue, Brooklyn, New York 11238.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A, a 20 year old male, at Interfaith Medical Center, which is located at 555 Prospect Place, Brooklyn, New York, from approximately 1984 to August 1993, and at his office, which is located at 368 Clermont Avenue, Brooklyn, New York, from approximately 1991 to 1993. (The identities of Patients A and B are disclosed in the attached Appendix.)

1. In the course of ongoing psychotherapy, and purportedly but not in fact for a proper medical purpose, Respondent touched Patient A inappropriately as follows:

   a. From approximately 1991/1992 to August 1993, while Patient A was Respondent's patient, Respondent engaged in sexual activity with Patient A with a frequency of approximately once a week to once every two weeks.

   b. From approximately 1992 to August 1993, Respondent greeted Patient A for each of his therapy sessions with a full body embrace; on at least one of those occasions, both Respondent and Patient A had an erection.

2. Respondent engaged in inappropriate conduct as follows:

   a. On one occasion in approximately 1992 or 1993, while administering an injection to Patient A's buttocks, Respondent commented that Patient A

was wearing nice underwear and that he had a "nice butt".

b. From approximately 1991 to 1993, Respondent and Patient A often drank alcoholic beverages at Respondent's home despite the fact that Patient A was taking psychotropic medication which Respondent prescribed to him. Respondent and Patient A also occasionally smoked marijuana together at Respondent's home.

c. In approximately the spring or summer of 1993, while Patient A was a patient of Respondent, Respondent took nude photographs of Patient A at Respondent's home.

d. Subsequent to the aforesaid events, in approximately August 1993, Patient A became extremely depressed and suicidal; when Patient A reported this to Respondent, Respondent instructed Patient A to tell anyone investigating the allegations of their sexual

relationship that he was hallucinating about said relationship.

3. Respondent failed to make or keep any record for Patient A regarding Patient A's participation in the group therapy sessions which Respondent held at Respondent's home/office.

B. Respondent treated Patient B, a 21 year old male, at Brooklyn Jewish Hospital, which is located at 555 Prospect Place, Brooklyn, New York, in approximately 1983, and at his office, which is located at 368 Clermont Avenue, Brooklyn, New York, from approximately 1983 to 1986 and from approximately 1990 to 1993.

1. In the course of ongoing psychotherapy, and purportedly but not in fact for a proper medical purpose, Respondent touched Patient B inappropriately as follows:

   a. From approximately 1984/85 to 1988/89, while Patient B was Respondent's patient, Respondent engaged in oral and anal sex with Patient B on approximately 13 occasions.

b. Respondent ended each individual and group therapy session by hugging Patient B; on several of those occasions, both Respondent and Patient B had an erection.

2. Respondent engaged in inappropriate conduct as follows:

a. In approximately 1985/86, Respondent held some of the group therapy sessions with Patient B and other male members of the group in the nude; at the conclusion of those sessions, Respondent, Patient B, and the other group member(s) embraced each other in the nude.

b. In approximately the summer of 1993, while Patient B was a patient of Respondent, pursuant to Respondent's encouragement, Respondent and Patient B posed for nude photographs at one of the group therapy member's home.

c. From approximately 1984-1992, while Patient B was a patient of Respondent, Patient B and Respondent did push ups and other exercises in the nude together on several occasions at Respondent's home; they also took baths together and rubbed each other's nude bodies with body oil.

d. From approximately 1984-1992, while Patient B was a patient of Respondent, Respondent, on many occasions, had Patient B accompany him to social and professional events to which Respondent was invited. Also on many occasions, Patient B, pursuant to Respondent's invitation, spent the night in a guest room at Respondent's home.

3. Respondent failed to make or keep any record for Patient B regarding the individual therapy which Patient B received from Respondent at Respondent's office, and he failed to make or keep any record for Patient B regarding Patient B's participation in the group therapy sessions

which Respondent held at Respondent's home/office.

SPECIFICATION OF CHARGES

FIRST AND SECOND SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with conduct in the practice of medicine which evidences moral unfitness to practice medicine, under N.Y. Educ. Law Section 6530(20) (McKinney Supp. 1994), in that Petitioner charges:

1. The facts contained in paragraphs A., A.1. and A.1.a. and/or b. and/or A.2. and A.2.a.-d.

2. The facts contained in paragraphs B., B. 1. and B.1.a. and/or b and/or B.2. and B.2.a.-c.

THIRD AND FOURTH SPECIFICATIONS

PRACTICING FRAUDULENTLY

Respondent is charged with practicing the profession fraudulently, under N.Y. Educ. Law Section 6530(2) (McKinney Supp. 1994), in that Petitioner charges:

3. The facts contained in paragraphs A., A.1. and A.1.a. and/or b. and/or A.2. and A.2.d.

4. The facts contained in paragraphs B., B.1. and B.1.a. and/or b.

FIFTH AND SIXTH SPECIFICATIONS

WILLFULLY HARASSING, ABUSING OR INTIMIDATING PATIENTS

Respondent is charged with willfully harassing, abusing or intimidating patients either physically or verbally, under N.Y. Educ. Law Section 6530(31) (McKinney Supp. 1994), in that Petitioner charges:

5. The facts contained in paragraphs A., A.1. and A.1.a. and/or b. and/or A.2. and A.2.a. and/or c.

6. The facts contained in paragraphs B., B. 1. and B.1.a. and/or b and/or B.2. and B.2.a.-c.

SEVENTH SPECIFICATION

PRACTICING WITH NEGLIGENCE

ON MORE THAN ONE OCCASION

Respondent is charged with practicing the profession with negligence on more than one occasion under N.Y. Educ. Law Section 6530(3) (McKinney Supp. 1994), in that Petitioner charges Respondent with having committed at least two of the following:

7. The facts contained in paragraphs A., A.1. and A.1.a. and/or b. and/or A.2 and A.2.a.-d. and/or B., B.1. and B.1.a. and/or b. and/or B.2. and B.2.a-d.

EIGHTH AND NINTH SPECIFICATIONS

PRACTICING WITH GROSS NEGLIGENCE

Respondent is charged with practicing the profession with gross negligence under N.Y. Educ. Law Section 6530(4) (McKinney Supp. 1994), in that Petitioner charges Respondent with having committed the following:

8. The facts contained in paragraphs A., A.1. and A.1.a. and/or b. and/or A.2 and A.2.a.-d.

9. The facts contained in paragraphs B., B.1. and B.1.a. and/or b. and/or B.2. and B.2.a-d.

TENTH AND ELEVENTH SPECIFICATIONS

FAILING TO MAINTAIN ACCURATE RECORDS

Respondent is charged with unprofessional conduct under N.Y. Educ. Law Section 6530(32) (McKinney Supp. 1994), in that he failed to maintain a record for each patient which accurately reflects his evaluation and treatment of the patient, in that Petitioner charges:

10. The facts contained in paragraphs A. and A.3.

11. The facts contained in paragraphs B. and B.3.

TWELVTH AND THIRTEENTH SPECIFICATIONS

PHYSICAL CONTACT OF A SEXUAL NATURE

BETWEEN LICENSEE AND PATIENT

Respondent is charged with physical contact of a sexual nature between licensee and patient in the practice of psychiatry under N.Y. Educ. Law Section 6530(44) (McKinney Supp. 1994), in that Petitioner charges:

12. The facts contained in paragraphs A., A.1. and A.1.a. and/or b.

13. The facts contained in paragraphs B., B.1. and B.1.a. and/or b, and/or B.2. and B.2.a. and/or c.

DATED: New York, New York
Sept 27, 1994

CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct