



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

September 22, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Stacey B. Mondschein, Esq.
NYS Department of Health
5 Penn Plaza - 6th Floor
New York, NY 10001

Barry J. Heck, M.D.
265 Long Meadow Road
Fairfield, Ct 06430

William L. Wood, Jr., Esq.
Wood & Scher
The Harwood Building
Scarsdale, NY 10583

RE: In the Matter of Barry J. Heck, M.D.

Dear Ms. Mondschein, Mr. Wood and Dr. Heck:

Enclosed please find the Determination and Order (No. BPMC-93-145) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

New York State Department of Health
Office of Professional Medical Conduct
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 (p), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he 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.

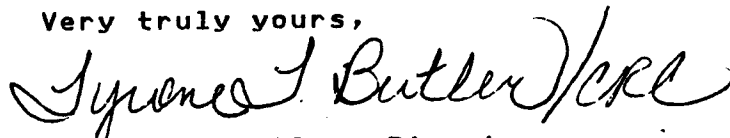
The notice of review served on the Administrative Review Board should be forwarded to:

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

Very truly yours,

A handwritten signature in cursive script that reads "Tyrone T. Butler / CRC". The signature is written in black ink and is positioned above the typed name.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

-----X
IN THE MATTER : DETERMINATION
: :
OF : AND
: :
BARRY J. HECK, M.D. : ORDER
-----X BPMC ORDER NO.93-145

A Notice of Hearing and Statement of Charges, both dated May 6, 1993, were served upon the Respondent, Barry J. Heck, M.D. **SHARON C. H. MEAD, M.D. (Chair), STEPHEN W. HORNYAK, M.D., and LOIS A. JORDAN,** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. A hearing was held on July 21, 1993. The Department of Health appeared by Stacey B. Mondschein, Esq., Assistant Counsel. The Respondent appeared by Wood & Scher, William L. Wood, Jr., Esq., of Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law

Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) and (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Barry J. Heck, M.D. (hereinafter "Respondent"), was authorized to practice medicine in New York State on September 16, 1974 by the issuance of license number 121522 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994. (Pet. Ex. #2).

2. On or about December 15, 1992, Respondent's license to practice medicine in the State of Connecticut was revoked upon his having been found guilty of illegal, incompetent or negligent conduct in the practice of medicine pursuant to Sections 19(a)-17 and 20-13(c) of the Connecticut General Statutes by the Connecticut Medical Examining Board (hereinafter "the Board"), after it conducted a professional disciplinary hearing against Respondent on various dates during the period from June 25, 1991 through June 30, 1992. (Pet. Ex. #3).

3. The Board found that Respondent's treatment of Patient A was below an acceptable standard of care in that he: a) rubbed his penis against her leg, b) fondled her breasts and c) made improper and inappropriate comments to her about her body. (Pet. Ex. #3).

4. The Board further found that Respondent's treatment of Patient B was below an acceptable standard of care in that he: a) forced her to remove her clothing, b) raped her, c) sodomized her, and d) offered her illegal drugs. (Pet. Ex. #3).

5. On December 9, 1992, six days prior to the Board's issuance of its findings in this matter, Respondent surrendered his license to practice medicine in the State of Connecticut. (Pet. Ex. #4).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee concluded that the Department had sustained its burden of proof. The preponderance of the evidence demonstrated that on December 9, 1992, Respondent surrendered his license to practice medicine in the State of Connecticut. This surrender occurred following the institution of disciplinary proceedings against Respondent by the Connecticut Board. The record further established that on December 15, 1992, the Connecticut Board revoked Respondent's license following an adjudicatory hearing. The Connecticut Board found that Respondent raped and sodomized a female patient and offered her illegal drugs. It further found that Respondent fondled another female patient, rubbed his penis against her leg, and made improper and inappropriate comments to her about her body.

The Hearing Committee concluded that Respondent's conduct would constitute professional misconduct pursuant to Education Law Section 6530, if committed in New York State. More specifically, Respondent engaged in conduct in the practice of medicine which evidences moral unfitness to practice medicine, in violation of Education Law Section 6530(20). Further, Respondent willfully

harassed, abused and intimidated patients either physically or verbally, in violation of Education Law Section 6530(31).

Respondent attempted to argue that the Department was barred from proceeding against him in a referral proceeding. He claimed that the Connecticut Board relied on a lower standard of proof than that required to find misconduct in New York. Consequently, he argued that the Hearing Committee could not rely upon the Connecticut action. The Hearing Committee expressly rejected this argument.

Public Health Law Section 230 (10)(f) notes that all conclusions shall be based upon preponderance of the evidence. Respondent has been charged with two specifications of professional misconduct. The First Specification alleges that Respondent committed professional misconduct by virtue of the finding of guilt by the Connecticut Board, following its hearing. It is the finding of guilt by the Connecticut Board which the Department must prove by a preponderance of the evidence. The Second Specification alleges that Respondent committed professional misconduct by virtue of the fact that he surrendered his Connecticut medical license following the institution of disciplinary proceedings by the Connecticut Board. Again, it is the fact that Respondent surrendered his license which the Department must prove by a preponderance of the evidence.

To argue, as Respondent does, that it is necessary that other jurisdictions utilize the same burden of proof as New York in

order to use the results in an expedited proceeding brought pursuant to Public Health Law Section 230(10)(p), would vitiate the entire expedited process. Such a decision would go beyond the scope of this Hearing Committee's authority. However, even assuming, *arguendo*, that Respondent's argument was generically valid, it would not be persuasive in the instant proceeding. The actions of the Connecticut Board regarding Respondent were based upon the *clear and convincing evidence* standard. This is the highest possible standard of proof in a non-criminal matter. By using this standard of proof, the Connecticut Board afforded Respondent even greater protection than would be required if the underlying allegations were to be tried in New York State. Consequently, the Hearing Committee unanimously concluded that Respondent's argument was not valid, and declined to dismiss the charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Any individual who receives a license to practice medicine is placed into a position of public trust. Respondent used his position of trust for his own personal gratification, to the detriment of his patients' welfare. Respondent raped and sodomized one patient and engaged in other inappropriate sexual contact with another patient. Respondent's misconduct constituted such a serious breach of the public trust that revocation is the only suitable alternative.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First and Second Specifications of professional misconduct contained in the Statement of Charges (Petitioner's Exhibit #1) are **SUSTAINED**, and

2. Respondent's license to practice medicine in New York State is **REVOKED**.

DATED: Albany, New York
15 September 1993



SHARON C. H.. MEAD, M.D. (Chair)

STEPHEN W. HORNYAK, M.D.
LOIS A. JORDAN

TO: Stacey B. Mondschein, Esq.
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

William L. Wood, Jr., Esq.
Wood & Scher
The Harwood Building
Scarsdale, New York 10583

Barry J. Heck, M.D.
265 Long Meadow Road
Fairfield, Connecticut 06430

SECRET

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

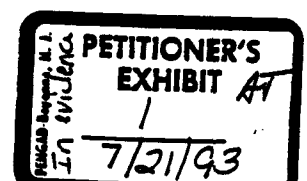
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: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: BARRY J. HECK, M.D. : PROCEEDING
: :
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TO: BARRY J. HECK, M.D.
265 Long Meadow Road
Fairfield, Connecticut 06430

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 23rd day of June, 1993 at eleven o'clock in the forenoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.



You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: NANCY MASSARONI, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before June 11, 1993

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before June 11, 1993 and a copy of all

papers must be served on the same date on the Department of Health attorney indicated 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.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT SUSPENDS OR REVOKES YOUR
LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE

AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED.
YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT
YOU IN THIS MATTER.

DATED: New York, New York
May 6, 1993



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Stacey B. Mondschein
Assistant Counsel
NYS Department of Health
Bureau of Professional
Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001
(212) 613-2617

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

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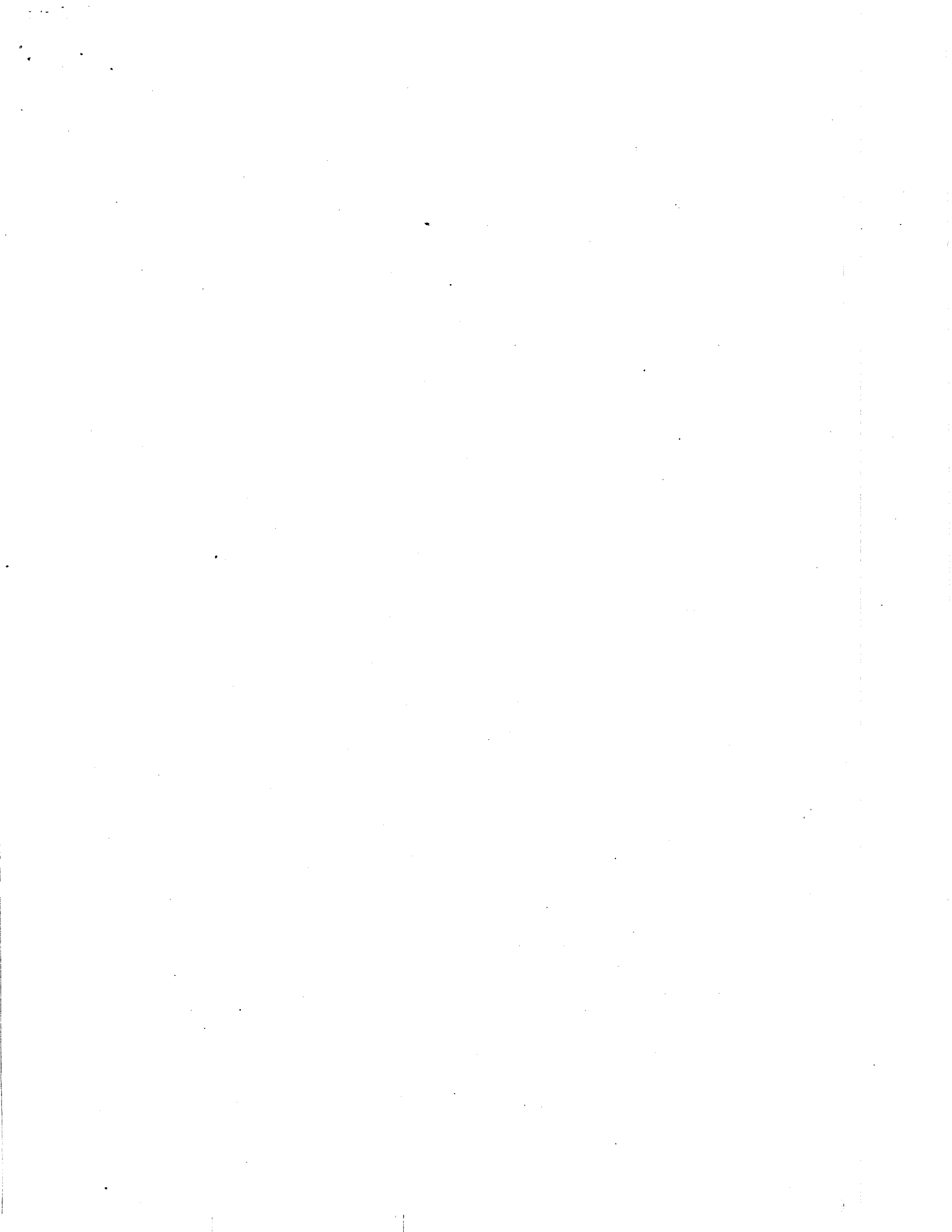
IN THE MATTER : STATEMENT
OF : OF
BARRY J. HECK, M.D. : CHARGES

-----X

BARRY J. HECK, M.D., the Respondent, was authorized to practice medicine in New York State on September 16, 1974 by the issuance of license number 121522 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 through December 3, 1994.

FACTUAL ALLEGATIONS

- A. On or about December 15, 1992, Respondent's license to practice medicine in the State of Connecticut was revoked upon his having been found guilty of illegal, incompetent or negligent conduct in the practice of medicine pursuant to Sections 19(a)-17 and 20-13(c) of the Connecticut General Statutes by the Connecticut Medical Examining Board ("the Board") after it conducted a professional disciplinary hearing against Respondent on various dates from June 25, 1991 through June 30, 1992.



- B. The Board found that Respondent's treatment of Patient A (all patients are identified in the annexed appendix) was below an acceptable standard of care in that he: a) rubbed his penis against her leg, b) fondled her breasts and c) made improper and inappropriate comments to her about her body. The Board found that Respondent's treatment of Patient B was below an acceptable standard of care in that he: a) forced her to remove her clothing, b) raped her, c) sodomized her and d) offered her illegal drugs.
- C. On December 9, 1992, six days prior to the Board's issuance of its findings in this matter, Respondent surrendered his license to practice medicine in the State of Connecticut.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF ACTS CONSTITUTING PROFESSIONAL MISCONDUCT UNDER NEW YORK STATE LAW

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(b) (McKinney Supp. 1993), having been found guilty of improper professional practice or professional misconduct by a duly

authorized professional disciplinary agency of another state where the conduct upon which the finding was based, if committed in New York State, would constitute professional misconduct under the laws of New York State. Petitioner charges:

1. The facts in paragraphs A and B.

SECOND SPECIFICATION

HAVING SURRENDERED A PROFESSIONAL LICENSE AFTER THE INSTITUTION OF DISCIPLINARY PROCEEDINGS

Respondent is charged with professional misconduct within the meaning of New York Educ. Law Section 6530(9)(d) (McKinney's Supp. 1993), having had his license to practice medicine revoked, suspended or having other disciplinary action taken, or having voluntarily surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state when the conduct resulting in the revocation, suspension or disciplinary action involving the license or the surrender of the license, if committed in New York State, would constitute professional misconduct under the laws of New York State. Petitioner charges:

2. The facts in paragraphs A, B and C.

DATED: New York, New York

May 6, 1993

A handwritten signature in black ink, appearing to read "CL-827", is written over a horizontal line.

Chris Stern Hyman
Counsel
Bureau of Professional Medical
Conduct