



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

April 10, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dianne Abaloff, Esq.
NYS Dept. of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

David A. Zarett, Esq.
Garfinkel, Wild & Travis
175 Great Neck Road
Great Neck, New York 11021

William C. Cham, M.D.
11 Hickory Drive
Chester Township, New Jersey 07930

RECEIVED
APR 10 1995
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

RE: In the Matter of William C. Cham, M.D.

Effective Date: 04/17/95

Dear Ms. Abeloff, Mr. Zarett and Dr. Cham :

Enclosed please find the Determination and Order (No. 95-07) of the Professional Medical Conduct Administrative Review Board 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

Office of Professional Medical Conduct
New York State Department of Health
Empire State Plaza
Corning Tower, Room 438
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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:

Enclosure

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

**IN THE MATTER
OF
WILLIAM C. CHAM, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 95-07**

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.**¹ held deliberations on March 24, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) January 11, 1995 Determination finding Dr. William C. Cham (Respondent) guilty of professional misconduct. Both the Respondent and Office of Professional Medical Conduct (Petitioner) requested the Review through a Notice which the Board received on January 25, 1995. James F. Horan served as Administrative Officer to the Review Board. David A. Zarett filed a brief for the Respondent on February 24, 1995 and a reply brief on March 10, 1995. Dianne Abeloff, Esq. filed a brief for the Petitioner on February 24, 1995.

SCOPE OF REVIEW

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

¹Dr. Sinnott and Mr. Shapiro participated in the deliberations through a telephone conference.

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL §230-a.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

HEARING COMMITTEE DETERMINATION

The Petitioner brought this case pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9)(a)(i), which provide an expedited hearing in cases in which professional misconduct charges against a Respondent are based upon a prior criminal conviction in New York or another jurisdiction or upon a prior administrative adjudication which would amount to misconduct if committed in New York State. The expedited hearing determines the nature and severity of the penalty which the Hearing Committee will impose based upon the criminal conviction or prior administrative adjudication.

The Hearing Committee in this case found that the Petitioner had met its burden of proof in establishing that the Respondent was guilty of professional misconduct based upon a proceeding through which the Respondent was disciplined in March, 1994 by the New Jersey Board of Medical Examiners. The New Jersey Board found that the Respondent, the head of the Radiation Oncology Department at United Hospital in Newark had sexually harassed two radiation technologists, each over a period of approximately one and one-half years. The New Jersey Board also found that the Respondent verbally abused, physically assaulted and retaliated against the department manager. The New Jersey Board suspended the Respondent's license for five years, with three years stayed, placed the Respondent on probation and ordered that the Respondent undergo a psychological evaluation and to comply with any recommendations for treatment. The New Jersey Board required that, prior to reinstatement of the Respondent's New Jersey license, the Respondent must produce evidence

acceptable to the Board that the Respondent is fit and competent to practice. The Board ordered further that the Respondent pay a penalty of Seventeen Thousand Five Hundred (\$17,500.00) Dollars and costs amounting to Seven Thousand Nine Hundred Fifty-Four (\$7,954.06) Dollars.

The Hearing Committee concluded that the Respondent's conduct would amount to moral unfitness in the practice of medicine, if it had been committed in New York. The Committee concluded that such conduct either violates a trust related to the practice of the profession or constitutes activity which violates the moral standards of the professional community to which the Respondent belongs. The Committee concluded that the Respondent's conduct toward the technologists and the division manager violated the Respondent's professional trust as well as the moral standards of the medical profession.

By a 2-1 vote, the Hearing Committee voted to censure and reprimand the Respondent, required that the Respondent undergo a course of psychotherapy and ordered that the Respondent be monitored for two years to verify that no further problems concerning sexual harassment or physical abuse occur. The Committee was influenced in their Determination by testimony by Dr. Basil Hilaris, of New York Medical College, who testified that the Respondent practices a rare subspecialty, pediatric radiation oncology, that would suffer if the Respondent's expertise was lost. The Hearing Committee was also influenced by the testimony of Dr. Marion Gindes, a psychologist, who evaluated the Respondent and concluded that there was no indication that the Respondent would be particularly vulnerable to engage in sexually-harassing or physically assaultive behavior.

REQUESTS FOR REVIEW

The Petitioner has asked the Review Board to overrule the Hearing Committee and revoke the Respondent's license to practice medicine in New York State. The Petitioner argues that the Respondent's action towards his three employees was an egregious abuse of his position as a physician, which should not go unpunished, and that censure and reprimand is a minor sanction tantamount to no punishment. The Petitioner contends that the Respondent's current conduct, about which Dr. Hilaris testified, does not excuse or negate the Respondent's deplorable abuse of power.

The Petitioner contends further that Dr. Gindes' psychological evaluation of the Respondent is inconsistent with the New Jersey findings. The Petitioner contends that the Committee's censure and reprimand is an invitation to physicians who have abused their licenses to flee their states for New York.

The Respondent has asked that the Review Board clarify the nature and extent of the psychological therapy which the Committee ordered, because the Hearing Committee put no limit on requirement. The Respondent requests that the Review Board modify the penalty to terminate the therapy upon advice of the therapist and prior consent by OPMC.

The Respondent argues that there is no ground on which to overturn the Hearing Committee's Determination to censure and reprimand the Respondent, monitor his practice and require that he undergo therapy. The Respondent argues that the Hearing Committee's Determination is appropriate in view of the testimony by Dr. Hilaris and Dr. Gindes. The Respondent argues that Dr. Cham poses no threat to patients due to his current structured and supervised work environment and that the Respondent has been punished sufficiently by the penalty from the New Jersey Board.

REVIEW BOARD DETERMINATION

The Review Board has considered the entire record below and the briefs which counsel have submitted.

The Review Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty of professional misconduct. The Committee's Determination is consistent with their findings that the Respondent was disciplined by the New Jersey Board for sexually harassing two employees from the Department which the Respondent headed, and for physically assaulting and verbally abusing a third employee. The Respondent's conduct clearly constituted misconduct in New York.

The Review Board votes unanimously to overturn the Hearing Committee's Penalty because the penalty of censure and reprimand, and mandated course of psychotherapy, is not consistent with the Committee's findings concerning the Respondent's serious conduct in New Jersey.

The Respondent's misconduct is so serious in nature, that the Review Board believes a severe penalty is appropriate. The Respondent violated his trust as a physician and violated the moral standards of the profession. The Respondent used his position as a Department head to sexually harass two female employees and to physically assault and verbally abuse a third employee. The penalty of censure and reprimand is not a severe enough sanction. The Committee's Penalty would also allow the Respondent to practice in New York without satisfying any portion of the New Jersey penalty. By imposing a penalty less severe than New Jersey and by allowing the Respondent to practice without satisfying the New Jersey penalty, the Hearing Committee is allowing the Respondent to escape the New Jersey penalty completely by moving his practice to New York.

Although New York is not bound to impose the same penalty as the New Jersey Board imposed against the Respondent, the Review Board feels that the New Jersey penalty of actual suspension and probation with counselling is an appropriate penalty for the Respondent's misconduct and a protection to the people of the State.

The Review Board does not believe that the Respondent's practice of a unique subspecialty, which Dr. Hilaris discussed at the hearing, is a sufficient reason to excuse the extreme nature of the Respondent's misconduct. The Review Board does not believe that we can rely on Dr. Gindes' testimony that the Respondent is not particularly vulnerable to sexually-harassing or physically assaultive behavior. The opinion by Dr. Gindes directly contradicts evidence for the New Jersey proceeding. Neither the Review Board nor the Hearing Committee can disregard or overrule the New Jersey findings. Dr. Gindes stated in the Respondent's evaluation that "If the charges were true, his categorical denial would suggest a serious psychological disorder, with strong psychopathic components and a tendency to act impulsively." Since we must accept the New Jersey findings as true, then Dr. Gindes' testimony indicates that the Respondent suffers from a strong psychological disorder.

By a vote of 4-1, the Review Board votes to suspend the Respondent's license to practice medicine in New York for five years. The final three years of the suspension shall be stayed, if the Respondent can demonstrate to the satisfaction of the Director of the Office of Professional Medical Conduct, that the Respondent is in compliance with all provisions of the New Jersey Order, and is

otherwise in good standing in any other jurisdiction in which the Respondent is licensed to practice medicine. At the conclusion of the suspension, the Respondent shall be on probation for three years, under such terms as the Director of the Office of Professional Medical Conduct shall impose.

The dissenting member of the Board does not feel that a suspension for two years is a severe enough penalty for the Respondent's misconduct. The dissenting member would revoke the Respondent's license to practice medicine in New York State.

ORDER

NOW, based upon this Determination, the Review Board issues the following **ORDER**:

1. The Administrative Review Board **SUSTAINS** the Hearing Committee's January 11, 1995 Determination finding Dr. William C. Cham guilty of professional misconduct.
2. The Review Board votes 5-0 to **OVERRULE** the Hearing Committee's Penalty to censure and reprimand the Respondent and order the Respondent to undergo a course of psychotherapy.
3. The Review Board votes 4-1 to **SUSPEND** the Respondent's license to practice medicine in New York State for five years.
4. The Review Board **STAYS** all but two years of the suspension, if the Respondent can comply with the conditions set out in the Board's Determination. In lieu of the remaining three years of the suspension, the Respondent shall be on probation, under conditions which the Director of the Office of Professional Medical Conduct shall deem appropriate.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

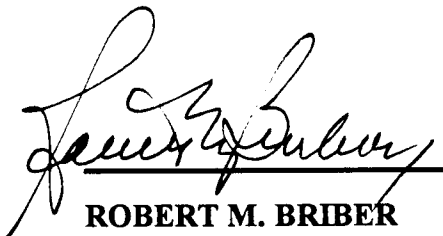
WILLIAM A. STEWART, M.D.

IN THE MATTER OF WILLIAM C. CHAM, M.D.

ROBERT M. BRIBER, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Cham.

DATED: Albany, New York

April 3, 1995

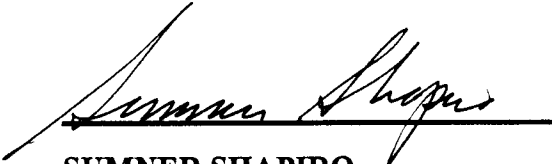

ROBERT M. BRIBER

IN THE MATTER OF WILLIAM C. CHAM, M.D.

SUMNER SHAPIRO, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Cham.

DATED: Delmar, New York

April 4, 1995


SUMNER SHAPIRO

IN THE MATTER OF WILLIAM C. CHAM, M.D.

WINSTON S. PRICE, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Cham.

DATED: Brooklyn, New York

APRIL 4, 1995

A handwritten signature in cursive script, appearing to read "W. S. Price, M.D.", is written over a solid horizontal line.

WINSTON S. PRICE, M.D.

IN THE MATTER OF WILLIAM C. CHAM, M.D.

EDWARD C. SINNOTT, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Cham.

DATED: Roslyn, New York

March 30, 1995

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott, M.D.", written over a horizontal line.

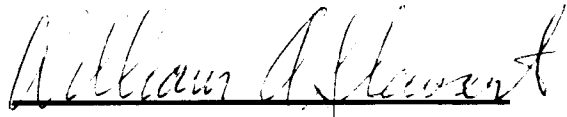
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF WILLIAM C. CHAM, M.D.

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Cham.

DATED: Syracuse, New York

30 May, 1995

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in black ink and is positioned above a horizontal line.

WILLIAM A. STEWART, M.D.

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

-----X

IN THE MATTER : STATEMENT
OF : OF
WILLIAM C. CHAM, M.D. : CHARGES

-----X

WILLIAM C. CHAM, M.D., the Respondent, was authorized to practice medicine in New York State on March 24, 1978 by the issuance of license number 133820 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 31, 1994 from Hickory Drive, Chester Township, New Jersey 07930.

SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law section 6530 (9) (b) (McKinney Supp. 1994), in that Respondent was found guilty of improper professional practice by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, specifically:

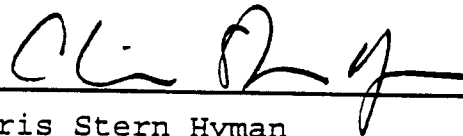
On or about March 16, 1994, after a hearing, the New Jersey Board of Medical Examiners (Board) found that Respondent, head of the Radiation Oncology Department of United Hospitals, Newark, New Jersey, sexually harassed two radiation technicians, each for a period of approximately one and a half years. The harassment often caused the employees to be distracted while preparing patients for high voltage radiation treatment which could have caused grave injury. When the employees rejected Respondent's inappropriate sexual advance he retaliated against them by writing critical reports concerning their work. The Board also found that Respondent verbally abused, physically assaulted and retaliated against a third employee for a period of approximately two and a half years. The abuse included slapping the employee on the arm, pushing him with sufficient force that he fell, publicly upbraiding the employee and finally, Respondent threatened to fire the employee if he refused to give a deposition in support of Respondent against one of the female former employees who was suing Respondent.

These acts, if committed within New York State, would constitute professional misconduct under N.Y. Educ. Law Sections 6530(20) (conduct in the practice of medicine which evidences moral unfitness to practice medicine).

The Board ordered that Respondent's license to practice medicine be suspended for a period of five years; the first two years of the suspension to be actual suspension, the remaining three years of suspension to be stayed and the Respondent to be placed on probation. Respondent must show the Board that he is fit and competent to practice medicine before he can return to actual practice.

DATED: New York, New York

September 12, 1994



Chris Stern Hyman
Counsel
Bureau of Professional Medical
Conduct



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

January 11, 1995

RECEIVED

JAN 11 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

Dianne Abeloff, Esq.
Offices of NYS Dept. of Health
Metropolitan Regional Office
5 Penn Plaza-Sixth Floor
New York, New York 10001

David A. Zarett, Esq.
Garfunkel, Wild & Travis
175 Great Neck Road
Great Neck, New York 11021

William C. Cham, M.D.
11 Hickory Drive
Chester Township, New Jersey 07930

RE: In the Matter of William C. Cham, M.D.

Dear Ms. Abeloff, Dr. Cham and Mr. Zarett:

Enclosed please find the Determination and Order (No. 95-07) 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), "(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.

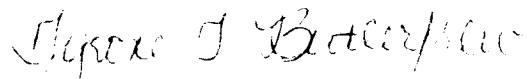
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
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:nm

Enclosure

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

-----X
IN THE MATTER : DETERMINATION
OF :
WILLIAM C. CHAM, M.D. : ORDER
-----X
BPMC-9507

A Notice of Referral Proceeding and Statement of Charges, both dated September 12, 1994, were served upon the Respondent, William C. Cham, M.D. **ADEL ABADIR, M.D. (Chair), JOHN L.S. HOLLOMAN, JR., M.D., and OLIVE M. JACOB,** 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, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Dianne Abeloff, Esq., Associate Counsel. The Respondent appeared by Garfunkel, Wild & Travis, David A. Zarett, Esq., and Jordy E. Rabinowitz, Esq., of Counsel. A hearing was held on October 26, 1994. 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 §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 §6530(9)(b). 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. William C. Cham, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on March

24, 1978 by the issuance of license number 133820 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 at Hickory Drive, Chester Township, New Jersey 07930. (Pet. Ex. #2).

2. On or about March 15, 1994, the New Jersey Board of Medical Examiners (hereinafter "New Jersey Board") found, following an adjudicatory hearing, that Respondent, the head of the Radiation Oncology Department of United Hospitals, Newark, New Jersey, sexually harassed two radiation technologists, each for a period of approximately one and a half years. (Pet. Ex. #4).

3. The New Jersey Board found that Respondent sexually harassed and retaliated against V.G., the manager of the department from 1985 until early 1987 when she resigned. He distracted her while she prepared patients for high voltage radiation treatments which could have resulted in grave injury. He caused prolonged treatment sessions including prolonged sedation which increased risks to patients. Shortly after V.G. became manager of the department, Respondent began to behave in an inappropriately sexual manner to her in the work environment. He gave or attempted give her gifts of clothing, jewelry and a stuffed animal. He touched her in an inappropriate manner upon her back and shoulders and attempted to kiss her. He pressed his penis against her buttocks in the treatment room in the presence of patients. He tried to kiss her and pull her into his bedroom at a convention. The New Jersey Board further found that

Respondent's attentions were unwelcome to V.G. and persisted in spite of her attempts to discourage him, and that these acts were committed against her under the clear threat that her failure to comply with his wishes would have an adverse impact upon her employment. Respondent retaliated for V.G.'s rejection of his advances by writing reports critical of her work. (Pet. Ex. #3; Pet. Ex. #4).

4. The New Jersey Board similarly found that Respondent sexually and otherwise harassed and retaliated against E.A., the subsequent manager of the radiation oncology department, between April, 1987 and August, 1988. The Board further found that while returning from a visit to St. Elizabeth's Hospital with E.A., he grabbed her crotch and attempted to place her hand on his penis. Respondent began to behave in an inappropriately sexual manner to her in the work environment. He gave her unsolicited gifts of clothing and candy. These attentions were unwelcome to E.A. and persisted in spite of her attempts to discourage them. Moreover, these acts were committed against her under the clear threat that her failure to comply with his wishes would have an adverse impact upon her employment. (Pet. Ex. #3; Pet. Ex. #4).

5. The New Jersey Board further found that Respondent attempted to induce E.A. to perform a vaginal examination upon patient with the knowledge that only a licensed physician was authorized to perform such an examination. Respondent pressed his pelvic area against E.A.'s buttocks in the localization room and the treatment room while they were supposed to be rendering

care to patients. Respondent distracted E.A. while she was doing essential calculations in preparation for treatment, preparing patients for treatment or administering therapy. Such distractions could have resulted in grave injury to patients. (Pet. Ex. #3; Pet. Ex. #4).

6. The New Jersey Board further found that Respondent would also go into E.A.'s office when she was not there and open her mail, which he did not have the authority to do. On occasion, she came into her office to find him sitting at her desk with his pants open, fondling her mail and fondling his penis at the same time. He subjected her to the sight of his feces in her bathroom, left his pants open, and exposed his penis to her. (Pet. Ex. #3; Pet. Ex. #4).

7. The New Jersey further found that Respondent retaliated against E.A. for rejecting his advances and reporting his conduct to the hospital administration by writing a deluge of memos critical of her work, many containing false reports. He previously had praised her job performance highly. (Pet. Ex. #3; Pet. Ex. #4).

8. E.A. subsequently sued Respondent for intentional infliction of emotional distress. Following a trial, a jury awarded E.A. \$20,000 in punitive damages. (Pet. Ex. #3).

9. The New Jersey Board further found that Respondent verbally abused, physically assaulted, and retaliated against Ramajoga Chitti, who became department manager upon E.A.'s departure in 1988. This abuse included slapping Mr. Chitti on the arm, pushing him with sufficient force that he fell, grabbing

him by the collar and publicly upbraiding him. Respondent also threatened Chitti with loss of employment if he refused to give a deposition on his behalf against E.A. (Pet. Ex. #3; Pet. Ex. #4).

10. The New Jersey Board ordered that Respondent's license to practice medicine be suspended for a period of five years the first two years to be actual suspension, with the remaining three years stayed, and Respondent placed on probation. Respondent was also ordered to submit to a complete psychological/psychiatric evaluation and to comply with any recommendations for treatment. Prior to the reinstatement of Respondent's license, he shall be required to produce evidence acceptable to the Board that he is fit and competent to practice medicine and that he is capable of discharging the functions of a licensee in a manner consistent with the health, safety and welfare of the public. Respondent was further ordered to pay a civil penalty in the amount of \$17,500.00 and costs in the amount of \$7,954.06. (Pet. Ex. #4).

11. Respondent categorically denies all of the findings of the New Jersey Board. (77).

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 of Health has sustained its burden of proof in this matter. The

preponderance of the evidence demonstrates that Respondent was disciplined by the New Jersey Board, the duly authorized disciplinary agency of the State of New Jersey, following an adjudicatory hearing. The Department has alleged that Respondent's conduct, as found by the New Jersey Board would, if committed in New York State, constitute professional misconduct within the meaning of Education Law §6530(20) [conduct in the practice of medicine which evidences moral unfitness to practice medicine].

Conduct which evidences moral unfitness can arise either from conduct which violates a trust related to the practice of the profession or from activity which violates the moral standards of the professional community to which the Respondent belongs. Respondent sexually harassed two female employees, for his own gratification, and then retaliated against them when they rejected his advances. In addition, Respondent verbally and physically abused a third employee. The Committee unanimously concluded that this conduct violated Respondent's professional trust, as well as the moral standards of the professional. Consequently, the Hearing Committee voted to sustain the Specification of professional misconduct set forth in the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, determined by a vote of 2-1 that Respondent should receive a censure and reprimand. In

addition, the majority of the Hearing Committee determined that Respondent's medical practice should be monitored for any further complaints of harassment for a period of two years, and that Respondent should be required to undergo appropriate psychiatric/psychological evaluation and therapy. 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.

Respondent is a board-certified radiation oncologist, with a subspecialization in pediatric radiation oncology. He is currently employed as an assistant professor in Radiation Medicine at New York Medical College and an attending physician and assistant professor in Radiation Medicine at the Westchester County Medical Center. (See, Tr., pp. 74, 81). The Committee heard testimony from Basil S. Hilaris, M.D., who is a professor of Radiation Medicine at New York Medical College and Director of Radiation Medicine at the Medical Center. (See, Tr., 13-14).

Dr. Hilaris testified that pediatric radiation oncology is a very rare subspecialty, and that his department would suffer if it were to lose Respondent's expertise in pediatrics. (See, Tr., pp. 26-27).

The Hearing Committee also considered the testimony of Marion Gindes, Ph.D. Dr. Gindes is a clinical psychologist who conducted an evaluation of Respondent on behalf of Respondent's counsel. Dr. Gindes testified that she obtained a history from Respondent, conducted a battery of clinical tests, and conducted

clinical interviews with Respondent. (See, Tr., pp. 45-48).

Based upon her evaluation of Respondent, Dr. Gindes concluded that there was no indication in the psychological material that Respondent would be particularly vulnerable to engage in sexually-harassing or physically assaultive behavior. (See, Tr., pp. 49-52; Resp. Ex. E). Dr. Gindes further concludes that, given the fact that Respondent denies the charges against him, it may be reasonable to suggest a course of psychological treatment.

The Hearing Committee agreed with this assessment. Accordingly, the Committee determined that Respondent should be required to undergo a course of psychotherapy with a psychiatrist or psychologist, selected by Respondent and subject to the approval of the Director of the Office of Professional Medical Conduct.

The members of the Hearing Committee further determined that Respondent's medical practice should be monitored for a period of two years, in order to verify that no further problems concerning sexual harassment or physical abuse occur.

The dissenting member of the Hearing Committee took a more serious view of Respondent's misconduct and voted to suspend Respondent's license for three years, six months actual suspension with the remainder stayed, and Respondent to be placed on probation. These sanctions would be in addition to the requirements for psychological/psychiatric treatment and monitoring mandated by the Committee.

Irrespective of Respondent's denial of the charges, it

is a matter of law that Respondent has been adjudicated by the New Jersey Board and found guilty of professional misconduct. Moreover, the New Jersey Board made specific, detailed findings which were delineated above. In her report on the evaluation of Respondent, Dr. Gindes noted that "If the charges were true, his categorical denial would suggest a serious psychological disorder, with strong psychopathic components and a tendency to act impulsively." (See, Resp. Ex. E).

The truth of the charges has been established. The dissenting member of the Hearing Committee strongly believes that Respondent's conduct toward the employees was an egregious abuse of his position as a physician. Accordingly, the dissenting member of the Committee would have implemented a stronger sanction.

ORDER

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

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) is

SUSTAINED;

2. Respondent shall and hereby does receive a **CENSURE AND REPRIMAND;**

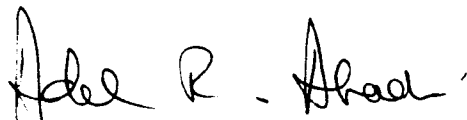
3. Respondent's medical practice shall be monitored for a period of two years by a physician, selected by Respondent and subject to the approval of the Director of the Office of Professional Medical Conduct, for evidence of any further complaints of sexual harassment or physical abuse. The

monitoring physician shall make quarterly reports to the Office of Professional Medical Conduct and shall immediately report any allegations of sexual harassment or physical abuse brought against Respondent.

4. Respondent shall undergo a psychological/psychiatric evaluation, with a course of regular therapy sessions with a psychologist or psychiatrist, selected by Respondent and subject to the approval of the Director of the Office of Professional Medical Conduct. The therapist shall submit quarterly reports to the Director of the Office of Professional Medical Conduct certifying compliance with treatment by Respondent and describing in detail any failure to comply. The therapist shall immediately report to the Office of Professional Medical Conduct any discontinuation of treatment by Respondent.

DATED: Albany, New York

January 10, 1995



ADEL ABADIR, M.D. (CHAIR)

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