



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

January 3, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jean Bresler, Esq.
NYS Department of Health
145 Huguenot Street
New Rochelle, New York 10801

Raul Lugo, M.D.
870 Park Avenue
New York, New York 10021

T. Lawrence Tabak, Esq.
Kern Augustine Conroy & Schoppman
420 Lakeville Road
Lake Success, New York 11042

RE: In the Matter of Raul Lugo, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-1) 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.

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.

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.

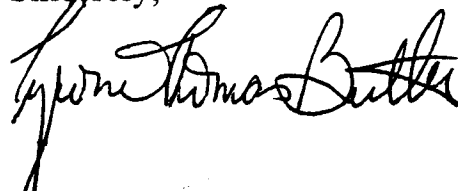
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

-----X

IN THE MATTER

COPY

OF

ORDER # BPMC 01-1

RAUL LUGO, M.D.

-----X

DETERMINATION AND ORDER OF THE HEARING COMMITTEE

The undersigned Hearing Committee consisting of DAVID LYON M.D., chairperson, RUTH HOROWITZ, and STEVEN M. LAPIDUS, M.D., were duly designated and appointed by the State Board for Professional Medical Conduct. MARY NOE served as Administrative Officer.

The hearing was conducted pursuant to the provisions of Sections 230 (10) of the New York Public Health Law and Sections 301-307 of the New York State Administrative Procedure Act to receive evidence concerning alleged violations of provisions of Section 6530 of the New York Education Law by RAUL LUGO M.D. (hereinafter referred to as "Respondent"). Witnesses were sworn or affirmed and examined. A stenographic record of the hearing was made. Exhibits were received in evidence and made a part of the record.

SUMMARY OF PROCEEDINGS

Place of Hearing: NYS Department of Health
5 Penn Plaza
New York, N.Y.

Pre-Hearing Conferences: January 13,

Hearing dates: January 25, 2000
February 24, 200
March 2, 2000

March 23, 2000
March 9, 2000
March 10, 2000

Date of Deliberation: May 4, 2000

Petitioner appeared by: NYS Department of Health
by: Jean Bresler, Esq. Associate Counsel

Respondent appeared: Kern Augustine Conroy & Schoppman.
420 Lakeville Road
Lake Success, New York 11042
By: T. Lawrence Tabak, Esq.

WITNESSES

For the Department: Patient A
Murray Brennan, M.D.
Paul Logerfo, M.D.
Susan Yale, M.D.
Irene Goldman

For the Respondent: Raul Lugo, M.D.
David Pollock, M.D.
Alison Hong
Abraham Halpern, M.D.

SIGNIFICANT LEGAL RULINGS

The Committee has considered the entire record in the above captioned matter and hereby renders its decision with regard to the charges of medical misconduct. The Administrative Law Judge issued instructions to the Committee when asked regarding the definitions of medical misconduct as alleged in this proceeding.

With regard to the expert testimony herein, including Respondent's, the Committee was instructed that each witness should be evaluated for possible bias and assessed according to his or her training, experience, credentials, demeanor and credibility.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York State on or about March 20, 1981, by the issuance of license number 14533 by the New York State Education Department.

2. Respondent first treated Patient A at his private office on September 13, 1995. He admitted her to Lenox Hill Hospital with a diagnoses of abdominal wall tumor on September 26, 1995 and operated on that date. Post operative diagnosis was desmoid tumor of the right lower quadrant abdominal wall. (Pet. Exh. 3 p. 22 - 24)

3. Respondent examined Patient A post operatively on October 4, 1995, November 8, 1995, December 8, 1995, January 17, 1996, March 6, 1996 and on June 12, 1996. (Pet. Exh 3).

4. Respondent's records indicate that a rectal exam was performed on October 4, 1995, a pelvic and rectal exam on December 8, 1995, and a pelvic exam on June 12, 1996. (Pet Exh 3)

6. At each post-operative visit, Respondent performed a pelvic and a rectal examination. (T.43) Respondent performed this examination even when Patient A had her menstrual period. (T.63-4) Patient A informed the Respondent that she had just been examined by her gynecologist Dr. Yale on January 15, 1996, two days prior to the Respondent's visit and examination. (T. 64).

8. On Patient A's second post operative visit (November 8, 1995) with the Respondent, she offered to put together a proposal for marketing the oncology department at Lenox Hill since her business involved this type of marketing. (T. 45)

9. Patient A drafted a written marketing plan. (T. 448) Respondent looked at the plan; and it was in reference to promoting the oncology unit at Lenox Hill Hospital and to promote him within that context. (T.449) Respondent knew that Lenox Hill did not have an oncology unit (T. 452) and therefore there was nothing to promote. Patient A suggested to Respondent that they have dinner and talk about the plan; and he agreed to do so. (T. 449) On or about November 1995, the Patient and Respondent met for dinner. (T. 51) At dinner, Respondent informed Patient A that there was no oncology department at Lenox Hill. (T. 451-2).

10. At dinner, Respondent expressed his attraction to Patient A, who was also experiencing an attraction to him. (T. 49)

11. After dinner, Respondent offered to drive Patient A home On the way home they parked and kissed for about twenty minutes at the Museum of Natural History on the 77th Street side. (T. 50)

12. On Patient A's next appointment at the Respondent's office (December 8, 1995), Respondent suggested that they get together again. She told him that she would be alone in her apartment the following Friday night; and they agreed to meet. (T. 52)

13. Respondent came to Patient A's apartment and while they were kissing she felt a hard object behind his back and asked him about it. (T. 53-4) He put his hand behind his back and took out a gun, he let her hold it, and then put it on her coffee table. (T. 54)

14. Patient A performed oral sex on Respondent at her apartment. (T. 54)

15. Respondent spent approximately 45 minutes in Patient A's apartment and then left for a black tie dinner later that night. (T. 53)

16. After that meeting, Patient A was in a state of confusion and disgust and contacted the Respondent regarding her feelings. (T. 55-6)

17. At her January appointment, Respondent told Patient A that he wanted to end their personal relationship (T. 57)

18. At Patient A's June 1996 appointment, Respondent performed a pelvic exam on Patient A while she had her menstrual period; and she remembers feeling humiliated. (T. 63-4)

19. At the June 1996 appointment, Patient A went into the Respondent's office where he told her that he couldn't get her out of his mind and he kissed her. (T. 65) Although the nurse was present in the examining room, only the Respondent and Patient A were present in Respondent's office. (T.65)

20. Respondent called Patient A in late September and told her that he was going to a medical conference and invited her. He congratulated her on her one year anniversary of being cancer free, and stated that now he wanted to have sexual intercourse with her. (T. 68)

21. Respondent's original Appointment Book indicates that he was at a medical conference in San Francisco from October 5, 1996 to October 9, 1996. (Pet. Exh. 7)

22. Shortly after this September 1996 conversation, Patient A was distraught and telephoned her gynecologist, Suzanne Yale, M.D., at her office about her relationship with the Respondent. (T. 69, 240-2)

23. Dr. Yale called Patient A later that night at home and discussed at length the relationship Patient A had with the Respondent. (T. 70-1, 240-2) Patient A was "extremely upset" while telling Dr. Yale about the sexual contact and everything that happened between

herself and the Respondent. (T. 69, 240-2). Subsequent to this conversation, Dr. Yale referred Patient A to Murray Brennan, M.D. (T. 243)

24. Dr. Yale is a physician licensed in New York and board certified in obstetrics and gynecology. She practices at the same hospital and has known the Respondent since their residencies in 1977. (T. 235)

25. Patient A had been Dr. Yale's patient since 1991 and to the present. While under Dr. Yale's care, Patient A had had two miscarriages and delivered twins. Dr. Yale knows Patient A quite well. (T. 236-7)

26. Patient A told Dr. Yale that each time she saw the Respondent he performed a pelvic and rectal exam. (T. 244)

27. Dr. Yale performed a pelvic examination on Patient A on January 15, 1996 while she was under the care of the Respondent. (T. 250) This examination was two days prior to the Respondent's examination. The Patient had informed the Respondent of her exam with Dr. Yale but he ignored this information and performed the pelvic examination. (T. 249-51)

28. Dr. Yale believed Patient A when she told her about the relationship with the Respondent and still believed her at the time of her testimony. (T. 256)

29. Throughout the many years of her care of Patient A, including labor and pregnancy, Dr. Yale was able to get a "...pretty good feel for a person..." (T. 256); and she had no reason to think of Patient A as a hysterical personality or to question her mental stability. (T. 256)

30. Dr. Brennan is Chairman of the Department of Surgery at Memorial Sloan Kettering and saw Patient A for the first time in November 1996. (T. 341, 347-8)

31. After reviewing Patient A's pathology slides and her operative report, Dr. Brennan did not see any need to perform a pelvic or rectal examination at that time. (T.345, 348)

32. Patient A told Dr. Brennan that the Respondent performed pelvic and rectal exams frequently. (T. 346)

33. Every time Patient A had an appointment with Dr. Brennan, she told him more information concerning the Respondent's management of her post-operatively. (T.349)

34. In November 1997, Dr. Brennan wrote a letter to the Respondent suggesting that the Respondent speak with Patient A as to her concerns regarding his care. Copies of the letter were sent to Dr. Yale and Dr. Bush. (T. 349)

35. The Respondent called Dr. Brennan and made an appointment to see him at his office one evening. They discussed the necessity for frequent post-operative rectal and pelvic examinations. (T. 350, 366)

36. Dr. Brennan did not judge whether Patient A was telling the truth, but rather that it was clear to him that the Patient thought it happened. (T. 370) Patient A had great difficulty accepting Dr. Brennan's explanation of the lack of necessity to perform such exams. (T. 370)

37. Ms. Goldman, a registered nurse employed with Dr. Brennan, was present when Dr. Brennan examined Patient A. She testified that at the conclusion of Patient A's first examination Patient A was shocked when the exam concluded without a pelvic and rectal exam explaining that her prior surgeon conducted a pelvic and rectal exam at every visit. (T. 279, 286) Patient A had great difficulty accepting Dr. Brennan's explanation of the lack of necessity to perform such exams and that at each visit with Dr. Brennan she became upset, often crying. (T. 286-7)

38. Dr. Paul Logerfo, Department's expert, is Director of Surgical Oncology at Columbia. (T. 310)

39. Dr. Logerfo has personally resected desmoid tumors 8 - 10 times and has supervised other surgeons resecting many, many of these tumors. (T. 324)

40. Dr. Logerfo reviewed Patient A's medical records and identified the Patient's tumor as "...low grade desmoid..." – which means it had not metastasized. (T. 312)

41. Dr. Logerfo believes that postoperative rectal and pelvic examination were inappropriate because MRI is the most accurate way to find out whether the tumor had come back. (T.312-3, 330, 331) Patient A's medical chart reflects an MRI in March 1997. (Pet. Exh.3)

42. Dr. Logerfo believes that the Patient's pelvic examinations made no sense to him. (T.317)

43. Dr. Logerfo believes that it is common for cancer patients to relate to their surgeon as "...GOD..." (T. 334). Cancer patients are vulnerable. (T. 335)

44. Dr. Raphael Pollock, Respondent's expert, is currently full professor of Surgical Oncology, Chairman of the Department of Surgical Oncology, and Head of the Division of Surgery at M.D. Anderson. During Respondent's training in surgical oncology, Dr. Pollock had been his primary teacher. (T. 482)

45. After having reviewed Patient A's record, Dr. Pollock believes that proper post-operative care would require a physician to see such a patient every one to three months, to have pelvic examinations performed, and to have an MRI. He does not feel that the pelvic examinations performed by Respondent on Patient A were excessive or inappropriate and, during Respondent's subspecialty training, had instructed Respondent to follow patients such as Patient A in this manner. (T. 495-6)

46. In Dr. Pollock's opinion, the reason for the pelvic examination is to make certain that the mesh from the surgery is still intact. (T. 500) He believes that in light of Patient A's complaint of a suture, possibly an early sign of mesh disruption, the pelvic exam was necessary and "The only way to do that even if she had not made the complaint is with a bimanual exam. No other exam will cover that." (T. 500) Dr. Pollock describes Patient A as of the December 8, 1995 office visit as "...considered fresh from surgery -- and a 12/8/95 date would be considered fresh from surgery -- to make certain that the mesh is still intact...." (T. 500)

47. At the hearing before this Panel on March 9, 2000, the Respondent testified that on December 8, 1995 the Patient A complained that her stitches were bothering her, which could have involved the surgical mesh, and based on that complaint the Respondent felt her abdomen wall and belly and testified that there was no indication to do a pelvic or rectal examination. (T. 430)

48. At the hearing before this Panel on March 9, 2000, the Respondent testified that the purpose for his performing a rectal and pelvic examination was to "...palpate the areas that I felt were at risk for recurrence...." (T. 431)

49. After Dr. Pollock's testimony on March 10, 2000, the Respondent testified that he performed a rectal and pelvic examination because Patient A was having discomfort relating to the surgical mesh and to determine how the pelvis was healing and recurrence of the disease. (T. 559)

DISCUSSION

The Panel was unanimous in its belief that the critical issue in this case was credibility. The majority of the Panel, in a two to one decision, found Patient A to be credible for the following

reasons: First, Patient A was privy to private information about the Respondent that would not have been known by patients of a physician; such as the Respondent's weekend trip for a medical meeting (T. 68), which was confirmed by the Respondent's appointment book (Pet. Exh. 7); Respondent was from Puerto Rico and played water polo (T. 48); Respondent's black tie dinner when he came to her apartment in January 1997; (T.53) Respondent's gun renewal date (T. 67). Second, Patient A, shortly after the sex occurred between the Respondent and herself, called her gynecologist, Dr. Yale and told her about that relationship, (T. 67) and Dr. Yale testified that she believed her then and believes her now. (T. 256) Approximately 5 months after the Patient's last visit with the Respondent, Dr. Brennan testified that based on what Patient A had told him regarding the pelvic and rectal examinations, he took affirmative actions such as writing to and meeting with the Respondent regarding this matter. (T. 349, 350, 366) This was felt by a majority of the Panel members to be the behavior of a doctor who believed Patient A since it is extraordinary for one doctor to take steps, such as write a letter or meet with another physician on behalf of a patient. In November 1998, Patient A contacted Dr. Sondak, head of the Sarcoma Clinic at University of Michigan (T. 218) through the internet regarding the pelvic and rectal examination. (T. 98) Finally, the Patient's own testimony was sufficiently specific as to details and her demeanor was convincing. The Patient had no motive to bring this action against the Respondent. She was aware of her civil remedy but allowed the statute of limitations to run out. Patient A, a woman in her mid thirties was clearly vulnerable at a time when she received a diagnosis of cancer. She was very grateful to the Respondent and believed he had saved her life. She admitted she was attracted to the Respondent. She did however, show signs of regretting her actions and suffering, while clearly admitting her actions with the Respondent at the restaurant, the museum and the apartment were consensual.

The majority of the Panel found the Respondent's testimony not credible for the following reasons: First, the Respondent testified differently on some of the same issues as the Patient and had the ability to substantiate his testimony with evidence but failed to do so. For example, he stated his wife went to San Francisco with him yet he did not produce any documentation (T. 588); and his gun permits expire in May, not January but he produced only some of his gun permits and admitted that he purchased another gun with perhaps a different permit date. (T. 540-3) Second: the Respondent's testimony seemed implausible at times, such as the fact that he was aware that her proposal to advance the Lenox Hill oncology department was of no use, yet he meets her for dinner (T. 449, 452). He testified that during the dinner the Patient said she wanted to have an affair with him, he refuses, then instead of finding her a taxi, he offers to drive her home and never writes a word in her medical chart. The Respondent writes no results of many rectal and pelvic examinations Patient A states were performed in the medical chart. (Pet. Exh. 3). The Respondent testified that on September 25, 1997, the Patient had an appointment, but there is no medical record of that visit and she did not pay her bill for that date (T. 548- 553). . Respondent became aware of Patient A's concerns first when he received a letter from Dr. Brennan, second at a later meeting with Dr. Brennan and third when the Office of Professional Medical Conduct became involved. However he never attempted to address the Patient's concerns and substantiate his position or impeach the Patient's credibility. It was felt by a majority of the Panel that the Respondent's demeanor was too controlled and not totally credible in light of the serious nature of the proceedings. The Panel was unanimous in finding that the Respondent is a skilled and experienced surgeon.

As to the experts, the following must be established. According to the Respondent's records of Patient A, he performed three pelvic and rectal examinations. If this Panel were

persuaded by the Respondent's testimony as to the necessity of these examinations there would be no reason to look to other testimony. However, the Respondent's testimony on this issue is also not credible. Prior to Respondent's expert, Dr. Pollock's testimony, Respondent presented one rationale for the exams (i.e. recurrence of tumor T. 431); after Dr. Pollock's testimony, he adopts his rationale (i.e. integrity of the surgical mesh T. 559). Therefore, a majority of this Panel is not convinced that the Respondent performed these examinations for legitimate medical reasons. Furthermore, Patient A's testimony regarding the frequency of these exams is again credible due to her specificity of her describing of the exams (i.e. examination during her menstrual period T. 63-4). As to Dr. Logerfo's testimony, the Panel found him to be forthright and sincere in his opinion that there was no medical necessity for such exams. Dr. Logerfo's testimony that cancer patients often look at their physician as "God" (T. 334) lent credibility as to the vulnerability of the Patient's state of mind at the time of the relationship. Dr. Pollock, the Respondent's expert characterizes Patient A as of the December 8, 1995 office visit as "...considered fresh from surgery -- and a 12/8/95 date would be considered fresh from surgery...." yet the Respondent had already dined at a restaurant with Patient A, driven her home, and testified that she approached him to have an affair. (T. 455)

Both Dr. Yale and Dr. Brennan appeared in their testimony to be somewhat reluctant witnesses but nevertheless credible. Dr. Yale in her telephone conversation with Patient A, and based on her knowledge of this patient made a judgment that the Patient was telling the truth and that sexual contact had occurred between Patient A and the Respondent. (T. 256) Dr. Yale took action and made the decision to recommend that Patient A not to continue as a patient of the Respondent but to transfer her care to Dr. Brennan. The Panel recognized the difficulty in having Dr. Yale testify before these proceedings in light of her position at the same hospital as

the Respondent. Panel members and the Administrative Law Judge were disturbed in learning that during these proceedings, the Respondent approached Dr. Yale at the hospital elevator and made a statement as to his innocence. (T. 245-6)

As to the other witnesses who appeared, the Panel found little information provided that addressed the issue of the Respondent and or Patient A's credibility concerns when he received a letter from Dr. Brennan, then a meeting with Dr. Brennan, then the Office of Professional Medical Conduct became involved yet never attempted to address the Patient's concerns and substantiate his position or the Patient's credibility. A majority of the Panel found the Respondent's demeanor controlled and not genuine in light of the serious nature of the proceedings.

After the testimony the Panel requested that the Respondent be evaluated by a psychiatrist (Dr. Abel) selected by the Panel; and Respondent agreed to do so. Dr. Abel's report was received into evidence along with the Department's Argument and Respondent's Supplemental Findings of Fact. It was never the intention of the Panel to rely on Dr. Abel's report as to credibility of the Respondent but merely as an aid to determine penalty. However, Dr. Abel's report was not useful. The Panel questions the validity of the report in light of the extensive ex-parte communication and evidence submitted to Dr. Abel from Respondent's counsel. The Panel concluded that the report was therefore tainted and not helpful.

After giving complete consideration to all the penalties available, the Panel in a two to one vote has decided on a suspension for five years which would be stayed after one month. The Panel based the penalty on the following factors: on the egregious acts committed by the Respondent, however they found that due to Respondent's personal life circumstances, that this one act of misconduct was an aberration, the Respondent would not violate New York State

Regulations again in light of penalty, Respondent willingly submitted himself to be evaluated at his own expense, the sexual impropriety that occurred took place out of the office setting and was mutually arranged by both parties. There was no indication that any other such relationships have occurred or will. If he were to be involved in such relationships regularly, it would require the collusion of both his staff and his wife who work with him in the office. Getting away with this behavior once is always possible but not regularly. This sanction is consistent with what the patient wanted. She did not sue and would have accepted an apology if one had been offered.

PANEL'S DETERMINATION ON THE CHARGES

MORAL UNFITNESS SPECIFICATION

Paragraph A1 – NOT SUSTAINED

Paragraph A2 - SUSTAINED

WILLFUL PATIENT ABUSE

Paragraph A - NOT SUSTAINED

FRAUDULENT PRACTICE

Paragraph A - NOT SUSTAINED

Paragraph A1 – NOT SUSTAINED

DETERMINATION OF THE HEARING COMMITTEE AS TO PENALTY

The hearing Committee, in a two to one vote, and after giving due consideration to all the penalties available, have determined that the Respondent's license to practice medicine in the State of New York should be SUSPENDED for five years, said SUSPENSION IS STAYED after one month.

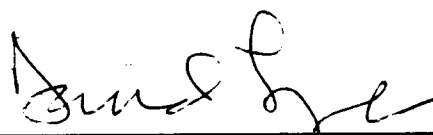
ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in the State of New York is **SUSPENDED** for five (5) years, said **SUSPENSION STAYED** after one month.
2. This **ORDER** shall be effective upon service on the Repondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Watertown, New York

December 21, 2000



DAVID T. LYON, M.D., M.P.H.
Chairperson

RUTH HOROWITZ, Ph.D.
STEVEN M. LAPIDUS, M.D.

APPENDIX I

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

IN THE MATTER
OF
RAUL N. LUGO, M.D.

NOTICE
OF
HEARING

TO: Raul Lugo, M.D.
870 Park Avenue
New York, NY 10021

RECEIVED

JAN 19 2000

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1999) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1999). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on January 25, 2000, at 10:00 a.m., at the Offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York, 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. A summary of the Department of Health Hearing Rules is enclosed.

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 New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF

ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), 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 §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 1999) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

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 OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW §§230-a (McKinney Supp.
1999). YOU ARE URGED TO OBTAIN AN ATTORNEY TO
REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
November 1, 1999
December



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Jean Bresler
Associate counsel
Bureau of Professional
Medical Conduct
New York State Department of Health
145 Huguenot Street
New Rochelle, N.Y.
914-632-3547

IN THE MATTER
OF
RAUL N. LUGO, M.D.

STATEMENT
OF
CHARGES

RAUL N. LUGO, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 20, 1981, by the issuance of license number 145332 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about September 13, 1995 Patient A first consulted the Respondent, a surgeon, at his private office, at 870 Park Avenue, New York, New York . She was hospitalized at Lenox Hill Hospital on or about September 26, with a diagnosis of desmoid tumor of the abdominal wall, right lower quadrant. Patient A was operated on by the Respondent on September 26, 1995. Surgery confirmed the Respondent's pre-operative diagnosis. Thereafter, she received follow up treatment, by the Respondent in his private office at 870 Park Avenue, New York, New York on approximately eight occasions between October 6, 1995 and September 26, 1996 when on or about November 6, 1996 she transferred her care to another surgeon.
1. On each office visit Respondent performed a pelvic and rectal exam and on multiple occasions performed a breast exam for other than a legitimate medical purpose.
 2. Beginning during one of Patient A's post-operative visits in or before November, 1995, and thereafter the Respondent inappropriately initiated a social and later a sexual relationship

and engaged in inappropriate sexual contact with her on multiple occasions and at multiple locations.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20)(McKinney Supp. 1999) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

1. The facts in paragraphs A and its subparagraphs.

SECOND SPECIFICATION

WILLFUL PATIENT ABUSE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(31)(McKinney Supp. 1999) by willfully physically abusing a patient, as alleged in the facts of:

2. The facts in paragraph A and its subparagraphs.

THIRD SPECIFICATION

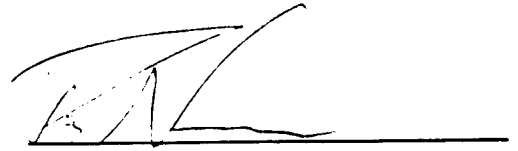
FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 1999) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

3. Paragraphs A and A.1.

October 1999

New York, New York

A handwritten signature in black ink, appearing to read 'RN', is written above a solid horizontal line.

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct