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

November 13, 1996

CERTIFIED MAIL - RETURN RECEIPT REOUESTED

Terrence Sheehan, Esq. NYS Department of Health Metropolitan Regional Office 5 Penn Plaza-Sixth Floor New York, New York 12237 Michael S. Kelton, Esq. Lippman, Krasnow & Kelton, LLP Attorneys at Law 711 Third Avenue New York, New York 10017

Patrick Griffin, M.D. 25 Central Park West Suite 1U New York, New York 10023 EFFECTIVE DATE NOVEMBER 20, 1996

RE: In the Matter of Patrick Griffin, M.D.

Dear Mr. Sheehan, Mr. Kelton and Dr. Griffin:

Enclosed please find the Determination and Order (No. 96-264) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct New York State Department of Health Corning Tower - Fourth Floor (Room 438) Empire State Plaza Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties <u>other than suspension or revocation</u> 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 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, Jylone J. Butlelnm

Tyrone T. Butler, Director Bureau of Adjudication

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



IN THE MATTER

: HEARING COMMITTEE

OF

DETERMINATION

PATRICK GRIFFIN, MD.

AND ORDER

BPMC-96-264

-----X

Naomi Goldstein, M.D., Chairperson, Benjamin Wainfeld, M.D., and Anthony C. Biondi, duly designated members of the State Board of Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230 (1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230 (10) (e) and 230 (12) of the Public Health Law. Stephen Bermas, Esq., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

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

SUMMARY OF THE PROCEEDINGS

Notice of Hearing dated:

March 26, 1996

Statement of Charges dated:

March 26, 1996

Amended Statement of Charges dated:

June 26, 1996

Hearing Dates:

April 24, May 2 and 29, June 10, 13 and

27, and July 17 and 18, 1996

Deliberation Date:

September 30, 1996

Place of Hearing:

NYS Department of Health

5 Penn Plaza

New York, New York

Petitioner Appeared By:

Terrence Sheehan, Esq., Associate Counsel Irene M. Koch, Esq., Assistant Counsel

Bureau of Professional Medical Conduct

NYS Department of Health

Respondent Appeared By:

Lippman Krasnow & Kelton, Esq.

BY: Michael S. Kelton

STATEMENT OF CHARGES

The Statement of Charges has been marked as Petitioner's Exhibit 1 and attached hereto as Appendix A. The Amended Statement of Charges has been marked as Petitioner's Exhibit 8 and attached hereto as Appendix B.

FINDINGS OF FACT

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 cited evidence. All Findings are unanimous except as specifically indicated.

- 1. Respondent was authorized to practice medicine in New York State on or about April 16, 1982, by the issuance of license number 149743 by the New York State Education Department. (Exs. 1, A)
- 2. Respondent graduated from Columbia University and from the Columbia College of Physicians and Surgeons, and thereafter completed his internship and residency at the Presbyterian Hospital at Columbia University. (T.921) Respondent completed a Harvard Medical School fellowship in gastroenterology at Brigham and Women's Hospital and is a Fellow of the American College of Physicians, a member of the American Gastroenterology Association, and is Board certified in internal medicine with a sub-specialty certification in gastroenterology. (T. 924-926, 1157)
- 3. Since 1983, Respondent has performed approximately 8,000 endoscopic procedures, approximately one-third of which have been colonoscopies. (T. 931-932, 1204)
- 4. Respondent first treated Patient A in December 1991 at Roosevelt Hospital. (T. 945) Patient A had been admitted to the hospital by another physician, with complaints of vague abdominal pain. (T. 946) Respondent performed both an upper endoscopy and a colonoscopy upon Patient A at that time. (T. 947)
- 5. Commencing in January 1992, Patient A became a private patient of Respondent's, and between January 1992 and January 1994, Patient A visited with Respondent approximately 2 to 3 times per year at Respondent's office at 25 Central Park West, Suite 1U, New York City. (T. 40, 948) The medical conditions for which Respondent treated Patient A during this period of time were hyperacidity, gastritis and depression. (T. 954) At many of these office visits, Respondent claimed that her prior eviction from her apartment was making her sick and Patient A repeatedly complained of stress. (T. 955) During this two year course of treatment,

Respondent variously prescribed to Patient A Pamelor (a tricyclic anti-depressant), Buspar (an anti-anxiety agent) and Zoloft (an anti-depressant). (T. 955-957, 1162; Ex. 3)

- 6. On at least one occasion, January 26, 1994, Respondent specifically recommended to Patient A that she seek psychiatric help. (T. 958-959; Ex. 3) Patient A declined to do so. (T. 959)
- 7. On January 13, 1995, Patient A presented to Respondent's office at 25 Central Park West, Suite 1U, New York City, for performance of a colonoscopy and upper endoscopy. (T. 41) On January 13, 1995, the following were employees of Respondent: Carmen Johnson, also known as "CJ" who was the office manager (T. 513); Bill McCue, who was a general office assistant (T. 408, 423); Melania Rivera, who was a medical assistant and receptionist (T. 650); and Dianne Lorens, who was the receptionist/secretary (T. 689).
- On January 13, 1995, Respondent's office set-up consisted of an entry/waiting area, CJ's office, which was also the blood-drawing room, two examination rooms, Respondent's private office, an office containing patient files, x-ray films, a photocopy machine, referral forms, a desk and a telephone, and a procedure room. The office containing the patient files, x-ray films, photocopy machine, referral forms, desk and telephone was considered Mr. McCue's office, since he customarily was stationed in that office during the business day. (T. 410, 516, 654, 696, 727-728, 967-968, 971).
- 9. The procedure room contained an open doorway with a sliding curtain. There is no door to the procedure room. (T. 410, 515, 653-654, 966)
- It was the custom and practice of Respondent's office that employees were allowed to, and, indeed, expected to, enter the procedure room while Respondent was performing procedures on patients, to advise Respondent of certain important telephone callers. (T. 413, 522-523, 524, 547-549, 624, 701, 702, 734, 973-975, 1146)

- On January 13, 1995, Patient A was scheduled for a procedure at 10:00 a.m. However, Patient A was running late because she was experiencing diarrhea associated with the bowel preparation she had taken the night before. Patient A called Respondent's office to advise that she would be late. (T. 43, 167-169, 286) Respondent therefore went to the hospital to perform a procedure scheduled for 11:00 a.m., after he was told that that patient had arrived at the hospital early and was ready for his procedure. (T. 986) Respondent returned to his office at approximately 11:30 to 11:45 a.m. (T. 988) Patient A had already been placed in the procedure room and given a gown.
- Respondent administered 1 cc (1 milligram) of Versed and 2 cc's (50 milligrams) of Demerol to Patient A. (T. 995) It took between 45 seconds and 1 ½ minutes for sedation to set in. (T. 997)
 - 13. The colonoscopy took approximately 8 to 15 minutes to perform. (T. 1003)
- 14. Upon commencement of the upper endoscopy, Patient A gagged slightly and her eyelids opened when her throat was sprayed with Novocain. Therefore, Respondent gave her another 1 milligram of Versed and 50 milligrams of Demerol before commencing the upper endoscopic procedure. (Ex. 3)
- 15. After an unknown period of time, Patient A awakened. She looked down and saw Respondent with his head between her legs and he was administering oral sex to Patient A. Respondent had his tongue and mouth on Patient A's vagina and he was licking her vagina. (T. 64-6) (This Finding was made by two Members of the Hearing Committee. The third Member did not concur.)
- 16. Patient A pushed Respondent away and told him to stop. She asked what he was doing and he responded "Oh, I'm sorry. I thought that's what you wanted me to do". (T. 65-6)

(This Finding was made by two Members of the Hearing Committee. The third Member did not concur.)

- 17. After completion of the upper endoscopic procedure, Respondent put the bed rail up, removed the butterfly and syringe from Patient A's arm, took the Patient's vital signs and left the procedure room, directing either Mr. McCue or Ms. Johnson to tend to the Patient. (T. 1014)
- During the course of performing these procedures on Patient A on January 13, 1995, Ms. Johnson entered the procedure room at least once to give Respondent a telephone message. Ms. Johnson actually looked in to the room and saw Respondent performing the upper endoscopy. Ms. Johnson never saw Respondent in a sexually compromising position with Patient A. (T. 534)
- 19. Ms. Rivera heard nothing unusual on January 13, 1995 during Patient A's procedures. (T. 660) Ms. Laurens recalls nothing unusual, and heard nothing unusual, with respect to the January 13, 1995 procedures performed on Patient A. (T. 704)
- 20. On two occasions, Patient A went to two different police precincts to report the matter but due to the unavailability of female officers, was unable, due to embarrassment, to speak to the male officers who were present. (T. 77-81)
- A was convinced to contact the Office of Professional Medical Conduct and the police. (T. 79)
- 22. Respondent did not speak to or see Patient A between January 13, 1995 and April 27, 1995. On April 27, 1995 Patient A presented at Respondent's office, ostensibly for a follow-up visit. Unbeknownst to Respondent, at that time, Patient A had been "wired" with a tape recording device by the Manhattan District Attorney's Office and the New York City Police Department. (T. 89; Ex. 4)

- On that tape, Patient A accused Respondent of placing his mouth on her vagina. Respondent repeatedly denied that he had ever done such a thing. (Ex. 4,5) Respondent told Patient A that he had kissed her. Initially, Respondent stated that he had kissed her "right before the end" of the procedure, and immediately thereafter Respondent stated that he had kissed her "right in the beginning" of the procedure. (T. 1036)
- 24. Respondent prepared a chart entry for the April 27, 1995 visit in which he created a false version of events in Patient A's chart. (Ex. 5)
- 25. Respondent falsely stated in his chart entry for April 27, 1995 that he asked the Patient to leave his office. (Ex. 5)
- 26. Respondent falsely stated in his chart entry for April 27, 1995 that he asked Patient A to seek psychiatric help. (Ex. 5)
- 27. There was no direct testimony that Patient A was hysterical at the April 27, 1995 visit, and her voice on the tape was quiet and controlled. (Ex. 4)
- Respondent related a similar false version of events to police detectives and made inconsistent statements including that Patient A returned to Respondent's office at a time after the medical procedures in a screaming, hysterical state. (Exs. 11, 12)
- 29. On or about June 19, 1996, Respondent was convicted in Supreme Court, New York County, of sodomy in the first degree in violation of Penal Law §130/50(2). (Exs. 8, 10)
- 30. On or about June 19, 1996, Respondent was convicted in Supreme Court, New York County, of the crime of falsifying business records in the first degree in violation of Penal Law §175.10. (Exs. 8, 10)

CONCLUSIONS OF LAW

The Hearing Committee agreed that the key evidentiary issue in this matter was the relative credibility of the Respondent and of Patient A. With respect to the first two charges, two of the Members determined that Patient A was more credible than the Respondent, and the third Member determined that the Respondent was more credible than Patient A. Consequently, the first two conclusions were reached by two Members, but not by the third. All other Conclusions were unanimous.

FIRST: Respondent is found to have engaged in professional misconduct by reason of engaging in conduct in the practice of medicine that evidences moral unfitness to practice within the meaning of N.Y. Education Law Sec. 6530 (20) (McKinney Suppl. 1996) as set forth in Findings of Fact 1 through 28, supra. (This Conclusion was reached by two Members of the Hearing Committee. The third Member concluded that there was insufficient proof.)

SECOND: Respondent is found to have engaged in professional misconduct by reason of willfully harassing, abusing or intimidating Patient A within the meaning of N.Y. Education Law Sec. 6530 (31) (McKinney Suppl. 1996) as set forth in Findings of Fact 1 through 28, supra. (This Conclusion was reached by two Members of the Hearing Committee. The third Member concluded that there was insufficient proof.)

THIRD: Respondent is found to have engaged in professional misconduct by reason of practicing medicine fraudulently within the meaning of N.Y. Education Law Sec. 6530 (2) (McKinney Suppl. 1996) as set forth in Findings of Fact 1 through 28, supra.

FOURTH: Respondent is found to have engaged in professional misconduct by reason of failing to maintain a record for Patient A which accurately reflected the evaluation and treatment of Patient A within the meaning of N.Y. Education Law Sec. 6530 (32) (McKinney Suppl. 1996), as set forth in Findings of Fact 1 through 28, supra.

FIFTH: Respondent is found to have engaged in professional misconduct within the meaning of N.Y. Education Law Section 6530 (9) (a) (i) (McKinney Supp. 1996), by reason of having been convicted of committing acts constituting a crime under N.Y. State Penal Law Section 130.50 (2), as set forth in Finding of Fact 29, supra.

SIXTH: Respondent is found to have engaged in professional misconduct within the meaning of N.Y. Education Law Section 6530 (a) (a) (I) (McKinney Supp. 1996), by reason of having been convicted of committing acts constituting a crime under N.Y. State Penal Law Section 175.10), as set forth in Finding of Fact 30, supra

ORDER

The Hearing Committee determines and orders that Respondent's license to practice medicine be revoked.

This Order is concurred in by two members of the Hearing Committee. The third member recommended suspension of Respondent's license pending the outcome of the appeal in Respondent's criminal case, at which time this matter would have been referred back to the Hearing Committee for further action. The two majority members concluded that the outcome of the criminal appeal would have no effect on the revocation of Respondent's license inasmuch as their Findings on the first four Specifications of the Charges are sufficient to warrant the revocation.

Date:

New York, N.Y.

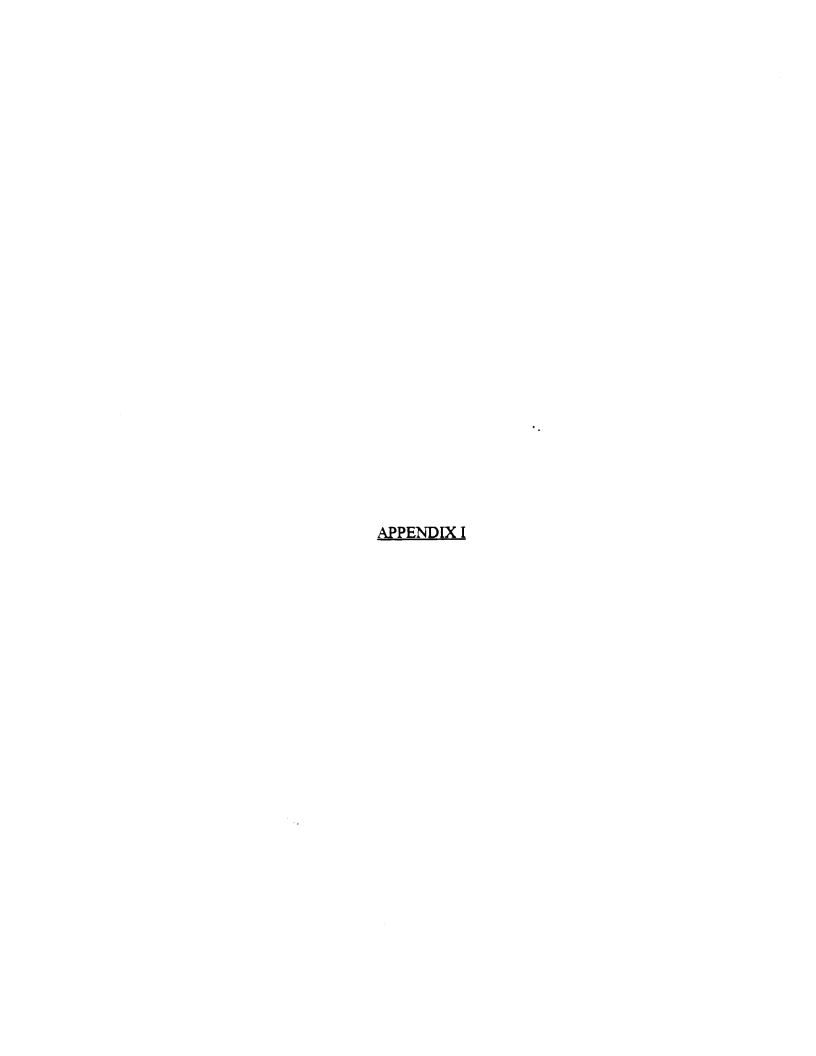
Oct. 24, 1996

Naomi Goldstein, M.D.

Chairperson

Benjamin Wainfeld, M.D.

Anthony C. Biondi



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

IN THE MATTER

OF

PATRICK GRIFFIN, M.D.

OF HEARING

PETITIONER'S
EXHIBIT

-01.

TO: Patrick Griffin, M.D.
25 Central Park West
Suite 1U
New York, New York 10023

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1996) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1996). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on April 24, 1996, 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 Administrative Law Judge's Office, Empire State Plaza, Tower Building, 25th Floor, Albany, New York 12237, (518-473-1385), upon notice to the attorney for the

Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1996), you may file an answer to the Statement of Charges not less than ten days prior to the date of the hearing. If you wish to raise an affirmative defense, however, N.Y. Admin. Code tit. 10, §51.5(c) requires that an answer be filed, but allows the filing of such an answer until three days prior to the date of the hearing. Any answer shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a (McKinney Supp. 1996). YOU ARE URGED TO OBTAIN AN ATTORNEY TO

REPRESENT YOU IN THIS MATTER.

DATED:

New York, New York

ROY NEMERSON Deputy Counsel Bureau of Professional Medical Conduct

Inquiries should be directed to: Irene M. Koch
Assistant Counsel
Bureau of Professional
Medical Conduct

5 Penn Plaza, Suité 601 New York, New York 10001 (212) 613-2615

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

IN THE MATTER

OF

PATRICK GRIFFIN, M.D.

STATEMENT OF CHARGES

PATRICK GRIFFIN, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 16, 1982, by the issuance of license number 149743 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent treated Patient A, a 42 year old female, at his office located at 25 Central Park West, Suite 1U, New York, New York 10023, on or about January 13, 1995, and April 27, 1995. (The identity of Patient A is disclosed in the attached Appendix).
 - On or about January 13, 1995, in the course a purported medical procedure (endoscopy and colonoscopy), but not for a proper medical purpose:
 - a. Respondent inserted his finger(s) in Patient A's vagina.
 - b. Respondent kissed and/or licked Patient A, including, but not limited to, her vagina.

2. Respondent knowingly and intentionally falsified information in Patient A's chart for April 27, 1995.

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. 1996) 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. Paragraph A, A.1, A.1.a and/or A.1.b.

SECOND SPECIFICATION WILLFULLY HARASSING, ABUSING OR INTIMIDATING PATIENTS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(31)(McKinney Supp. 1996) by willfully harassing, abusing, or intimidating patients either physically or verbally as alleged in the facts of the following:

2. Paragraph A, A.1, A.1.a and/or A.1.b.

THIRD SPECIFICATION FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 1996) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

3. Paragraph A, and A.2.

FOURTH SPECIFICATION FAILING TO MAINTAIN ACCURATE RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32)(McKinney Supp. 1996) by failing to maintain records for each patient which accurately reflect the evaluation and treatment of the patients as alleged in the facts of two or more of the following:

Paragraph A, and A.2. 4.

DATED:

March - € . 1996

New York, New York

ROY NEMERSON

Deputy Counsel Bureau of Professional Medical Conduct

APPENDIX II

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

IN THE MATTER

OF

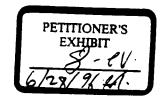
PATRICK GRIFFIN, M.D.

AMENDED
STATEMENT
OF
CHARGES

The Statement of Charges dated March 26, 1996 in the referenced matter is hereby amended by the addition of the following two specifications.

FACTUAL ALLEGATIONS

- B. On or about June 19, 1996, Respondent was convicted in Supreme Court, New York County of the felony of sodomy in the first degree in violation of Penal Law §130.50(2) in that he was found to have placed his mouth on the vulva of Patient A while Patient A was incapable of consent by reason of being physically helpless.
- C. On or about June 19, 1996, Respondent was convicted in Supreme Court, New York County of the crime of falsifying business records in the first degree in violation of Penal Law §175.10 in that Respondent was found to have made a false entry in the medical record maintained by him for Patient A and that in so doing he intended to aid and conceal the commission of another crime.



FIFTH AND SIXTH SPECIFICATIONS

HAVING BEEN CONVICTED OF A CRIME UNDER **NEW YORK STATE LAW**

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(9)(a)(i) in that he has been convicted of committing acts constituting crimes under New York State law. Specifically, Petitioner charges the facts in:

- 5. Paragraph B.
- 6. Paragraph C.

June 26, 1996 New York, NY Dated:

FOR OFFICIAL USB

	:		
SUPREME COURT OF THE STATE OF A COUNTY OF NEW YORK	ew york	ork CERTIFICATE NO. 17080	
THE PROPLE OF THE STATE OF NEW YORK	SODOW	TMENT	for
	7217154 No. 122	11: 12 COUNT IMY BUSINCSS 35-95	
I NORMAN GOODMAN, County Clerk certify that it appears from an examination of the B	ed Cleak of the So	upreme Court, New York	
the above name of SOBOME AND SOCIETY OF THE SOCIETY		/ /	,
	the Defender 2-26-	t was sentenced by egent. to K	Ha Hon
	Row	UN 2/6 1998 The Polyment	0074
IN WITHES WHEEROF, I have become JUNC 19 9	net my hand and a	uttered my official Stal this	day of

ty Clork and Clork of the Supreme Court, New York County.