

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234
September 18, 1992

OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

Saied Shamsian, Physician
510 Eighth Avenue
Brooklyn, New York 11215

Re: License No. 152696

Dear Dr. Shamsian:

Enclosed please find Commissioner's Order No. 12931. This Order goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. Your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department. In the event you are also served with this Order by personal service, the effective date of the Order is the date of personal service.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you may, pursuant to Rule 24.7 (b) of the Rules of the Board of Regents, a copy of which is attached, apply for restoration of your license after one year has elapsed from the effective date of the Order and the penalty; but said application is not granted automatically.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations

By: *Gustave Martine*

GUSTAVE MARTINE
Supervisor

DJK/GM/er

CERTIFIED MAIL - RRR

cc: Bruce A. Jackson & Maureen McLeod, Esqs.
Jackson, Krez & Consumano
220 East 42 Street
New York, New York 10017

RECEIVED

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OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

**REPORT OF THE
REGENTS REVIEW COMMITTEE**

SAIED SHAMSIAN

CALENDAR NO. 12931



The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

SAIED SHAMSIAN

No. 12931

who is currently licensed to practice
as a physician in the State of New York.

REPORT OF THE REGENTS REVIEW COMMITTEE

On July 23, 1991, July 31, 1991 and August 1, 1991, which includes a pre-hearing conference, a hearing was held in the instant matter before a hearing committee of the State Board for Professional Medical Conduct which subsequently rendered a report of its findings, conclusions and recommendation, a copy of which is annexed hereto, made a part hereof, and marked as Exhibit "A". Included as "Appendix I" of the hearing committee report is a copy of the original statement of charges. However, this statement of charges was amended by deleting the last two lines of paragraph A.1 on July 31, 1991. A copy of the statement of charges, as amended, is attached hereto, made a part hereof, and marked as Exhibit "B".

The specifications charged upon which the hearing committee determined respondent to be guilty related to the first specification (unprofessional conduct), involving moral unfitness,

SAIED SHAMSIAN (12931)

in that respondent subjected a patient to unconsented physical contact of a sexual nature; and the second specification (unprofessional conduct), involving the willful physical abuse of the patient, as set forth in the first specification.

The hearing committee recommended that respondent's license to practice medicine in the State of New York be suspended for a period of two years and that the suspension be stayed and respondent be placed on probation for two years, during which time respondent, as a condition of probation, shall be required to have a female assistant present whenever treating female patients.

The Commissioner of Health recommended that the findings of fact, conclusions and recommendation of the hearing committee be accepted. A copy of the recommendation of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "C".

On May 27, 1992 respondent appeared before us in person and was represented by his attorneys, Bruce A. Jackson, Esq. and Maureen A. McLeod, Esq. David W. Smith, Esq., represented the Department of Health.

Petitioner's written recommendation as to the penalty to be imposed should respondent be found guilty, was a two year stayed suspension; two years of probation; and the presence of a female assistant whenever treating a female patient.

Respondent's written recommendation as to the penalty to be imposed was for the dismissal of all charges or, alternatively, a new hearing.

SAIED SHAMSIAN (12931)

We have considered the record herein, as transferred by the Commissioner of Health, as well as respondent's brief and petitioner's reply brief.

In our unanimous opinion, the hearing was conducted in a fair and impartial manner and the rulings of the Administrative Officer did not deprive respondent of the opportunity to adequately cross-examine witnesses as to issues relevant to the charges herein. Moreover, the hearing committee appropriately weighed the evidence before it and based its decision thereon.

We note that we accept finding of fact number (13) of the hearing committee report only as a statement of fact which relates to the lack of availability of any additional witness to the conduct here at issue and do not view this finding as establishing any misconduct by respondent.

We unanimously recommend the following:

1. The hearing committee's findings of fact and conclusions as to guilt, as well as the Commissioner of Health's recommendation as to those findings and conclusions be accepted, with the clarification that finding of fact number (13) of the hearing committee report be accepted only as a statement of fact which relates to the lack of availability of any additional witness to the conduct here at issue and not be viewed as establishing any misconduct by respondent;
2. Respondent be found guilty, by a preponderance of the

SAIED SHAMSIAN (12931)

evidence, of the first specification (unprofessional conduct), involving moral unfitness, in that respondent subjected a patient to unconsented physical contact of a sexual nature; and the second specification (unprofessional conduct), involving the willful physical abuse of the patient, as set forth in the first specification;

3. The recommendations of the hearing committee and the Commissioner of Health as to the measure of discipline be accepted; and
4. Respondent's license to practice as a physician in the State of New York be suspended for two years upon each specification charged of which respondent has been found guilty, and that execution of said suspensions be stayed at which time respondent then be placed on probation for two years in accordance with the terms set forth in the exhibit annexed hereto, made a part hereof, and marked as Exhibit "D".

Respectfully submitted,

FLOYD S. LINTON

THEODORE M. BLACK, SR.

NANCY A. RUCKER


Chairperson

Dated: *July 31, 1992*

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

-----X
IN THE MATTER : REPORT OF THE
OF : HEARING
SAIED SHAMSIAN : COMMITTEE
-----X

TO: LORNA MCBARNETTE
EXECUTIVE DEPUTY COMMISSIONER
NEW YORK STATE DEPARTMENT OF HEALTH

The undersigned Hearing Committee consisting of Stanley L. Grossman, M.D. Chairperson, Elizabeth A.M. Frost, M.D. and Ms. Olive M. Jacob, was duly designated and appointed by the State Board for Professional Medical Conduct. Jonathan M. Brandes, Administrative Law Judge, served as Administrative Officer.

The hearing was conducted pursuant to the provisions of New York Public Health Law Section 230(12) and New York State Administrative Procedure Act Sections 301-307 to receive evidence concerning alleged violations of provisions of New York Education Law Section 6509 by Saied Shamsian, 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.

The Committee has considered the entire record in the above captioned matter and hereby makes its report to the New York State Commissioner of Health or his designee with regard to the charges of medical misconduct.

RECORD OF PROCEEDINGS

Original Notice of Hearing and Statement of Charges dated:	June 27, 1991
Notice of hearing returnable:	July 31, 1991
Place of Hearing:	New York, New York
Respondent's answer served:	none
The State Board for Professional Medical Conduct appeared by:	David W. Smith, Esq. Assistant Counsel Bureau of Professional Medical Conduct 5 Penn Plaza Sixth Floor New York, NY 10001
Respondent appeared in person and was represented by:	Brownstein, Esqs., 19 Rector Street Penthouse New York, NY 10006 Irwin Brownstein, Esq. with Margo Hayes of Counsel
Hearings held on:	July 31, and August 1, 1991
Conference held:	July 23, 1991
Record closed:	September 16, 1991
Deliberations held:	September 23, 1991

SUMMARY OF PROCEEDINGS

The Statement of Charges alleges Respondent has committed unprofessional conduct by engaging in conduct which evidences moral unfitness to practice the profession and by willfully abusing a patient either physically or verbally. The allegations arise from treatment of one patient in June 1990. The allegations are more particularly set forth in the Statement of Charges which is attached hereto as Appendix 1.

Respondent denied each of the charges.

Patient A	Fact Witness
M.F.	Former husband of Patient A: Fact witness

Respondent testified in his own behalf and called these witnesses:

Benita Diaz	Fact witness
Elie Elbaz	Character witness
Chitra Gopaldaswamy M.D.	Character Witness

The Administrative Law Judge rendered instructions to the Committee with regard to the definitions of medical misconduct as alleged in this proceeding. The Administrative Law Judge instructed the panel that each witness should be evaluated for possible bias and assessed according to his/her

training, experience, credentials, demeanor and credibility. With regard to immoral conduct, the Committee was given two standards: The Committee was instructed that conduct evidencing moral unfitness to practice medicine could be found if the Department established a violation of the public trust conferred upon a physician by virtue of his licensure. The Committee was further instructed that conduct evidencing moral unfitness to practice medicine could be found if the Department established facts which showed a violation of the moral standards of the professional community.

FINDINGS OF FACT

The following findings of fact were made after a complete review of the entire record in this matter. Numbers in parenthesis refer to transcript page numbers (Tr.) Exhibits (Ex.) These citations represent evidence found persuasive by the hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered by the Committee and rejected as unpersuasive. Other evidence not referred to in this report was considered by the committee but rejected as superfluous or irrelevant. All findings and conclusions herein were unanimous unless otherwise noted.

1. Respondent was authorized to practice medicine in New York State in 1982 by the issuance of license number 152696 by the New York Education Department (Ex. 2).

2. Respondent is currently registered with the New York State Education Department to practice medicine from 510 8th Avenue, Brooklyn, New York 11215. (T. 153 Ex. 2).

3. Patient A was treated by Respondent for urethral syndrome at his office at 510 8th Avenue Brooklyn, New York, from about October 1989, through June, 1990 (Tr. 22-24, 158-159, 186-190; Resp. Ex. G).

4. During this period, the medical condition of Patient A improved (Tr. 23).

5. Between October, 1989, and June, 1990, Patient A paid to Respondent approximately \$1400 for such medical treatment. (Tr. 42; Resp. Ex. G).

6. As of June 1990, Patient A owed Respondent approximately \$2000 (Ex. 6 & T 168). On June 4, 1990 Patient A paid Respondent \$75.00 (Tr. 43). Patient A sent Respondent a handwritten note dated June 6, 1990 asking Respondent to sign an insurance form and return it to her (Exhs. A and B).

7. Respondent never issued a further bill to Patient A after June 4, 1990 (Tr. 134).

8. On June 4, 1990, Patient A called Respondent's office and made an emergency appointment to see Respondent for medical treatment that afternoon. She arrived at Respondent's office sometime around 5:30 p.m. that same afternoon. (Tr. 24-26, 81; Resp. Ex. F).

9. Patient A was the last patient to be seen by Respondent that day. There were no other patients in the office at that time and only a very small office staff was present. (Tr. 27, 300-302).

10. Respondent led her into his examining room and then left the room. Patient A took off her clothes, put on a patient gown and lay down on the examining table. (Tr. 26-28).

11. No one could see into the examining room from the outside. (Tr. 36-37, 51-52).

12. Patient A was emotionally upset that day by a series of disappointments arising from her personal and academic life. As she lay on the table, she began to cry. At this point in time Respondent came back into the room and began his examination (Tr. 24-29 98-100 166).

13. There was no third party present during Respondent's examination of Patient A. (Tr. 37, 242, 198, 245-247).

14. Respondent finished his examination. Patient A was still crying and he put his arm around her. (Tr. 29, 166, 210-218).

15. Respondent repeatedly asked Patient A why she was crying and why she was upset. Patient A was reluctant and embarrassed to tell him, but he was persistent and she finally did. (Tr. 28-29).

16. At this point, Respondent leaned forward and kissed Patient A on the lips, inserted his tongue into her mouth and rubbed against her, all without her consent. (Tr. 29-30).

17. Respondent then left the examining room. Patient A was terrified, ashamed and embarrassed and afraid that somehow she was responsible for the actions of Respondent. (Tr. 30, 117-118, 123-124).

18. Patient A determined not to let anyone know what had happened. She got dressed and was leaving when Respondent called her into his private office. (Tr. 29-31, 122-124).

19. Patient A went into Respondent's office when she saw Respondent's receptionist was also there. He could find nothing wrong and told her to stay on her diet. (Tr. 30-31).

20. Patient A then left Respondent's inner office, wrote the receptionist a check for \$75 which she gave to the

receptionist and left the office. She was distraught and once outside she began crying again. (Tr. 31, 125-126.

21. Still crying, she tried to find a phone on the street and finally found one. She called a number of friends trying to find someone to talk to, but no one was home. Finally she reached her husband from whom she was separated. (Tr. 31-34, 126-127).

22. Patient A went immediately from the phone to her husband's apartment and arrived nearly in hysteria. He tried to calm her. After she calmed down, she went home. She attempted to hide her upset from her son. She also called a rape hotline. (Tr. 32, 125-126, 257-263).

23. The next day she made a formal complaint to the Office of Professional Medical Conduct. (Tr. 127-131).

CONCLUSIONS

The Committee's decision in this case is based on the credibility of Patient A and the Respondent. The Committee carefully considered all the testimony and evidence presented to it and concludes that Patient A was credible. The Committee concludes, by a preponderance of evidence and testimony that the Respondent kissed Patient A in the manner described in the charges.

The Committee carefully considered the Respondent's arguments that: Patient A was suffering from extreme emotional stress at the time in question and therefore she misinterpreted the Respondent's actions. We agreed that Patient A was under extreme stress on that particular day but we agreed that she didn't misinterpret the Respondent's actions. Her demeanor during the testimony was straight forward and consistent, therefore credible.

The Committee rejected the Respondent's allegation that Patient A had a hidden agenda in bringing this charge, namely, that she owed money to the Respondent. In point of fact, Exhibit B demonstrates an attempt by Patient A, after the incident occurred, to obtain the documentation necessary for the Respondent to be paid by her insurance carrier.

Based upon the above, the committee concludes, unanimously that the Respondent did willfully abuse Patient A physically when he kissed her in the manner described and that such conduct is a violation of the moral standards of the medical community as well as the fiduciary trust conferred upon Respondent as a physician.

It follows then that all factual allegations herein are sustained.

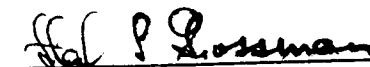
Specification one and specification two are sustained.

RECOMMENDATION

The Committee recommends that the Respondent's license to practice medicine in New York State be SUSPENDED for a period of two years, and that the SUSPENSION be stayed and the Respondent be placed on PROBATION for a period of two years, during which time the Respondent, as a condition of probation, shall be required to have a female assistant present whenever treating female patients.

DATED: Newburgh, New York 15th
day of November, 1991

Respectfully submitted,



STANLEY L. GROSSMAN, M.D.
Chairperson

Elizabeth A.M. Frost M.D.
Ms. Olive M. Jacob

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

-----X
IN THE MATTER : STATEMENT
OF : OF
SAIED SHAMSIAN, M.D. : CHARGES
-----X

SAIED SHAMSIAN, M.D., the Respondent, was authorized to practice medicine in New York State on December 10, 1982 by the issuance of license number 152696 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, 1991 to December 31, 1992.

FACTUAL ALLEGATIONS

A. In or about June, 1990, Respondent treated Patient A, a woman, (identified in Appendix A), for a urological problem in his medical office at 510 Eighth Avenue, Brooklyn, New York.

1. On or about June 4, 1990, Patient A visited Respondent's office. Respondent instructed Patient A to disrobe for a physical examination but neither offered nor provided the presence of a nurse or other third party.

2. Respondent conducted an examination of Patient A, including a pelvic examination, then put his arm around her, rubbed against her, kissed her and inserted his tongue into her mouth.

FIRST SPECIFICATION

MORAL UNFITNESS

Respondent is charged with committing unprofessional conduct within the meaning of N.Y. Educ. Law Section 6509(9) (McKinney 1985) and 8 NYCRR 29.1(b)(5) (1987) by engaging in conduct in the practice of medicine which evidences moral unfitness to practice the profession, in that Petitioner charges:

1. The facts in Paragraph A and A-1 and 2.


SECOND SPECIFICATION

WILFULLY ABUSING A PATIENT

Respondent is charged with committing unprofessional conduct within the meaning of N.Y. Educ. Law Section 6509 (9) (McKinney 1985) and 8 NYCRR 29.2(a)(2) (1989) by wilfully abusing a patient either physically or verbally in that Petitioner charges:

2. The facts in Paragraph A and A1 and 2.

DATED: New York, New York
June 27, 1991



Chris Stern Hyman
Counsel
Bureau of Professional Medical
Conduct

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

-----X
IN THE MATTER : STATEMENT
OF : OF
SAIED SHAMSIAN, M.D. : CHARGES
-----X

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[but neither offered nor provided the presence of a nurse or other third party.]

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AGREEMENT
JULY 31 1991
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2. The facts in Paragraph A and A1 and 2.

DATED: New York, New York

June 27, 1991



Chris Stern Hyman
Counsel
Bureau of Professional Medical
Conduct

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

-----X

IN THE MATTER :

OF :

SAIED SHAMSIAN :

-----X

COMMISSIONER'S

RECOMMENDATION

TO: Board of Regents
New York State Education Department
State Education Building
Albany, New York

A hearing in the above-entitled proceeding was held on July 31, and August 1, 1991. Respondent, SAIED SHAMSIAN, appeared by Irwin Brownstein, Esq. The evidence in support of the charges against the Respondent was presented by David W. Smith, Esq.

NOW, on reading and filing the transcript of the hearing, the exhibits and other evidence, and the findings, conclusions and recommendation of the Committee,

I hereby make the following recommendation to the Board of Regents:

- A. The Findings of Fact and Conclusions of the Committee should be accepted in full;
- B. The Recommendation of the Committee should be accepted; and
- C. The Board of Regents should issue an order adopting and incorporating the Findings of Fact and Conclusions and further adopting as its determination the Recommendation described above.

The entire record of the within proceeding is transmitted with this Recommendation.

DATED: Albany, New York
25, 1991

Lloyd F. Novick

LLOYD F. NOVICK, M.D.
New York State Department of Health

EXHIBIT "D"

TERMS OF PROBATION
OF THE REGENTS REVIEW COMMITTEE

SAIED SHAMSIAN

CALENDAR NO. 12931

1. That respondent shall make quarterly visits to an employee of and selected by the Office of Professional Medical Conduct of the New York State Department of Health, unless said employee agrees otherwise as to said visits, for the purpose of determining whether respondent is in compliance with the following:
 - a. That respondent, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing respondent's profession;
 - b. That respondent shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Albany, NY 12234 of any employment and/or practice, respondent's residence, telephone number, or mailing address, and of any change in respondent's employment, practice, residence, telephone number, or mailing address within or without the State of New York;
 - c. That respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that respondent has paid all registration fees due and owing to the NYSED and respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation; and
 - d. That respondent shall submit written proof to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1) respondent is currently registered with the NYSED, unless respondent submits written proof to the New York State Department of Health, that respondent has

advised DPLS, NYSED, that respondent is not engaging in the practice of respondent's profession in the State of New York and does not desire to register, and that 2) respondent has paid any fines which may have previously been imposed upon respondent by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation;

e. That respondent shall, at respondent's expense, during the period of probation, have a female attendant, selected by respondent and previously approved, in writing, by the New York State Department of Health, physically present with respondent at all times when respondent is rendering services to any female patient; and that the name, address, and telephone number of that attendant shall 1) be made part of the record kept for that patient and 2) be made available to the New York State Department of Health upon written request therefor;

2. If the Director of the Office of Professional Medical Conduct determines that respondent may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents.

VOTE AND ORDER

SAIED SHAMSIAN

CALENDAR NO. 12931



The University of the State of New York

IN THE MATTER

OF

SAIED SHAMSIAN
(Physician)

DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 12931

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 12931, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (September 18, 1992): That, in the matter of SAIED SHAMSIAN, respondent, the recommendation of the Regents Review Committee be accepted as follows:

1. The hearing committee's findings of fact and conclusions as to guilt, as well as the Commissioner of Health's recommendation as to those findings and conclusions be accepted, with the clarification that finding of fact number (13) of the hearing committee report be accepted only as a statement of fact which relates to the lack of availability of any additional witness to the conduct here at issue and not be viewed as establishing any misconduct by respondent;
2. Respondent is guilty, by a preponderance of the evidence, of the first specification (unprofessional conduct), involving moral unfitness, in that respondent subjected a patient to unconsented physical contact of a sexual nature; and the second specification (unprofessional conduct), involving the willful physical abuse of the patient, as set forth in the first specification;

SAIED SHAMSIAN (12931)

3. The recommendations of the hearing committee and the Commissioner of Health as to the measure of discipline be accepted; and
 4. Respondent's license to practice as a physician in the State of New York be suspended for two years upon each specification charged of which respondent has been found guilty, and that execution of said suspensions be stayed at which time respondent then be placed on probation for two years in accordance with the terms prescribed by the Regents Review Committee;
- and that Deputy Commissioner Henry A. Fernandez be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote and the provisions thereof are hereby adopted and SO ORDERED, and it is further

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Henry A. Fernandez, Deputy Commissioner, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand, at the City of ~~Albany~~, this 18th day of September 1992.


HENRY A. FERNANDEZ
DEPUTY COMMISSIONER