



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

July 30, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ann Gayle, Esq.
NYS Department of Health
5 Penn Plaza-Sixth Floor
New York, New York 10001

William Wood, Esq.
Wood & Scher
14 Harwood Court-Suite 512
Scarsdale, New York 10583

Shawn D. McPartland, M.D.
Suite 40
333 Route 25A
Rocky Point, New York 11778-8809

RE: In the Matter of Shawn D. McPartland, M.D.

Dear Ms. Gayle, Mr. Wood and Dr. McPartland:

Enclosed please find the Determination and Order (No. 96-179) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 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.

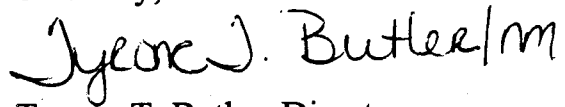
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink that reads "Tyrone T. Butler/m". The signature is written in a cursive style with a vertical line at the end of the word "Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

COPY

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

**IN THE MATTER
OF
SHAWN D. MCPARTLAND, M.D.**

DETERMINATION

AND

ORDER

BPMC-96- 179

The undersigned Hearing Committee consisting of **FR. DANIEL MORRISSEY**, chairperson, **MARGARET MCALLOON MD**, and **RALPH LEVY D.O.**, were duly designated and appointed by the State Board for Professional Medical Conduct. **MARY NOE, ESQ.** (Administrative Law Judge) 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 **SHAWN D. MCPARTLAND, 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 renders its decision with regard to the charges of medical misconduct.

SUMMARY OF PROCEEDINGS

Notice of Hearing and Statement of Charges:	December , 1995
Pre-Hearing Conferences:	March 6, 1996
Hearing dates:	March 13, 1996 April 2, 1996 April 16, 1996 April 18, 1996 April 24, 1996
Place of Hearing:	NYS Department of Health New York, New York
Date of Deliberation:	May 23, 1996
Petitioner appeared by:	Henry M. Greenberg, General Counsel NYS Department of Health By: Ann Gayle, Esq. Assistant Counsel
Respondent appeared by:	William Wood, Esq. Wood & Scher 14 Harwood Court - Suite 512 Scarsdale, NY 10583

WITNESSES

For the Petitioner:

Bruce Taylor, M.D
Steven B. Tamarin, M.D.
Patient A, D and E

For the Respondent:

Miriam Wirski
Jacqueline McPartland
Shawn McPartland, M.D., the Respondent
Paul Stewart
James T. Kelly, D.O.
Allen Reisman, M.D.
Kelly Ann Felice

SIGNIFICANT LEGAL RULINGS

The Administrative Law Judge issued 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 negligence is the failure to use that level of care and diligence expected of a prudent physician and thus consistent with acceptable standards of medical practice in this State. Gross negligence was defined as a single act of negligence of egregious proportions or multiple acts of negligence that cumulatively amount to egregious conduct. The panel was told that the term egregious means a conspicuously bad act or severe deviation from standards.

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.

Inaccurate record keeping was defined as a failure to keep records which accurately reflect the evaluation and treatment of a patient. The standard applied would be whether a substitute or future physician or reviewing entity could review a given chart and be able to understand Respondent's course of treatment and basis for same.

FINDINGS OF FACT

1. Shawn D. McPartland, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1985, by the issuance of license number 162787 by the New York State Education Department. (Department's Exhibit 2 - hereinafter "Dept's Exh. 2" e.g.)

PATIENT "A"

2. Respondent treated Patient A, a 42 year old male, at St. Charles Hospital, which is located at 200 Belle Terre Road, Port Jefferson, New York, on or about January 31, 1994. (Dept's Ex. 5)
3. On or about January 30, 1994, Patient A went to the emergency room at St. Charles Hospital, complaining of stomach pains; he was admitted to St. Charles Hospital on January 30, 1994. (Dept's Exh. 5) (Transcript p. 144-146, 156 - hereinafter "T 144-146, 156" e.g.)
4. On January 31, 1994, Patient A placed several calls to Respondent, but Respondent did not visit him until approximately 11 p.m. (Dept's Exh. 5) (T 146-148, 155)
5. Respondent was under the influence of alcohol when he visited Patient A on January 31, 1994 (Dept's Exh. 5) (Resp's Exh. S) (T 148-151, 488, 553-557)
6. Patient A promptly reported the aforesaid incident, and he did not continue to receive medical care from Respondent. (Dept's Exh. 5) (T 152-154)

PATIENT "B"

7. Respondent treated Patient B, a 47 year old female, at Mather Memorial Hospital which is located at 75 North Country Road, Port Jefferson, New York, on or about November 25, 1994. (Dept's Exh. 6)

8. Respondent was under the influence of alcohol on said date. (Dept's Exh. 6) (Resp's Exh. S) (T 488-491, 557-562)

PATIENT "C"

9. Respondent treated Patient C, a 79 year old female, at St. Charles Hospital which is located at 200 Belle Terre Road, Port Jefferson, New York, on or about March 12, 1995. (Dept's Exh. 9, p. 19, 52, 63, 65)

10. Respondent was aware of Patient C's lab results on March 12, 1995. (Dept's Exh. 7, p. 3-4) (Dept's Exh. 9, p. 80) (Dept's Exh. 16)

11. It is customary to give Coumadin daily to achieve and maintain a therapeutic prothrombin time and to keep the level up to a therapeutic level. (T 181, 183-184, 193, 196-197, 199, 201, 212, 1407, 1527)

12. Patient C received Coumadin on March 10, 11, 13, 14, 15 and 16, 1995, and she was discharged with orders for Coumadin. The only day she did not receive Coumadin was the day Respondent treated her. (Dept's Exh. 9) (T 181-183, 1417-1420, 1421-1422)
13. To meet the minimum standard of care, Patient C should have continued to receive Coumadin throughout her hospitalization. If it was not ordered a note in the chart should have been made stating why it had not been ordered. (Dept's Exh. 9) (T 180, 184-185, 204-205, 233, 234, 237-238, 241-246, 492-494, 510-511, 572-573, 1419, 1435-1439, 1533-1534, 1542, 1548-1549)
14. Dalmane is a benzodiazepine which has a long half-life of approximately 36 hours. It is particularly unsuited for the elderly, and it should not be given at the same time that another benzodiazepine is given. Xanax is also a benzodiazepine. It is important to know the response of the first benzodiazepine before ordering a second one because they can have addictive effects. (T 186-188, 221-222)
15. "P.R.N." means "as needed", which means the medication would be available if the patient's complaints warranted such medication, or the medication could be offered to the patient, and the patient would decide whether to take the medication. (T 215-216)
16. Patient C was started on Xanax, a benzodiazepine by her attending physician on March 12, 1995, and Respondent ordered Dalmane for Patient C on the same night. (Dept's Exh. 9) (T 186-188, 1432-1435, 1441-1442)

17. Respondent inappropriately ordered Dalmane for this elderly patient. (Dept's Exh. 9)
(T 180-181, 217, 234-236)

18. Respondent was under the influence of alcohol on said date. (Dept's Exh. 9) (Resp's Exh. S) (T 241-244, 491-494, 495-497, 562-564, 1306-1311, 1395-1396, 1418-1319, 1442-1443, 1444-1447)

PATIENT "D"

19. Respondent treated Patient D, a 38 year old female, at North Shore University Hospital at Glen Cove, Family Practice Department, which is located at St. Andrews Lane, Glen Cove, New York, from approximately March 1985 to March 1986. (Dept's Exh. 10, p. 5-12, 51-53, 59) (T 50)

20. The purpose of Patient D's visit on March 13, 1986 was for a pap smear; Patient D also discussed a bowel problem (and she needed medication for her mother). (Dept's Exh. 10) (T 52, 93-94, 119-120, 124-127)

21. The following findings of fact all relate to Patient D's March 13, 1986 visit with Respondent.

22. Respondent sang a song while he was performing a pap smear upon Patient D. (T 53-55, 92-93, 135-136)
23. Respondent performed the pap smear in the presence of another female employee. While Patient D was lying on her back on the examination table, with her feet in the stirrups, Respondent told Patient D that she smelled good. (T 62, 80-81)
24. There is no medical need for a physician to tell a patient that she smells good. (T 331)
25. The Respondent returned to the room for the second time alone. Patient D complained about a bowel problem. Patient D left her dress on but she removed her arms from the dress, she also removed her underwear and pantyhose, and she loosened her bra at the doctor's request so the Respondent could examine Patient D. (Dept's Exh. 10) (T 52, 58-59, 64-65, 66-67, 82, 94, 133-134, 139-140)
26. When Respondent entered the room for the second time, he told Patient D that her dress or her backside was nice. (T 57, 110)
27. While Patient D was lying on the examination table, Respondent on more than one occasion, inserted his finger into her rectum. (T 58-61)

28. After Respondent instructed Patient D to get up on her knees on the examination table with her face facing the table, Respondent inserted his finger into her vagina and repeatedly moved his finger in an in and out motion. (T 60-62)
29. Respondent also inserted his fingers into Patient's rectum and vagina. (T 60-61)
30. Based on Patient D's complaints regarding her bowel problem, it was appropriate to perform a rectal examination. The rectal should have been done in only one position and only one time. A rectal examination takes about 15 seconds. During a rectal exam, it was not necessary for the physician to insert one or more fingers simultaneously in the patient's vagina and rectum or to insert his finger into the patient's vagina and repeatedly move his finger in an in-and-out motion. (Dept's Exh. 10) (T 326-332, 334-335)
31. Respondent rubbed lubricant on Patient D's breast(s). (T 66, 127-129)
32. Based on Patient D's complaints, there was no need for the physician to rub lubricant on her breast(s). (Dept's Exh. 10) (T 331)
33. The rectal and vaginal examinations differed from other rectal and vaginal examinations which Patient D had. (T 72-73, 81-83)

34. Patient D promptly reported the aforesaid incidents, and she did not continue to receive medical care from Respondent, however, she attempted to confront him about the aforesaid incidents. (T 74-81, 109, 137-139, 140)

PATIENT "E"

35. Respondent treated Patient E, a 42 year old female, at Respondent's office which is located at 333 Route 25A, Suite 40, Rocky Point, New York, from approximately May 1989 to October 1991. (Dept's Exh. 11) (T 346-348, 1258-1261)
36. During the course of Respondent's treatment of Patient E, she reported to him that she had been a victim of incest, that she experienced panic attacks (for which she went to emergency rooms), that she was stressed, depressed and suicidal, and that she was sexually obsessed/preoccupied. (Dept's Exh. 11) (T 349-351, 371-372, 377, 386, 389-391, 401-402)
37. When Patient E was having sexual fantasies, she knew they were fantasies and not something that was happening at the time. Patient E never acted upon her sexual fantasies with another person, and her sexual fantasies ended on October 4, 1991. (T 365, 396-397, 424-425, 436-438)

38. Patient E became aroused on or about her September 3, 1991 office visit with Respondent. She then had a panic attack in her car in the parking lot of Respondent's office. When Respondent and his wife found Patient E in her car, they called her husband, who then picked her up and brought her home. (Dept's Exh. 11) (T 351-354, 368, 406-409)
39. The following findings of fact numbers 40-46 relate to Patient E's October 4, 1991 visit with Respondent.
40. After Patient E informed Respondent that she had sexual fantasies about Respondent during her previous office visit with him (on or about September 3, 1991), Respondent asked Patient E if she was "moist" during that September 3rd or 5th visit, he also asked her if said fantasies included fantasies about oral sex. (T 354, 356-357)
41. Respondent told Patient E that he wanted to have sex with her. (T 358-359, 369-370)
42. Respondent first placed his own hand on his erect penis, and later placed Patient E's hand on his erect penis. (T 357-358)
43. Respondent, after commenting that he must see Patient E's "beautiful" breasts, pulled her sweater away from her breasts and touched her breasts. (T 359, 369-370, 423-424)
44. Respondent was under the influence of alcohol on said date. (T 358-359, 364, 434-436)

45. Respondent told Patient E to keep the aforesaid a secret. (T 369)
46. Patient E promptly reported the aforesaid incidents, and she did not continue to receive medical care from Respondent, however, they subsequently discussed the aforesaid incidents. (T 361-364)
47. If a physician suspects that a patient has hypothyroidism based on symptoms of fatigue or depression, a more extensive history regarding menstrual period, skin changes, hot and cold tolerance should be taken, and the patient's thyroid should be examined. The findings should be documented in the medical record. (Dept's Ex. 11) (T 313)
48. Patient E received a thyroid hormone test on or about May 9 or 10, 1989, and her thyroid hormone level was normal. (Dept's Ex. 11) (T 258, 284, 286-287, 1451-1453)
49. On or about May 15, 1989, Respondent prescribed Synthroid, 150 mcg. daily, a thyroid medicine, without evidence of a hypothyroid condition. (Dept's Ex. 11, p. 4) (T 256-262, 275, 282-283, 293, 297, 322, 1450-1451, 1473-1474, 1479-1483, 1564-1568)
50. Respondent told Patient E that the results of her blood test revealed that she was hypothyroid. In fact, however, said results did not confirm hypothyroidism. (Dept's Ex. 11) (T 441-442, 1451-1454)

51. Corgard is used to treat angina and hypertension. On August 31, 1990, Respondent diagnosed Patient E for angina. He treated her angina with Corgard. (Dept's Exh. 11) (T 268)
52. When a physician suspects that a patient has new angina, he/she must act in an emergency, but if the physician suspects chronic angina, he/she must work the patient up by doing a stress test and possibly an angiogram. (T 263-265, 308, 311-312, 317-318, 324)
53. In approximately August 1990, Respondent diagnosed and treated Patient E for angina pectoris, but he failed to appropriately work her up for said condition. (Dept's Exh. 11, p. 11) (T 262-268, 1474-1479, 1483-1485, 1487, 1568-1573)
54. Although Respondent diagnosed and treated Patient E for angina pectoris in August 1990, he did not send the patient for a stress test until it was recommended by Central Suffolk Hospital when the patient had been brought there by ambulance following a panic attack on or about May 13, 1991. (Exh. 11, pages 11, 38, 65-66) (T 1460-1462)

IMPAIRMENT

55. Alcoholism is a disease process characterized by compulsive use of alcohol with loss of control and continued use despite adverse consequences. (T 456-461)

56. Denial and relapse are both part of the disease of alcoholism. (T 458, 472, 476-483, 507-509)
57. Alcohol has fairly predictable results/actions within the brain, and these consequences occur in stages. The first state or action is on the cortex and this reaction is manifested as either disinhibition and euphoria or else as unpleasant effects and antiregiousness. Alcohol next effects the cerebellum, and here results are manifested by ataxic gait and stumbling around. There must be a high level of alcohol in the blood to get to this stage. (T 490-491)
58. Recovering alcoholics must admit the mistakes and errors they made when they were in the active stages of alcoholism. (T 527-529)
59. From approximately 1989 to March 1995 Respondent was dependent upon, and a habitual user of, alcohol. Although not a complete list, some of the dates on which Respondent was under the influence of alcohol and practiced medicine while his ability to do so was impaired on the following dated: on or about March 18, 1991, October 4, 1991, January 31, 1994, July, 1994, November 25, 1994, March 12, 1995, and March 13, 1995. (Dept's Exh. 3, 4, 5, 6, 7, 12, 13, 16, 24) (Resp's Exh. S) (T 593-594, 598-601, 609-618, 620-623, 624-628, 632-635, 655-657, 686-691, 693-697, 703-707, 708-712) Respondent admits that he was dependent upon, and a habitual user of alcohol from late 1990 to 1995 (T 1258, 1367)

60. During Respondent's treatment of Patients A, B and C, Respondent was in the active stage of alcoholism. Each patient complained of Respondent's being intoxicated when he treated them, and each patient was concerned about being treated by an impaired physician. (Dept's Exh. 5, 6, 7, 8, 16) (Resp's Exh. S) (T 501-503)
61. On or about March 13, 1995 while at Mather Memorial Hospital, which is located at 75 North Country Road, Port Jefferson, New York, Respondent was under the influence of alcohol. (Dept's Exh. 8) (T 497-499, 564-566)

WITNESSES

The committee finds the testimony of Bruce Taylor, M.D., Steven B. Tamarin, M.D., Patients A, D, and E to be credible. Bruce Taylor, M.D. and Steven B. Tamarin were forthright in their opinions; they had the requisite training, knowledge and experience to render an expert opinion. Patients A, D and E were honest and consistent, and remained so throughout their examination.

The committee gives no weight to Miriam Wirski's testimony or to Jacqueline McPartland's testimony, and the committee gives little weight to the testimony of Respondent's additional witness, Allen Reisman, M.D., James T. Kelly, M.D., Paul Stewart and Kelly Ann Felice. Dr. Kelly was credible but his testimony was based on his limited friendship with the Respondent. Ms. Felice was a credible witness, but her testimony was inconsistent with a

statement she gave closer to the event in question. Dr. Reisman's assessment was based on only several hours spent with the Respondent. Finally, Mr. Stewart was a credible witness, but the Panel disagrees with his assessment of the Respondent regarding his recovery from alcohol.

The Committee unanimously and strongly agree that Respondent's testimony to have been contradictory, inconsistent, and self-serving. He also had "selective recall" regarding several key questions which were asked of him.

The rationale for the Committee's findings with regard to each of the aforesaid witnesses is based on the Department's extensive analysis, in its Summation, of each of the witnesses.

CONCLUSIONS OF LAW

FIRST SPECIFICATION - NEGLIGENCE ON MORE THAN ONE OCCASION

Based on a preponderance of the evidence, the Hearing Committee concludes that the Respondent practiced the profession with negligence on more than one occasion under NY Educ. Law Section 6530 (3) (McKinney Supp. 1995), in that his evaluation and care of Patients C and E deviated from accepted medical standards on more than one occasion.

The Committee therefore concludes that the First Specification is **SUSTAINED**.

SECOND SPECIFICATION - INCOMPETENCE ON MORE THAN ONE OCCASION

Based on a preponderance of the evidence, the Hearing Committee concludes that the Respondent practiced the profession with incompetence on more than one occasion under N.Y. Educ. Law Section 6530 (5) (McKinney Supp. 1996).

The Committee therefore concludes that the Second Specification is **SUSTAINED**.

THIRD & FOURTH SPECIFICATION - FRAUDULENT PRACTICE

The intentional misrepresentation or concealment of a known fact, made in connection with the practice of medicine, constitutes the fraudulent practice of medicine. Fraudulent practice of medicine is present when (1) a false representation was made by the licensee, whether by words, conduct or concealment of that which should have been disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation. The licensee's knowledge and intent may properly be inferred from facts found by the hearing committee, but the committee must specifically state the inferences it is drawing regarding knowledge and intent.

Respondent falsely represented through his words and actions, that he was engaged in proper professional conduct which was related to his care and treatment of Patient D but, in fact, he was engaged in activity for his own sexual gratification.

Based on a preponderance of the evidence, the Hearing Committee concludes that the Respondent practiced the profession fraudulently under N.Y. Educ. Law Section 6530 (2) (McKinney Supp. 1996)

The Committee therefore concludes that the Third and Fourth Specifications are **SUSTAINED.**

FIFTH & SIXTH SPECIFICATIONS - MORAL UNFITNESS

Based on a preponderance of the evidence, the Hearing Committee concludes that the Respondent practiced the profession with moral unfitness under N.Y. Educ. Law Section 6530 (20) (McKinney Supp. 1996).

With respect to Patients D and E, Respondent exploited the trust that morally fit physicians require of their patients in order to effectively practice the profession. The conduct which Patients D and E described shows that Respondent absolutely and completely disregarded the needs of these two vulnerable patients. Respondent's actions constitute a violation of professional trust. Respondent abused the trust that Patients D and E placed in him. This is clearly conduct, in the practice of the profession, that evidences his moral unfitness to practice the profession.

The Committee therefore concludes that the Fifth and Six Specifications are **SUSTAINED.**

**SEVENTH & EIGHTH SPECIFICATIONS - WILLFULLY HARASSING, ABUSING OR
INTIMIDATING PATIENTS**

Based on a preponderance of the evidence, the Hearing Committee concludes that the Respondent willfully harassed, abused, or intimidated Patients D and E under N.Y. Educ. Law Section 6530 (31) (McKinney Supp. 1996) in that Respondent engaged in the abusive conduct set forth in detail above with regard to Patients D and E. This conduct was intentional, purposeful and willful.

Therefore, the Committee finds that Respondent physically abused Patients D and E, and the Committee therefore concludes that the Seventh and Eighth Specifications are **SUSTAINED**.

NINTH SPECIFICATION - PRACTICING WHILE IMPAIRED

Based on a preponderance of the evidence, the Hearing Committee concludes that the Respondent practiced the profession while impaired by alcohol under N.Y. Educ. Law Section 6530 (7) (McKinney Supp. 1996).

Therefore, the Committee concludes that the Ninth Specification is **SUSTAINED**.

**TENTH SPECIFICATION - BEING A HABITUAL USER OR HAVING A PSYCHIATRIC
CONDITION WHICH IMPAIRS THE ABILITY TO PRACTICE**

Based on a preponderance of the evidence, the Hearing Committee concludes that the Respondent was a habitual user of alcohol, as defined in N.Y. Educ. Law Section 6530 (8) (McKinney Supp. 1996).

Therefore, the Committee concludes that the Tenth Specification is **SUSTAINED**.

SANCTION

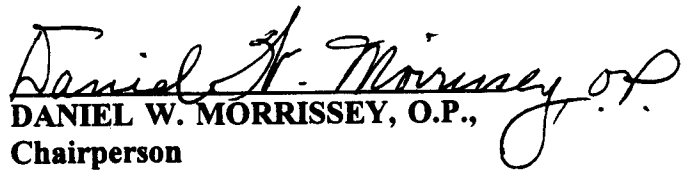
Given the fact that by sexually abusing Patients D and E, Respondent violated the trust which these two vulnerable patients placed in him, coupled with the findings of negligence, habitual impairment by alcohol, and practicing while impaired by alcohol, we find that it is unsafe to permit Respondent to continue practicing medicine in this State.

ORDER

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

The Respondent's license to practice medicine in the State of New York be and hereby is **REVOKED**.

DATED: New York, New York
July 29, 1996


DANIEL W. MORRISSEY, O.P.,
Chairperson

MARGARET H. MCALOON, M.D.
RALPH LEVY, D.O.

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

IN THE MATTER
OF
SHAWN D. MCPARTLAND, M.D.

NOTICE
OF
HEARING

TO: Shawn D. McPartland, M.D.
Suite 40
333 Route 25A
Rocky Point, NY 11778-8809

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 March 6, 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
February 8, 1996

Ann Gayle for:

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Ann Gayle
Associate Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2615

IN THE MATTER
OF
SHAWN D. MCPARTLAND, M.D.

AMENDED
STATEMENT OF
CHARGES

Shawn D. McPartland, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1985, by the issuance of license number 162787 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. From approximately 1986 to March 1995, Respondent was dependent upon, and a habitual user of, consciousness altering substances, including, but not limited to, alcohol.
- B. Between 1986 and March 1995, Respondent practiced medicine while his ability to so practice was impaired by, consciousness altering substances, including, but not limited to, alcohol. Instances of such practice included, but were not limited to:
1. Respondent treated Patient A, a 42 year old male, at St. Charles Hospital which is located at 200 Belle Terre Road, Port Jefferson, New York, on or about January 31, 1994. (The identities of Patient A and the other patients are disclosed in the attached Appendix.)
 - a. Respondent was under the influence of consciousness altering substances, including, but not limited to, alcohol, on said date.
 2. Respondent treated Patient B, a 47 year old female, at Mather

Memorial Hospital which is located at 75 North Country Road, Port Jefferson, New York, on or about November 25, 1994.

a. Respondent was under the influence of consciousness altering substances, including, but not limited to, alcohol, on said date.

3. Respondent treated Patient C, a 79 year old female, at St. Charles Hospital which is located at 200 Belle Terre Road, Port Jefferson, New York, on or about March 12, 1995.

a. Respondent was under the influence of consciousness altering substances, including, but not limited to, alcohol, on said date.

b. Respondent failed to write an order to continue Patient C's daily dosage of Coumadin medication.

c. Respondent inappropriately ordered Dalmane for this elderly patient.

4. On or about March 13, 1995, while at Mather Memorial Hospital, which is located at 75 North Country Road, Port Jefferson, New York, Respondent was under the influence of consciousness altering substances, including, but not limited to, alcohol.

5. Petitioner alleges the facts in C2c and d, below.

6. Petitioner alleges the facts in D2d, below.

C. Respondent treated Patient D, a 38 year old female, at North Shore University Hospital at Glen Cove, Family Practice Department, which is located at St. Andrews Lane, Glen Cove, New York, from approximately May 1985 to March 1986.

1. On or about March 13, 1986, in the course of a purported

physical examination, but not for a proper medical purpose.

Respondent touched Patient D inappropriately as follows:

- a. While Patient D was lying on the examination table, Respondent, on more than one occasion, inserted his finger into her rectum.
- b. After Respondent instructed Patient D to get up on her knees on the examination table, Respondent inserted his finger into her vagina and repeatedly moved his finger in an in and out motion.
- c. Respondent also inserted his fingers into Patient D's rectum and vagina.
- d. Respondent rubbed lubricant on Patient D's breast(s).

2. On or about March 13, 1986, Respondent engaged in inappropriate conduct as follows:

- a. While Patient D was lying on her back on the examination table, with her feet in the stirrups, Respondent told Patient D that she smelled good.
- b. When Respondent entered the room for the second time, he told Patient D, in a flirtatious manner, that her dress was nice.
- c. Respondent sang a song while he was performing a pelvic examination upon Patient D.
- d. Respondent was under the influence of consciousness altering substances, including, but not limited to, alcohol, on said date.

D. Respondent treated Patient E, a 42 year old female, at Respondent's office

which is located at 333 Route 25A, Suite 40, Rocky Point, New York from approximately May 1989 to October 1991

1. On or about October 4, 1991, in the course of a purported physical examination, but not for a proper medical purpose, Respondent touched Patient E inappropriately as follows:
 - a. Respondent, after commenting that he must see Patient E's "beautiful" breasts, pulled her sweater away from her breasts and touched her breasts.
2. On or about October 4, 1991, Respondent engaged in inappropriate conduct as follows:
 - a. After Patient E informed Respondent that she had had sexual fantasies about Respondent during her previous office visit with him (on September 3, 1991), Respondent asked Patient E if she was "moist" during that September 3rd visit; he also asked her if said fantasies included fantasies about "oral sex".
 - b. Respondent asked Patient E to have sex with him.
 - c. Respondent first placed his own hand on his erect penis, and, later, placed Patient E's hand on his erect penis.
 - d. Respondent was under the influence of consciousness altering substances, including, but not limited to, alcohol, on said date.
 - e. Respondent told Patient E to keep the aforesaid a secret.
3. In approximately May 1989, Respondent treated Patient E with Synthroid, 150 mcg. daily, a thyroid medicine, without evidence of

a hypothyroid condition and without having the results of the thyroid function test.

4. In approximately August 1990, Respondent diagnosed and treated Patient E for angina pectoris, but he failed to appropriately work her up for said condition.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3)(McKinney Supp. 1996) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following.

1. Paragraphs B and B3 and B3b and/or c, D and D3, and/or 4.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 1996) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following.

2. Paragraphs B and B3 and B3b and/or c, D and D3, and/or 4.

THIRD AND FOURTH SPECIFICATIONS

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. Paragraphs C and C1 and C1a-d.
4. Paragraphs D and D1 and D1a.

FIFTH AND SIXTH SPECIFICATIONS

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:

5. Paragraphs C and C1 and C1a-d and/or C2 and C2a-c.
6. Paragraphs D and D1 and D1a and/or D2 and D2a, b, c and/or e.

SEVENTH AND EIGHTH SPECIFICATIONS

WILLFULLY HARASSING, ABUSING OR INTIMIDATING A PATIENT

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 a Patient Either physically or verbally, as alleged in the facts of:

7. Paragraphs C and C1 and C1a-d and/or C2 and C2a-c.
8. Paragraphs D and D1 and D1a and/or D2 and D2a, b, c and/or e.

NINTH SPECIFICATION

PRACTICING WHILE IMPAIRED

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(7)(McKinney Supp. 1996) by practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability, as alleged in the facts of the following:

9. Paragraphs A, B and B1 and B1a and/or B2 and B2a and/or B3 and B3a and/or B4, 5 and/or 6, C and C2 and C2c and/or d, D and D2 and D2d.

TENTH SPECIFICATION
BEING AN HABITUAL USER OR HAVING A
PSYCHIATRIC CONDITION WHICH IMPAIRS
THE ABILITY TO PRACTICE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(8)(McKinney Supp. 1996) by being a habitual user of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effect, or having a psychiatric condition which impairs the licensee's ability to practice, as alleged in the facts of the following:

10. Paragraph A.

DATED: March 5, 1996
New York, New York

Ann Gayle for:

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct