



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.

Commissioner

Paula Wilson

Executive Deputy Commissioner

July 15, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Howard Finelli, M.D.
791 Morris Park Avenue
Bronx, New York 10462

Joseph K. Gormley, Esq.
Lifshutz, Polland &
Associates
675 Third Avenue
New York, New York 10017

David W. Smith, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

RE: In the Matter of Howard Finelli, M.D.

Dear Dr. Finelli, Mr. Gormley and Mr. Smith:

Enclosed please find the Determination and Order (No. BPMC-93-100) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

New York State Department of Health
Office of Professional Medical Conduct
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 than be delivered to the Office of Professional Medical Conduct in the manner noted above.

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

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Corning Tower -Room 2503
Empire State Plaza
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.

Very truly yours,

Tyrone T. Butler, nam

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

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

-----X
: IN THE MATTER :
: OF : DETERMINATION
: HOWARD FINELLI, M.D. : ORDER
: NO. BPMC-93-100
-----X

The Hearing Committee, composed of Eugenia Herbst, Chairperson, F. Joseph Flatley, M.D., and Samuel H. Madell, M.D., was duly designated and appointed by the Commissioner of Health of the State of New York pursuant to New York Public Health Law § 230, subd. 10(e). Eugene A. Gaer, Esq., Administrative Law Judge, served as Hearing Officer for the Committee.

The Committee, having considered the entire record in this matter, hereby renders its decision with regard to the charges of medical misconduct filed against Howard Finelli, M.D. (the "Respondent").

STATEMENT OF CHARGES

Respondent is charged by Petitioner Department of Health (the "Petitioner") with three types of professional misconduct, as defined in New York Education Law § 6530, subds. 31, 20 and 2, respectively. The charges are that he willfully abused a patient (three specifications), that he engaged in conduct in the practice of medicine which evidences moral unfitness to practice medicine (three specifications) and that he practiced the

profession fraudulently (three specifications).

These allegations relate to Respondent's treatment of one patient in September 1988 and to his treatment of two other patients in March and April 1992. The charges are more particularly set forth in the Statement of Charges, a copy of which is attached hereto as Appendix 1.

RECORD OF PROCEEDINGS

Notice of Hearing and Statement of Charges dated:	January 12, 1993
Pre-hearing Conference:	February 19, 1993
Hearing dates:	March 4, 1993 April 20, 1993 April 29, 1993
Deliberation dates:	May 20, 1993 June 1, 1993
Place of Hearing:	New York State Department of Health 5 Penn Plaza New York, New York 10001
Petitioner represented by:	David W. Smith, Esq. Assistant Counsel Bureau of Professional Medical Conduct 5 Penn Plaza New York, New York 10001
Respondent represented by:	Joseph K. Gormley, Esq. Lifshutz, Polland & Associates 675 Third Avenue New York, New York 10017
Closing briefs submitted on:	May 18, 1993

WITNESSES

Petitioner called these witnesses:

Patient A	Fact Witness
Patient B	Fact Witness
Patient C	Fact Witness

Respondent testified in his own behalf and submitted statements of good character from the following individuals:

Louis Atlas	David A. Rim, M.D.
Steven Bruck	Steven F. Seidman, M.D.
Frederick M. Daniels	Bernadette Sicilia
Anne Cynthia Dunbar	Mary Dale Smith
Sansern Hastanan, M.D.	Sheryl Stein
Russell M. Higley	Beverly Vines
Kenneth T. Jenkins, Jr.	Nicholas D. Yuelys
Ellen Litroff	Rita Zorsilli

FINDINGS OF FACT

The following findings of fact were made after review of the entire record by the Committee. Petitioner was required to meet the burden of proof by a preponderance of the evidence.

Citations indicate evidence found persuasive by the Committee in arriving at the finding. "Tr." citations are to the transcript of the hearing. "P.Ex." and "R.Ex." citations are to the exhibits introduced by Petitioner and Respondent. Evidence

which conflicted with any finding of the Committee was considered and rejected. All findings of fact were established by a preponderance of the evidence.

General Findings

1. Respondent was authorized to practice medicine in the State of New York on March 18, 1985, by the issuance of License No. 161585 by the Department of Education. P.Ex. 2, pp. 2-4. He has been continuously licensed to practice medicine in the State since that time. Tr. 200. At all times relevant to this proceeding his office has been located at 791 Morris Park Avenue, Bronx, New York. Tr. 202.

Findings as to Patient A

2. Patient A was born in Jamaica and had a high school education. He has been in the United States three-and-a-half years. Tr. 12.

3. Patient A first saw Respondent on April 7, 1992 for treatment of back, neck and shoulder pains. Patient A had been in an auto accident and his attorney referred him to Respondent. Tr. 12-13, 53; P.Ex. 3.

4. Prior to the examination by Respondent, Patient A undressed down to his underwear, but Respondent instructed him to remove his underwear. Tr. 14. During the examination Respondent

noted that Patient A had a rash on his penis. Respondent recommended a circumcision but suggested that the rash be treated first. Tr. 229; P.Ex. 3, p. 4. Respondent applied ointment to Patient A's penis and pubic area. Tr. 15.

5. Patient A was upset by the touching of his penis. Immediately after he left Respondent's office he told his fiancée about it. Tr. 18, 20.

6. Patient A came back to Respondent for a second visit on April 14, 1992. Tr. 21-22; P.Ex. 3, pp. 3-4. Patient A undressed but left his underwear on. Respondent asked him to remove his underwear but did not give Patient A a gown. Tr. 22, 25.

7. Respondent put Patient A on his stomach on the examining table and massaged a substance over his back, lower buttocks, the crease in his buttocks, and his scrotum. Tr. 22-23, 25-27, 59-60. During this massage Respondent also rubbed Patient A's penis, causing Patient A to have an erection. Tr. 23-24, 59-60, 62.

8. Respondent next turned Patient A on his back, rubbed ointment on his penis and stroked it approximately four times. Tr. 23-24, 61-63.

9. Patient A did not tell Respondent to stop because he had been taught to trust physicians. Tr. 24, 59,68-69,73-74.

10. On both visits Respondent examined Patient A lying prone and supine but did not examine him standing erect. Tr. 14-16, 18, 25-26, 28-29, 54-57.

11. After the second visit Patient A immediately talked about the incidents to the lawyer who had referred him to Respondent. Tr. 30. Patient A thereupon filed a sex abuse complaint against Respondent with the Police Department. Tr. 30-31; P.Ex. 6.

Findings as to Patient B

12. Patient B was born in Jamaica and has resided here for five years. Tr. 84.

13. Patient B first saw Respondent on March 2, 1992, as the result of having been in an auto accident. Patient B was referred to Respondent by the same lawyer who referred Patient A. Tr. 85, 319-20; P.Ex. 4, p. 2.

14. Patient B complained of pain in his left shoulder, lower back and neck. Tr. 85-86; P.Ex. 4, p. 2.

15. At the first visit respondent told Patient B to undress

completely. Patient B left his underwear on but Respondent told him to take it off and tried to help him remove it. Tr. 87-88.

16. Respondent put Patient B on his back on the examining table and felt his abdomen. Respondent then rubbed ointment on Patient B's groin. Tr. 88-91.

17. Respondent then turned Patient B on his stomach and massaged Patient B's buttocks, but not where Patient B was feeling pain. Tr. 90-91. As he was rubbing, Respondent's two thumbs were in the groin area of Patient B. Tr. 91-93.

18. Patient B's second visit to Respondent was on March 9, 1992. P.Ex. 4, p. 3. Respondent again had him completely undress. Tr. 94-95.

19. Respondent had Patient B lie on the examining table and again massaged his groin and buttocks with ointment. Tr. 96. He also touched Patient B's penis. Tr. 97, 123.

20. On the March 9th visit Respondent also examined Patient B for an inguinal hernia and noted that he found none. Tr. 97, 123-24, 328-29, 354-57; P.Ex. 4, p. 4.

21. Patient B saw Respondent a third time on March 16, 1992 (P.Ex. 4, p. 5), and again was examined naked. Tr. 98-99.

Respondent put him on his stomach on the examining table and once again rubbed his buttocks with ointment and again touched his penis. Tr. 100-02.

22. Patient B was also examined by Respondent on March 30, 1992. Tr. 337; P.Ex. 4, p. 5.

23. Patient B never challenged what Respondent was doing because he trusted physicians and had never been to an orthopedist before. Tr. 127.

24. Patient B has commenced a lawsuit against Respondent seeking damages as a result of his examination by Respondent. Tr. 105, 108-10; D.Ex. B.

Findings as to Patient C

25. Patient C's sole visit to Respondent was in September 1988. Tr. 145-46, 367-68; P.Ex. 5.

26. Patient C had been hospitalized for two weeks in New Jersey and was seeking a physicians's note to verify his health status so that he could return to work. Tr. 145, 169-70; cf. Tr. 369-70, 386-87.

27. Patient C had come to Respondent's office seeking his prior physician who had withdrawn from practice and whose former

patients were being directed to Respondent's office. Patient C's medical records were stored at Respondent's office. Tr. 155-56, 385-86, 398, 404-06, 408; D.Ex. K.

28. Respondent had Patient C completely undress. Respondent then examined Patient C. Tr. 146; P.Ex. 5, p. 2.

29. During the course of the rectal examination of Patient C, Respondent noted swelling of the prostate and told Patient C he needed some fluid from his penis. Tr. 146-47, 153, 371-73; P.Ex. 5, p.2.

30. Respondent then stroked Patient C's penis until he ejaculated. Tr. 147-48, 176. At one point during the stroking, Patient C offered to do it himself, but Respondent refused and continued to masturbate him. Tr. 148, 171-72.

31. The urine and prostatic fluid obtained from Patient C were sent to a laboratory for culture and analysis. The culture and analysis did not include a microscopic examination. Tr. 395-97. See, also, P.Ex. 5, pp. 4, 6.

32. Patient C was upset with what happened and after leaving Respondent's office he went immediately to the office of another physician, Dr. Ezratty, to discuss whether respondent had acted properly. Tr. 148-49, 163.

33. Patient C subsequently filed a complaint with the Office of Professional Medical Conduct ("OPMC"). Tr. 151-52, 178-79. On December 28, 1989, OPMC notified Respondent that no charges would be brought as a result of Patient C's complaint. D.Ex. I (copy attached hereto as Appendix 2).

**CONCLUSIONS AS TO
FACTUAL ALLEGATIONS**

General Conclusions

This is essentially a case in which the credibility of the Respondent physician must be weighed against that of the three complaining witnesses. The charges against Respondent related to office examinations and treatments of three patients. One of these, Patient C, was treated during a single office visit in 1988. The others were seen during a two-month period in 1992. Although the testimony of none of the witnesses (complainants as well as Respondent) was entirely free of ambiguity, the Committee finds that the weight of credibility comes down on the side of the complainants.

One issue in controversy was the extent to which patients were asked to disrobe. All three complainants testified that they were directed to undress completely. Patients A and B testified to almost identical experiences when they initially left their underwear on only to be told (or even helped) to remove it. Tr. 14, 87-88. Patient C testified to the

unavailability of a gown. Tr. 146.

Respondent's testimony on this subject was inconsistent and unconvincing. He flatly disputed Patient A's account of the procedure at the first office visit (Tr. 213-14, 223, 270-71, 276, 282), while essentially conceding the accuracy of Patient B's account (Tr. 322-23, 346-48). At some points Respondent asserted that his standard office routine was for all patients to be provided gowns, but this was not confirmed by any of the complainants. Tr. 335, 346-47, 349; cf. Tr. 16, 88, 146. At other times Respondent stated that he often instructed patients to "undress a little bit", trusting to their discretion on how far to disrobe. Tr. 212-13, 269, 305-06, 346.

In all three cases Respondent evinced an undue preoccupation with the patient's genital areas, even though this was not warranted by the presenting symptoms of any of the patients. All three patients made prompt complaints about what they regarded as inappropriate touching by the physician. Yet despite the similarities of their complaints, there is no evidence of any contact, much less collusion, among these witnesses. See Tr. 112.

Respondent's credibility is also weakened by troubling gaps in his recordkeeping. For example a failure to record aspects of Patient A's history (of which he ostensibly retained an

independent recollection) was explained by the statement that he asked certain questions "routinely, like clockwork" and only recorded positive responses. Tr. 264-65. The failure to record that he gave Patient A a corticosteroid cream on his first visit was explained by saying that it was done "as an afterthought ... as he was leaving [a]nd I just didn't write it down." Tr. 274. On another occasion he suggested that his ability to "remember things about patients" compensated for lack of detail in his documentation. Tr. 361-62; see, also, Tr. 299.

Conclusions As To Patient A

Paragraphs A, A-1 and A-2 relate to visits by Patient A to Respondent's office in April 1992. Patient A had been referred to Respondent by an attorney for an orthopedic examination as a result of an auto accident in which the patient had recently been involved. As a general statement of Patient A's presentation and treatment by Respondent Paragraph A is **SUSTAINED**.

Even though Patient A was basically seeking treatment for back, neck and shoulder pains (Tr. 12-13, 22, 26, 53), Respondent's physical examination largely, and, in the Committee's view, inappropriately, focused on Patient A's genital areas. Still, the Committee does not fully sustain Petitioner's charges as to Patient A.

Paragraph A-1 relates to Patient A's first treatment by

Respondent, on April 7, 1992, during which, it is alleged, Respondent "inappropriately held the penis of Patient A." The evidence shows that after Patient A was fully undressed, Respondent saw a rash on Patient A's penis. Respondent advised Patient A to consider receiving a circumcision, but stated that it should not be done until the rash cleared up. Respondent then produced a tube of ointment and rubbed it on Patient A's penis. While this course of events was far afield from the treatment for back and neck pains the patient was seeking (and Patient A testified that he conveyed his uneasiness to his fiancée as soon as he left Respondent's office), it is doubtful whether the testimony can be characterized as showing that Respondent "held" the patient's penis. Accordingly, Paragraph A-1, as framed, is **NOT SUSTAINED.**

Paragraph A-2 relates to Patient A's second visit, on April 14, 1992, when, it is alleged, "Respondent inappropriately rubbed Patient A's buttocks, touched his rectum and stroked his penis." Patient A's testimony, which the Committee finds credible, is that Respondent directed him to undress completely. Thereafter, while Patient A was lying on his stomach, Respondent massaged his buttocks and reaching underneath touched his penis. Finally, Respondent had Patient A turn over and Respondent stroked his penis.

Respondent testified that his actions were consistent with

his examination of Patient A for continuing back pain. Tr. 216-19, 221-23, 231-36, 244-48, 252-54, 288-90. It is possible that in the course of a routine physical examination of the lower back and hips Respondent would have had occasion to touch the lateral aspects of the buttocks but a proper examination would not have included touching the scrotum and penis from the rear. The Committee notes that Patient A's testimony was not perfect.¹ However, the defects in his testimony are outbalanced both by his general demeanor and by the unmistakable fact that the actions he described cannot be reconciled with a careful orthopedic examination and were clearly inappropriate. Paragraph A-2 is **SUSTAINED.**

Conclusions As To Patient B

Paragraphs B, B-1, B-2 and B-3 relate to Respondent's treatment of Patient B during three visits in March 1992. As a general statement of Patient B's presentation and treatment by Respondent Paragraph B is **SUSTAINED.**

Like Patient A, Patient B was referred by an attorney for an orthopedic examination following an auto accident. Yet despite

¹Patient A did not mention (until his cross-examination) that he had commenced a lawsuit arising from an earlier auto accident unrelated to the one which occasioned his examination by Respondent. Tr. 40-41, 44-47; R.Exs. A-1, A-2, A-3, A-4. His testimony about his second visit was also clouded by his statement that he may have fallen asleep during part of Respondent's examination. Tr. 27.

the original purpose of Patient B's examination by Respondent, the examinations largely consisted of massaging and other touching of Patient B's genital areas. Patient B was also directed to undress completely and was not provided a gown.

On the first visit, Respondent did not palpate the areas in Patient B's lower back where his pain was centered. Instead he rubbed ointment on Patient B's buttocks with his thumbs extending down into the patient's groin. Tr. 90-92. On the second visit, respondent massaged Patient B's buttocks and groin while the patient was on his stomach; after the patient turned over Respondent touched his penis, ostensibly because he wanted to examine a lump. Tr. 96-97. On the third visit, Respondent again massaged Patient B's buttocks while he was on his stomach with his thumbs under his groin and touching his penis. Tr. 101-02.

Aside from direct denials, Respondent asserted that some of these actions were in the course of examining Patient B for an inguinal hernia. Tr. 324-26, 328-29, 333-34, 336. At no time did Respondent examine Patient B for a hernia while the patient was standing erect. Tr. 329-30. Respondent conceded that the supine position is not optimal for examining a patient for an inguinal hernia. Tr. 354-57.

The Committee is aware of weaknesses in Patient B's testimony (e.g., his failure to mention a fourth office visit

[see Tr. 357; P.Ex. 4, p.5], his reference to an MRI test ordered by Respondent as an "EEG" [Tr. 93-94, 120-22; cf. Tr. 325, 340; P. Ex. 5, pp. 6-10] and his statement that the test supposedly related to a lump on his penis [Tr. 95, 97, 126, 133]). The Committee has also considered the fact that Patient B has filed a lawsuit based on his allegations of Respondent's misconduct.

On the other hand Respondent never fully explained why the MRI was ordered.² Furthermore, it is troubling that so much that was questionable in Respondent's treatment of Patient B related to matters that were unrelated to the patient's physical symptoms. Thus, balancing all factors, including witness demeanor, the preponderance of the evidence is in favor of crediting Patient B's testimony. Accordingly, Paragraphs B-1, B-2 and B-3 are each **SUSTAINED**.

Conclusions As To Patient C

Paragraphs C and C-1 relate to the single office visit of Patient C to Respondent in September 1988. Patient C had never been treated by Respondent before. Rather, he had previously been the patient of another physician who had withdrawn from practice and whose office records were stored at Respondent's

²His assertion that he ordered an MRI of the brain because Patient B had complained of headaches is undermined by the fact that no headaches are recorded in his patient records. See Tr. 353-54; P. Ex. 4, p.2. Patient B's testimony made no reference to headaches.

office. Tr. 145, 155-56, 367-68, 385-86; D. Ex. K.

Although Paragraph C states that Patient C sought treatment from Respondent "for allergic reactions to medication", Patient C testified (and Respondent did not contest) that Patient C's reason for visiting Respondent's office was to obtain a physician's note stating that he was fit to return to his job.³ Paragraph C is thus **SUSTAINED** insofar as it describes the fact, date and location of Patient C's office visit, but **NOT SUSTAINED** insofar as it describes the purpose of the visit.

Paragraph C-1 alleges that Respondent "inappropriately touched Patient C's rectum and m[a]ssaged his penis." The testimony shows that as part of his examination of Patient C Respondent performed a rectal examination. After stating that he noticed an enlargement of the prostate, Respondent began stroking Patient C's penis in order to obtain prostatic fluid. Patient C offered to do it himself, but Respondent continued to masturbate him. The rectal examination may not, in the circumstances, have been inappropriate. However, the preponderance of the evidence indicates that the massaging of the penis was inappropriate. The patient offered to perform the procedure himself. There is also

³Patient C had recently been hospitalized for two weeks in New Jersey, but there was no testimony why he did not seek such a note from a physician who treated him during his hospitalization. See Tr. 145, 167, 169-70.

doubt as to the necessity for the procedure in view of the fact that Respondent never ordered a microscopic examination of the fluid obtained from Patient C.

Upon leaving Respondent's office Patient C went immediately to the office of another neighborhood physician because he wanted to discuss whether Respondent had followed a proper procedure. Patient C subsequently filed a complaint with the Department of Health, which in December 1989 notified Respondent that it did not intend to pursue the matter.

Having heard the testimony of both Patient C and Respondent, and considering the purpose and character of the examination, the Committee concludes that, although the rectal examination may have been justifiable, the preponderance of the evidence shows that it was inappropriate for Respondent to massage Patient C's penis.

The Committee is not precluded by the Department's December 1989 letter from considering whether Respondent's actions with regard to Patient C may have constituted professional misconduct, especially in light of the subsequent complaints from Patients A and B. The Committee therefore concludes that Paragraph C-1 is **SUSTAINED** in all respects **except** that it is **NOT SUSTAINED** insofar as it alleges that it was inappropriate for Respondent to touch Patient C's rectum.

DISPOSITION OF SPECIFICATIONS

Having entered the foregoing Findings of Fact and Conclusions as to the Allegations, the Committee has, by unanimous vote, determined that the charges relating to willful abuse of patients and of moral unfitness to practice medicine are sustained by the evidence. The Committee, by unanimous vote, has also determined that the evidence, as presented here, does not support the charges of fraudulent practice of medicine.⁴ The Committee has entered the following Dispositions of the Specifications of Charges:

FIRST THROUGH THIRD SPECIFICATIONS (willfully abusing a patient):
SUSTAINED

FOURTH THROUGH SIXTH SPECIFICATIONS (moral unfitness to practice medicine): SUSTAINED

SEVENTH THROUGH NINTH SPECIFICATIONS (practicing the profession fraudulently): NOT SUSTAINED

ORDER

The penalty stated herein is based upon a majority vote of the Committee. The minority believed that, although Respondent's misconduct was serious, the Committee should take into consideration the disruption which an immediate suspension of

⁴Because of this disposition, the Committee did not consider Respondent's contention that charges of fraudulent practice can only be sustained under a "clear and convincing evidence" standard.

Respondent's license would cause to him, to his family and to the underserved community in which he practices. The minority would therefore defer any consideration of a license suspension until the completion of a psychiatric evaluation of Respondent, which should proceed immediately, to be performed by a psychiatrist approved by the Board for Professional Medical Conduct. If Respondent is found to be suffering from a remediable disorder, the minority would then suspend his license until such time as his therapist represents that he no longer represents a threat to his patients. If he is found to be irremediable, Respondent's license would be revoked.

However the majority determines that the following penalty should be, and it hereby is,

ORDERED that the license to practice medicine of Respondent **HOWARD PINELLI** shall be **SUSPENDED** until

(a) Respondent is examined and evaluated by a psychiatrist approved by the Board for Professional Medical Conduct (the "approved psychiatrist");

(b) Respondent successfully completes such course of treatment as may be recommended by the approved psychiatrist; and

(c) the approved psychiatrist recommends to the satisfaction of the Board for Professional Medical Conduct that Respondent may appropriately resume the practice of medicine; and it is further

ORDERED that the license to practice medicine of Respondent HOWARD FINELLI shall in any event be SUSPENDED for a period of no less than six months.

Dated: New York, New York
June 28, 1993

By: Eugenia Herbst
EUGENIA HERBST
(Chairperson)

F. JOSEPH FLATLEY, M.D.
SAMUEL H. MADELL, M.D.

A P P E N D I X I

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

-----X

IN THE MATTER : STATEMENT
OF : OF
HOWARD FINELLI, M.D. : CHARGES

-----X

HOWARD FINELLI, M.D., the Respondent, was authorized to practice medicine in New York State on March 18, 1985 by the issuance of license number 161585 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994.

FACTUAL ALLEGATIONS

- A. In or about April 1992, Patient A was treated by Respondent at his office at 791 Morris Park Avenue, Bronx, New York for pain in the back, neck and shoulder. (Patient A and all other patients are identified in the attached Appendix)
1. During a visit on or about April 7, 1992, in the course of purportedly providing medical care, Respondent inappropriately held the penis of Patient A.

2. During a visit on or about April 14, 1992, in the course of purportedly rendering medical care, Respondent inappropriately rubbed Patient A's buttocks, touched his rectum and stroked his penis.
- B. In or about March, 1992, Respondent treated Patient B for neck and shoulder pain at his office at 791 Morris Park Avenue, Bronx, New York.
1. During the first visit, on or about March 2, 1992, in the course of purportedly rendering medical care, Respondent inappropriately rubbed the groin and buttocks of Patient B.
 2. During the second visit, on or about March 9, 1992, in the course of purportedly rendering medical care, Respondent inappropriately touched the penis of Patient B and rubbed his thighs.
 3. During the third visit, on or about March 16, 1992, in the course of purportedly rendering medical care, Respondent inappropriately rubbed Patient B's genital area, his buttocks and penis.

C. During in or about September, 1988 Respondent treated Patient C in his office at 791 Morris Park Avenue, Bronx, New York for allergic reactions to medication.

1. During a visit on or about September 19, 1988, in the course of purportedly rendering medical care, Respondent inappropriately touched Patient C's rectum and massaged his penis.

SPECIFICATION OF CHARGES

FIRST THROUGH THIRD SPECIFICATIONS

WILLFULLY ABUSING A PATIENT

Respondent is charged with committing professional misconduct by willfully physically abusing a patient within the meaning of N.Y. Educ. Law Section 6530(31) (McKinney Supp. 1992).
Petitioner charges:

1. The facts in Paragraph A and A1-2.
2. The facts in Paragraph B and B1-3.
3. The facts in Paragraph C and C1.

FOURTH THROUGH SIXTH SPECIFICATIONS

MORAL UNFITNESS TO PRACTICE MEDICINE

Respondent is charged with committing professional misconduct by engaging in conduct in the practice of medicine which evidences moral unfitness to practice medicine within the meaning of N.Y. Educ. Law Section 6530(20) (McKinney Supp. 1992). Petitioner charges:

4. The facts in paragraphs A and A1-2.
5. The facts in paragraphs B and B1-3.
6. The facts in paragraphs C and C1.

SEVENTH THROUGH NINTH SPECIFICATIONS

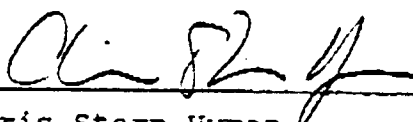
PRACTICING THE PROFESSION FRAUDULENTLY

Respondent is charged with committing professional misconduct by practicing the profession fraudulently within the meaning of N.Y. Educ. Law Section 6530(2) (McKinney Supp. 1992).
Petitioner charges:

7. The facts in Paragraphs A and A1-2.
8. The facts in Paragraphs B and B1-3.
9. The facts in Paragraphs C and C1.

DATED: New York, New York

January 12, 1993


Chris Stern Hyman
Counsel
Bureau of Professional
Medical
Conduct

APPENDIX II



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

David A. Aruffo, M.D.
Commissioner

OFFICE OF PUBLIC HEALTH

Linda A. Randall, M.D., M.P.H.
Director

William F. Leavy
Executive Deputy Director

CASE BMIC Finelli
Resp EXHIBIT I
FOR ID. _____ M.S.B.
BY 4/29/93 M.S.B.

December 28, 1989

PERSONAL AND CONFIDENTIAL

Howard Finelli, M.D.
791 Morris Park Avenue
Bronx, NY 10462

Re: DS-88-09-2620

Dear Dr. Finelli:

As required by the State Public Health Law, the Office of Professional Medical Conduct has investigated allegations of professional medical misconduct lodged against you. An investigative committee of the State Board for Professional Medical Conduct has thoroughly investigated these allegations and the information you provided, and has found insufficient evidence to sustain a charge of professional misconduct. Our investigation has been discontinued, and the case is dismissed.

Because a medical misconduct investigation is not a disciplinary proceeding, we are prohibited from providing you, your counsel, or anyone else with further information regarding our inquiry or the source of the allegations. This is done to protect your confidentiality in this matter as well as that of the complainant.

Sincerely,

Leeanne Raga
Health Program Administrator
Office of Professional Medical Conduct

LR/rah