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

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

December 18, 1992

Edwin Y. Fondo, Jr., Physician
P.O. Box 324
New York, N.Y. 10021

Re: License No. 113966

Dear Dr. Fondo:

Enclosed please find Commissioner's Order No. 13129. 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: William Wood, Jr., Esq.
Wood & Scher
The Harwood Building
Scarsdale, New York 10583

The University of the State of New York

IN THE MATTER

OF

EDWIN Y. FONDO, JR.
(Physician)

DUPLICATE ORIGINAL VOTE AND ORDER NO. 13129

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 13129, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (December 18, 1992): That, in the matter of EDWIN Y. FONDO, JR., respondent, the recommendation of the Regents Review Committee be accepted as follows:

1. The findings of fact of the hearing committee be accepted, except its finding of fact 15 not be accepted and finding of fact 54 be modified and clarified as hereafter set forth;
2. The recommendation of the Health Commissioner's designee as to the hearing committee's findings of fact be accepted, except the recommendation of the Health Commissioner's designee not be accepted as to hearing committee's findings of fact 25, 26, 27, 28, and 29, and be modified and clarified as to finding of fact 54 as hereafter set forth;
3. The additional findings of fact of the Health Commissioner's designee be accepted, except additional findings of fact vi - xvi and xviii - xxi not be accepted;
4. The following additional findings of fact, referable to

Patients B and D, be accepted:

64. Respondent improperly squeezed Patient B's nipple at a time when he was no longer examining Patient B's breast. (T. 210-218).

65. There was no medical reason to squeeze Patient B's nipple at the time referred to in finding of fact 64. (T. 210-218).

66. Respondent's conduct, as shown in findings of fact 37-41, did not constitute any proper examination or treatment of Patient D. (T. 400-403, 474-475, and 473).

67. By failing to inform Patient D that he was ceasing medical evaluation and treatment and commencing a sexually abusive series of acts, respondent on April 13, 1989, intentionally and knowingly concealed from Patient D the true nature of his acts, intending that she continue to submit to intimate physical conduct under the false belief that medical care was being rendered. (T. 396, 398-400, 400-403, 474-475, and 477).

68. Patient D did not consent to sexual activity with respondent on April 13, 1989. She did consent to sexual activity with respondent on April 25, 1989 and June 6, 1989.

5. The conclusions of the hearing committee and the recommendation of the Health Commissioner's designee as to those conclusions be modified;

6. Respondent is guilty, by a preponderance of the evidence, of the first, sixth, and tenth specifications of practicing the profession fraudulently, unprofessional conduct for moral unfitness, and unprofessional conduct for willfully abusing a patient physically to the extent allegation B.2 relates to respondent improperly squeezing Patient B's nipple; and the third, eighth, and twelfth specifications for practicing fraudulently, unprofessional conduct for moral unfitness, and unprofessional conduct for wilfully abusing a patient physically to the extent allegation D.2 relates to respondent, on April 13, 1989, inserting more than one finger into Patient D's vagina, rubbing her vagina and clitoris in a sexual manner, and rubbing Patient D which became so rough that he caused her to bleed from the vagina; and

7. The penalty recommendation of the hearing committee and the recommendation of the Health Commissioner's designee as to that recommendation be accepted, except that the recommendations in regard to imposition of a condition precedent for any potential restoration of respondent's license not be accepted; and respondent's license to practice medicine in the State of New York be revoked upon each specification of the charges of which respondent has been found guilty, as

aforesaid. The penalty imposed in this matter is without prejudice to any conditions or requirements which may be applicable at the time of any proceeding for the restoration of respondent's license;

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 December, 1992.

HENRY A. FERNANDEZ
DEPUTY COMMISSIONER

VOTE AND ORDER

EDWIN Y. FONDO, JR.

CALENDAR NO. 13129

The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

EDWIN Y. FONDO, JR.

No. 13129

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

REPORT OF THE REGENTS REVIEW COMMITTEE

Between February 25, 1991 and September 17, 1991 a hearing was held in the instant matter on ten sessions 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, without attachment, is annexed hereto, made a part hereof, and marked as Exhibit "A". The statement of charges is annexed hereto, made a part hereof, and marked as Exhibit "B". Allegation D.5 was amended by stipulation of the parties, as shown on page 7 of the statement of charges.

The hearing committee concluded that respondent, Edwin Y. Fondo, Jr., was guilty of the charges regarding Patient D of practicing fraudulently, unprofessional conduct for moral unfitness, and unprofessional conduct for willfully abusing a patient (third, eighth, and twelfth specifications); and was not

guilty of the other specifications. The hearing committee recommended that respondent's license to practice medicine be revoked.

The Commissioner of Health, by designee, (hereafter the designee) recommended to the Board of Regents that the findings of the hearing committee be accepted as to Resident A and Patients D and E, be modified as to Patients B and C, and be modified by additional findings of fact as to Patients B and C. He also recommended that the conclusions of the hearing committee be accepted as to Patients D and E, be accepted except as shown in paragraph E of his recommendation as to Resident A, be modified as to Patients B and C, and be reversed as to the first, second, sixth, seventh, tenth, and eleventh specifications. He further recommended that based upon the nine specifications he was sustaining, the 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 July 30, 1992, respondent appeared in person and was represented by William L. Wood, Jr., Esq. Paul Stern, Esq. presented oral argument on behalf of the Department of Health.

Petitioner's written recommendation as to the measure of discipline to be imposed, should respondent be found guilty, was revocation.

Respondent's written recommendation as to the measure of discipline to be imposed, should respondent be found guilty, was "no recommendation". Respondent also recommended in his memorandum that the recommendation as to penalty of the hearing committee and designee "must be rejected" and are "far too severe".

We have considered the record in this matter, as transferred by the Department of Health, and respondent's memorandum.

Petitioner charged respondent with committing 13 specifications of professional misconduct involving various allegations relating to respondent's conduct as to five individuals. Each of these five cases will be decided on their own merits. The hearing committee found respondent guilty as to Patient D. The designee found respondent guilty as to Patients B, C, and D. This report will address the differences between the findings and conclusions of the hearing committee and of the designee. It will also address the different view of this Committee as to Patient D.

PATIENT B

The first, sixth, and tenth specifications concern allegations B and B.1-B.2 and the case of Patient B. The hearing committee concluded that various factual allegations were sustained, but that those acts did not constitute the alleged misconduct. Hearing committee report pages 14-15. While the hearing committee's conclusion was unanimous with respect to the charged fraud, its

vote to not sustain the charged patient abuse and moral unfitness was 2-1. In contrast, the designee's recommendation modified the hearing committee's findings and conclusions as to Patient B, and sustained the first, sixth, and tenth specifications to the extent of allegation B.2. Commissioner's recommendation pages 1, 2, 4, and 5.

The findings of fact added by the designee include: "i. While Respondent had one of his hands in Patient B's vagina, he squeezed her breast with his other hand." (T. 212); "v. Respondent's actions were deliberately and intentionally sexually and physically abusive." (T. 210-218); "ii. Respondent's conduct did not constitute any treatment or examination for ... any condition noted anywhere on Respondent's chart ..." (T. 210-218); and "iii. Respondent's conduct above was sexually and physically abusive in nature." (T. 210-218).

We find Patient B's testimony to be credible and worthy of belief. On the other hand, we do not credit respondent's denials of the events on April 5, 1988. Even the hearing committee, in its findings 12-14 and 16, accepted Patient B's testimony which substantially differed from that of respondent.

The hearing committee cited to respondent's testimony only as to the question of his squeezing Patient B's breast. This finding (number 15), by a 2-1 vote, only related to the time "when he did a breast examination." Such finding, therefore, did not address

the relevant question as to whether respondent squeezed Patient B's nipple at the separate time while his fingers were in her vagina. The patient's testimony shows that a breast examination was conducted on April 5, 1988 and that the separate act of the complained improper squeezing occurred at a later time in the visit when respondent was not examining her breast. Respondent's testimony shows that the breast examination revealed a clear nipple discharge which was not bloody and that there was no reason to squeeze the nipple to perform a pelvic examination. The hearing committee's report does not explain its rationale for finding 15.

The designee and the dissenting hearing committee member correctly accept Patient B's consistent testimony that the squeezing she complained about occurred while respondent had one hand in her vagina. The earlier breast examination had concluded by that time. In our unanimous opinion, this sexual conduct of squeezing Patient B's nipple was of a sexually and physically abusive nature, and was not part of any proper breast examination. Accordingly, as found by the designee regarding allegation B.2, respondent's conduct constituted practicing fraudulently (first specification) as well as unprofessional conduct both for moral unfitness conduct (sixth specification) and willfully abusing a patient physically (tenth specification).

The guilt specified by the designee as to Patient B referred to "Respondent's conduct above." Designee's recommended finding

B.iii. The conduct shown "above" in his recommendation as to Patient B did not include respondent's alleged insertion of his fingers into Patient B's vagina. Unlike petitioner's proposed findings, the designee's added finding did not specifically base the abusive conduct by respondent on any such insertion of fingers or on any prolonged vaginal examination. We note that, during the long period respondent's hand was in Patient B's vagina, respondent wore a glove on that hand.

The designee modified the hearing committee's findings as to Patient B without indicating clearly that any of its findings were accepted. In rendering our conclusions, we accept both the hearing committee's findings as to Patient B, except for number 15, and the designee's added findings as to Patient B. As indicated by the designee, respondent's course of conduct shows that respondent's intentions were sexual and not medical.

PATIENT C

The second, seventh, and eleventh specifications concern allegations C and C.1-C.4 and the case of Patient C. The hearing committee concluded that the "material allegations were not sustained, so the charges ... should not be sustained." Hearing committee report page 16. On the other hand, the designee sustained each of these specifications to the extent of allegations C.2-C.4. Therefore, for example, the designee found respondent guilty, as to allegation C.3, of practicing fraudulently and

unprofessional conduct both for moral unfitness and willfully abusing a patient merely for not providing the presence of a nurse or other third individual when he instructed Patient C to disrobe for a purportedly legitimate physical examination. However, at the same time, the designee did not modify and he accepted the conclusion that respondent was not guilty of allegation C.1, which is similar to allegation C.3 which the designee did sustain.

Allegations C.1-C.2 pertain to Patient C's August 1989 office visit with respondent: allegations C.3-C.4 pertain to Patient C's October 17, 1989 office visit with respondent. The hearing committee found that the charged sexual activity between respondent and Patient C did not occur on either occasion.

The designee relied on Patient C's testimony to sustain the second, seventh, eleventh specifications. He did not explain his rationale for rejecting respondent's denials as to Patient C; did not indicate whether or how he assessed the testimony of the other witnesses relative to the case of Patient C; and did not address how he weighed the evidence in dispute. The designee should have attempted to demonstrate the basis for his rejection of various findings of the hearing committee.

Allegation C.4 relates to Patient C's claim that, on October 17, 1989, respondent put his penis inside her vagina. Respondent's denials of this claim were accepted by the hearing committee. The

record, in the case of Patient C, is not limited to the contradictory versions told by Patient C and respondent. Respondent produced two witnesses who claimed to be in respondent's office on October 17, 1989. One of those witness was no longer employed by respondent. The hearing committee, in finding of fact 26, accepted the testimony of these witnesses which testimony is at odds with Patient C's uncorroborated claims. Moreover, the documentary evidence does not support Patient C's testimony as to the events of October 17, 1989. Although Patient C went to the hospital within an hour and a half of the alleged incident, the documentary evidence shows that the slabs and swabs were all negative for spermatozoa. The rape test kit results were negative. As will be shown, the hospital record was used by respondent's attorney to impeach Patient C's testimony.

The nurses notes in the hospital record for 9:40 p.m. on October 17, 1989 recorded Patient C's statements that she did not know whether the "pointy object", which she had reported was inserted into her vagina, was an instrument, penis, or fingers, and that she did not know whether there was an orgasm. The nurses notes also indicate that, upon examination of Patient C, no lacerations or abrasions were noted on external genitalia. The later hospital gynecological progress note for 11:15 p.m. that date also recorded that Patient C did not know the pointy object inserted was an instrument or a penis, and did not know whether

there was an orgasm. In her testimony, Patient C acknowledged that she told a police detective at the hospital a version of the events of October 17, 1989 which was inconsistent with her claim at the hearing. This version involved Patient C's response to the police detective at the hospital that maybe it was an instrument and not respondent's penis which had been inserted inside her vagina. At the hearing, Patient C denied telling anyone other than the detective about the insertion of an instrument.

Petitioner presented an expert to explain that Patient C's hospital statements may have been the product of rape trauma syndrome rather than of any doubt on her part. This expert, however, did not diagnose Patient C as having experienced this syndrome. T. 715. He could not arrive at any diagnosis for Patient C because he never spoke to or examined her. T. 714-717 and 703-706.

In our unanimous opinion, petitioner has not proven allegation C.4 by a preponderance of the evidence of record.

With respect to the August 1989 visit referred to in allegation C.2, the hearing committee found that respondent did not pat the inside of Patient C's leg near her knee, but simply touched her legs. Hearing committee finding of fact 23. The hearing committee cited page 531 of the transcript in support of this finding. Patient C's testimony on said page did not mention the charged act of a patting of her leg near her knee. Such testimony

also did not refer to the specific location of the inside of her thigh. The designee also cited to only page 531 of the transcript. Although we are aware that further testimony as to a patting of Patient C's thigh was given on page 600 of the transcript, neither the designee nor petitioner in its proposals referred to said page 600. In our opinion, based on the record as a whole, the hearing committee correctly found that petitioner did not prove allegation C.2 by a preponderance of the evidence. The designee has not shown credible evidence to the contrary that an improper patting of the inside of Patient C's thigh occurred. Accordingly, respondent is not guilty as to allegation C.2 of the seventh specification of the charges.

PATIENT D

The third, eighth, and twelfth specifications concern allegations D and D.1-D.5 and the case of Patient D. The hearing committee and the designee concluded that these specifications be sustained. Hearing committee report page 17. The hearing committee report shows that all of the allegations contained in these three specifications were sustained by the hearing committee.

The allegations as to Patient D relate to sexual activity between respondent and Patient D on three occasions. Respondent's relationship with Patient D, evolved over the course of her office visits. On April 13, 1989, respondent sexually abused Patient D as found in hearing committee findings 37-39. On April 25, 1988, respondent committed further sexual activity with this patient, as

found in hearing committee finding 48. Respondent also committed, on this last April occasion and on the June occasion, further sexual activity with Patient D.

Respondent denied that the sexual activity between Patient D and himself, referred to in findings 37-39 and 45-46, 48 and 61, ever happened. Respondent also denied the allegation that he did not offer or provide a nurse or other third individual when he examined his patients. See, T. 910-911. The hearing committee and designee nevertheless considered Patient D to be highly credible and accepted her testimony that the sexual activity occurred as she described it and that no one else was present as she had claimed. We note that the hearing committee, in findings of fact 34 and 44 cited to Ms. Rosado's testimony that she, as respondent's employee, would leave the office by a certain time and while patients were still in the office, and that she did not remember being present for all of Patient D's visits with respondent.

Based upon our review of the record, we determine that a preponderance of evidence in the record supports the hearing committee's findings as to April 13, 1989. We reject respondent's contention that Patient D's testimony "cannot be credited." Respondent's memorandum page 5. Patient D was candid and frank in revealing various weaknesses in her testimony. After considering all of her testified actions and statements, we disagree with respondent's claim that her testimony was motivated by greed.

Accordingly, we find Patient D's testimony as to her sexual activity with respondent to be credible and truthful.

The hearing committee's fifty-fourth finding was: "Patient D's sexual activity with Respondent was, to some degree, consensual." It also referred to the "consensual nature of the sexual activity." Hearing committee report page 18. The hearing committee concluded that the professional misconduct was not negated by the consensual nature of the sexual activity. Its report failed to explain precisely what was meant by the activity being considered "somewhat consensual" and which specific activities on which specific occasions were referred to by the hearing committee in this manner. We cannot determine from these vague and incomplete references whether the hearing committee sustained all the allegations and specifications as to Patient D because it believed that: the charged professional misconduct is never negated by a patient's consent to her physician's sexual activities; consent was given by Patient D, but not to a sufficient degree on any occasion; or, as it stated on page 17 of its report, that the consent by Patient D related to only "some of the sexual activity".

In our unanimous opinion, Patient D did not consent to any of the sexual activity which occurred on the April 13, 1989 visit. On this occasion, respondent commenced his sexual activity with Patient D before he had received her permission and agreement. At

that time, she felt "totally paralyzed" and totally incapacitated from the liberties respondent unexpectedly took in his office without medical purpose. The fact that Patient D did not immediately push respondent's hands away does not establish consent as to this occasion. Accordingly, respondent is guilty of the third, eighth, and twelfth specifications to the extent of allegation D.2 which relates to the April 13, 1989 visit. We note that respondent relied on his defense that no sexual activity occurred rather than on any defense as to consent.

On the other hand, the record demonstrates that sexual activity which occurred on the April 25, 1989 and the June visits was of a consensual nature. The charged professional misconduct is not committed where the adult patient truly consents to the sexual activity with a physician. Young I. Kim, Calendar Nos. 11344/8826; determination confirmed Kim v. Sobol, ___ A.D.2d ___, 580 N.Y.S.2d 581 (3rd Dept. 1991).

On April 25, 1989, Patient D returned to respondent's office. Before he left the room temporarily, respondent engaged in sexual activity similar to that committed on the prior visit. Patient D testified that she was aroused by respondent's conduct on this April 25, 1989 occasion and that she noticed her own erotic feelings. As respondent stood very close to her, Patient D did not object to or resist respondent's conduct or inform him as to the extent she was permitting sexual activity. Patient D knew that

this similar sexual activity might recur, observed respondent's conduct, heard respondent make "sounds" (T. 410) and, by her course of conduct, permitted and agreed to this non-medical conduct by respondent.

While Patient D voluntarily returned to respondent's office on April 25, 1989 after sexual activity occurred on the prior visit, Patient D did not intend to permit and did not expressly agree to sexual intercourse with respondent. However, on this visit in which further sexual activity had already occurred, Patient D waited for approximately five minutes for respondent to return to the room. While respondent was outside the room, Patient D remained on the table with her legs up in stirrups. She still had not objected to his prior sexual conduct and had not discussed with respondent the extent to which she would consent to sexual activity. Patient D had not thought that the sexual activity "would go that far". T. 412. She had thought, however, that respondent's feelings had taken on a "special meaning" in the "way a man feels toward a woman". T. 487. Patient D knew that the relationship with respondent "had become sexual" and she believed she needed a personal relationship with respondent at that time. T. 487-489. After engaging in sexual intercourse with respondent, Patient D dressed, met respondent in the reception area, and talked to him about a variety of personal subjects, including Patient D obtaining tickets for a show at Radio City. T. 413.

The record demonstrates that Patient D implicitly permitted and agreed to sexual activity with respondent on the April 25, 1989 visit. After respondent returned to the room Patient D did not limit the extent of the activities she would permit respondent to pursue and did not object when respondent committed further sexual activity. In our opinion, respondent's conduct on April 25, 1989 was consensual in nature and respondent was then acting outside his physician capacity within the context of a continuing personal relationship. While we do not condone respondent's conduct on April 25, 1989, we conclude that, based upon Patient D's candid testimony, petitioner has not proven by a preponderance of the evidence that this conduct constitutes the specific abuses of the professional misconduct charged as to allegation D.4.

On the June occasion, Patient D voluntarily returned to respondent after having had sexual intercourse with him on her April 25, 1989 visit. Patient D brought vodka to respondent's office on this occasion and drank that vodka while disrobing. At that time, respondent was not concealing his intended actions. Patient D, who believed she had developed a personal relationship with respondent, did not try to inform respondent, in this June occasion, not to engage in sexual activity and did not object once respondent renewed it. In our opinion, respondent's conduct on said June visit was consensual in nature and respondent was then acting outside his physician capacity within the context of a

continuing personal relationship. Accordingly, we conclude that respondent is not guilty of any charges as to allegation D.5.

The hearing committee's finding of fact (fifty-four) relating to consensual activity between respondent and Patient D omitted, in its citation, any reference to the June occasion. Thus, the hearing committee did not anywhere identify this June visit as being an occasion when Patient D's sexual activity with respondent was even "somewhat consensual." Inasmuch as Patient D clearly consented to the sexual activity on this occasion, the hearing committee report failed to address this issue in a clear fashion and to demonstrate any guilt as to the June visit by a preponderance of the evidence of record.

Furthermore, petitioner has failed to establish professional misconduct based upon allegations D.1 and D.3. These two allegations do not allege that respondent committed any sexual activity.

In concluding that respondent is guilty of the third specification to the extent indicated above, we add a finding of fact relating to respondent's fraudulent conduct and intent. Although the designee added a similar finding with respect to Patients B and C, he and the hearing committee did not render such a finding as to Patient D.

RESIDENT A

We accept the designee's modification of the hearing

committee's conclusions as to Resident A. Accordingly, although petitioner has not proven the charge by a preponderance of the evidence, respondent's conduct involving his supervision in his professional capacity of a subordinate and his conduct while on duty constitutes the practice of medicine. See, Sinha v. Ambach, 91 A.D.2d 703 (3rd Dept. 1982); and Cerminaro v. Board of Regents of the State of New York, 120 A.D.2d 262 (3rd Dept. 1986). We note that both the designee and hearing committee incorrectly used the term "Patient" when referring to Resident A.

We unanimously recommend the following:

1. The findings of fact of the hearing committee be accepted, except its finding of fact 15 not be accepted and finding of fact 54 be modified and clarified as hereafter set forth;

2. The recommendation of the Health Commissioner's designee as to the hearing committee's findings of fact be accepted, except the recommendation of the Health Commissioner's designee not be accepted as to hearing committee's findings of fact 25, 26, 27, 28, and 29, and be modified and clarified as to finding of fact 54 as hereafter set forth;

3. The additional findings of fact of the Health Commissioner's designee be accepted, except additional findings of fact vi - xvi and xviii - xxi not be accepted;

4. The following additional findings of fact, referable to Patients B and D, be accepted:

64. Respondent improperly squeezed Patient B's nipple at a time when he was no longer examining Patient B's breast. (T. 210-218).

65. There was no medical reason to squeeze Patient B's nipple at the time referred to in finding of fact 64. (T. 210-218).

66. Respondent's conduct, as shown in findings of fact 37-41, did not constitute any proper examination or treatment of Patient D. (T. 400-403, 474-475, and 473).

67. By failing to inform Patient D that he was ceasing medical evaluation and treatment and commencing a sexually abusive series of acts, respondent on April 13, 1989, intentionally and knowingly concealed from Patient D the true nature of his acts, intending that she continue to submit to intimate physical conduct under the false belief that medical care was being rendered. (T. 396, 398-400, 400-403, 474-475, and 477).

68. Patient D did not consent to sexual activity with respondent on April 13, 1989. She did consent to sexual activity with respondent on April 25, 1989 and June 6, 1989.

5. The conclusions of the hearing committee and the

recommendation of the Health Commissioner's designee as to those conclusions be modified;

6. Respondent be found guilty, by a preponderance of the evidence, of the first, sixth, and tenth specifications of practicing the profession fraudulently, unprofessional conduct for moral unfitness, and unprofessional conduct for willfully abusing a patient physically to the extent allegation B.2 relates to respondent improperly squeezing Patient B's nipple; and the third, eighth, and twelfth specifications for practicing fraudulently, unprofessional conduct for moral unfitness, and unprofessional conduct for wilfully abusing a patient physically to the extent allegation D.2 relates to respondent, on April 13, 1989, inserting more than one finger into Patient D's vagina, rubbing her vagina and clitoris in a sexual manner, and rubbing Patient D which became so rough that he caused her to bleed from the vagina; and

7. The penalty recommendation of the hearing committee and the recommendation of the Health Commissioner's designee as to that recommendation be accepted, except that the recommendations in regard to imposition of a condition precedent for any potential restoration of respondent's license not be accepted; and respondent's license to practice medicine in the State of

New York be revoked upon each specification of the charges of which respondent has been found guilty, as aforesaid. The penalty imposed in this matter is without prejudice to any conditions or requirements which may be applicable at the time of any proceeding for the restoration of respondent's license.

Respectfully submitted,

EMLYN I. GRIFFITH

JANE M. BOLIN

PATRICK J. PICARIELLO

Emlyn I. Griffith

Chairperson

Dated: 11/27/92