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

March 17, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Peter M. Glassman, M.D.
531 Washington Street
Watertown, New York 13601

Emil M. Rossi, Esq.
108 West Jefferson Street
Suite 500
Syracuse, New York 13202

Cindy M. Fascia, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower - Room 2438
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Peter M. Glassman, M.D.

Dear Dr. Glassman, Mr. Rossi and Ms. Fascia:

Enclosed please find the Determination and Order (No. BPMC-93-26) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

IN THE MATTER OF PETER MICHAEL GLASSMAN, M.D.	:DETERMINATION AND :ORDER OF THE :HEARING COMMITTEE ORDER NO. BPMC-93-26

The undersigned Hearing Committee consisting of THERESE G. LYNCH, M.D. , Chairperson, KENNETH A. DE BARTH, R.P.A. and PAUL M. DELUCA, M. D. was duly designated and appointed by the State Board for Professional Medical Conduct. DAVID A. SOLOMON, Esq., Administrative Law Judge, served as Administrative Officer.

The Hearing was conducted pursuant to the provisions of Section 230, subd. 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 Peter Michael Glassman, M. D. (hereinafter referred to as the "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.

RECORD OF PROCEEDINGS

Notice of Hearing and Statement of Charges:		September 8, 1992
Affidavit of Service:		September 10, 1992
Answer:		October 6, 1992
The State Board for Professional Medical Conduct appeared by:		Cindy M. Fascia, Esq. Associate Counsel Bureau of Professional Medical Conduct 2429 Corning Tower Empire State Plaza Albany, NY 12237
Respondent appeared in person, represented by:		Emil M. Rossi, Esq. 108 West Jefferson Street Suite 500 Syracuse, NY 13202
Locations and dates of Hearings:	Canton, NY, Best Western, County Seat:	November 19, 1992 November 20, 1992
	Syracuse Area Office, NYS Dept. of Health:	December 7, 1992 December 9, 1992

Locations and dates of Conferences:	Syracuse Area Office, NYS Dept. of Health:	October 27, 1992
	Albany, NY Telecon:	November 2, 1992
	Albany, NY Telecon:	November 16, 1992
	Canton, NY Best Western, County Seat:	November 19, 1992
	Schenectady, NY Telecon:	December 28, 1992
Submission of Findings of Fact		
by the Respondent:		January 8, 1993
by the Petitioner:		January 12, 1993
Final Deliberations:		January 18, 1993
Closing of the Record:		January 18, 1993

SUMMARY OF PROCEEDINGS

The Statement of Charges alleges the Respondent improperly examined and treated a female patient at her home the evening of January 17, 1992. Seven specifications of charges allege conduct in the practice of medicine evidencing moral unfitness to practice the profession. An eighth specification charges willful physical abuse of the female patient.

Six additional specifications, numbered ninth through fourteenth, allege willfully filing of a false report to six different hospitals in applications for medical priviledges.

Seven further specifications, numbered fifteenth through twenty-first, allege practice of the medical profession fraudulently in treatment of the female patient and in applications to the six hospitals.

The twenty-second and twenty-third specifications allege practicing with gross negligence and with gross incompetence on the particular occasion of treatment of the female patient. A twenty-fourth specification alleges failure to maintain an accurate record of the evaluation and treatment of the female patient. A final twenty-fifth specification alleges a duly authorized disciplinary agency of a state found conduct which would constitute professional misconduct in New York State.

The Respondent denied each of the allegations and each of the specifications in the Statement of Charges. As an affirmative defense the Respondent requests dismissal of the Charges as being barred by "the applicable Statute of Limitations and/or Doctrine of Laches." The Administrative Officer denied the request for dismissal of the charges.

A copy of the Petitioner's Notice of Hearing and Statement of Charges is Attachment I. A copy of the Respondent's Answer is Attachment II.

The Respondent's Findings of Fact asserts the Petitioner has failed to prove the allegations in Section "A" of the Statement of Charges relating to treatment of Patient A. Further, the Respondent states that false information was provided to the six hospitals substantially as set forth in Sections "B" through "G" of the Statement of Charges with mitigating facts proferred. The Respondent also states that the allegations in Section "H" of the Statement of Charges of a finding by another state of "misconduct" in 1987 relating to events that had occurred in 1978 are not refuted, but that such does not affect the Respondent's current ability and competency to practice medicine. Attachment III:Findings of Fact of the Respondent.

The Petitioner called the following witnesses:

Patient A	Fact Witness
Lillis Murray	Fact Witness
Susan E. Buckley	Fact Witness
Spurgeon Scott Smith,M.D.	Expert /Fact Witness
Ronald Kaplan, M.D.	Expert Witness

The Respondent called the following witnesses:

The Respondent	Fact Witness
Sidney A. Orgel, Ph.D.	Expert/Fact Witness
Scott Sherman, M.D.	Character Witness

The following exhibits were accepted in evidence:

For the Petitioner:

Exhibit	
Notice of Hearing and Statement of Charges:	Petitioner's Ex. 1
Affidavit of Personal Service of Exhibit 1:	Petitioner's Ex. 2
Certified Copy of Lourdes Hospital Personnel File of the Respondent:	Petitioner's Ex. 3
Certified Copy of United Health Service Hospital Credentials and Personnel File of the Respondent	Petitioner's Ex. 4
Certified Copy of Massena Memorial Hospital Credential File of the Respondent:	Petitioner's Ex. 5
Certified Copy of the House of the Good Samaritan File of the Respondent:	Petitioner's Ex. 6
Certified Copies of Documents from St.Joseph's Hospital Regarding the Respondent:	Petitioner's Ex. 7
Certified Copy of Documents from Nashoba Hospital and Massachusetts Board of Registration in Medicine Regarding the Respondent:	Petitioner's Ex. 8
Certified Copy of Medical Records for Patient "A"from Canton-Potsdam Hospital:	Petitioner's Ex. 9
Certified Copy of Medical Records for Patient "A"from Massena Memorial Hospital:	Petitioner's Ex. 10
Certified Copy of Medical Records for Patient "A" from the House of the Good Samaritan Hospital:	Petitioner's Ex. 11
Certified Copy of Medical Records for Patient "A" from Watertown Anesthesia Associates:	Petitioner's Ex. 12

Exhibit	Designation
Certified Copy of Medical Records for Patient "A" from Bedros Bakirtzian,M.D.:	Petitioner's Ex. 13
Certified Copy of a Statement Made by the Respondent to the New York State Police:	Petitioner's Ex. 14
Certified Copy of Documents from the Massachusetts Board of Registration in Medicine Pertaining to Disciplinary Proceedings against the Respondent:	Petitioner's Ex. 15
Packet of Documents of Licensing and Registration from the NYS Department of Education including Application for Licensure:	Petitioner's Ex. 16-A
Packet of Documents of Licensing and Registration from the NYS Department of Education incluiding Registration Documents:	Petitioner's Ex. 16-B
Tape of Telephone Conversation Between Patient "A" and the Respondent:	Petitioner's Ex. 17
Curriculum Vitae of Ronald Kaplan:	Petitioner's Ex. 18
For the Respondent:	
Answer of the Respondent:	Respondent's Ex. A
Patient "A" Statement to Investigator Buckley:	Respondent's Ex. B
Lillis Murray Statement to Investigator Buckley:	Respondent's Ex. D
Curriculum Vitae Sidney A. Orgel, Ph.D.:	Respondent's Ex. G
By the Administrative Officer:	
Rescheduling of Initial Hearing;11/2/92 Letter:	Adm. Off. Ex.I
Resp. Letter of 10/29/92; Pet. Letter of 11/2/92; Resp.Notice of Motion and Affidavit:	Adm. Off. Ex.II
Corrections of Steno.Minutes:	Adm. Off. Ex.III

SIGNIFICANT LEGAL RULINGS

The Notice of Hearing scheduled the initial hearing date November 5, 1992. Rescheduling was required when the Chair of the Hearing Committee was unable to attend because of a family emergency.The Respondent was not prepared to move forward with only two members of the Committee present on the initial dates. By stipulation,the amended initial hearing date of November 19,1992 was requested and consented to by both parties and the Hearing Committee. See,Attachment IV, Adm. Off. Ex.I.

The Respondent excepted to the acceptance into evidence by the Administrative Officer of Pet. Ex. 14. The Respondent's and the Petitioner's positions on the matter, along with a County Court Notice of Motion with an affidavit by the attorney for the Respondent as stipulated to by the two attorneys is attached hereto. See, Attachment V; Adm. Off. Ex.II.

After review of the stenographic minutes of the first two hearing days in Canton, NY, the Respondent's attorney requested and the Petitioner's attorney concurred that reviewing the record of the evidence presented was necessary. The matter was considered after all written proposals were reviewed by the Administrative Officer with his Hearing notes.

The unique circumstances that resulted in the corrections to the record by the attorneys for the parties and Administrative Officer were twofold. The first was a major acoustics problem from a large meeting in an adjacent room separated from the hearing room by a plastic screen. Changes in reporters at two additional hearing dates were significant. On the stipulation of the Petitioner and the Respondent, and with the agreement of the Hearing Committee, a waiver to rule 10 NYCRR 51.9(d)(1) pursuant to 10 NYCRR 51.15 was granted by the Administrative Officer. S.M. 625-627.

All of the noted corrections were stipulated to with the exception of two noted in the Administrative Officer's letter dated December 29, 1992. Since the 2nd exception, the acceptance of the correction of the Smith Direct on S.M. 350 at lines 18-19,has not met the criteria for a waiver pursuant to Rule 51.15,the Administrative Officer has determined that the 2nd exception should, and hereby is, rejected. The Hearing Committee was informed of the rejection prior to deliberations. See, Attachment VI, Adm. Off. Ex.III.

Waivers to the time limitations set forth in Section 230 of the Public Health Law were granted on the request of the Respondent because of the delay in the initial hearing date and because of the time needed to review and correct the minutes.

During the course of the Hearing, instructions to the Hearing Committee were given by the Administrative Officer on the request of the Respondent and the Petitioner noting that redacted sections of various exhibits were agreed to by both parties and were not material to a determination of the matter and that references to a criminal action related to the subject matter was not and should not be considered by the Committee. See, S. M.10-11, 533.

A further correction to the Stenographic Minutes of the Hearing was stipulated to by the parties. A conference in the absence of the Hearing Committee had been conducted with instructions to separately report the minutes. Both parties stipulated to a direction being given to the Committee not to consider S.M. 318, line 6 through S.M. 320, line 10. Such was done by the Administrative Officer prior to deliberations. See, S.M. 629-630.

The Hearing Committee was provided with definitions of medical misconduct. The Administrative Officer instructed the Committee that Charges 1 through 7 alleging moral unfitness to practice require finding the Respondent, in his practice of medicine, acted in a manner which violated the moral standards of the medical community.

The 8th Charge of willful physical abuse of a patient requires a finding the Respondent deliberately committed an inappropriate act likely to harm a patient. The 9th through the 14th Charges of willful filing of a false report each require a finding the Respondent signed the hospital reports including an intentional ommission or falsehood. The 15th through 21st Charges of practicing fraudulently require finding an intentional concealment or misrepresentation of fact.

The 22nd Charge of practicing with gross negligence is defined as a single egregious act, or multiple acts, of deviating from acceptable medical standards in the treatment of a patient, of breaching of the duty of care. The 23rd Charge of practicing with gross incompetence is defined as a lack of the requisite skill or knowledge to practice medicine, an inability to discharge the physician's required duty to patients because of a lack of skill or knowledge on more than one occassion. "Definitions of Professional Medical Conduct under the New York Education Law," P.J.Millock, General Counsel, Feb. 5,1992.

FINDINGS OF FACT-PATIENT A

The following findings of fact were made after review of the entire record. References to the hearing transcript(SM__) and the exhibits (Pet.Ex.__) or (Resp.Ex.__) represent testimony and evidence found persuasive by the Hearing Committee in arriving at the finding. Evidence or testimony which conflicted with any finding herein was considered and rejected. Some testimony and evidence was rejected as irrelevant. All findings and conclusions herein were unanimous unless noted otherwise. The findings and conclusions of the Petitioner and the Respondent submitted herein were each considered and rejected by the Hearing Committee unless specifically set forth herein as findings and/or conclusions of the Committee:

1. Patient A is a 48 year old woman. In January, 1982, she was residing in Madrid, New York. Patient A at that time was sharing a house with her friend Lillis Murray, and Lillis Murray's children. S.M. 36,150-151; Pet. Ex. 9.

2. Patient A first saw Respondent for medical treatment on December 21, 1990. Patient A had been referred to Respondent by Dr. Bedros Bakirtzian, an orthopedic surgeon who had been treating Patient A for chronic back pain. S.M. 36- 37; Pet. Ex. 13, .

3. Patient A received medical treatment from Respondent on several occasions at Massena Memorial Hospital from December, 1990 through July,1991. The treatment first consisted of nerve blocks. After several nerve blocks, steroids were then added and cryotherapy was also attempted. Because these therapies were not fully satisfactory, Respondent discussed with Patient A the possibility of performing an alcohol block.

S.M. 37-40; Pet.Exs. 10,13.

4. Patient A subsequently tried to contact Respondent at Massena Memorial Hospital. She was informed that he was no longer practicing at that facility, and that he was now practicing at the House of the Good Samaritan, in Watertown, New York. S.M. 40-41.

5. Respondent treated Patient A on several occasions in December, 1991 and January, 1992 at the House of the Good Samaritan with modalities noted in Finding 3. S.M. 41; Pet. Exs. 11, 12.

6. On January 13, 1992, at the Ambulatory Care Unit at the House of the Good Samaritan, Patient A and Respondent again discussed the possibility of him performing an alcohol block. A nurse was present at the time Respondent discussed this with Patient A. Respondent told Patient A that he would like to do a pelvic examination to ascertain if there were any pre-sacral

nodules/trigger points. Respondent referred to these as "neuromas." Patient A told Respondent that she was having a slight period that day, and she was told that the pelvic examination would not have to be done that day. S.M. 41-42, 435-438, 461, 463; Pet. Ex. 14.

7. Patient A called Respondent on or about January 14, 1992 to tell him that she had decided that she wanted him to perform an alcohol block, because of her continued back pain. Respondent said he would set up the appointment, and that he would call her back to let her know when he had scheduled it. S.M. 44

8. On January 15, 1992, Respondent and Patient A had a telephone conversation. Respondent told Patient A that he would come to her house to perform a physical examination on her. Respondent told Patient A that he would be driving to his home on either Friday night, January 17, or Saturday morning, January 18, and that he would stop by at Patient A's house on his way home. He told Patient A that he would call her when he was leaving the House of the Good Samaritan, to let her know what time he would be arriving. S.M. 44-45,152.

9. It was Respondent's suggestion that he come to Patient A's home. Although Patient A had not requested that Respondent come to her home, she accepted his offer to come to her house to examine her. S.M. 44-45, 48.

10. Patient A mentioned her conversations with Respondent to her friend and housemate, Lillis Murray. At that time, Ms. Murray was a patient at the E.J. Noble Hospital in Gouvernour, where she had undergone surgery on January 14, 1992. S.M.47-48, 151-152.

11. Ms. Murray thought Respondent's offer was strange, because house calls by physicians are no longer common practice. She suggested to Patient A that she should have someone else present in the house when Respondent came to perform the examination. S.M. 47-48, 151-152.

12. Respondent called Patient A at her home at about 7 p.m. on Friday, January 17, 1992. He told her that he was leaving Watertown at that time, and would arrive at her home in Madrid at about 8:30 p.m. S.M. 48-49, 153-154.

13. Patient A's housemate, Lillis Murray, had been discharged home from the hospital on January 17, 1992. Patient A had cooked dinner that evening for herself, Ms. Murray, and Ms. Murray's children. Patient A had prepared pork chops, mashed potatoes , applesauce and vegetables. They ate dinner at about 5:30 p.m. that evening. Patient A ate dinner, and drank beer that evening prior to and during dinner. S.M. 49-50, 153.

14. Respondent arrived at Patient A's house at about 8:30 p.m. S.M. 50, 154-155, 175.

15. Respondent asked Patient A where he could perform the examination. Patient A took him to the TV room, which was a front parlor . It had a door, and contained a desk, a couch and a television. Respondent put his briefcase on the desk, opened it, took out a brown folder and wrote down something. Patient A was sitting on the couch at the time. Respondent then asked Patient A if there was some place more private, where he could examine her. Patient A said her bedroom was upstairs,and Respondent said they should go to the bedroom. Patient A and the Respondent did so. S.M. 51-52, 156.

16. When Respondent arrived at Patient A's house; Lillis Murray, her son, Ernest (Butch) Brothers,and Butch's girlfriend Billie Jo, were in the living room watching television. Ms. Murray recognized the Respondent; she had met him on one occasion when she drove with Patient A to Watertown. She saw Patient A and the Respondent going upstairs. S.M.51-52,155-157.

17. Patient A and Respondent went to Patient A's upstairs bedroom. Respondent performed an examination with tuning forks on Patient A's legs and lifted her legs. Respondent did not listen to Patient A's heart and lungs, or perform any other physical examination. Patient A was fully clothed. The door to Patient A's bedroom was closed. S.M. 53, 117-118.

18. Respondent told Patient A to undress from the waist down so that he could do a pelvic examination. Patient A removed her jeans and underpants. Respondent remained in the room while Patient A was getting undressed. He was taking something out of his medical bag. Respondent put on rubber gloves and put lubricant on his glove. He inserted the fingers of one hand in Patient A's vagina. Patient A, during this time, was lying on her bed, which was a waterbed. She was lying sideways, across the bed, against the railing, with her legs spread apart. To Patient A, the pelvic examination seemed similiar to those she had had before. S.M. 54-55, 127.

19. Respondent told Patient A that he wanted to give her some medication that he would be using on her at the House of the Good Samaritan when he performed the alcohol block. He wanted to see if Patient A would have to stay overnight at the House of the Good Samaritan, and "...how long (she) would be out... ." S.M. 55-56, 160.

20. Respondent did not tell Patient A she could get dressed after the internal exam. He did not ask her if she would like to get dressed. Respondent told Patient A to lay down on her bed. Patient A was still unclothed from the waist down. S.M.56, 130.

21. Respondent took a rubber glove, a vial and needles out of his medical bag. He tied the rubber glove around Patient A's left upper arm. He taped a device on Patient A's arm. Patient A had seen such devices used on her mother in the hospital. Patient A's understanding of the use of the device was for repeated injections of medications. S.M. 57, 125-126.

22. Respondent told Patient A that he was going to give her an injection. He took a vial and drew something out of the vial with a syringe. He gave Patient A the first injection, and asked her how she felt. He then gave her a second injection from the same vial, and asked again. He gave her a third injection, after which Patient A lost all awareness. S.M. 57-58, 128, 162.

23. Respondent did not ask Patient A when she had last eaten prior to giving her the injections. Nor did he ask if she had consumed any alcoholic beverages that evening prior to giving her the injections. S.M. 58.

24. Patient A has dentures, full upper and lower plates. He did not have any discussion with her about removing her dentures before he gave her the injections. At the time Respondent gave Patient A the injections, she had her upper plate im place. S. M. 58-59.

25. After the third injection, Patient A lost all awareness for a time. The next thing she recalled was trying to lift her head up off the pillow, but being unable to move. She vaguely heard Respondent asking her if there was someone downstairs that could come up and be with her. Patient A felt unable to talk or swallow. She was "...drifting in and out...", and kept feeling like she was "...passing out again... ." She thought she saw and spoke to her brother, who has been dead for years. S.M. 59-60.

26. Ms. Murray, her son and his girlfriend had remained downstairs watching a Garth Brooks country music special on television. Respondent came downstairs to the living room and asked who was "Lil." Ms. Murray said she was, and Respondent asked her to come upstairs with him. Ms. Murray asked if Patient A wanted her, and Respondent said "yes." S.M. 158-159.

27. Ms. Murray went into Patient A's bedroom with Respondent and saw Patient A lying on the bed. To Ms. Murray, Patient A seemed semi-conscious with her eyes set back in her head. S.M. 159-160.

28. Respondent told Ms. Murray not to let Patient A smoke, and after about an hour, Patient A "would come out of it." The Respondent was trying to get his papers that had fallen to the

floor while the dog was taking the papers as fast as the Respondent tried to pick them up. He took his things andleft. He stated to the State Police that he left at about 10:00 p.m. while Patient A was still experiencing the effects of sedation. S.M. 160-161,209,214; Pet.Ex. 14..

29. Ms. Murray called Patient A's sister and told her about the situation with Patient A while Ms. Murray's son's girlfriend stayed with Patient A. S.M. 160-161.

30. Ms. Murray went back upstairs to be with Patient A. She was not back to normal, but was somewhat more coherent. She told Ms. Murray that Respondent had given her three injections of medication. Patient A showed Ms. Murray the band aid on her arm. While talking to Patient A, Ms. Murray noticed that Patient A's jeans and underpants were on the floor by the bed. Patient A was lying on the bed with a quilt pulled up to her chest. Ms Murray asked Patient A if she had anything on the bottom part of her body. Patient A checked under the quilt and said no. She then told Ms. Murray that Respopndent had done a pelvic examination. S.M.162-163.

31. Patient A's sister called the State Police, and she came to Patient A's house. S.M. 163,209.

32. The State Police arrived at Patient A's house, specifically, Investigator Susan Buckley arrived, as did Sergeant Anthony Zeledon. Sergeant Zeledon was a station sergeant stationed at the Canton State Police Station. Investigator Buckley conducted interviews. Sergeant Zeledon did not take part in the interviews. Investigator Buckley conducted the investigation. S.M. 225, 241-248,309.

33. When Investigator Buckley arrived at Patient A's home and spoke to her, Patient A appeared to be very tired and groggy. Patient A was also somewhat confused and disoriented in that she thought it was much earlier than it actually was.
S.M. 336-337.

34. Patient A. was taken to Canton-Potsdam Hospital, where various tests were performed. There was a needle puncture mark on Patient A's left arm, as noted in the Canton-Potsdam Emergency Room record. A urine screen was performed on Patient A; the test was strongly positive for benzodiazepines.

35. On January 28, 1992, with Patient A's authorization, Investigator Buckley tape recorded a telephone conversation between Respondent and Patient A. Respondent was not aware that Patient A was at the police station, and that the telephone call was being taped. Patient A told Respondent that the "...anaesthesia that [he] gave [her]..." made her "... a

little sick..." and asked what he had given her. Respondent told Patient A that the drugs he had given her were Nubain and Versed. He said that these drugs did make some people sick, and that he was glad she told him. He said: "That is one of the reasons that I used it." S.M. 366,369; Pet. Ex.17.

36. Patient A told Respondent that she wanted to "...hold off for a couple of weeks..." on the alcohol block because she did did not have any one to drive her. In fact, Patient A told this to Respondent because she had no intention of letting him treat her again , and she needed to give him a reason for cancelling the alcohol block. It was not because she had transportation problems. S.M. 132-133, Pet.Ex.17.

37. On February 5, 1992, Investigator Buckley called Respondent at approximately 3:30 p.m. In that telephone conversation, Investigator Buckley told Respondent that a female had made allegations against him, and that it was something that they needed to discuss in person. She asked Respondent when it would be convenient for them to meet, and they agreed that Respondent would come to the State Police Barracks on February 7, 1992, at 1:00 p.m. S.M. 257-258.

38. In her telephone conversation with Respondent, Investigator Buckley never identified Patient A as the female making allegations against Respondent. Investigator Buckley did not specify the nature of the allegations. S.M. 257-258.

39. A few minutes after her telephone conversation with Respondent ended, Investigator Buckley received a telephone call from Patient A's housemate, Lillis Murray. Ms. Murray told Investigator Buckley that Respondent had just called, and asked to speak to Patient A. When Ms. Murray said Patient A was not at home, Respondent identified himself and said he was calling to see how Patient A was. S.M. 166-167,258-259.

40. Respondent came to the State Police Barracks at about 12:45 p.m. on February 7, 1992. Respondent waited in the foyer, and approximately fifteen to twenty minutes later Investigator Buckley and Investigator Frank Dunning met with Respondent in Investigator Buckley's office. S.M. 260-262.

41. At approximately 1:12 p.m., Investigator Buckley read Respondent his Miranda warnings. Approximately 15 minutes later, Respondent told Investigators Buckley and Dunning what happened on the night of January 17, 1992. S.M. 262-264.

42. Respondent states: "Over the past year, I have come to like her (Patient A) very much. ... I wanted to get to know her better-as man and woman-and I volunteered to do the preoperative exam on her at her residence. ... I intended before the night was over, to get to know her better as a woman." Respondent's interior pelvic examination " ... felt good to me (the Respondent) sexually. ..." Respondent then states he sedated Patient A with three injections of Nubain. He left at approximately 10:00 p.m. S.M. 266-268; Pet.Ex.14.

43. Investigator Buckley typed Respondent's statement from Respondent's own words. After she had typed it, Respondent reviewed it. She advised Respondent that if he wanted to make any additions, deletions or changes he should say so. The Respondent read the statement and requested that two changes be made on page two. Investigator Buckley made the changes that Respondent requested and Respondent initialed the changes. The Respondent signed his statement at 2:09 p.m. S.M. 268-273; Pet. Ex. 14.

44. Neither Investigator Buckley or Investigator Dunning yelled at Respondent during the interview. They did not abuse or harass him in any way. Respondent was not threatened with physical harm. He was never prevented from leaving the

interview whenever he chose. Respondent's statement to the State Police was voluntary, uncoerced, and given in his own words. S.M. 238-274, 345-346; Pet. Exc. 14.

45. In a taped telephone conversation on January 28, 1992, the Respondent told Patient A that he had given her Nubain and Versed. Versed is a benzodiazepine. It could have produced the strong positive result in Patient A's urine screen at Canton-Potsdam Hospital. S.M. 349-351,353-354; Pet.Exs. 9,17.

46. Respondent deeply sedated Patient A with the three injections he administered to her on January 17, 1992. Patient A lost awareness for a time; she was groggy, incoherent, and had hallucinations about her dead brother. These reactions would be associated with deep sedation. S.M. 59-61,159-161, 389-390.

47. Patients who have been deeply sedated have greater potential for loss of their airway control. They may have to be reminded to take a deep breath. They may have more profound changes in their cardiovascular system and their blood pressure may drop. There is a greater risk of hypoxemia. Patients are rendered more insensible, with more depressed respirations, and must be properly monitored. Oxygen supplementation should be available. S.M.389.

48. A reasonably prudent physician would recommend that a patient not have anything to eat or drink for at least six to eight hours prior to the sedation . S.M.390.

49. A reasonably prudent physician would require that a patient receiving deep sedation be carefully monitored: Pulse oximetry, EKG and blood pressure monitoring are the minimums of an acceptable monitoring. An optimal place for recovery and the monitoring of patients' recovery from the administration of sedation must be provided; and,the patients must remain there until they have fully recovered and are ready to be discharged. S.M. 380-381.

50. Prior to administering deep sedation, the physician should obtain from the patient a history as to whether the patient has ever been administered this type of anaesthetic, and if there has been any history of adverse reactions to administration of an anaesthetic. The physician should ascertain whether the patient had anything to eat or drink within a certain time period. The patient's cardiovascular and pulmonary status, blood pressure, heart sounds, lung condition, and the condition of the airway should be ascertained. The physician must also ascertain whether the patient has any loose teeth, dentures or oral prosthesis: In deep sedation there is a risk they might dislodge and obstruct the patient's airway. S.M. 381-382.

51. A reasonably prudent physician ascertains a patient's food and drink consumption prior to sedation because deeply sedated patients can lose their protective reflexes. Regurgitation, retching or vomiting from a full stomach risks aspiration of the stomach's contents, which can lead to pneumonia with an increase in morbidity and mortality. The more bulky the food, the longer it will take to digest and for the stomach to clear. S.M.382-383.

52. A reasonably prudent physician must ascertain whether a patient has consumed alcohol. Recent consumption may slow down the emptying of stomach contents, putting the patient at a risk of aspiration for a longer period of time and potentiating the sedative effects of the anaesthetics used for deep sedation, particularly if the anaesthetic is used within three or four hours of the sedation. S.M. 383-384, 387-388.

53. Respondent's failure to ascertain if, or disregard for the fact that, Patient A had consumed food within four hours of Respondent's administering anaesthesia placed Patient A at risk for regurgitation and aspiration and resultant pneumonia. S.M. 387-388.

54. Respondent's failure to ascertain if, or his disregard for the fact that, Patient A had consumed alcoholic beverages within four hours of Respondent's administering deep sedation placed Patient A at risk for regurgitation and aspiration and resultant pneumonia. S.M. 387-388,395-396.

55. Respondent's failure to ascertain if, or his disregard for the fact that, Patient A had false teeth in place at the time he administered anaesthesia placed Patient A at risk for severe problems. S.M. S.M. 392-393.

56. A person monitoring a patient recovering from the effects of sedation must make sure that the patient is aware when they are awakened, alert, oriented and with protective reflexes intact. Before a patient is discharged, the patient should be checked for hypotension, dizziness,lack of coordination, and nausea. The person who observes the patient in recovery from sedation must have proper medical training. S.M. 393-395.

57. Lillis Murray, Patient A's housemate, has never had any medical training.She has no knowledge of how to observe,assess or assist patients who are recovering from sedation.S.M.164-165

58. Respondent did not ask Ms. Murray if she had any medical training before he left Patient A's home. The only instruction he gave her was to not let Patient A smoke. He gave no other instructions, did not tell her about anything she should watch for. Respondent's leaving Patient A before she had fully recovered from the effects of the sedation was a deviation from accepted standards of practice. Respondent's instructions to Ms. Murray were inadequate and incomplete. Patient A needed to be assessed more carefully in the recovery period. Respondent's leaving Patient A with an untrained person placed Patient A at risk: Persons without medical training would be unable to assess her properly, or to treat her for any problem that arose in the recovery period. S.M. 164-165,210,395-396

59. It is not acceptable procedure to "test" anaesthetic drugs prior to the actual procedure. If a physician is concerned about a patient having an adverse response to anaesthetic agents, the patient must be in a monitored setting where the physician can titrate the agents and watch for the response. The accepted method to evaluate a patient's response is careful titration of the drug at the time of the procedure. It is not acceptable practice to attempt to titrate drugs and monitor a patient in a "preoperative " test in the patient's

home. In such a setting, a physician would be unable to respond to an adverse effect if it did arise. S.M. 385-386, 419-420.

60. Respondent did not have adequate monitoring and/or resuscitative equipment available. Pulse oximetry, suction, oxygen and/or other resuscitative equipment was not available at Patient A's home. Respondent did not bring any sort of suction device or an Ambu bag. S.M. 390-391,402,497-498, 517-518.

61. It was inappropriate and a deviation from accepted medical practice for Respondent to administer Versed and/or Nubain and/or drugs producing similiar effects to Patient A in her home. There were no valid medical purposes for such administration. S.M. 379-380,404,418-419.

62. There was no medical indication for Respondent to perform an internal pelvic examination on Patient A in her home on the evening of January 17, 1992. Patient A had not had any change in her presentation or symptomalogy that might make a physician suspicious of a problem in her genitourinary system. She had no complaints about changes in her menstrual cycle, about increasing back pain with her menstrual cycle, pelvic fullness, or other such complaints. S.M. 399-402,579-580.

63. There was no reason to perform a pelvic examination on Patient A prior to the alcohol block. If there were concerns about neuromas or trigger points posterior in the sacrum, and if the physician wanted to know if the patient had them in front of her sacrum, a rectal examination, not a vaginal exam, would be indicated. The area in question can be palpated more easily by doing a rectal digital examination than by doing a vaginal examination. S.M. 415,422.

64. Respondent did not maintain medical records regarding his treatment of Patient A in her home on January 17,1992. Respondent failed to produce any records regarding Patient A's treatment in her home at the hearing. S.M. 396-397; Pet. Exs. 11,12,13.

65. It is a clear deviation from accepted standards of medical practice for Respondent to fail to maintain records regarding the examination of, and administration of drugs to, Patient A. He did not document his thought processes or any reason for the examination, the drugs administered, the amount of drugs, and their method of administration. He did not document the results of the examination or the outcome of the test or evaluation he professed to be performing. S.M. 397-398.

FINDINGS OF FACT

HOSPITAL APPLICATIONS

66. Respondent, on or about June 27, 1980, filed an Application for Medical Staff Appointment at Our Lady of Lourdes Memorial Hospital, Binghamton, New York, wherein he answered "No" to the question: "Have your privileges in any health facility ever been suspended or revoked ." S.M. 542; Pet. Ex. 3,pp. 6,47.

67. The Executive Committee of the Medical Staff of Nashoba Community Hospital, Ayer, MA, summarily suspended Respondent's clinical privileges on November 1,1978. Prior to review of the suspension, the Respondent resigned from the medical staff of the Hospital. Respondent's answer to the Lourdes Application question was false. S.M. 542-544; Pet. Ex. 8,p.4,6-7.

68. The Respondent's privileges at Nashoba Community Hospital were summarily suspended because of his failure to maintain a level of medical care consistent with the standards of the Hospital. The Executive Committee of the Board of Trustees of the Hospital supported the disciplinary action and directed the Hospital's administration to notify the Massachusetts Board of Registration in Medicine of the summary suspension and subsequent resignation. Pet.Ex 8, pp. 4,6.

69. Respondent was formally advised of the actions taken by letter of December 12, 1978 received by certified mail by the Respondent on December 18, 1978. S.M. 544; Pet. Ex.8,pp. 5-6.

70. Respondent deliberately gave a false answer to the Lourdes application question about suspension or revocation of hospital privileges. He knew that the information he was giving was untrue, and he knew that his privileges at Nashoba had been summarily suspended. S.M. 557.

71. Respondent, in his application for medical staff to Lourdes answered "No" to the application question "Do you have any known or suspected (physical, mental) impairments that could affect your ability to practice medicine as requested in this application." S.M. 544; Pet. Ex.3.

72. Respondent's answer to the above question was false. During 1979-1980, he had undergone both inpatient and outpatient rehabilitation therapy and psychiatric care for his alcoholism; he had received psychotherapy for his alcoholism on June 11, 1980, about 16 days before his application date. S.M. 544-545; Pet.Ex. 4.

73. Respondent answered the Lourdes application request for a list of "medical Staff Appointments (Past and Present)." He did not list Nashoba hospital when he knew he had been a staff member prior to his summary suspension and subsequent "resignation." S.M. 545; Pet. Ex. 3,p.6.

74. Respondent, on or about June 28, 1980, filed an Application for Medical Staff Appointment at Binghamton General Hospital, Binghamton, New York, wherein he answered "No" to the question "Have your privileges at any hospital or clinic ever been suspended, diminished, revoked or not renewed." S.M. 546;

75. Respondent's answer to the above question was false;his clinical privileges were summarily suspended on November 1,1978 by Nashoba hospital. He deliberately gave the false answer; he knew it to be untrue. S.M. 542-544,550,557;Pet.Ex.8,pp.4-7; See, Findings 67,68,69,70.

76. Respondent's answer to the Binghamton General question was false as well because the Medical Executive Committee of St. Joseph's Hospital, Lowell, MA, by a unanimous vote on July 24,1978 had reduced Respondent's privileges from M-2 to M-3 status, ruling that his privileges would not be fully reinstated until he could "provide evidence of his responsibleness." St. Joseph's was concerned about problems with his responsibility and his unavailability, and his failure to respond to the paging system. Respondent knew that St. Joseph's had taken the action; he deliberately answered the question falsely. S.M. 546-550; Pet.Ex. 7,pp. 1-6.

77. Respondent answered "No" in his Binghamton General staff application to the question "Do you have any known or suspected (physical,mental) impairments that could affect your ability to practice medicine as requested in this application." As noted in Finding 72, his answer was knowingly false; he had received psychotherapy on June 11, 1980, about 17 days before his Binghamton application date. S.M. 544-545, 551-552; Pet.Ex. 4.

78. Respondent, in response to a Binghamton General Hospital application request for a list of "Medical Staff Appointments Past and Present" did not list Nashoba or St. Joseph's Hospitals when he knew he had been a staff member at both and had his privileges suspended and reduced, respectively, as noted in Findings 67,68,69,70. S.M.550; Pet.Ex. 4, p.28.

79. Respondent, on or about August 6,1986, made an Application for Appointment to the Medical Staff of Massena Memorial Hospital, Massena, New York, answering "No" to the question "Have you ever been refused membership on a hospital medical staff". S.M. 554; Pet.Ex. 5, 198-208.

80. Respondent's answer to the above question was false; he had been denied membership in the Department of Anaesthesia of Binghamton General by the Medical Staff Executive Committee on or about November 26, 1980. Respondent was notified of the decision by letter dated December 9, 1980. He deliberately answered the question falsely. S.M. 554-555; Pet. Ex.4.

81. Respondent answered "No" to the 1986 Massena Memorial Hospital question "Have your privileges at any hospital ever been suspended, diminished, revoked or not renewed."S.M.555; Pet.Ex.5.

82. Respondent's answer to the above question was false. His privileges at Nashoba Community Hospital had been summarily suspended as set forth in Findings 67,68,69,70,75, above. The Respondent intentionally omitted the information. S.M.542-544, 555-558; Pet.Ex.8.

83. Respondent's answer to the question was also false because temporary privileges at Binghamton General were terminated on or about October 3, 1980, because of false and inaccurate data in his application. Respondent knew he was terminated, knew the reason for the action and was informed of it by certified letter dated October 3, 1980. He intentionally answered the application question falsely. S.M. 552,565-567; Pet.Ex. 4, pp.10-12,49-50; and See, Findings 76,77,78.

84. Respondent also knew that Lourdes Hospital suspended his temporary privileges on or about October 27,1980 by letter notice. He also knew that St. Joseph's Hospital had reduced his privileges on or about July 24, 1978. Respondent falsely answered the Massena application questions intentionally. S.M. 546-550,555-558 565-566; Pet.Ex. 3,pp.30,39; Pet.Ex. 7; and See, Findings 70, 71,76.

85. On or about April 11, 1988 the Respondent received a letter of reprimand from the Board of Managers of Massena Memorial Hospital.His 1986 and his 1987 applications to the Hospital had not disclosed a pending disciplinary proceeding against him in Massachusetts. The applications did not list the Massachusetts licenses. S.M.558-559; Pet.Ex.5,pp. 109,199

86. In Respondent's reapplication to Massena Hospital dated November 9, 1987, he answered "No" to the question "Since your last application to the staff, have you had any misconduct experience or have there been any challenges to your license, registration, narcotic license or other evidence of professional status or are you currently under investigation by this hospital, other health care facility or agency with jurisdiction over professional health care organizations." S.M. 559; Pet.Ex.5, p.167.

87. Respondent knew the Massachusetts Board of Medical Examiners had a pending disciplinary proceeding against him commenced by an Order to Show Cause dated June 27,1984. He had appeared before the Board and testified on his own behalf in the matter on May 13, 1987. The Final Decision and Order of the Board, dated November 4, 1987, found the Respondent guilty of misconduct and suspended his license for a two year period. Pet. Ex. 15.

88. The Board of Managers of Massena Memorial Hospital reprimanded the Respondent, stating that his omissions were "...violative of at least the ethical spirit and intent of the Medical Staff Bylaws and credentialing process." The Board of Managers ordered that Respondent's practice be monitored, and his reappointment was limited to six months. S.M. 559-560, Pet.Ex. 5, pp.109-110.

89. Respondent filed an Application for Appointment to the Medical Staff of Massena Memorial Hospital on September 1,1988. Therein, he answered "No" to the question "Have your privileges at any facility ever been denied, suspended, discontinued or granted with stated limitations." Nashoba Community, Binghamton General,Our Lady of Lourdes Memorial, St. Joseph's Hospitals had all taken actions on the privileges listed. The Respondent intentionally answered falsely.S.M.542, 544,546-550,552,556-558,565-566; Pet.Exs.3,4,7; See,Findings 66,67,68,70,71,74,75,76,84.

90. In the Massena Hospital application dated September 1, 1988, Respondent answered "No" to the question "Has your membership, association, employment or practice at another facility ever been limited, suspended or discontinued". Nashoba Community, Binghamton General, Our Lady of Lourdes Memorial,and St Joseph's Hospitals had all taken actions on his practice. The Respondent intentionally answered falsely.

S.M. 542-544,546-550,552,556-558,560-562,564-566; Pet.Exs. 3, 4,5,7,8; See, Findings 66,67,68,69,70,71,74,75,76,84.

91. In Respondent's Application for Medical Staff Reappointment and Clinical Privileges at Massena Memorial Hospital on April 2, 1990, he answered "No" to the question "Have your privileges at any facility ever been denied, suspended, discontinued or granted with stated limitations." Nashoba Community,Binghamton General and Our Lady of Lourdes Memorial Hospitals had all taken actions on the privileges listed. The Respondent intentionally answered falsely. S.M. 542-544,552, 555-558,561-563,565-566; Pet.Ex. 3,4,5,8. See,Findings 67, 68,70.71,74,75,76,84,90.

92. The Respondent,in his 1990 reapplication to Massena hospital, answered "No" to the question "Has your membership, association, employment or practice at another facility ever been limited, suspended or discontinued." Pet. Ex.5.

93. Nashoba Community, Binghamton General, Our Lady of Lourdes Memorial, and St. Joseph's Hospitals had all taken action on the privileges noted. The Respondent intentionally answered falsely. S.M. 542-544,546-550,552,554-558,561-562, 565-566; Pet.Ex. 3,4,7,8; See, Findings 67,68,69,70,74,75,76, 82,84,89,90,91.

94. In his 1990 reapplication to Massena hospital , the Respondent failed to list Our Lady of Lourdes Memorial Hospital as a "...facility with which [he had] been associated, employed, privileged or practiced..." within ten years. He knew he had held temporary privileges within such period at Lourdes. He intentionally answered the question falsely. S.M. 563; Pet.Exs. 3,5; See, Findings 84, 91.

95. Respondent also did not list Binghamton General Hospital where he had held temporary privileges within ten years of his reapplication. Respondent intentionally answered falsely. S.M. 563; Pet Exs.4,5; See,Findings 89,90,

96. Respondent filed an Application for Appointment to the Medical Staff at The House the Good Samaritan and Samaritan-Keep Home on or about May 25, 1991. Therein, he answered "No" to the question "Has your membership, association, employment or practice at another facility ever been limited, suspended or discontinued."S.M. 565, Pet. Exs. 6.

97. Respondent's temporary practice in anaesthesia at Our Lady of Lourdes Memorial Hospital was suspended on about October 27, 1980, and at Binghamton General Hospital was terminated on about October 3, 1980. Nashoba Community Hospital had summarily suspended his clinical practice on November 1,1978. His practice at St. Joseph's Hospital was reduced from M-2 to M-3 on or about July 24, 1978. None of these were reported on the Good Samaritan Hospital application. Respondent knew of each of these. In each case, the Respondent intentionally answered falsely. S.M. 542-544,546-550,552, 556-558,561-562,565-566; Pet.Exs. 3,4,7,8; See, Findings 67, 68,69,70,82,83,84,89,90,91,93.

98. In the above Application for appointment to the Medical Staff at The House of Good Samaritan and Samaritan-Keep Home the Respondent answered "No" to the question "Have your privileges at any facility ever been denied, suspended, discontinued or granted with stated limitations." Pet. Ex.6.

99. The summary suspension at Nashoba Community Hospital, the termination of temporary privileges and the denial of the application for membership at Binghamton General Hospital, the suspension of temporary privileges at Our Lady of Lourdes Memorial Hospital were known by notice to the Respondent. He intentionally answered the question falsely.S.M.542-544,552-553 557,560-561,564-566;Pet.Exs.3,4,8;See,Findings 68,69,74,84.

FINDINGS OF FACT

MASSACHUSETTS DISCIPLINARY ACTION

100. Respondent was found guilty of professional misconduct by the Massachusetts Board of Registration in Medicine, pursuant to a Final Decision and Order dated November 4, 1987. Pet.Ex.15.

101. In the Final Decision and Order, Respondent was found guilty of "...conduct which places into question his competence to practice medicine, including gross misconduct in the practice of medicine,practicing medicine with gross misconduct, and with gross negligence on a particular occasion, in violation of Massachusetts General Laws ch. 112, sections 5(c) and 61, and 243 CMR 103." Pet Ex. 15,pp.7-8.

102. The Massachusetts Board of Registration's action was based on Respondent's actions on August 22,1978, when he "...deviated substantially from good and accepted standards of care in his treatment of (Mrs. L.A.) which substandard care contributed to her death on August 22,1978 ." The Board noted that Respondent's conduct was of an "...egregious nature... ." Pet. Ex. 15, pp.8-10,102.

103. The Massachusetts Board ordered that Respondent's license to practice medicine in Massachusetts be actually suspended for a period of two years. Pet.Ex.15,pp.9-10.

CONCLUSIONS-PATIENT A

The Hearing Committee concludes that Patient A was a credible witness. She was forthright and consistent in her answers during direct and cross examination, and was careful to distinguish between what she could and could not remember. Her explanations were reasonable and credible, and her descriptions of her contacts with Respondent were not embellished or exaggerated.

Much of Patient A's testimony was corroborated by Lillis Murray. The Committee concludes that Ms. Murray was a credible witness. Furthermore, Ms. Murray had nothing to gain by her testimony in the proceeding. She and Patient A were friends of less than a year, and roommates of only a few weeks on January 17,1992. S.M.150-151. Patient A moved out of the house shortly thereafter, and since then she and Ms. Murray see each other infrequently. S.M. 167-169. Ms. Murray has no financial or other interest in the matter. S.M. 169. Her testimony has great weight. Ms. Murray's description of Patient A's condition after Respondent asked Ms. Murray to come upstairs with him, a description which Ms. Murray was careful not to exaggerate and to portray accurately, is compelling evidence that Respondent deeply sedated Patient A. Findings 26,27,28,30.

The Hearing Committee concludes that the events of January 17,1992 occurred as described by Patient A and Ms. Murray. The Committee rejects Respondent's version of the events of that evening. Respondent, knowing that he had been taped admitting he had come to Patient A's house and administered Nubain and Versed to her, struggled to exonerate himself. Findings 35,45 The Committee rejects Respondent's contention that he did not deeply sedate Patient A. Finding 46. The testimony of Patient A, Lillis Murray and Investigator Buckley would have to be disbelieved to accept Respondent's testimony.

The Hearing Committee finds that Investigator Buckley was a credible witness and accepts her testimony regarding the circumstances under which Respondent made his statement to the State Police investigators. Findings 37,38,39,40,41,42,43,44. Respondent's version of the events is not credible. The interview took place at a mutually selected date, time and place in the early afternoon. The Respondent drove himself in his car, and he was read the Miranda warnings shortly after the the interview started. Findings 40,41. The Respondent is an educated man. The statement was voluntary, uncoerced and in the Respondent's own words. Finding 45.

The Petitioner's expert witness, Dr. Ronald Kaplan, was an impartial and unbiased reviewer. His expertise and knowledge of anaesthesia and pain medicine were not disputed. A series of medical care anomalies were identified as characteristic of the Respondent's "treatment" of Patient A. A reasonably prudent physician would recommend no food or drink for six to eight hours prior to sedation, and careful monitoring including at least: pulse oximetry,EKG and blood pressure,along with oversight by qualified staff of the patient's full recovery from sedation, a full history of any adverse reactions to the administration of anaesthetics, the patient's cardiovascular and pulmonary status- blood pressure,heart sounds, lung and airway condition-and initial identification of the presence of loose teeth, dentures or oral prosthesis. The expert testimony of Dr. Kaplan is accepted by the Hearing Committee. Findings 49,50.

Reasonably prudent physicians include the minimum patient care noted prior to deep sedation because patients may lose their protective reflexes and risk aspiration of the stomach's contents. Too, recent consumption of alcohol may slow the emptying of the stomach placing the patient at risk of aspiration for a longer period of time. Findings 51,52,53,54.

Respondent's leaving Patient A during the recovery period without a person with proper medical training did not meet accepted standards of practice. Patient's housemate had no medical training that would permit her to observe, assess and assist Patient A's recovery. Patient A was placed at risk. Findings 56,57,58. Further, it is not acceptable procedure to "test" an anaesthetic prior to the actual procedure, and it is not acceptable to perform it in a home where no response to an adverse effect was possible. Findings 59, 60.

There was no valid medical purpose for the Respondent to administer Nubain and/or Versed, and no medical indication for the Respondent to perform an internal pelvic examination. If there were concerns about neuromas or trigger points in front of Patient A's sacrum, a rectal examination would be indicated. Findings 61,62,63.

Respondent's failure to maintain any records of the examination of and the administration of drugs to Patient A, or the outcome of the evaluation he professed to be performing, was a clear deviation from accepted standards of medical practice. Findings 64,65.

The Hearing Committee concludes Respondent inserted his gloved finger in Patient A's vagina for his own gratification, not for any valid medical purpose. Finding 18,42.

Respondent's conduct in performing the pelvic examination or administering the drugs to Patient A for no valid medical purposes constituted willful physical abuses of Patient A, inappropriate acts likely to harm the Patient. Deceiving Patient A on the purported medical purpose for the treatment,Respondent used a pattern of fraudulent practice that intentionally misrepresented the purpose of the examination that culminated in the treatment given Patient A on the night of January 17, 1992. Respondent's actions constitute ethical unfitness clearly violating the moral standards of the medical community and the trust that Patient A placed in her physician. Findings 6,7,8,9,12,15,17,18,19,20 21,22,23,24.

The Respondent's conduct in administering the drugs to Patient A for no valid medical purpose constituted gross negligence, a single egregious act failing to exercise even a modicum of care. He negligently failed to determine the time Patient A ate, the alcoholic beverages consumed, the fact that a dental plate was in the Patient's mouth: Together these constitute gross negligence. Findings 48,50,51,52,53,54,55.

Without adequate monitoring and resuscitative equipment available in Patient A's home, the administration of the drugs to Patient A constituted gross negligence. Finding 60.

It is also concluded by the Hearing Committee that the administration of drugs at Patient A's home for no valid medical purpose without the medical personnel needed to monitor the condition of Patient A exposed her to the life threatening risk of regurgitation and aspiration. Further, the Respondent left the Patient alone with her untrained friend with no instructions on care other than no smoking; such gross negligence represents an indifference to Patient A's condition that was induced by the Respondent. Findings 25,28,30,33,34,35

The Committee also concludes that the conduct noted also constitutes practicing with gross incompetence. The Respondent does not have the ability, morally or intellectually, to practice the profession. The Respondent failed to produce records of his treatment of Patient A on January 17,1992. The Committee concludes the Respondent failed to maintain adequate medical records as charged. Findings 64,65.

After final review of the entire record, the Committee has concluded that the reason why the Petitioner came to Patient A's house on January 17, 1992 has been best explained by the Respondent himself: He "...wanted to get closer to [Patient A] and have her think of [him] as a man and not a doctor." It was not for any valid medical purpose. Pet. Ex. 14.

CONCLUSIONS

HOSPITAL APPLICATIONS

The Hearing Committee concludes that the Respondent knowingly and intentionally made false statements and deliberate omissions on his application and reapplications to Our Lady of Lourdes Memorial Hospital, Binghamton General Hospital, Massena Memorial Hospital, and the House of the Good Samaritan. The Committee concludes that Respondent's motivation for the falsehoods on his applications to Our Lady of Lourdes and Binghamton General were motivated by his desire to conceal his professional problems in Massachusetts, and at the Massachusetts hospitals, Nashoba Community and St. Joseph's, so that he could obtain hospital privileges in Binghamton. After Respondent's deceit was unmasked at Binghamton General, and he lost his temporary privileges at both Binghamton Hospitals, he left New York. A few years later he returned to New York and applied to Massena Memorial. He lied about the Massachusetts hospitals and the Binghamton hospitals to obtain privileges at Massena Memorial. Even when Massena Memorial found out through other means that Respondent

had been disciplined by the Massachusetts Board of Registration in Medicine, the Board of Managers of Massena Memorial reprimanded Respondent for not revealing the fact on his applications, the Respondent did not tell the whole truth. Being caught in one lie, he remained silent about the others. When Respondent applied to Good Samaritan, his lies on his applications continued. He again obtained privileges under false pretenses. Findings 66 through 99.

CONCLUSIONS

MASSACHUSETTS DISCIPLINARY ACTION

The Hearing Committee concludes that the Respondent was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state. Respondent was found guilty of professional misconduct by the Massachusetts Board of Registration in Medicine, pursuant to the Board's Final Decision and Order dated November 4, 1987. The Committee concludes that the conduct on which the Board's finding was based would, if committed in New York State, constitute professional misconduct under New York State law; namely, practicing medicine with gross incompetence under N.Y. Educ.Law Sect.6530(6), and gross negligence on a particular under N.Y.Educ.Law Sect.6530(4). Findings 100,101,102.

The Massachusetts Board of Registration in Medicine took an extremely serious view of the Respondent's misconduct, which contributed to the death of a patient: The Board actively suspended Respondent's license to practice medicine for a two year period. Finding 103.

CONCLUSIONS WITH REGARD TO FACTUAL ALLEGATIONS

A. Patient A

A. Respondent, on the evening of January 17, 1992, went to the home of Patient A [identified in Appendix A] in Madrid,New York.*

A1.The allegation states Respondent inserted his gloved finger into Patient A's vagina, when an internal pelvic exam was not warranted.

Respondent arrived at Patient A's home at about 8:30 p.m.on January 17, 1992 on his suggestion. Findings 9,13, 14. He inserted his gloved finger into Patient A's vagina when an internal pelvic exam was not warranted. Findings 18,19, 62,63.

Allegation A.1 is Sustained.

A.2. The allegation states Respondent came to Patient A's home and performed an internal pelvic examination on her because he "wanted to get closer to [Patient A] and have her think of [him] as a man and not a doctor", and not for any valid medical purpose.

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* Petitioner's Brief requests that the second sentence of the prefatory language to Specification A in the Statement of Charges be deleted. The Administrative Officer has granted the request. 10 NYCRR 51.6.

The Respondent came to Patient A's home to perform an internal pelvic examination for his own personal gratification. It was not done for any valid medical purpose. The Respondent's own explanation in Petitioner's Exhibit 14 is set forth in the subject charge. Findings 18,42.

Allegation A.2 is Sustained.

A.3 The allegation states Respondent administered Versed and/or Nubain and/or other drugs producing similiar effects to Patient A, when there was no valid medical purpose to administer these drugs to Patient A that evening in her home.

It was inappropriate and a deviation from accepted medical practice for Respondent to administer the drugs producing the effects documented on Patient A in her home. Finding 61. He did not have adequate monitoring and resuscitative equipment available. Finding 60. It is not acceptable procedure to "test" anaesthetic drugs prior to the actual procedure. Finding 59. The Committee concludes there was no valid medical purpose to administer the drugs.

Allegation A.3 is Sustained.

A.4 The allegation states the Respondent administerred Versed and/or Nubain and/or other drugs producing similiar effects to Patient A and failed to ascertain or disregarded information which increased the risk to Patient A, in that:

a. Respondent failed to ascertain that Patient A had consumed alcoholic beverages that evening.
b. Respondent failed to ascertain when Patient A had last eaten.
c. Respondent failed to ascertain or disregarded the fact that Patient A had false teeth in place at the time Respondent administered said drugs.

Major considerations for the administration of the drugs in a medical setting include a potential for the loss of airway and breathing control, profound changes in the cardiovascular system, and a loss of protective reflexes. Finding 47,51,52,54. A reasonably prudent physician would at the minimum ascertain a patient had not eaten or consumed alcoholic beverages within a reasonable four hour time period. The presence of false teeth in the mouth of the patient places the patient at a severe risk. Finding 55. Respondent failed to ascertain if, or disregarded the fact that Patient A had consumed,alcohol or food within four hours of drug administration. Findings 48,52,53. Respondent's failure to ascertain if, or his disregard of the fact that, Patient A had false teeth in place at the time he administered anaesthesia placed Patient A at risk for severe problems. Finding 54.

The Hearing Committee concludes the Respondent failed to ascertain Patient A had consumed alcoholic beverages, when she had last eaten and that she had full dentures in her mouth; her upper plate was in place when drugs were administered. Findings 13,14,15,23,24.

Allegations 4.a, 4.b and 4.c are Sustained.

A.5 Respondent administered Versed and/or Nubain and/or other drugs producing similiar effects to Patient A under circumstances which placed Patient A at risk, in that:

a. Respondent administered said drugs to Patient A in her home, where adequate monitoring and/or resuscitative equipment was not available.

b. Respondent left Patient A's home before Patient A had adequately recovered from the effects of the drugs Respondent administered to her.

c. Respondent left Patient A's home before Patient A had adequately recovered from the effects of the drugs Respondent administered to her, and left Patient A with persons untrained to recover her from the drugs' effect.

The person who observes the patient in recovery from the effects of sedation must have proper medical training to assure the patient is aware, alert, oriented and with protective reflexes intact, and to check the patient for hypotension, dizziness, lack of coordination and nausea. Finding 56. Ms. Murray had never had any medical training; she had no knowledge on what or how to observe, assess and assist patients in recovery from sedation. Finding 57. Respondent didn't ask. Finding 58. No equipment was available for the task.Finding 60

Respondent only told Ms. Murray not to let Patient A smoke and that she "would come out of it" in about an hour. He left at about 10:p.m.Finding 28.

The Hearing Committee concludes the drugs were administered to Patient A in her home where adequate monitoring and resuscitative equipment was not available. He left the home before Patient A had adequately recovered from the effects of the drugs he administered. He left the Patient with persons untrained to recover her from the drugs' effect.

<u>Allegations 5.a, 5.b and 5.c are Sustained</u>.

A.6. The allegation states Respondent failed to maintain adequate medical records regarding his treatment of Patient A in her home on January 17, 1992.

Respondent failed to maintain any records of the examination of, and the administration of drugs to, Patient A. Nor did he record any evaluation of examination and treatment of Patient A at her home. Findings 64,65.

<u>Allegation A.6 is Sustained</u>.

CONCLUSIONS WITH REGARD TO FACTUAL ALLEGATIONS: HOSPITAL APPLICATIONS

B. Respondent, on or about June 27, 1980, filed an Application for Medical Staff Appointment at Our Lady of Lourdes Memorial Hospital, Binghamton, New York

1. Therein, Respondent answered "No" to a question on whether any such privileges had ever been suspended or revoked despite the fact that Nashoba Community Hospital, Ayer, Massachusetts had summarily suspended his clinical privileges on November 1, 1978.

2. Therein, Respondent answered "No" to a question on whether he knew of any physical or mental impairments that could affect his ability to practice medicine despite his having undergone therapy and psychiatric care for alcoholism as recently as June 11, 1980.

3. Therein, Respondents answer to a question asking for a list of all medical staff appointments did not list Nashoba Community Hospital.

B.1.As alleged the Respondent had filed an Application for Medical Staff Appointment to Lourdes Memorial Hospital. By answering negatively to a question requiring he list all hospital privileges suspended, he knowingly failed to list Nashoba Community Hospital where he was suspended on November 1, 1978. Findings 66,67,68,69,70.

B.2.As alleged the Respondent answered negatively a question on whether he had any physical or mental impairment that could affect his ability to practice when he had and was receiving the treatment alleged for alcoholism and he knew he was receiving such psychotherapy. Findings 71,72.

B.3.As alleged the Respondent in said Application failed to list Nashoba Community as a former hospital in which he knew he had staff privileges. Finding 73.

<u>Allegations B.1,B.2 and B.3 are Sustained</u>.

C. Respondent, on or about June 28, 1980, filed an Application for Medical Staff Appointment at Binghamton General Hospital, Binghamton, New York.

1. Therein, Respondent answered "No" to a question on whether any such privileges had ever been suspended, revoked or diminished despite his knowledge of Nashoba Hospital's suspension.

2. Therein , Respondent answered such question "No" when he knew that St. Joseph's Hospital, Lowell,Massachusetts had diminished his privileges on July 24, 1978.

3. Therein, Respondent answered "No" to a question on whether he knew of any physical or mental impairments that could affect his ability to practice despite his having undergone therapy and psychiatric care for alcoholism as recently as June 11, 1980.

4. Therein, responding to a question on other medical staff appointments, Respondent did not list, Nashoba Hospital.

5. Therein, responding to the same question, Respondent did not list St. Joseph's Hospital.

C.1. The Respondent filed an application with Binghamton General Hospital, Binghamton,New York.Intentionally, he failed to report his summary suspension by Nashoba Hospital. Findings 74,75.

C.2. In said application the Respondent did not list his privileges at St. Joseph's being diminished on July 24, 1978. Finding 76.

C.3. Therein, Respondent did not report that he had undergone therapy and psychiatric care for alcoholism as recently as June 11, 1980. Finding 77.

C.4. Therein, Respondent did not report that he had been a former staff member of Nashoba Hospital. Finding 78.

C.5. Therein, Respondent did not report that he had been a former staff member of St. Joseph's Hospital. Finding 78.

Allegations C.1, C.2, C.3, C.4, and C.5 are Sustained.

D. Respondent, on or about August 6,1986, made an application for appointment to the Medical Staff at Massena Memorial Hospital, Massena, New York.

1. Therein, Respondent answered "No" to a question on whether he had been refused membership to a hospital's medical staff when Binghamton General Hospital had denied such on November 26, 1980, and he knew it.

2. Therein, Respondent answered negatively when asked if priviledges had ever been suspended, diminished, revoked or not renewed. He did not report his knowledge of the action by Nashoba Hospital, when he knew it.

3. Therein, Respondent did not report the termination of temporary privileges by Binghamton Hospital on October 3, 1980, when he knew it.

4. Therein, Respondent did not report loss of temporary privileges at Our Lady of Lourdes Memorial Hospital on October 27, 1980, when he knew it.

5. Therein, Respondent reported negatively on whether privileges had ever been diminished when he knew that such had been done by St. Joseph's Hospital.

D.1 The Respondent filed an application for staff membership with Masssena Memorial Hospital on August 6, 1986. Intentionally, he did not report Binghamton General Hospital's refusal to grant him membership. Findings 79, 80.

D.2 Therein, Respondent did not report his summary suspension by Nashoba Hospital, when he knew it. Findings 81,82.

D.3 Therein, Respondent falsely failed to report the loss of temporary privileges by Binghamton General Hospital on October 3, 1980, when he knew it. Finding 83.

D.4 Therein, Respondent failed to report that Lourdes Hospital had suspended his temporary privileges on October 27,1980, when he knew it. Finding 84.

D.5 Therein, Respondent failed to report that St. Joseph's Hospital had reduced his privileges on July 24, 1978, when he knew it. Finding 84.

Allegations D.1, D.2, D.3, D.4, and D.5 are Sustained.

E. Respondent, on or about September 1, 1988, filed an application for appointment to the medical staff at Massena Memorial Hospital, Massena, New York,wherein he knew the following disciplinary actions were falsely omitted.

1. Therein, Respondent failed to include his summary suspension of privileges by Nashoba on November 1, 1978.

2. Therein, Respondent failed to include termination of temporary privileges at Binghamton Hospital on October 3,1980 and denial of membership privileges on November 26,1980.

3. Therein, Respondent failed to mention suspension of temporary privileges at Our Lady of Lourdes on October 27,1980.

4. Therein, Respondent failed to include his summary suspension of practice by Nashoba on November 1, 1978.

5. Therein, Respondent failed to include his termination of temporary privileges to practice at Binghamton General on October 3, 1980 and denial of his application for membership on November 26, 1980.

6. Therein, Respondent failed to include termination of his temporary practice at Our Lady of Lourdes on October 27,1980.

7. Therein, Respondent failed to include reduction of his privilege to practice at St. Joseph's Hospital on July 24,1978

E.1, E.2,E.3,E.4,E.5,E.6,E.7:

The Respondent failed to report any of the disciplinary actions set forth in summary in Charges E.1 through E.7. in his application of September 1, 1988 to Massena Memorial Hospital.With full knowledge of each action, with an intent to deceive Massena Memorial Hospital's Medical and Executive Staff by the submission of an application with no reports of previous disciplinary actions by the four hospitals noted, Nashoba Community, Binghamton General, Our Lady of Lourdes Memorial, and St. Joseph's, the Respondent omitted any reference to the disciplinary actions. Findings 89,90.

<u>Allegations E.1,E.2,E.3,E.4,E.5,E.6,E.7 are Sustained</u>

F. Respondent, on or about April 2,1990 filed an Application for Medical Staff Re-Appointment and Clinical Privileges at Massena Memorial Hospital, Massena, New York when he knew the following disciplinary actions were falsely omitted.

1. Therein, Respondent failed to include his summary suspension of privileges by Nashoba on November 1, 1978.

2. Therein, Respondent failed to include termination of temporary privileges at Binghamton General on October 3, 1980 and denial of membership privileges on November 26, 1980.

3. Therein, Respondent failed to mention suspension of temporary privileges at our Lady of Lourdes on October 27, 1980.

4. Therein, Respondent failed to include his summary suspension from practice by Nashoba on November 1,1978.

5. Therein, Respondent failed to include his termination of temporary privileges to practice at Binghamton General on October 3, 1980 and denial of his application for membership on November 26, 1980.

6. Therein, Respondent failed to include termination of his temporary practice at Our Lady of Lourdes on October 27, 1980.

7. Therein, Respondent failed to include reduction of his privileges to practice at St. Joseph's on July 24,1978.

8. In addition, and therein,Respondent failed to include Our Lady of Lourdes as a hospital where he had practiced within ten years of his 1990 reapplication to Massena Memorial. Despite knowing he had practiced there, he intentionally falsified said application.

9. In addition, and therein, Respondent failed to include Binghamton General as a hospital where he had practiced within ten years of his 1990 reapplication to Massena Memorial. Despite knowing he had practiced there, he intentionally falsified said application.

F.1,F.2,F.3,F.4,F.5,F.6,F.7:

The Respondent failed to report any of the disciplinary actions set forth in summary in Charges F.1 through F.7 in his application of April 2, 1990 to Massena Memorial Hospital. With full knowledge of each action, with an intent to deceive Massena Memorial's Medical and Executive Staff by the submission of an application with no reports of previous disciplinary actions by the four hospitals noted, Nashoba Community,Binghamton General Our Lady of Lourdes Memorial, and St. Joseph's, the Respondent omitted any reference to the disciplinary actions. Findings 91,92,93.

F.8,F.9:

Respondent failed to list Our Lady of Lourdes Memorial and Binghamton General Hospitals where he had held medical staff privileges within ten years of the application date of April 2, 1990. He knew he had held temporary privileges at both facilities within the ten year period. He intentionally answered the question falsely. Findings 94,95.

Allegations F.1,F.2,F.3,F.4,F.5,F.6,F.7,F.8,F.9 are Sustained.

G. Respondent, on or about May 25, 1991, filed an Application for Appointment to the Medical Staff at The House of the Good Samaritan and Samaritan-Keep Home ,Watertown, New York when he knew the following disciplinary actions were falsely omitted.

1. Repeats each and every allegation set forth in allegation "F.6", above.

2. Repeats each and every allegation set forth in allegation "F.5", above,to the extent they relate to temporary privileges in the Department of Anaesthesia at Binghamton General Hospital [that] were terminated by said hospital on or about October 3,1980.

3. Repeats each and every allegation set forth in allegation "F.4", above.

4. Repeats each and every allegation set forth in allegation "F.7",above.

5. Repeats each and every allegation set forth in allegation "F.1", above.

6. Repeats each and every allegation set forth in allegation "F.2", above.

7. Repeats each and every allegation set forth in allegation "F.3", above.

G.1,G.2,G.3,G.4,G.5,G.6,G.7:

The Respondent failed to report any of the disciplinary actions set forth in Charges G.1 through G.7 in his Application for Appointment to the Medical Staff at The House of the Good Samaritan and Samaritan-Keep Home, Watertown, New York on May 25, 1991. With full knowledge of each action, with an intent to deceive The House of the Good Samaritan and Samaritan-Keep Home's Medical and Executive Staff by the

submission of an application with no reports of previous multiple disciplinary actions by the four hospitals noted, Nashoba Community, Binghamton General, Our Lady of Lourdes Memorial, and St. Joseph's, the Respondent omitted any reference to the disciplinary actions. Findings 96,97,98,99.

Allegations G.1,G.2,G.3,G.4,G.5,G.6,G.7 are Sustained.

CONCLUSIONS WITH REGARD TO FACTUAL ALLEGATIONS MASSACHUSETTS TWO YEAR SUSPENSION

H. Respondent was found guilty of professional misconduct by the Massachusetts Board of Registration in Medicine pursuant to a Final Decision and Order dated November 4,1987. Finding 100.

Respondent was found guilty of "conduct which places into question his competence to practice medicine, including gross misconduct in the practice of medicine, practicing medicine with gross misconduct, and with gross negligence on a particular occasion, in violation of Massachusetts General Laws ch. 112, sections 5(c) and 61, and 243 CMR 1.03. Finding 101.

The Machusetts Board's action was based on Respondent's actions on August 22, 1978, when he "deviated substantially from good and accepted standards of care in his treatment of [Mrs.L.A.] which substandard care contributed to her death on August 22, 1978." The Board noted that Respondent's conduct was of an "egregious nature." Finding 102.

The Massachusetts Board ordered that Respondent's license to practice medicine in Massachusetts be actually suspended for a period of two years. Finding 103.

The Hearing Committee has concluded that Respondent's conduct upon which the Massachusetts finding was based would, if committed in New York State, constitute misconduct under the Laws of the State of New York: Specifically N.Y.Educ.Law Section 6530(4) [practicing the profession with gross negligence on a particular occasion] and/or N.Y.Educ.Law Section 6530(6) [practicing the profession with gross incompetence]. McKinney Supp. 1992. The Administrative Officer concurs.

CONCLUSIONS WITH REGARD TO SPECIFICATION OF CHARGES

Having sustained all of the Factual Allegations, the Hearing Committee concludes with regard to the Specification of Charges:

First through Seventh Specification:
Moral Unfitness:

1. The facts in paragraphs A.1,A.2 and A.3, having been sustained, Count 1 of Moral Unfitness is Sustained.

2. The facts in paragraphs B.1, B.2 and B.3 having been sustained, Count 2 of Moral Unfitness ia Sustained.

3. The facts in paragraphs C and in C.1, C.2, C.3, C.4, and C.5 having been sustained, Count 3 of Moral Unfitness is Sustained.

4. The facts in paragraphs D and in D.1, D.2,D.3,D.4 and D.5 having been sustained, Count 4 of Moral Unfitness is Sustained.

5. The facts in paragraphs E and in E.1,E.2,E.3,E.4,E.5,E.6,and E.7 having been sustained, Count 5 of Moral Unfitness is Sustained.

6. The facts in paragraph F and in F.1,F.2,F.3,F.4,F.5,F.6,F.7,F.8, and F.9 having been sustained, Count 6 of Moral Unfitness is Sustained.

7. The facts in paragraphs G and in G.1,G.2,G.3,G.4,G.5,G.6, and G.7 having been sustained, Count 7 of Moral Unfitness is Sustained.

Eighth Specification:
Willfully Abusing a Patient:

8. The facts in paragraphs A and in A.1,A.2,and A.3 having been sustained, Count 8 of Willfully Abusing a Patient is Sustained.

Ninth through Fourteenth Specifications:
Willfully Filing a False Report:

9. The facts in paragraphs B and B.1,B.2 and B.3 having been sustained, Count 9 of Willfully Filing a False Report is Sustained.

10. The facts in paragraphs C and in C.1,C.2,C.3,C.4 and C.5 having been sustained, Count 10 of Willfully Filing a False Report is Sustained.

11.The facts in paragraphs D and in D.1,D.2,D.3,D.4,and D.5 having been sustained, Count 11 of Willfully Filing a False Report is Sustained.

12. The facts in paragraphs E and in E.1,E.2,E.3,E.4,E.5,E.6,and E.7 having been sustained, Count 12 of Willfully Filing a False Report is Sustained.

13. The facts in paragraphs F and in F.1,F.2,F.3,F.4,F.5,F.6,F.7,F.8, and F.9 having been sustained, Count 13 of Willfully Filing a False Report is Sustained.

14. The facts in paragraphs G and in G.1,G.2,G.3,G.4,G.5,G.6,and G.7 having been sustained, Count 14 of Willfully Filing a False Report is Sustained.

Fifteenth through Twenty-First Specifications:
Fraudulent Practice:

15. The facts in paragraphs A and in A.1,A.2 and A.3 having been sustained, Count 15 of Fraudulent Practice is Sustained.

16. The facts in paragraphs B and in B.1,B.2 and B.3 having been sustained, Count 16 of Fraudulent Practice is Sustained.

17. The facts in paragraphs C and in C.1,C.2,C.3,C.4,and C.5 having been sustained, Count 17 of Fraudulent Practice is Sustained.

18. The facts in paragraphs D and in D.1,D.2,D.3,D.4,and D.5 having been sustained, Count 18 of Fraudulent Practice is Sustained.

19. The facts in paragraphs E and in E.1,E.2,E.3,E.4,E.5,E.6, and E.7 having been sustained, Count 19 of Fraudulent Practice is Sustained.

20. The facts in paragraphs F and in F.1,F.2,F.3,F.4,F.5,F.6,F.7,F.8, and F.9 having been sustained, Count 20 of Fraudulent Practice is Sustained.

21. The facts in paragraphs G and in G.1,G.2,G.3,G.4,G.5,G.6,and G.7 having been sustained, Count 21 of Fraudulent Practice is Sustained.

Twenty-Second Specification:
Practicing with Gross Negligence:

22. The facts in paragraphs A and in A.3,A.4(a), A.4(b),A.4(c) and A.5(a),A.5(b),A.5(c) having been sustained, Count 22 of Practicing with Gross Negligence is Sustained.

Twenty-Third Specification:
Practicing with Gross Incompetence:

23. The facts in paragraphs A and in A.3,A.4(a),A.4(b),A.4(c) and A.5(a),A.5(b),A.5(c) having been sustained, Count 23 of Practicing with Gross Incompetence is Sustained.

Twenty-Fourth Specification:
Failing to Maintain Adequate Records:

24. The facts in paragraphs A and A.6 having been sustained, Count 24 of Failing to Maintain Adequate Records is Sustained.

Twenty-Fifth Specification:
Having Been Found Guilty of
Professional Misconduct:

25. The Charge of having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State, under N.Y.Educ.Law Section 6530(9)(b) (McKinney 1992) as set forth in the facts in paragraph H having been sustained, Count 25 of Having Been Found Guilty of Professional Misconduct is Sustained.

SUMMARY OF CONCLUSIONS

In the late 1970's, the Respondent sought help for his alcoholism from the Institute for Living. During the 1980's, he had intermittent therapy assistance that was followed in 1990 by inpatient treatment at Conifer Park. He has continued with outpatient therapy. An expert witness for the Respondent stated that some of the violations alleged may have been the result of the disease, and some may not be associated with it.

In the late 1980's, the Massachusetts Board's two year license suspension provided the Respondent an opportunity to rehabilitate himself, personally and professionally. Evidence and testimony at the hearing clarified his failure to do so.

Throughout the period, the Respondent's judgement has been questionable. His lack of judgement in falsifying medical staff applications at the half dozen hospitals that are in the hearing record documents a pattern of intransigent disciplinary problems. The Respondent' ability to handle stress may be seen in his judgement of the interview with the State Police, a very straightforward and professional interrogation. The inability to handle an application and an interview are danger signals in an anaesthesiologist whose work frequently requires the ability to make life threatening decisions under stress.

The Respondent's testimony relied on an effort to misconstrue some of the disciplinary actions by hospitals; and, finally, to rely on alcoholism as an explanation of his predicament.

The Hearing Committee is required to measure the number and type of the charges that are sustained against the life and character of the Respondent. And such must be done with a duty to the public and the profession in the assessment of a penalty in the matter.

The Committee has found no reason to believe the Respondent can initiate a sustained effort at rehabilitation. The Respondent's treatment of Patient A, his lack of judgement, his violations of ethical standards, his record at the medical facilities he helped staff, only promise more of the same. The violations themselves: seven counts of moral unfitness, one count of willfull abuse of a patient, six counts of willfully filing false reports, seven counts of fraudulent practice, and one count each of practicing with gross negligence, practicing with gross incompetence and failing to maintain adequate records cannot be tolerated .

The Hearing Committee unanimously concludes the license to practice medicine of the Respondent should be revoked.

ORDER

IT IS HEREBY ORDERED that the license to practice medicine of the Respondent, PETER MICHAEL GLASSMAN, M.D., License Number 104663 issued by the New York State Education Department shall be REVOKED, and that,

This Order shall take effect thirty (30) days from the date of service upon Respondent's counsel by personal service or certified or registered mail.

DATED: Pittsford, New York
February 13 ,1993

BY: [signature]
THERESE G. LYNCH, M.D.
(Chairperson)

KENNETH A. DE BARTH, R.P.A.
PAUL M. DE LUCA, M.D.

ATTACHMENTS

ATTACHMENT I . . . Statement of Charges

ATTACHMENT II . . . Answer

ATTACHMENT III . . . Findings of Fact of the Respondent

ATTACHMENT IV . . . Adm.Of.Ex .I

ATTACHMENT V . . . Adm.Of.Ex. II

ATTACHMENT VI . . . Adm.Of.Ex .III