



# The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

**ZEKROLLAH HEDAYAT**

**No. 10055**

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

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## REPORT OF THE REGENTS REVIEW COMMITTEE

ZEKROLLAH HEDAYAT, hereinafter referred to as respondent, was licensed to practice as a physician in the State of New York by the New York State Education Department.

The instant disciplinary proceeding was properly commenced and on July 29, September 9, September 13, September 26, and September 27, 1988 a hearing was held before a hearing committee of the State Board for Professional Medical Conduct. A copy of the statement of charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

The hearing committee rendered a report of its findings, conclusions, and recommendation, a copy of which is annexed hereto, made a part hereof, and marked as Exhibit "B".

The hearing committee concluded that respondent was guilty of the first through fifth, seventh through fourteenth, and sixteenth

**ZEKROLLAH HEDAYAT (10055)**

through nineteenth specifications of the charges, and guilty, to the extent indicated, of the sixth and fifteenth specifications of the charges. The hearing committee recommended that respondent's license to practice as a physician in the State of New York be revoked.

On February 10, 1989 the Commissioner of Health recommended to the Board of Regents that the findings of fact, conclusions, and recommendation of the hearing committee be accepted. A copy of the recommendation of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "C".

On March 3, 1989 the Commissioner of Health issued an order that the hearing committee reconvene and reevaluate the record in view of the standard of proof of a preponderance of the evidence as set forth in Public Health Law §230(10)(f) and issue a supplemental report. A copy of the order of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "D".

On April 7, 1989 the hearing committee issued a supplemental report amending its previous report in pertinent parts to the extent of clarifying that the standard of proof used was a preponderance of the evidence, as set forth in Public Health Law §230(10)(f). A copy of the hearing committee's supplemental report, without attachment, is annexed hereto, made a part hereof, and marked as Exhibit "E".

**ZEKROLLAH HEDAYAT (10055)**

On May 12, 1989 the Commissioner of Health recommended to the Board of Regents that the findings of fact, conclusions, and recommendation of the hearing committee as set forth in the hearing committee's report and supplemental report be accepted. A copy of the May 12, 1989 recommendation of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "F".

On October 17, 1989 respondent appeared before us in person and was represented by his attorney, Terence P. O'Connor, Esq., who presented oral argument on behalf of respondent. E. Marta Sachey, Esq., presented oral argument on behalf of the Department of Health.

Petitioner's recommendation, which is the same as the Commissioner of Health's recommendation, as to the measure of discipline to be imposed, should respondent be found guilty, was that respondent's license to practice as a physician in the State of New York be revoked.

Respondent's recommendation as to the measure of discipline to be imposed, should respondent be found guilty, was that respondent's license to practice as a physician in the State of New York be suspended with a stay with probation and psychological counseling.

We have considered the record as transferred by the Commissioner of Health in this matter, as well as respondent's October 2, 1989 letter with attached documents and briefs.

**ZEKROLLAH HEDAYAT (10055)**

We note that the hearing committee, in its original recommendation, stated that respondent "has been convicted of Medicaid fraud." We understand this to mean that the hearing committee found respondent guilty of the nineteenth specification of the charges, although the hearing committee and Commissioner of Health could have been more precise. However, we note that we independently conclude upon our review of the entire record that respondent is guilty, by a preponderance of the evidence, of the nineteenth specification of the charges. This renders moot the hearing committee's and Commissioner of Health's lack of precision as to the nineteenth specification of the charges.

We unanimously recommend the following to the Board of Regents:

1. The hearing committee's findings of fact, its conclusions, as amended by its April 7, 1989 supplemental report, as to the question of respondent's guilt, and its recommendation as to the measure of discipline be accepted as hereafter indicated, and the Commissioner of Health's May 12, 1989 recommendation as to the hearing committee's findings of fact, conclusions, and recommendation be accepted as hereafter indicated;
2. Respondent be found guilty, as hereafter indicated, by a preponderance of the evidence as follows: the first through fifth specifications of the charges, the sixth

**ZEKROLLAH HEDAYAT (10055)**

specification of the charges to the extent indicated in the hearing committee report, the seventh through ninth specifications of the charges, the tenth through fourteenth specifications of the charges based on willfully harassing and abusing patients physically, the fifteenth specification of the charges, based on willfully harassing and abusing a patient physically, to the extent indicated in the hearing committee report, the sixteenth specification of the charges based on willfully harassing and abusing a patient physically, the seventeenth and eighteenth specifications of the charges based on willfully harassing a patient verbally, and the nineteenth specification of the charges; and

3. Respondent's license to practice as a physician in the State of New York be revoked upon each specification of the charges of which we recommend respondent be found guilty, as aforesaid. Respondent may, pursuant to Rule 24.7(b) of the Rules of the Board of Regents, apply for restoration of said license after one year has elapsed from the effective date of the service of the order of the Commissioner of Education to be issued herein; but said application shall not be granted automatically.

ZEKROLLAH HEDAYAT (10055)

Respectfully submitted,

ADELAIDE L. SANFORD

SIMON J. LIEBOWITZ

JOHN T. MCKENNAN

  
Chairperson

Dated: November 16, 1989

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

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IN THE MATTER : STATEMENT  
OF : OF  
ZEKROLLAH HEDAYAT, M.D. : CHARGES

-----X

ZEKROLLAH HEDAYAT, M.D., the Respondent, was authorized to practice medicine in New York State on April 3, 1981 by the issuance of license number 145449 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1986 through December 31, 1988 at 411 Prospect Street, Herkimer, New York 13350.

FACTUAL ALLEGATIONS

A. Respondent, on or about August 23, 1983 and at various times through April 5, 1984, provided medical care to Patient A (Patients denominated by letters are identified in the Appendix) at his office at Fall Street, Seneca Falls, New York 13148 [hereinafter "his office"].

1. Respondent, during the course of an appointment at his office on or about April 5, 1984, advised Patient A that he wanted to perform a PAP test and requested her to disrobe and lay on an examining table. Thereafter, Respondent inserted

his penis into Patient A's vagina and moved it in and out.

2. Respondent, on numerous occasions during the course of appointments Respondent had with Patient A at his office from the approximate period of August, 1983 through March, 1984, advised Patient A that he wanted to examine her "below" and thereafter inserted his penis into Patient A's vagina.

B. Respondent, on or about September, 1983 and at various times through April, 1984, provided medical care to Patient B at his office.

1. Respondent, during the course of approximately ten appointments at his office with Patient B, engaged in sexual intercourse with Patient B.
2. Respondent, during the aforesaid appointments with Patient B at his office, refrained from giving Patient B prescriptions which Respondent had written for the controlled substance Tranxene until after Patient B engaged in sexual intercourse with him.
3. Respondent, during the time period in which Patient B was seeing him at his office for medical care, engaged in sexual intercourse on one occasion with Patient B at Respondent's residence at 339 West Lake Road, Geneva, New York 13148.

(1 GLASS FACTORY BAY RD)

C. Respondent, on or about early May, 1983, saw Patient C at his office with regard to the Patient's respiratory problems. The office visit was a follow-up visit to the Patient's emergency room visit, on or about April 30, 1983, to the Seneca Falls Hospital, 2 Fall Street, Seneca Falls, New York where she was seen by Respondent.



1. Respondent, during the course of the Patient's visit at his office, gave Patient C a pelvic "examination". This procedure and/or the manner in which it was performed was not medically justified.
2. Respondent, during the performance of the aforesaid pelvic "examination",
  - (i) fondled Patient C's genital area by rhythmically moving his finger on Patient C's clitoris as he moved his fingers inside her vagina.
  - (ii) asked Patient C if she would work for him as a receptionist.
  - (iii) asked Patient C to go out to dinner with him to discuss Respondent's aforesaid offer of employment.

D. Respondent, on or about August 3, 1987, in the County Court of Seneca Falls, in the case of The People of the State of New York v. Zekrollah Hedayat (Index No. 23636) was convicted, upon his plea of guilty, of one count of Grand Larceny in the 3rd Degree and one count of offering a false instrument for filing in the 1st Degree, both arising from Respondent's submission of claims for payment under the New York State Medical Assistance Program.

FIRST THROUGH NINTH SPECIFICATIONS

CONDUCT EVIDENCING MORAL UNFITNESS

Respondent is charged with committing unprofessional conduct within the meaning of N.Y. Educ. Law §6509(9) (McKinney 1985) and 8 NYCRR §29.1(b)(5) (1987) by his conduct in the practice of a profession which evidences moral unfitness to practice the profession, in that the State Board for Professional Medical Conduct [hereinafter "Petitioner"] alleges:

1. The facts in Paragraphs A and A.1.
2. The facts in Paragraphs A and A.2.
3. The facts in Paragraphs B and B.1.
4. The facts in Paragraphs B and B.2.
5. The facts in Paragraphs B and B.3.
6. The facts in Paragraphs C and C.1.
7. The facts in Paragraphs C and C.2(i).
8. The facts in Paragraphs C and C.2(ii).
9. The facts in Paragraphs C and C.2.(iii).

TENTH THROUGH EIGHTEENTH SPECIFICATIONS

HARASSING, ABUSING OR INTIMIDATING A PATIENT

Respondent is charged with committing unprofessional conduct within the meaning of N.Y. Educ. Law §6509(9) (McKinney 1985) and 8 NYCRR §29.2(a)(2) (1987) by his willfully harassing, abusing or

intimidating a patient either physically or verbally, in that  
Petitioner alleges:

10. The facts in Paragraphs A and A.1.
11. The facts in Paragraphs A and A.2.
12. The facts in Paragraphs B and B.1.
13. The facts in Paragraphs B and B.2.
14. The facts in Paragraphs B and B.3.
15. The facts in Paragraphs C and C.1.
16. The facts in Paragraphs C and C.2(i).
17. The facts in Paragraphs C and C.2(ii).
18. The facts in Paragraphs C and C.2(iii).

#### NINETEENTH SPECIFICATION

##### CRIMINAL CONVICTION

Respondent is charged with committing unprofessional conduct within the meaning of N.Y. Educ. Law §6509(5)(a)(i) (McKinney 1985) by his having been convicted of committing an act constituting a crime under New York State law, in that Petitioner alleges:

19. The facts in Paragraph D.

DATED: Albany, New York

*Peter D. Van Buren*

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PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical  
Conduct

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

IN THE MATTER

OF

ZEKROLLAH HEDAYAT, M.D.

REPORT OF

HEARING

COMMITTEE

TO: HONORABLE DAVID AXELROD, M.D.  
COMMISSIONER OF HEALTH OF THE STATE OF NEW YORK

The undersigned Hearing Committee (the Committee) consisting of William W. Faloon, M.D., Chairperson, John P. Frazer, M.D. and Matthew M. P. Cammen, was duly designated, constituted and appointed by the State Board for Professional Medical Conduct (the Board). Marshall Jay Grauer, Esq. served as the Administrative Law Judge.

The hearing was conducted pursuant to the provisions of New York Public Health Law Section 230 and New York State Administrative Procedure Act Sections 301-307 to receive evidence concerning the charges that the Respondent has violated provisions of the New York Education Law Section 6509. 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 makes a Report of its Findings of Fact, Conclusions and Recommendations to the New York State Commissioner of Health

**RECORD OF PROCEEDINGS**

Notice of Hearing and  
Statement of Charges dated: June 2, 1988

Hearing Dates: July 29, 1988  
September 9, 1988  
September 13, 1988  
September 26, 1988  
September 27, 1988

Hearing location: Holiday Inn  
Waterloo, New York

Date and location of  
deliberations held by  
Committee: November 9, 1988  
Holiday Inn  
Waterloo, New York

The State Board for Professional  
Medical Conduct appeared by: E. Marta Sachey, Esq.  
Empire State Plaza  
24th Floor  
Albany, New York 12237

Respondent appeared by: Carter & Conboy  
Terrence P. O'Conner, Esq.  
Of Counsel  
74 Chapel Street  
Albany, New York 12207

Respondent's Address: 142 Hillview Avenue  
Waterbury, CT 06704-2640

**WITNESSES**

**FOR THE DEPARTMENT**

PATIENT "A"	A patient of Respondent
HUSBAND OF PATIENT "A"	Husband of Respondent's patient
PATIENT B	Patient of the Respondent
PATIENT C	Patient of the Respondent
G. THEODORE RUCKERT	Board Certified OB/GYN

RAFAEL ACOSTA

Senior Investigator with  
Department of Health

FOR THE RESPONDENT

KARSEN POORMON

Fact Witness

DAVID LEE FOSTER

Attorney for Respondent in  
criminal matter

ZAKROLLAH HEDAYAT

Respondent

SUMMARY OF CHARGES - PRELIMINARY DISCUSSION

The within proceeding primarily deals with the alleged sexual abuse by the Respondent of three female patients (A, B and C) during a period from August of 1983 through April of 1984, during which time he practiced his profession at Seneca Falls, New York.

Respondent is also charged with having been convicted of Grand Larceny in the 3rd Degree based upon his plea of guilty to charges arising out of the submission of fraudulent claims under the New York State Medical Assistance Program (Medicaid).

These proceedings do not relate to the level of skill or medical knowledge of the Respondent. Rather, the questions presented to the Committee are whether the Respondent did, in fact, commit the acts of misconduct, as alleged and as testified to by the patients, or whether the Respondent's version of the events is credible. The Findings hereafter set forth, in part, therefore, reflect the testimony that the Committee found to be credible under all of the circumstances. An analysis of the credibility of the witnesses and the Respondent and the basis for

the conclusions will be covered in the Summary of Conclusions.

#### PRELIMINARY FINDINGS

1. Respondent was authorized to practice medicine in New York State in 1981 and was issued license number 145449 by the New York Education Department. Respondent is currently registered with the New York State Education Department to practice medicine from the period of January 1, 1986 through December 31, 1988 at 411 Prospect Street, Herkimer, New York 13350. (Exh. "2" - p. 542)

#### FACTUAL ALLEGATIONS AND CHARGES

A. Respondent, on or about August 23, 1983 and at various times through April 5, 1984 provided medical care to Patient A at his office at Fall Street, Seneca Falls, New York 13148 .

1. Respondent, during the course of an appointment at his office on or about April 5, 1984, advised Patient A that he wanted to perform a PAP test and requested her to disrobe and lay on an examining table. Thereafter, Respondent inserted his penis into Patient A's vagina and moved it in and out.
2. Respondent, on numerous occasions during the course of appointments Respondent had with Patient A at his office from the approximate period of August, 1983 through March, 1984, advised Patient A that he wanted to examine her "below" and thereafter inserted his penis into Patient A's vagina.

#### FINDINGS

2. Respondent first treated Patient A on August 23, 1983 at his office in Seneca Falls, New York, which was located contiguous to the Seneca Falls Hospital. (p. 338, 577, 578, 621)



(Exh. "12")

3. Patient A is a woman now 23 years of age, who was married in December of 1983 and has one child. At her initial contact with Respondent she was 17 years of age. (p. 313, 314, 335) (Exh. "12")

4. Patient A's history of school and employment, as well as her testimony in this proceeding, clearly demonstrate that she has limited learning and intellectual ability. She has a medical history which includes seizures, and she had a seizure as recently as one month immediately prior to the time she testified in this proceeding. (p. 336, 444)

5. Respondent saw Patient A on approximately 15 occasions during the period from August 23, 1983 through and including April 5, 1984. (p. 339, 598) (Exh. "12")

6. Respondent's primary concern and purpose in treating Patient A was epilepsy and psychotherapy. (p. 653)

7. During the course of the April 5, 1984 visit, Patient A's husband was present and in the examining room with both "A" and the Respondent. After a preliminary exam, during which time Respondent drew some blood, Respondent stated to "A" and her husband that he was going to perform a PAP smear, and Patient A's husband left the room pursuant to the direction of Respondent. (p. 317, 343, 404, 598)

8. No nurse or receptionist was present. The only period of time that Respondent had any employees would have been from approximately January of 1983 through April of 1983. (p. 609)

9. Respondent instructed Patient A to undress from the waist down and lie down on the examining table. (p. 343-344)

10. Respondent placed himself between Patient A's legs and thereafter inserted his penis into her vagina and moved it in and out. (p. 344, 345)

11. "A" heard Respondent unhooking his trousers and unzipping his fly before he inserted his penis into her. (p. 344, 345) (Exh. "13")

12. After Respondent inserted his penis in "A" he moved back and forth, during which time Patient A could feel his penis moving inside of her and could also feel Respondent's skin coming in rhythmic contact with the inside of her thighs. (p. 344, 345, 413, 414) (Exh. "13")

13. There are no entries in Respondent's records with respect to the care and treatment of Patient A, of any PAP tests or any other gynecological procedures or complaints performed on the visit of April 5, 1984. (Exh. "12") (Exh. "12a")

14. After Respondent withdrew his penis from Patient A, he showed her a cloth with blood on it and inquired whether she was having her menstrual period. "A" answered in the negative. (p. 415) (Exh. "13")

15. Six days subsequent to the April 5th office visit, and on April 11, 1984 Patient A was requested to appear at the local police station in connection with an investigation being conducted by the Seneca Falls Police Department. At that time, "A" signed a statement of the events of April 5, 1984 and further

reported in said statement other sexual misconduct by the Respondent, to wit: that on prior occasions Respondent had put his penis in "A"'s vagina after advising Patient A that he wished to examine her "below." (p. 350, 379-400, 418, 434-438) (Exh. "13")

16. No PAP tests were performed by the Respondent during the course of his treatment of Patient A prior to April 5, 1984.

### CONCLUSIONS

The Committee concludes unanimously that the factual allegations set forth in Paragraph "A", "A(1)" and "A(2)" have been adequately supported by substantial probative evidence and have been sustained. The Committee will hereafter in this report set forth in its Discussion and Summary of Conclusions its determination on Specifications One through Nineteen.

### FACTUAL ALLEGATIONS AND CHARGES

B. Respondent, on or about September 1983 and at various times through April, 1984, provided medical care to Patient B at his office.

1. Respondent, during the course of approximately ten appointments at his office with Patient B, engaged in sexual intercourse with Patient B.
2. Respondent, during the aforesaid appointments with Patient B at his office, refrained from giving Patient B prescriptions which Respondent had written for the controlled substance Tranxene until after Patient B engaged in sexual intercourse with him.
3. Respondent, during the time period in which Patient B was seeing him at his office for medical care,

engaged in sexual intercourse on one occasion with Patient B at Respondent's residence at One Glass Factory Bay Road, Geneva, New York 13148.

#### FINDINGS

17. Patient B first saw Respondent approximately September 2, 1983 at the emergency room in Seneca Falls Hospital, Seneca Falls, New York in connection with a lacerated finger. (Exh. "5")

18. Thereafter and on or about September 9, 1983 Respondent saw Patient B at his office for a follow-up visit. "B" observed a plaque on his office wall indicating that Respondent was trained in psychiatry and suggested that he treat her. Respondent thereafter undertook to treat Patient B for anxiety and drug addiction. (p. 169, 171)

19. Respondent continued to treat Patient B, purportedly for drug addiction and related problems, until on or about April 20, 1984. (Exh. "5")

20. At the time she placed herself in Respondent's care, Patient B, 35 years of age, was divorced, had not been gainfully employed since the 1970's and was a recipient of public assistance.

21. Patient B had a medical history of migraine headaches, foot problems and carpal tunnel syndrome of both hands. However, the primary focus of Respondent's treatment was for migraine headaches and drug addiction. (p. 169, 171, 692, 693) (Exh. "5")

22. "B" had been using quantities of Valium, Tranxene and painkillers such as Codeine. She had acquired these substances,

in part, by treatment with three other physicians and did not advise Respondent of this fact. (p. 169, 172, 193, 241-243)

23. On one of her early visits, "B" told Respondent she was dependent upon drugs. Respondent indicated he would devise a plan to reduce "B"'s ingestion of drugs. (p. 205, 693) (Exh. "5")

24. In October of 1983 Respondent had sexual intercourse with Patient B for the first time. This took place at Respondent's office. (p. 177)

25. Regular sexual intercourse between Respondent and Patient B took place on approximately 12 to 15 occasions during the period from October of 1983 to December 1983 or January 1984. (p. 177-179)

26. A routine evolved whereby Respondent would write a prescription for Tranxene for "B" but would not give it to her until after they had sexual intercourse in the examining room of his office. (p. 177-179, 272) (Exh. "7")

27. On one occasion, Respondent and Patient B had sexual intercourse at his home when Patient B went there to obtain drugs for a migraine headache. (p. 179, 245-246)

28. On April 19, 1984 Respondent met with an investigator from the New York State Health Department and learned that "B" had altered certain prescriptions he had written for her, and Respondent thereafter signed a statement verifying same. (p. 723-725) (Exh. "8")

29. The last office visit took place on April 20, 1984 at

which time Respondent told Patient B he was aware of her altering prescriptions and would not write any more scripts for her. "B" advised Respondent she would seek another therapist. (p. 237)

30. Patient B has since received further counseling and has successfully dealt with her drug problem. (p. 182, 183, 265, 266)

31. On April 23, 1984 Patient B gave a signed statement to a Health Department investigator in which she admitted altering certain prescriptions and also alleged that she had been having sexual intercourse with Respondent and that he had been writing her prescriptions. (Exh. "10")

#### CONCLUSIONS

The Committee concludes unanimously that the factual allegations set forth in Paragraph "B", "B(1)", "B(2)" and "B(3)" have been adequately supported by substantial probative evidence and have been sustained.

The Committee will hereafter in this report set forth its determination and conclusions with respect to Specifications One through Nineteen in the Discussion and Summary Conclusions.

### FACTUAL ALLEGATIONS AND CHARGES

C. Respondent, on or about early May, 1983, saw Patient C at his office with regard to the Patient's respiratory problems. The office visit was a follow-up visit to the Patient's emergency room visit, on or about April 30, 1983, to the Seneca Falls Hospital, 2 Fall Street, Seneca Falls, New York where she was seen by Respondent.

1. Respondent, during the course of the Patient's visit at his office, gave Patient C a pelvic "examination". This procedure and/or the manner in which it was performed was not medically justified.
2. Respondent, during the performance of the aforesaid pelvic "examination",
  - (i) fondled Patient C's genital area by rhythmically moving his finger on Patient C's clitoris as he moved his fingers inside her vagina.
  - (ii) asked Patient C if she would work for him as a receptionist.
  - (iii) asked Patient C to go out to dinner with him to discuss Respondent's aforesaid offer of employment.

### FINDINGS

32. Respondent first saw Patient C at Seneca Falls Hospital Emergency Room on or about April 30, 1983. (Exh. "4")

33. Patient C is a woman who at that time was 27 years old. She was married with two children. (p. 42) (Exh. "4")

34. Patient C arrived at the emergency room complaining of shortness of breath and reporting two asthma attacks earlier that day. (Exh. "4")

35. Respondent saw Patient C in his office for a follow-up

on or about May 2, 1983. (p. 47, 87) (Exh. "4") Respondent was made aware that Patient C was on birth control pills. He advised "C" that her respiratory problems might be related to the fact that she was taking birth control pills. (p. 51, 850)

36. Respondent directed "C" to undress below the waist and placed her on the examining table in his office with her feet in the stirrups. (p. 50-52)

37. In conducting the examination, Respondent stood at her left side, extended one hand over her left leg and manipulated her clitoris back and forth. He inserted a finger of his other hand in her vagina and moved it in and out. (p. 52, 53, 97, 138-139)

38. During the time that Respondent was manipulating Patient C's genitals, he asked her if she would like a job with him as a receptionist and also invited her out to dinner. Patient C declined both proposals. (p. 53, 96)

39. The medically accepted way to conduct a gynecological examination would be to stand or sit between the legs of the patient so that the external aspects can be visualized and then use a speculum to make an internal exam. (p. 218, 286)

40. The examination conducted by Respondent did not comport with the accepted standards of medical care. (p. 289)

41. A gynecological exam would not be of primary importance to any pulmonary problems secondary to oral contraceptive agents. (p. 291)



### CONCLUSIONS

The Committee concludes unanimously that the factual allegations set forth in Paragraphs "c", "c(1)", "c(2)", "c(2)(i)", "c(2)(ii)" and "c(2)(iii)" were adequately supported by substantial evidence and were sustained with the exception that the Committee does not conclude that a pelvic examination was unjustified. In this regard the Committee gives the Respondent the benefit of any doubt and concludes that if properly performed, a pelvic exam may have been proper under the circumstances.

### DISCUSSION

The Hearing Committee has carefully reviewed the entire record, including exhibits and the final written submissions of counsel.

The Committee was confronted with conflicting testimony with respect to certain events that took place between Respondent and Patients A, B and C.

In concluding that the factual allegations were sustained, the Committee simultaneously concluded that Respondent's version of the events was not worthy of belief. The Committee reached these conclusions for several reasons as will hereafter be detailed.

Respondent's general demeanor during his testimony and his tendency to frequently be unresponsive and/or evasive in his answers did not inspire confidence in Respondent's credibility.

More specifically, Respondent testified to certain facts that gave rise to a fair inference that his veracity was suspect. There is no question that Respondent entered a plea of guilty to Medicaid fraud, i.e. making false statements to obtain money from a governmental agency. It is clear that the Respondent is capable of telling a falsehood. The Committee does not believe that Respondent's plea of guilty, in the plea bargaining process, was a matter of simple expediency, as Respondent would have you believe, but rather was an accurate admission of guilt.

Furthermore, Respondent admits that on April 5, 1986 he had Patient A disrobe in his office for a gynecological exam, but no corresponding entries appear in his records. Respondent accounts for this by explaining that at the end of each work day he would make more elaborate notes on eight by ten sheets of paper to supplement the original notes he made during an exam and that these additional notes would reflect the gynecological exam.

(p. 773-781)

With respect to Patient A, Respondent alleges he gave to the New York State Health Department investigator these additional notes, but they have been lost or misplaced, presumably by the Health Department, and this is why they are not part of the case record. This assertion is in direct contradiction to the testimony of the investigator for the Health Department. (p. 814-816)

Respondent also testified that these eight by ten sheets of notes pertaining to Patient B were provided to the Department of

Social Services and that they too lost, misplaced or withheld said notes and that consequently these notes are also missing from the record. It appears that if these sheets of paper actually did exist they would number anywhere from 25 to 50 sheets for both patients. The Committee does not accept as credible Respondent's testimony that two separate government agencies lost his records and concludes that these notes never existed and are another misrepresentation of Respondent.

Respondent asserts that with respect to Patient C there are no notes of his exam due to the fact that two unidentified people from Medicaid took about 50 patient records from his Richfield Springs office. It is interesting to note that Respondent stated that some of the records taken did not even relate to Medicaid patients. (p. 859-862)

The Committee further notes that Respondent testified that the examining table used was approximately four feet high. (p. 600). This assertion was made in connection with Respondent's treatment of Patient A to negate the physical possibility of Respondent molesting Patient A as alleged. The Committee finds the testimony with respect to the height of the table incredible.

Finally, the Committee is mindful of Respondent's recent application to Coney Island Hospital, which was made on or about March 7, 1988, which further impinges on Respondent's credibility.

Respondent admitted in his testimony that he failed to list a number of past professional associations and employment in this

application, and in response to a specific question in the application, he denied his recent criminal conviction. (p. 617-620) The Committee does not accept Respondent's assertion that this was an ingenuous answer based upon his belief that the fact that an appeal to the conviction might be pending would justify his answer to that question.

The Committee has carefully reviewed the testimony of Patients A, B and C and accepts their testimony as credible. The Committee is not persuaded by Respondent counsel's arguments that there was any adequate motive for any of them to prevaricate their stories.

#### SUMMARY OF CONCLUSIONS

In summary, the Committee concludes that Respondent committed unprofessional conduct within the meaning of New York Education Law §6509(9) (McKinney 1985) and 8 NYCRR §29.1(b)(5) (1987) by misconduct in the practice of his profession, which evidences moral unfitness to practice in the profession, as set forth in the First, Second, Third, Fourth, Fifth, Seventh, Eighth and Ninth Specifications.

With respect to the Sixth Specification, the Committee gives the Respondent the benefit of any doubt and concludes that the pelvic examination of Patient C might have been medically justified under the circumstances, but the manner in which it was performed was not medically justified.

The Committee further concludes that Respondent committed

unprofessional conduct within the meaning of New York Education Law §6509(9) (McKinney 1985) and 8 NYCRR §29.2(a)(2) (1987) by his willfully harassing, abusing or intimidating Patients A, B and C, as set forth in Specifications Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Sixteenth, Seventeenth and Eighteenth. With respect to the Fifteenth Specification, the Committee concludes that although a pelvic examination might have been justified, the manner in which it was performed was not medically justified.

#### RECOMMENDATIONS

Respondent has conducted himself in a manner evidencing moral unfitness and has harassed and/or abused three patients. His conduct toward these patients has been one of deception and sexual abuse. Additionally, Respondent has been convicted of Medicaid fraud. These offenses all demonstrate a complete lack of integrity and evince in the minds of the Hearing Committee a certain moral depravity.

Respondent used his position of trust as a physician to take advantage of the vulnerability of his patients to satisfy his own appetites. To compound matters, in the case of Patient B he supplied drugs for sex to a patient to whom he had an obligation to help rather than harm.

The Committee is aware of the fact that there are several alternative penalties for professional misconduct, as set forth

in §6511 of the Education Law and will hereafter discuss same insofar as they may relate to the instant case.

Censure and reprimand, suspension, annulment of license, fine, education and/or retraining, performance of public service or probation are, in the minds of the Committee, inadequate or inappropriate.

Censure and reprimand or suspension are not adequate in view of the misconduct involved, and further it is the opinion of the Committee that Respondent's lack of integrity is so fundamental that the passage of time will neither alleviate nor correct this deficiency.

Education and retraining are inappropriate, since the issues here are those of morality and integrity, not competency.

Performance of public service of any number of hours is neither adequate nor appropriate particularly since it is the objective of the Committee to terminate any and all contact the Respondent has with the public at large in his capacity as a physician.

Nor does the Committee feel a fine is appropriate. Although funds were involved in the Medicaid fraud, the Respondent has already made restitution. The Committee feels that the primary focus of Respondent's misconduct was not financial gain.

In summary, after a careful review of all alternative measures, it is the unanimous recommendation of the Committee that the only appropriate penalty is revocation of the Respondent's license, and said revocation should not in any way


be stayed upon any conditions.

Respondent testified that his conviction for Medicaid fraud was supposed to be appealed. Whether or not said appeal is successful would have no bearing on this Committee's recommendations for revocation, as it is the strong conviction of the Committee that even absent the Medicaid fraud charges, the Respondent's conduct warrants a termination of his practice of medicine.

The above penalties have been reviewed to leave no doubt that the Committee has considered said alternatives before arriving at its final recommendation.

Respondent's license to practice medicine in the State of New York should be revoked.

Respectfully submitted,



WILLIAM W. FALOON, M.D.

Chairperson

JOHN P. FRAZER, M.D.

MATTHEW M. P. CAMMEN

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

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IN THE MATTER :  
OF : COMMISSIONER'S  
ZEKROLLAH HEDAYAT, M.D. : RECOMMENDATION

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

A hearing in the above-entitled proceeding was held on July 29, September 9, 13, 26 and 27, 1988. Respondent Zekrollah Hedayat, M.D., appeared by Carter & Conboy, Esqs., Terrence P. O'Conner, Esq., of Counsel. Petitioner appeared by Peter J. Millock, Esq., General Counsel, E. Marta Sachey, Esq., of Counsel.

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

EXHIBIT "C"



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

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

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

Dated: Albany, New York

*February 10*, 1989



DAVID AXELROD, M.D.  
Commissioner of Health  
State of New York

TO:

E. Marta Sachey, Esq.  
Office of Professional Medical Conduct  
New York State Department of Health  
Corning Tower - 25th Floor  
Empire State Plaza  
Albany, New York 12237-0026

Terrence P. O'Conner, Esq.  
Carter & Conboy  
74 Chapel Street  
Albany, New York 12207

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

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IN THE MATTER :  
OF : COMMISSIONER'S  
ZEKROLLAH HEDAYAT, M.D. : ORDER

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TO: Marshall Jay Grauer  
Administrative Officer  
Suite 1035 University Building  
120 East Washington Street  
Syracuse, New York 13202

A hearing in the above-entitled proceeding was held on July 29, September 9, 13, 26 and 27, 1988. Respondent Zekrollah Hedayat, M.D., appeared by Carter & Conboy, Esqs., Terrence P. O'Conner, Esq., of Counsel. Petitioner appeared by Peter J. Millock, Esq., General Counsel, E. Marta Sachey, Esq., of Counsel.

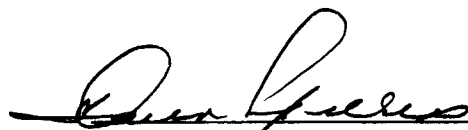
On reading the transcript of the hearing, the exhibits and other evidence, and the findings, conclusions and recommendation of the Committee, I signed a Commissioner's Recommendation, dated February 10, 1989. Before my recommendation and the record were sent to the Board of Regents, E. Marta Sachey, by letter to me of February 14, 1989, requested that I reconsider my recommendation because the Committee may

have applied an incorrect standard of proof in reaching its conclusions. Upon further review of the record, I conclude that the Committee may have done so.

THEREFORE, I hereby ORDER that you reconvene the Committee by conference telephone communication or in another appropriate manner; that the Committee reevaluate the record in view of the standard of proof of a preponderance of the evidence as set forth in Public Health Law #230(10)(f); and that you advise me, by a Supplementary Report of the Committee executed by the chairperson, of the Committee's findings, conclusions and recommendations.

Dated: Albany, New York

March 3 , 1989

  
\_\_\_\_\_  
DAVID AXELROD, M.D.  
Commissioner of Health  
State of New York

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

IN THE MATTER  
OF  
ZEKROLLAH HEDAYAT, M.D.

SUPPLEMENTAL  
REPORT OF  
HEARING COMMITTEE

TO: HONORABLE DAVID AXELROD, M.D.  
COMMISSIONER OF HEALTH OF THE STATE OF NEW YORK

The undersigned Hearing Committee (the Committee) consisting of William W. Faloon, M.D., Chairperson, John P. Frazer, M.D. and Matthew M. P. Cammen having been heretofore duly designated, constituted and appointed by the State Board for Professional Medical Conduct and having heretofore held hearings relative to the above-captioned matter and having rendered a report on or about January 17, 1989 containing Findings, Conclusions and Recommendations, and

The Commissioner of Health of the State of New York having issued an Order dated March 3, 1989, a copy of which is hereto annexed and made a part of this supplemental report, wherein the Commissioner directed that the Committee reconvene to resolve and/or clarify certain issues, and the full Committee having reconvened, together with Marshall Jay Grauer, Esq., Administrative Law Judge, by a telephone conference call on the 13th day of March, 1989, and upon due deliberations now makes the following supplemental findings:

(a) That the language which appears under the title "Conclusions" on page 7 of the Report, to wit, "supported by substantial, probative evidence" should be amended to read

"supported by a preponderance of the evidence."

(b) That the language which appears under the title "Conclusions" on page 10 of the Report, to wit, "supported by substantial, probative evidence" should be amended to read "supported by a preponderance of the evidence."

(c) That the language which appears under the title "Conclusions" on page 13 of the Report, to wit, "supported by substantial evidence" should be amended to read "supported by a preponderance of the evidence."

#### DISCUSSION

The Committee submits this Report pursuant to the direction and request of the Commissioner so that there shall be no uncertainty with respect to the standard of proof used by the Committee in evaluating the evidence and making its Findings, Conclusions and Recommendations. Said standard of proof was the preponderance of evidence, as set forth in the Public Health Law §230.10(f).

#### CONCLUSIONS

The Committee reiterates and incorporates by reference the Conclusions in its Report heretofore submitted to the Commissioner as though more fully set forth herein.

#### RECOMMENDATIONS

The Committee reiterates and incorporates by reference its

Recommendations heretofore submitted to the Commissioner in the Report of Hearing Committee as though more fully set forth herein.

DATED: March \_\_\_\_\_, 1989

4/7/89

*William W. Faloon, M.D.*

WILLIAM W. FALON, M.D.

Chairperson

John P. Frazer, M.D.

Matthew M.P. Cammen

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

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IN THE MATTER :  
OF : COMMISSIONER'S  
ZEKROLLAH HEDAYAT, M.D. : RECOMMENDATION

---

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

A hearing in the above-entitled proceeding was held on July 29, September 9, 13, 26 and 27, 1988. Respondent, Zekrollah Hedayat, M.D., appeared by Carter & Conboy, Esqs., Terrence P. O'Conner, Esq., of Counsel. The evidence in support of the charges against the Respondent was presented by E. Marta Sachey, Esq. The Report of the Hearing Committee was signed on or about January 17, 1989.

After submission of the original report herein, the Commissioner of Health referred the matter back to the Hearing Committee to reevaluate the record in view of the standard of proof of a preponderance of the evidence as set forth in Public Health Law §230(10)(f). The Committee reconvened by a telephone conference call on March 13, 1989 and issued a Supplemental Report of the Hearing Committee.

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

EXHIBIT "F"




conclusions and recommendation of the Committee contained in the Report of the Hearing Committee and Supplemental Report of the Hearing Committee,

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

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

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

Dated: Albany, New York  
*May 12* 1989

  
\_\_\_\_\_  
DAVID AXELROD, M.D.  
Commissioner of Health  
State of New York



# The University of the State of New York

IN THE MATTER

OF

**ZEKROLLAH HEDAYAT**  
(Physician)

**ORIGINAL**  
**VOTE AND ORDER**  
**NO. 10055**

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Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 10055, and in accordance with the provisions of Title VIII of the Education Law, it was

**VOTED (December 15, 1989):** That, in the matter of ZEKROLLAH HEDAYAT, respondent, the recommendation of the Regents Review Committee be accepted as follows:

1. The hearing committee's findings of fact, its conclusions, as amended by its April 7, 1989 supplemental report, as to the question of respondent's guilt, and its recommendation as to the measure of discipline be accepted as hereafter indicated, and the Commissioner of Health's May 12, 1989 recommendation as to the hearing committee's findings of fact, conclusions, and recommendation be accepted as hereafter indicated;
2. Respondent is guilty, as hereafter indicated, by a preponderance of the evidence as follows: the first through fifth specifications of the charges, the sixth specification of the charges to the extent indicated in the hearing committee report, the seventh through ninth specifications of the charges, the tenth through fourteenth specifications of the charges based on

willfully harassing and abusing patients physically, the fifteenth specification of the charges, based on willfully harassing and abusing a patient physically, to the extent indicated in the hearing committee report, the sixteenth specification of the charges based on willfully harassing and abusing a patient physically, the seventeenth and eighteenth specifications of the charges based on willfully harassing a patient verbally, and the nineteenth specification of the charges; and

3. Respondent's license to practice as a physician in the State of New York be revoked upon each specification of the charges of which respondent was found guilty, as aforesaid. Respondent may, pursuant to Rule 24.7(b) of the Rules of the Board of Regents, apply for restoration of said license after one year has elapsed from the effective date of the service of the order of the Commissioner of Education to be issued herein; but said application shall not be granted automatically;

and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

**and it is**

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

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

ZEKROLLAH HEDAYAT (10055)

IN WITNESS WHEREOF, I, Thomas Sobol,  
Commissioner of Education of the State of  
New York, for and on behalf of the State  
Education Department and the Board of  
Regents, do hereunto set my hand and affix  
the seal of the State Education Department,  
at the City of Albany, this 8<sup>th</sup> day of  
*January* 1990.  
*Thomas Sobol*  
Commissioner of Education



The University of the State of New York

X-----X

IN THE MATTER

OF

ZEKROLLAH HEDAYAT

(PHYSICIAN)

X-----X

STATE OF NEW YORK )
COUNTY OF NEW YORK )
SS.:

Michele A. Haughton being duly sworn, deposes and says:

I am over the age of twenty-one years and am an employee of the New York State Education Department, One Park Avenue, 6th Floor, New York, New York 10016-5802.

On the 26th day of January, 1990, I personally delivered to the Murray Hill Post Office, the Duplicate Original Order of the Commissioner of Education No. 10055, dated the 8th day of January, 1990 the Vote of the Board of Regents and the Report of the Regents Review Committee/Application by Certified Mail - Return Receipt Requested to the respondent herein named at 142 Millview Avenue, Waterbury, Connecticut 0670-2640 & 89-91 Ocean Parkway, Apt. D, Brooklyn, N.Y. 11218 & Terence P. O'Connor, Esq., Carter, Conboy, Bardwell, Case, Blackmore & Napierski, 74 Chapel Street, Albany, N.Y. 12207-2192. The Certified Mail Receipt No. P 924 512 667 P 924 512 668 & P 924 512 669.

The effective date of the Order being the 31st day of January, 1990.

Michele A. Haughton (handwritten signature)

Sworn to before me this
26th day of January, 1990

(handwritten signature)

WILLIAM SACHS
NOTARY PUBLIC, State of New York
No. 24-4601984
Qualified in Kings County
Commission Expires January 31, 1991