



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

April 16, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Steven Kashan, M.D.
147 West Cherry Street
Hicksville, New York 11801

Robert H. Harris, Esq.
Schneider, Harris & Harris, Esqs.
1015 Broadway
Woodmere, New York 11598

Leni S. Klaimitz, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

RE: In the Matter of Steven Kashan, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-66) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

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

Request for review of the Committee's determination by the Administrative Review Board stays penalties **other than suspension or revocation** 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.

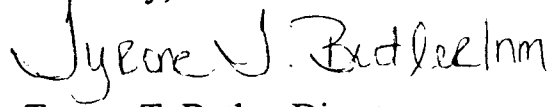
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's
Determination and Order.

Sincerely,

A handwritten signature in black ink that reads "Tyrone T. Butler nm". The signature is written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

**IN THE MATTER
OF
STEVEN KASHAN, M.D.**

**DETERMINATION
AND
ORDER
BPMC 98 - 66**

**KENDRICK A. SEARS, M.D., (Chair), RICHARD N. ASHLEY, M.D., and
REVEREND JAMES H. MILLER,** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, ("ALJ") served as the Administrative Officer.

The Department of Health appeared by **HENRY M. GREENBERG, ESQ.,** General Counsel, by **LENI S. KLAIMITZ, ESQ., JEAN BRESLER, ESQ.,** Associate Counsel, and **DIANNE ABELOFF, ESQ.,** Associate Counsel.

Respondent, **STEVEN KASHAN, M.D.,** appeared personally and was represented by **SCHNEIDER, HARRIS & HARRIS, ESQS,** by **ROBERT H. HARRIS, ESQ.,** and **LISA LEVINSON, ESQ.,** of Counsel.

Evidence was received and examined, including witnesses who were sworn or affirmed. Transcripts of the proceeding were made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

PROCEDURAL HISTORY

Date of Notice of Hearing:	October 28, 1997
Date of Statement of Charges:	October 28, 1997
Date of Service of Notice of Hearing and Statement of Charges:	October 29, 1997 [P.H.T-14-15] ¹
Date of Answer to Charges:	November 5, 1997
Pre-Hearing Conference Held:	October 29, 1997
Hearings Held: - (First Hearing day):	December 10, 1997 January 23, 1998 January 29, 1998
Pre-Hearing Conference Held:	October 29, 1997
Intra-Hearing Conferences Held:	December 10, 1998 January 23, 1998 January 29, 1998
Petitioner's Proposed Findings of Fact, Conclusions of Law and Sanctions:	February 26, 1998
Respondent's Proposed Findings of Fact, and Conclusions of Law:	None submitted
Witnesses called by the Petitioner, Department of Health:	Patient A ² Patient A's husband Patient B Patient B's husband (K.R.)

¹ Numbers in brackets refer to Hearing transcript page numbers [T-]; to Pre-Hearing transcript page numbers [P.H.T-] or to Intra-Hearing transcript page numbers [I.H.T-]. The Hearing Committee did not review the Pre-Hearing or the Intra-Hearing transcripts. Mr. Harris was authorized to and did accept service on behalf of Dr. Kashan.

² Patients are identified in the Appendix annexed to the Statement of Charges (Department's Exhibit # 1).

Witnesses called by the Respondent,
Steven Kashan, M.D.:

Nancy A. Jacobellis
Patricia Reilly
Gloria Basile
Hinda Russo
Catherine Hottendorf, R.N.
Bruce Meinhard, M.D.
Steven Kashan, M.D.

Deliberations Held: (last day of Hearing)

March 13, 1998

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (§230 et seq. of the Public Health Law of the State of New York ["P.H.L."]).

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("**Petitioner**" or "**Department**") pursuant to §230 of the P.H.L.

STEVEN KASHAN, M.D., ("**Respondent**") is charged with four specifications of professional misconduct, as delineated in §6530 of the Education Law of the State of New York ("**Education Law**").

Respondent is charged with willfully harassing, abusing or intimidating two patients, either physically or verbally³ and with engaging in conduct in the practice of medicine that evidences moral unfitness to practice medicine⁴. These charges stem from Respondent's alleged conduct and treatment of Patient A and Patient B at his office in Hicksville, New York.

³ Education Law § 6530(31) and see also First and Second Specifications of the Statement of Charges (Department's Exhibit # 1).

⁴ Education Law § 6530(20) and see also Third and Fourth Specifications of the Statement of Charges (Department's Exhibit # 1).

Respondent admits to being licensed to practice medicine in New York and denies all allegations, specifications and charges.

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent documentary evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Where there was conflicting evidence the Hearing Committee considered all of the evidence presented and rejected what was not relevant, believable or credible in favor of the cited evidence. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. The Hearing Committee unanimously agreed on all Findings of Fact. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was licensed to practice medicine in New York State on September 24, 1976 by the issuance of license number 128602 by the New York State Education Department (Department's Exhibits # 1 & # 2); (Respondent's Exhibit # F)⁵.

2. Respondent is currently registered with the New York State Education Department to practice medicine for the period October 1, 1996 through September 30, 1998 (Department's Exhibit # 2).

⁵ Refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's or Department's Exhibit #) or by Dr. Steven Kashan (Respondent's Exhibit #).

3. The State Board for Professional Medical Conduct has obtained personal jurisdiction over Respondent (determination made by the Administrative Officer; Respondent had no objection regarding service effected on him); (P.H.L. § 230[10][d]); [P.H.T-14-15].

4. Steven Kashan graduated from Teheran Medical School in 1967. Since 1977, Dr. Kashan has been in private practice in New York and is board-certified in Orthopedic Surgery. Dr. Kashan testified on his own behalf as to Patients A and B [T-419-474].

5. Patient A graduated from college with a Bachelor of Business Administration and Marketing and is presently employed as a sales associate. Patient A was 17 years old at the time of the alleged incident in 1986. Patient A testified on January 23, 1998 (Department's Exhibit # 3); [T-184-244].

6. Patient A's husband is presently employed as a driver/supervisor and was Patient A's boyfriend at the time of the alleged incident in 1986. Patient A's husband testified on January 23, 1998 (Department's Exhibit # 3); [T-245-253].

7. Patient B was a New York City Police Officer from [REDACTED] until she retired on a disability pension after she was involved in an incident in [REDACTED]. Patient B testified on December 10, 1997 (Department's Exhibit # 4); [T-20-137].

8. Patient B's husband, [REDACTED], has been employed by the New York City Fire Department since November 1989. Prior to November 1989, he was a New York City Police Officer for two years and ten months. [REDACTED] testified on December 10, 1997 [T-138-171].

9. [REDACTED] has been employed by Respondent as his assistant and as a technician for approximately 13 years. She is related, by marriage, to Patient B. She testified for Respondent, on January 23, 1998, regarding her experience in Respondent's office [T-255-271].

10. Patricia Reilly has been employed by Respondent as an X-Ray Technician for approximately 12 years. She testified for Respondent, on January 23, 1998, regarding her experience in Respondent's office [T-273-286].

11. Gloria Basile has been employed by Respondent as his receptionist for approximately 15 years. She testified for Respondent, on January 23, 1998, regarding her experience in Respondent's office [T-288-327].

12. Hinda Russo has been employed by Respondent as his office manager for approximately 18 years. She testified for Respondent, on January 23, 1998, regarding her experience in Respondent's office [T-340-377].

13. Catherine Hottendorf is a Registered Nurse and employed as the Assistant Hospital Director of the Nassau County Medical Center. Ms. Hottendorf was employed by Respondent as his office manager and nurse from approximately 1977 through 1993. She testified for Respondent, on January 29, 1998, about Respondent's office procedures and character [T-403-413].

14. Bruce Meinhard has been an orthopedic surgeon, in practice in Nassau County since 1980. He has known Respondent since 1980 and testified as a character witness for Respondent [T-414-419].

PATIENT A

15. Respondent treated Patient A from October 9, 1986 through December 16, 1986 at his medical office located at 100 Newbridge Road, Hicksville, NY (Department's Exhibit # 3).

16. Patient A went to Respondent for treatment of a knee injury sustained as a result of her athletic school activities [T-188-190]; (Department's Exhibit # 3).

17. On December 16, 1986, Patient A, then a 17 year old female, was seen by Respondent, at his office. On that date, Respondent fondled, several times and through Patient A's clothing, Patient A's breasts, nipples, vagina, clitoris and buttocks [T-192-195, 218]; (Respondent's Exhibit # H).

18. The fondling of Patient A by Respondent occurred during the course of a medical examination and exercises. Patient A never removed her clothes at any of her visits to Respondent's office [T-192-195]; (Respondent's Exhibit # H).

19. After Patient A left Respondent's office, she eventually discussed the events which had occurred in Respondent's office with her boyfriend and her mother [T-197-198, 218, 249-251]; (Respondent's Exhibit # H).

20. Patient A filed a complaint and a statement with the Nassau County Police Department but did not pursue with the complaint [T-198-200, 237-240, 252]; (Respondent's Exhibit # H).

21. Patient A has had no contact with Patient B and had no access to her own original statement dictated on December 17, 1986 (Respondent's Exhibit # H) until several weeks prior to her testimony before the Hearing Committee [T-206, 222, 226-230].

PATIENT B

22. Respondent treated Patient B from March 16, 1995 through June 20, 1995 at his medical office located at 147 West Cherry Street, Hicksville, NY (Department's Exhibit # 4).

23. Patient B went to Respondent for treatment of injuries she sustained as a result of an on the job incident on March 14, 1995. Patient B's complaints included pain in her neck, shoulder and right hand [T-24-26, 28]; (Department's Exhibit # 4).

24. On March 23, 1995 Respondent performed surgery on Patient B's right hand (Department's Exhibit # 4); [T-29-30].

25. On May 15, 1995 Patient B, a 30 year old female, was seen by Respondent, at his office. On that date, Respondent placed his hand on Patient B's breasts while asking her to perform exercises [T-42-46, 75-76, 80-81]

26. On June 2, 1995 Respondent, while performing an examination and exercises, placed his left hand on Patient B's left breast, pinched her nipple and placed his elbow into her crotch area. Respondent rubbed his elbow around Patient B's pubic and vaginal areas, over Patient B's clothes [T-48, 51, 121]; (Respondent's Exhibits # C & # E).

27. On the June 2, 1995 incident, Patient B pushed Respondent away and quickly left the examination room [T-51]; (Respondent's Exhibit # E).

28. The fondling of Patient B by Respondent occurred during the course of a medical examinations and exercises. Patient B never removed her clothes during the examinations discussed herein [T-120, 129]; (Respondent's Exhibit # E).

29. After Patient B left Respondent's office, she eventually discussed the events which had occurred in Respondent's office with her husband [T-54-56, 148, 150-152].

30. After the June 2, 1995 incident, Patient B filed a complaint and a statement with the Nassau County Police Department [T-55-57, 151]; (Respondent's Exhibit # E).

31. At some point the Nassau County Sex Crimes Unit of the Police Department closed their investigation of Patient B's complaint [T-119, 161}.

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions as to the allegations contained in the Statement of Charges were by a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the following Factual Allegations, in the October 28, 1997 Statement of Charges are **SUSTAINED**:⁶

Paragraph A.	:	(15 - 16)
Paragraph A.1.	:	(17 - 21)
Paragraph B.	:	(22 - 23)
Paragraph B.2.	:	(25, 28 - 31)
Paragraph B.3	:	(26 - 31)

The Hearing Committee concludes that the following Factual Allegations, in the October 28, 1997, Statement of Charges, are **NOT SUSTAINED**:

Paragraph B.1.	:	(21 - 31)
----------------	---	-------------

Based on the above and the complete Findings of Fact, the Hearing Committee concludes that the **FIRST, SECOND, THIRD and FOURTH SPECIFICATIONS** contained in the Specifications of Charges are **SUSTAINED**.

The rationale for the Hearing Committee's conclusions is set forth below.

⁶ The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation contained in the Amended Statement of Charges. The numbers in the brackets refer to the vote by The Hearing Committee for each Factual Allegation.

DISCUSSION

Respondent is charged with four specifications alleging professional misconduct within the meaning of §6530 of the Education Law. §6530 of the Education Law sets forth a number and variety of forms or types of conduct which constitute professional misconduct. However §6530 of the Education Law does not provide definitions or explanations of the types of misconduct charged in this matter. Therefore, the Hearing Committee used ordinary English usage, general understanding for all terms, allegations and charges and known legal precedents.

To sustain an allegation of moral unfitness, the Department must show that Respondent committed acts which "evidence moral unfitness". There is a distinction between a finding that an act "evidences moral unfitness" and a finding that a particular person is, in fact, morally unfit.

In a proceeding before the State Board for Professional Medical Conduct, the Hearing Committee is asked to decide if certain conduct is suggestive of, or would tend to prove, moral unfitness. The Hearing Committee is not called on to make an overall judgment regarding a Respondent's moral character. It is noteworthy that an otherwise moral individual can commit an act "evidencing moral unfitness" due to a lapse in judgment or other temporary aberration.

The standard for moral unfitness in the practice of medicine is twofold. First, there may be a finding that the accused has violated the public trust which is bestowed by virtue of his licensure as a physician. Physicians have privileges that are available solely due to the fact that one is a physician. The public places great trust in physicians solely based on the fact that they are physicians. For instance, physicians have access to controlled substances and billing privileges that are available to them solely because they are physicians. Patients are asked to place themselves in potentially compromising positions with physicians, such as when they

disrobe for examination or treatment. Hence, it is expected that a physician will not violate the trust the public has bestowed on him or her by virtue of his or her professional status. Second, moral unfitness can be seen as a violation of the moral standards of the medical community which the Hearing Committee, as delegated members of that community, represent.

The Hearing Committee was aware of its duty to keep an open mind regarding the allegations and testimony. The Hearing Committee is fully aware that the fact that there may have been police activity in this matter has absolutely nothing to do with this proceeding. The fact that the police was involved does not in any way add or detract weight to a given charge or circumstance. All findings by the Hearing Committee were established on their own merits and not based or bolstered because of police involvement.

With regard to the testimony presented herein, including Respondent's, the Hearing Committee evaluated each witness for possible bias. The witnesses were also assessed according to their training, experience, credentials, demeanor and credibility. The Hearing Committee understood that if it is found that any witness has willfully testified falsely as to any material fact, the law permits them, as the trier of fact to disregard completely the entire testimony of that witness on the principle that one who testifies falsely about one material fact is likely to testify falsely about everything. The Hearing Committee also understood however that they are not required to consider such a witness as totally unworthy of belief. The trier of fact may accept so much of a witnesses testimony as is deemed true and disregard what is found to be false.

Patient A testified as to the events that transpired between her and Respondent on December 16, 1986. Her testimony remained unequivocal during direct examination and cross-examination. She showed no hint of a hidden agenda. She presented her testimony in a straight forward and measured manner. Her demeanor during both direct and cross examination was that of an honest person recounting an experience. There was no hint of vengeance in her choice

of words or attitude. Her recitation of the facts made sense and had the logic of facts truthfully presented. She did not waver on cross examination either in demeanor or in the factual presentation contained in her testimony. The Hearing Committee completely dismisses the suggestion by Respondent that Patient A's actions were somehow based on revenge because Respondent refused to prescribe drugs or that Patient A was on drugs at the time at issue. The Hearing Committee finds that Patient A's subsequent actions were totally consistent. The Hearing Committee notes that within hours of the incident, Patient A had the courage to inform her then boyfriend, mother and the police. Even the reasons advanced by Patient A for not pursuing the matter with the police were consistent with the atmosphere of the 1980's.

Respondent's argument regarding the lengthy time period (11 years) between the event and the charges were also considered by the Hearing Committee in the context of Patient A's testimony. The Hearing Committee believes that if Patient A had fabricated the entire event of and in December 1986, she certainly would have dropped the matter and be, at the very least, reluctant to testify 11 years later, in 1998. Patient A's subsequent recounting of the events were consistent with her prior written statements.

The Hearing Committee finds that the testimony of this witness was sufficient in weight and credibility to establish by more than a preponderance of the evidence that the allegations did occur. The Hearing Committee also found Patient A's husband (then her boyfriend) to be credible. The explanations of both witnesses and the family dynamics involved as recounted by both witnesses made sense and were dependable.

The Hearing Committee unanimously found Patient B's testimony to be somewhat less credible and reliable than Patient A. However, as previously discussed, this does not indicate that her entire testimony was disregarded. The Hearing Committee believes that something happened to Patient B. However, the Hearing Committee believes that she may have

embellished some of the events. Patient B seemed to be more vindictive, less consistent and partially tainted. Although the Hearing Committee disregarded the issue of disability as a reason for Patient B to get even, the Hearing Committee was puzzled by Patient B's failure to act considering her training as a Police Officer. The Hearing Committee found it very difficult to believe that Patient B, a Police Officer for more than 8 years, would subject herself to sexual assaults 3 times in the course of a month. The Hearing Committee placed weight on the substance of her testimony which was corroborated. In addition, the similarities of the allegations and testimony of the patients about the specific acts of sexual improprieties, eventhough they occurred more than 8 years apart, were considered by the Hearing Committee as supportive of the proposition that it was more likely than not that at least some of those events occurred to Patient B. The Hearing Committee found Patient B's husband to be credible, as well as genuinely remorseful for his reactions and suggestions.

Obviously Respondent had the greatest amount of interest in the result of this proceeding. The Hearing Committee did not find Respondent to be credible. Respondent's evasiveness and lack of candor presented itself on a number of situations. For example, Respondent misrepresented the simple innocuous (for the purposes of this Hearing) issue of malpractice. On direct examination, he strongly proffered that since 1977 he had "never" been "sued in malpractice". On cross examination, Respondent reluctantly acknowledged being named four times "probably, probably; I never had any malpractice, and all the cases were thrown out."

Another example involved the fabrication by Respondent of drug use and/or request by Patient A. Respondent's medical record notations are complete and thorough. Such a request or observation of Patient A would have been important in her evaluation and treatment and would have been noted by Respondent. In addition, Respondent's total lack of recall of other information regarding Patient A, except for this one attempt to discredit her is not only obviously

contrived but reprehensible by Respondent. The Hearing Committee also found Respondent's alleged lack of knowledge about the complaint filed by Patient A to be inconceivable. Respondent knew enough to send an attorney. His attempt to feign ignorance was deceitful and inconsistent with other portions of his testimony.

The testimony of the other witnesses was mostly collateral and concerned general office policy and procedures. The Hearing Committee found it difficult to believe that this office was perfect and that Respondent's staff had "never seen Dr. Kashan in a room with a male or a female patient alone". With four examining rooms and the staffing indicated, it is difficult, if not impossible, to conceive that someone would be in the room with Respondent all the time. No office is 100 percent perfect all the times as testified by Respondent's staff. In any event, the Hearing Committee focused more on the credibility of the patients and Respondent, rather than the other witnesses' testimony. All other witnesses, including the character witnesses, were duly assessed and their testimony was considered and utilized when necessary by the Hearing Committee.

The taped phone conversation and video recording between Patient B and Respondent provided no helpful, much less conclusive, information to either positions taken by the parties (Respondent's Exhibits # A & B).

The Hearing Committee concludes that on December 16, 1986, Respondent fondled Patient A's breasts and nipple, fondled her vagina and clitoris, and then her buttocks. Respondent's actions were not part of a legitimate medical exam or for a legitimate medical purpose.

The Hearing Committee concludes that on May 15, 1995, Respondent touched Patient B's breasts. The Hearing Committee also concludes that on June 2, 1995, Respondent again touched Patient B's breasts and placed his elbow in her crotch. Respondent rubbed his elbow

around Patient B's pubic and vaginal areas, over Patient B's clothes. Respondent's actions were not part of a legitimate medical exam or for a legitimate medical purpose. The Hearing Committee does not sustain the May 2, 1995 allegation because of conflicting testimony between Patient B and her husband. That allegation was not believed due to the lack of corroboration, together with Patient B's tendency to embellish and the less than probable likelihood that she would allowed the abuse to occur three times.

CONCLUSIONS WITH REGARD TO THE FIRST AND SECOND SPECIFICATIONS

The acts of unwanted: fondling or touching of a patient's breasts; rubbing of a patient's nipple and vaginal or pubic area; and touching of a patient's buttocks, when not done for a legitimate medical purpose is, by any reasonable definition of the terms, physical abuse and harassment. While consent is not an element of these charges, it is not unreasonable to point out that there was not the slightest hint of consent on the part of Patient A or Patient B. In addition there is no question that these acts occurred willfully and not accidentally or as a result of uncontrolled muscle movements. What occurred here was unauthorized physical contact between a physician and two of his patients. These contacts occurred while Respondent was providing medical care and treatment to these two patients, which places a patient in a vulnerable and trusting position. Respondent took advantage of his patient's vulnerability and helplessness.

With regard to the actions proven herein, Respondent has been shown by more than a preponderance of the evidence to have molested two patients with entirely self serving acts for his own gratification. This constitutes physical abuse and harassment of a patient.

Using the above information and understanding, the Hearing Committee unanimously concludes that the Department of Health has shown by a preponderance of the evidence that Respondent's conduct constituted professional misconduct under §6530(31) of the Education Law.

CONCLUSIONS WITH REGARD TO THE THIRD AND FOURTH SPECIFICATIONS

To sustain a finding of moral unfitness, the Department must show that Respondent either violated the trust bestowed on him by virtue of his licensure as a physician or he violated the moral standards of the medical community, or both. The Hearing Committee finds violations in both factual allegations of both standards for both patients.

The physical abuse of a patient violates the trust bestowed upon a physician, solely because of his position as a physician. Patient A, at the time a 17 year old, trusted Respondent with her health and body. His use of that trust as an opportunity to abuse and embarrass Patient A constitutes a serious betrayal of trust. The same is true of Patient B, where he took advantage of the situation more than once. Neither Patient A nor Patient B would have been in a private room, with Respondent, but for the fact that Respondent is a licensed physician. Patient A and B and all female patients must suspend some of the most basic rules of society in order to allow, what amounts to a stranger, the opportunity to touch them in their most private places. When a physician violates that trust for his own self serving amusement, it is a violation of the most basic moral standards of the medical community.

The Hearing Committee unanimously concludes that the Department of Health has shown by a preponderance of the evidence that Respondent's conduct constituted professional misconduct under §6530(20) of the Education Law.

Therefore the Department of Health has met its burden of proof as to all of the Specifications of misconduct contained in the October 28, 1997 Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above, unanimously determines that Respondent's license should be REVOKED.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. § 230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

Since there was no negative evidence regarding Respondent's practice (medical care provided), the Hearing Committee finds that limiting Respondent's practice is not an available penalty.

Respondent's abilities as a surgeon have not been questioned. Similarly, a suspension is not appropriate since the medical care and (non-abusing) treatment provided by Respondent to his patients are not at issue.

The Hearing Committee believes that neither public service nor monetary penalties are appropriate sanctions under the circumstances presented in this case. Similarly, censure and reprimand are wholly inadequate in this case. The Hearing Committee does not believe that re-training or attendance at CME seminars is appropriate because there was no evidence that Respondent lacked competence.

The Hearing Committee does not believe that probation, using a practice monitor, a practice supervisor or a chaperone would be beneficial because according to Respondent and his witnesses, his office policy and procedures are such that a "chaperone" is always in the room. Yet the sexual abuses of these two patients occurred. The patients were clothed at all times that the abuse occurred and the possibility that Respondent didn't do this very often may very well be connected to his "supervising" staff. Nevertheless, the abuses still occurred.

Respondent showed absolutely no remorse and is in total denial. Respondent clearly lied to the Hearing Committee. The Hearing Committee is even more disturbed by Respondent's attempt to explain the allegations by vilifying his patients. The attempted character assassinations of Patients A and B shows further deficiency in Respondent's character and moral fiber. Respondent's story was not believable, even taking into consideration the 11 year delay for Patient A. Respondent has not shown any efforts to seek professional help or therapy, nor has he shown that he did not orchestrate or plan these sexual encounters.

The Hearing Committee has absolutely zero degree of confidence that these acts would not occur again at some point and time in the future. The Hearing Committee notes that the aberrant behavior of Respondent towards Patient A's, by itself is sufficient to revoke his license. The combination and similarities of the abuse of the two patients without excuse or mitigation makes clear what the appropriate penalty is in this case.

It is for those reasons that the Hearing Committee believes that only revocation will adequately safeguard and protect the public. The Hearing Committee believes that the sanction will send a sufficiently sobering message to Respondent and the medical community that there can be no tolerance for such abysmal behavior.

In so finding the Hearing Committee considered the thoughts expressed previously in the conclusions of this decision. In the violation of patient trust perpetrated by Respondent herein, he has damaged the reputation of all those who practice the medical arts. From physicians to aides in health care facilities, this sort of behavior disrupts the necessary trust which must flow from patient to practitioner and back again if medical care is to be provided. With regard to the particular patients herein, the physician/patient trust they developed or should have developed has been permanently damaged.

Taking all of the facts, details, circumstances and particulars in this matter into consideration, the Hearing Committee determines that the above is the appropriate sanction under the circumstances. The Hearing Committee concludes that the sanction imposed strikes the appropriate balance between the need to punish Respondent, deter future misconduct, and protect the public.

All other issues raised by both parties have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

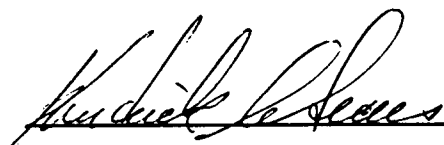
By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

ORDER

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

1. The First through Fourth Specifications of professional misconduct from the Statement of Charges (Department's Exhibit # 1) are **SUSTAINED**, and;
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

DATED: Albany, New York
April, 08, 1998



KENDRICK A. SEARS, M.D., (Chair),

RICHARD N. ASHLEY, M.D.

REVEREND JAMES H. MILLER

To:

Steven Kashan, M.D.,
147 West Cherry Street
Hicksville, NY 11801

Schneider, Harris & Harris, ESQS..
Robert H. Harris, Esq.,
Attorneys for Respondent
1015 Broadway
Woodmere, NY 11598

Leni S. Klaimitz, Esq.
Jean Bresler, Esq., Associate Counsel
Dianne Abeloff, Esq., Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, Suite 601
New York, New York 10001

APPENDIX I

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

IN THE MATTER
OF
STEVEN KASHAN, M.D.

STATEMENT
OF
CHARGES

STEVEN KASHAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 24, 1976, by the issuance of license number 128602 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Between on or about October 9, 1986, and on or about December 16, 1986, Respondent treated Patient A for a knee injury at his medical offices, then located at 100 Newbridge Road, Hicksville, New York. (The names of patients are contained in the attached Appendix).
1. On or about December 16, 1986, Patient A was seen by Respondent at his medical offices where, not for any legitimate medical purpose, Respondent fondled Patient A's breasts, rubbed her nipple and vaginal area and touched the patient's buttocks.
- B. Between on or about March 16, 1995 and on or about June 20, 1995, Respondent treated Patient B for injuries to her neck, shoulder and hand at his medical offices located at 147 West Cherry Street, Hicksville, New York.
1. On or about May 2, 1995, Patient B was seen by Respondent at

his medical offices where, not for any legitimate medical purpose, Respondent held Patient B's breasts.

2. On or about May 15, 1995, Patient B was seen by Respondent at his medical offices where, not for any legitimate medical purpose, Respondent touched Patient B's breasts.
3. On or about June 2, 1995, Patient B was seen by Respondent at his medical offices where, not for any legitimate medical purpose, Respondent touched Patient B's breast and rubbed her pubic and vaginal areas with his elbow.

SPECIFICATION OF CHARGES

FIRST AND SECOND SPECIFICATIONS

WILLFULLY HARASSING, ABUSING OR INTIMIDATING A PATIENT EITHER PHYSICALLY OR VERBALLY

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(31)(McKinney Supp. 1997) by willfully harassing, abusing or intimidating a patient either physically or verbally, as alleged in the facts of:

1. Paragraphs A and A(1).
2. Paragraphs B and B(1), B(2) and/or B(3)

THIRD AND FOURTH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with professional misconduct as defined in N.Y. Educ. Law §6530(20)(McKinney Supp. 1997) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

3. Paragraphs A and A(1).
4. Paragraphs B and B(1), B(2) and/or B(3.)

DATED: October 28, 1997
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct