NEW YORK
THE STATE OF LEARNING

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

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

March 13, 1991

Young I. Kim, Physician
76 Southaven Avenue - Suite 4
Medford, N.Y. 11763

Re: License No. 130366

Dear Dr. Kim:

Enclosed please find Commissioner's Order No. 11344/8826. This Order and any penalty contained therein goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order is a surrender, revocation or suspension of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. In such a case your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations
By:

Gustave Martine
GUSTAVE MARTINE
Supervisor

DJK/GM/er
Enclosures

CERTIFIED MAIL- RRR
cc: George M. Harmel, Jr., Esq.
33 Wheeler Road
Central Islip, N.Y. 11722

REPORT OF THE
REGENTS REVIEW COMMITTEE

YOUNG I. KIM

CALENDAR NOS. 11344/8826

The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

YOUNG I. KIM **Nos. 11344/8826**

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

REPORT OF THE REGENTS REVIEW COMMITTEE

YOUNG I. KIM, 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 November 17 and December 9, 1987 hearings were 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".

On March 23, 1988 the hearing committee rendered a report of its findings, conclusions, and recommendation, a copy of which, without attachments, is annexed hereto, made a part hereof, and marked as Exhibit "B".

The hearing committee concluded that respondent was guilty of the second specification and not guilty of the first specification

of the charges, and recommended that a Censure and Reprimand be imposed upon respondent.

On May 20, 1988 the Commissioner of Health recommended to the Board of Regents that the fact findings of the hearing committee be accepted except for finding #9, which was to be changed to state that Patient A did not consent to sexual contact by respondent, that the conclusions of the hearing committee be modified so that respondent be found guilty of both the first and second specifications, and that the recommendation of the hearing committee as to the measure of discipline be rejected. The Commissioner of Health recommended that respondent's license to practice as a physician be suspended and that such suspension be stayed provided respondent provide medical care to female patients only in the presence of a woman and otherwise adhere to the standard terms of probation. A copy of the May 20, 1988 recommendation of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "C".

On September 29, 1988 this matter was heard by a previous Regents Review Committee consisting of Regent Emlyn I. Griffith, Jane M. Bolin, Esq., and Patrick J. Picariello, Esq. The previous Regents Review Committee raised concerns about the appropriateness of the hearing committee assigning to petitioner the burden of proving lack of patient consent on a charge of willful physical abuse (sexual abuse in this case). The previous Regents Review

Committee recommended that this case be remanded to the hearing committee to reconsider the first specification of the charges under the correct burden of proof on the issue of patient consent to the alleged misconduct, and to reconsider the measure of discipline based on said reconsideration of the first specification of the charges. Each party was to have an opportunity to present further evidence, including cross-examination on the issue of patient consent to the alleged misconduct set forth in the first specification of the charges. The correct burden of proof, according to the previous Regents Review Committee, was for respondent to overcome the presumption that the patient does not consent to the alleged misconduct, and prove that the patient consented to the alleged misconduct (see pp. 3-4 of the April 26, 1989 report of the previous Regents Review Committee which is annexed hereto, made a part hereof, and marked as Exhibit "D").

On June 16, 1989 the Board of Regents voted to accept the recommendation of the previous Regents Review Committee and to remand this case in accordance with the April 26, 1989 Regents Review Committee report. A copy of the June 16, 1989 vote of the Board of Regents is annexed hereto, made a part hereof, and marked as Exhibit "E". On June 28, 1989 the Commissioner of Education issued an order implementing the June 16, 1989 vote of the Board of Regents remanding this case. A copy of the June 28, 1989 order of the Commissioner of Education is annexed hereto, made a part

hereof, and marked as Exhibit "F".

On February 2, 1990 the Commissioner of Health issued an order to reconvene the hearing committee pursuant to the terms of the June 28, 1989 order of the Commissioner of Education. A copy of the February 2, 1990 order of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "G".

On April 18, 1990 the hearing committee reconvened for further deliberations (the parties each having waived presentation of further evidence and having waived the further participation of hearing committee member Dr. Nancy H. Nielsen), in accord with the remand instructions contained in the June 28, 1989 order of the Commissioner of Education. On July 2, 1990 the hearing committee issued a second report of its findings, conclusions, and recommendation, a copy of which, without attachments, is annexed hereto, made a part hereof, and marked as Exhibit "H". The hearing committee concluded that respondent was guilty of the first and second specifications of the charges, and recommended that respondent's license to practice medicine should be suspended for one year with the suspension permanently stayed upon two conditions: successful completion of a one year period of probation upon terms to be established by the Commissioner; and that another woman be present whenever respondent provides medical care to a female.

On September 7, 1990 the Commissioner of Health issued a

second recommendation in which he recommended to the Board of Regents that the findings, conclusions, and recommendation of the hearing committee be accepted. A copy of the September 7, 1990 second recommendation of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "I".

On November 7, 1990 respondent did not appear before us in person, but was represented by an attorney, George M. Harmel, Jr., Esq., who appeared before us and presented oral argument on respondent's behalf. Dawn Dweir, Esq., presented oral argument on behalf of the Department of Health.

Petitioner's written recommendation as to the measure of discipline to be imposed, should respondent be found guilty, was: respondent's license to practice medicine should be suspended for one year. Said suspension should be stayed upon two conditions:

1) one year of standard terms of probation;

2) another woman must be present whenever respondent provides medical care to a female.

Respondent's written recommendation as to the measure of discipline to be imposed, should respondent be found guilty, was: the original penalty found was that of a reprimand and a one year suspended probationary period -- this was the hearing committee's recommendation at the first hearing.

We have considered the record as transferred by the Commissioner of Health in this matter, which includes the original record and the record upon remand, as well as respondent's

September 7, 1990 letter with attached brief, respondent's October 24, 1990 letter with accompanying documents, and petitioner's November 7, 1990 submission at the hearing before us of the Attorney General's notice of motion to dismiss, with attached memorandum of law, an action brought by respondent against the Department of Health for a writ of prohibition.

MAJORITY OPINION OF REGENT GERALD J. LUSTIG, M.D., AND MELINDA AIKINS BASS, ESQ.

* * * * * * * * * * *

It is our opinion that respondent is guilty of both specifications of the charges herein, and that the substance of the penalty recommended by the hearing committee in its July 2, 1990 second report and by the Commissioner of Health in his September 7, 1990 second recommendation is appropriate. We would modify the penalty only to put it in authorized form, as a conditionally stayed suspension is not authorized by statute.

We reject the various legal contentions raised by respondent as being without merit.

In particular, we reject respondent's claim that it is inappropriate to place the burden of proof on the issue of patient consent on respondent with regard to the first specification of the charges. This issue was already decided by the previous Regents Review Committee. In our opinion, it is in the nature of an

affirmative defense for respondent to claim that a patient consented to sexual abuse. Therefore, the burden of proof must rest on respondent to establish such a defense. We note that on this point the dissent is in agreement with us. Respondent has failed to establish that patient A consented to the sexual contact herein. In fact, respondent presented no evidence of any kind on the issue of patient A consenting to sexual contact. Thus, the preponderance of the evidence clearly demonstrates that respondent is guilty of the first specification of the charges.

With regard to the issue of respondent's having been denied the right to confront and to cross-examine his accuser, we find numerous flaws in respondent's contention. We first note that petitioner is not under any obligation to produce the complaining patient (patient A herein) to testify against respondent. Petitioner may present its case as it chooses. In this case, petitioner made it clear that it chose to base its case on respondent's confession and not on any testimony of patient A. We next note that respondent was free to call patient A as a witness. Respondent did not do so.

We acknowledge that patient A's written police complaint statement, prepared by one police Detective Vath and signed by patient A, was admitted into the record. However, this police complaint statement was not admitted for the probative value of its

contents, but merely to explain the procedural background that led to respondent's confession. The initial instruction given by the Administrative Officer to the hearing committee upon allowing this item into evidence could have been more focused, but the Administrative Officer clearly and carefully clarified how the hearing committee was to consider this evidence when he stated:

> "If I may be bold enough to state it, the question simply is, given the statement by the respondent which you have before you in Evidence, made under the circumstances which you heard from the detective last time, was, if any misconduct, again underscore if any, misconduct can be found. You are limited to the four corners, as they say in legal circles, to that statement alone. Now, a certain statement by Patient A was admitted into Evidence but, again, I allowed that only as foundation. It was not admitted, it was not even offered for the truth of the statements contained in it." (Transcript pp. 131-132).

Moreover, the entire tenor of the proceeding indicates to us that the hearing committee understood and applied the limiting instructions given by the Administrative Officer. Since the police complaint statement of patient A was not used against respondent for the truth of its contents, respondent suffered no loss of any right of confrontation or cross-examination with regard to the maker of the statement. Cf., Goldberg v. Kelly, 397 U.S. 254 (1970); People ex rel. McGee v. Walters, 62 N.Y.2d 317 (1984); Gray v. Adduci, 73 N.Y.2d 741 (1988).

We do not accept the dissent's argument of overwhelming prejudice, because the police complaint statement contains no information as to the actual charges not already contained in

respondent's own confession. However, we stress that patient A's statement was not considered substantively by us or by the hearing committee. We merely note that, even had it been considered, it would not have been overwhelmingly prejudicial as the dissent claims.

With respect to respondent's contention that his confession should be inadmissible as evidence because it was taken in violation of his Fourth Amendment rights, and because it was given involuntarily as a matter of law and fact, we disagree. We note that this is an administrative proceeding and that the full panoply of rights accorded a defendant in a criminal proceeding need not be accorded respondent herein. Miles v. Nyquist, 60 A.D.2d 133, 400 N.Y.S.2d 868 (3d Dep't 1977), leave to appeal denied 44 N.Y.2d 789 (1978). It is sufficient that due process appropriate to an administrative hearing be observed. In our opinion, respondent has been afforded all necessary and adequate due process protection. The factual question of the voluntariness of respondent's confession to the police was appropriately put before the hearing committee. Id. Respondent had his opportunity to persuade the hearing committee that his confession was made involuntarily. Such an opportunity is always available when any admission is thrown up to a party and the party wishes to relate a different story. Terpstra v. Niagara Fire Insurance Co., 26 N.Y.2d 70 (1970). Indeed, in Terpstra a confession to arson was allowed in a civil

case, even though it had previously been suppressed in a criminal prosecution. We cannot agree that respondent's confession was involuntary as a matter of law. In our opinion, the hearing committee properly concluded from the factual issues raised that respondent gave his confession voluntarily. Again, we are not involved in a criminal proceeding and respondent's confession need not meet the tests for criminal due process.

In reaching this opinion, we are not unmindful of respondent's Fourth Amendment rights (as protected through the Fourteenth Amendment). However, unlike the dissent, we find no violation of any of respondent's Fourth Amendment rights. Respondent was legitimately under investigation by the police for possible criminal conduct. Pursuant to that investigation the police sought to question respondent. There was never any intent to arrest respondent, and when the two policemen went to respondent's office they simply read him his Miranda rights and asked if respondent would be willing to accompany them to the police station to answer some questions concerning patient A. Cf., Frazier v. Cupp, 394 U.S. 731 (1969). Respondent, who was under no restraint or compulsion, agreed to go to the police station. Cf., People v. Morales, 22 N.Y.2d 55 (1968), vacated on other grounds 396 U.S. 102 (1969), affirmed 42 N.Y.2d 129 (1977). Respondent then signed the confession at issue at the police station after being there for questioning for approximately one hour. Cf., People v. Yukl, 25

N.Y.2d 585 (1969); Watts v. Indiana, 338 U.S. 49 (1949). Respondent also signed a waiver of his right to an attorney. There is no indication that respondent, an educated and intelligent man with no apparent difficulty in comprehending the English language, was coerced or deceived into signing anything. Cf., Crooker v. California, 357 U.S. 433 (1958). It is incredible that respondent would have been promised anything by the police in return for his signing the confession. Police Detective Rotondo testified unequivocally that no promises of any kind were made, and that it would have been beyond his power to make such promises, since the District Attorney had yet to make a decision about seeking an arrest. Despite his protestations to the contrary, respondent was never arrested or taken into custody by the police. Therefore, there was no illegal arrest in violation of the Fourth Amendment herein. Respondent voluntarily cooperated with the police. Cf., Rawlings v. Kentucky, 448 U.S. 98 (1980). It is irrelevant that respondent did not have the advice of counsel, as respondent voluntarily elected to waive this right. Lack of counsel does not convert these facts into an illegal arrest. We also see no nefarious scheme operating here. Unlike the dissent, we do not accept respondent's implicit argument that the police were acting in some devious complicity with patient A. Under the factual circumstances presented, the hearing committee appropriately concluded that respodnent voluntarily confessed to the sexual

contact that constitutes the professional misconduct in this case.

Finally, we wish to note that the moral character of patient A is irrelevant to the charges in this case. Patient A did not testify in this case, and whether or not patient A may be of dubious character, as the dissent contends, would not be a basis for rejecting respondent's confession herein as to his engaging in the sexual abuse of patient A.

Based on the foregoing, we (Gerald J. Lustig, M.D., and Melinda Aikins Bass, Esq.), recommend the following to the Board of Regents:

1. The hearing committee's eight findings of fact and conclusions as to the question of respondent's guilt contained in the July 2, 1990 second report of the hearing committee be accepted, and the Commissioner of Health's September 7, 1990 second recommendation as to those findings of fact and conclusions be accepted;
2. The hearing committee's recommendation as to the measure of discipline contained in the July 2, 1990 second report of the hearing committee be modified, and the Commissioner of Health's recommendation as to the measure of discipline contained in the September 7, 1990 second recommendation of the Commissioner of Health be modified;
3. Respondent be found guilty, by a preponderance of the evidence, of the first and second specifications of the charges; and

4. Respondent's license to practice as a physician in the State of New York be suspended for one year upon each specification of the charges of which we recommend respondent be found guilty, said suspensions to run concurrently, that execution of said suspensions be stayed, and respondent be placed on probation for one year under the terms set forth in the exhibit annexed hereto, made a part hereof, and marked as Exhibit "J".

DISSENTING OPINION OF PATRICK J. PICARIELLO, ESQ.

* * * * * * * * * * *

I respectfully dissent from the majority's view of the facts and from the majority's view of two major legal issues raised by respondent, and would dismiss all the charges herein. In recommending a dismissal of all the charges, I am not unmindful of the fact that I previously recommended that this matter be remanded. That remand was premised on the fact that the hearing panel had improperly imposed on petitioner the burden of proving lack of patient consent to alleged sexual contact during the course of a medical examination. I join the majority in affirming the decision of the previous Regents Review Committee on the issue of placing the burden of proof on respondent to establish, as an affirmative defense, that a patient consented to sexual abuse.

I cannot join the majority's rationale on the issue of

respondent's right to confront and cross-examine the complainant. In my view, respondent's fundamental right to due process has been violated. The Administrative Officer allowed into evidence a written complaint statement taken by police Detective Vath, and signed by patient A, without requiring that patient A testify. I also note that Detective Vath did not testify. The complaint statement was part of a larger packet of police documents admitted into evidence as petitioner's Exhibit "4", that also included respondent's alleged confession. There is no good reason why the complaint statement should have been allowed into evidence, since no reason appears as to why patient A could not herself testify. The admission of this item is a blatantly unjustified denial of respondent's right to confront and cross-examine his accuser. These rights are guaranteed by the Fourteenth Amendment of the United States Constitution and New York State Administrative Procedure Act §306(3). It is not enough to claim, as the majority does, that the complaint statement was not admitted for the truth of its content, or for its own probative value. Neither is it sufficient, as the majority claims, that the Administrative Officer gave instructions to the hearing panel to the effect that the complaint statement was being allowed into evidence solely for the purpose of explaining the procedural background that led to respondent's alleged confession. In my opinion, no amount of cautionary instructions could cure the inherent and overwhelming

prejudice of allowing patient A's police complaint statement into the record without allowing respondent the right to confront and cross-examine patient A. The prejudicial contents of this document simply cannot be effectively segregated and ignored in the minds of the hearing panel members. Moreover, the Administrative Officer's allegedly cautionary instructions to the hearing panel are fraught with ambiguity. Even allowing that cautionary instructions could have cured the substantial prejudice created by patient A's police complaint statement, the instructions herein would be woefully inadequate for that purpose. The Administrative Officer's instruction, given during the testimony of police Detective Rotondo (who took respondent's alleged confession), was as follows:

> "And it is my ruling that the document does come in for its relevant weight, noting the possibly and potential and real hearsay problems in that we don't have the actual people who made the statement present. That goes to the weight of the document. And the tryers of fact in this case, the three Panel Members, will have to determine, after they've heard cross-examination and after they've had an opportunity to question the witness, the tryers of fact will have to determine whether or not they will be willing to give sufficient weight to the document to find in favor of the statement." (Transcript p. 25).

This instruction conveys no limits on the use of this evidence by the hearing panel, and totally overlooks respondent's constitutional and statutory rights to confront and cross-examine his accuser.

People ex rel. McGee v. Walters, 62 N.Y.2d 317 (1984), sets

out the relevant inquiry that should have been followed by the Administrative Officer herein. In deciding whether confrontation is required, an Administrative Officer should consider not only the preference for confrontation, but also whether, under the circumstances, confrontation would aid the fact-finding process, and the burden which would be placed on the State in producing the witness. To be considered are the objective or subjective nature of the contents of the written statement, the potentional assistance to the fact-finding process of cross-examination, whether the written evidence is cumulative, the burden of requiring the declarant to testify, and the general policy favoring confrontation. Id. No such inquiry was made in this case. Had the necessary inquiry been undertaken, it would inevitably have led to the exclusion of patient A's police complaint statement.

The majority's decision would effectively nullify any right of confrontation or cross-examination by permitting substitution of "curative" instructions for cross-examination. In my opinion, even the relaxed and informal procedures of administrative hearings do not allow for such a result. The unnecessary and substantial prejudice suffered by respondent from the improper admission into the record of patient A's police complaint statement requires dismissal of the charges in this case.

I also cannot join the majority on the issue of the voluntariness of respondent's alleged confession.

The respondent's confession should be inadmissible in this proceeding because it is the fruit of the illegal seizure of respondent by the police in violation of respondent's Fourth Amendment rights. See, Mapp v. Ohio, 367 U.S. 643 (1961). The majority's repeated insistence that we are involved in an administrative proceeding, and not in a criminal proceeding, is irrelevant on this point. The Fourth Amendment to the United States Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Nowhere is the Fourth Amendment limited to criminal cases. It applies to an administrative proceeding with the same force and effect as to any other proceeding. See, Matter of Finn's Liquor Shop v. State Liquor Authority, 24 N.Y.2d 647 (1969). The uncontroverted facts herein demonstrate that patient A was the niece of a police detective, that the two police detectives who went to respondent's office obtained surveillance equipment from this uncle of patient A, that these two armed police detectives entered respondent's office at approximately ten o'clock at night and read respondent his Miranda rights, that respondent was then taken to the police station without any warrant for his arrest ever having been issued or sought, that respondent was kept at the

police station for at least one hour, and that respondent then signed an alleged confession prepared by one of the two detectives without benefit of counsel and without ever having been charged with any crime. Cf., Greenwald v. Wisconsin, 390 U.S. 519 (1968); Rhode Island v. Innis, 446 U.S. 291 (1980); Wong Sun v. United States, 371 U.S. 471 (1963). Moreover, I find respondent's testimony that he only signed the "confession" because he was told he would be released without consequences if he did so to be entirely consistent and credible given the surrounding uncontroverted facts. Respondent has never been subsequently charged with any crime.

Under the circumstances described, it is my opinion that respondent was illegally arrested, without any warrant and without probable cause for an arrest. See, People v. Dodt, 61 N.Y.2d 408 (1984). It was uncontradicted that the District Attorney had made no decision to seek respondent's arrest prior to the highly unusual police action herein. Under circumstances where armed police officers arrive at respondent's office at night, and read respondent his Miranda rights, before taking him to the police station, a custodial situation is established. It is irrelevant that the police officers claim they did not mean to arrest respondent. The facts establish that respondent was, as a matter of law, taken into custody that was the equivalent of an illegal arrest. Cf., Dunaway v. New York, 442 U.S. 200 (1979). No

statement taken from respondent as a result of this breach of his Fourth Amendment rights can be used to prove professional misconduct charges against him. Cf., Matter of Finn's Liquor Shop v. State Liquor Authority, 24 N.Y.2d 647 (1969); People v. Gonzalez, 39 N.Y.2d 122 (1976).

Finally, even if it were presumed that the police acted within the allowable bounds of the Fourth Amendment, it cannot be said that respondent voluntarily confessed to professional misconduct. Respondent was still in custody, be it legal or illegal, and was, absent counsel, in no position to voluntarily confess given the tactics employed by the police under the circumstances herein. Cf., Brown v. Illinois, 422 U.S. 590 (1975); Taylor v. Alabama, 457 U.S. 687 (1982). The majority's reliance on Miles v. Nyquist, 60 A.D.2d 133, 400 N.Y.S.2d 868 (3d Dep't 1977), leave to appeal denied 44 N.Y.2d 789 (1978), is misplaced. In Miles, an optometrist signed a stipulation to formal misconduct charges in California in order to settle the charges. The optometrist had been represented by counsel in California and had signed the stipulation upon the advice of counsel. This stipulation was then used as the basis for a disciplinary charge against the optometrist in New York. These facts differ significantly from the present case. Respondent herein was never represented by counsel and certainly did not sign a stipulation for the purpose of settling any pending charge in the context of any formal proceeding. There

is a total absence of any indicia of reliability surrounding the "confession" in the present case. There are no facts for the hearing committee to assess to determine voluntariness. Under the circumstances herein, this "confession" is involuntary as a matter of law. It was taken in a custodial situation without benefit of counsel for respondent, and was only signed by respondent upon a promise that he would be released without consequences. See, Terpstra v. Niagara Fire Insurance Co., 26 N.Y.2d 70 (1970). Under circumstances so unlike Miles, it would be arbitrary and irrational to conclude that the "confession" herein was voluntary. Consequently, respondent's alleged confession should have been excluded from the record as a matter of law or, upon my review of the record, as a matter of fact. Absent this evidence, there is nothing to support the charges herein.

Finally, I wish to note that, under the circumstances herein, I take a dim view of the credibility of the facts and motives of patient A in this case.

Respondent had previously performed medical services for patient A for which patient A owed respondent substantial money. I agree with respondent that patient A deceived respondent about her medical insurance coverage. When respondent indicated he wanted to be paid, patient A went to the police. Patient A's uncle is a police detective and he supplied the police detectives who took respondent into custody, as previously described, with the

surveillance equipment they used. No results of that surveillance effort have been produced. In my opinion, the procedure followed by the police detectives inappropriately resulted in respondent signing the document now called a confession. In particular, respondent was promised he would be released without consequences if he signed the "confession." At no time was respondent ever advised by counsel while in police custody. I have concerns regarding patient A's reliability with regard to the truthfulness of her police complaint. Patient A has since instituted a civil suit against respondent seeking a substantial sum of money. In my opinion, given the quality of the evidence in the record of this case, this scenario appears to be a case of a naive physician being taken advantage of by a patient motivated by financial gain. I recognize that my view of the facts is distasteful to the majority, and I wish to stress that my view of the facts in no way condones the serious professional misconduct of sexual abuse. However, I simply do not believe that sexual abuse occurred in this case.

I, therefore, recommend that all charges herein be dismissed for all the reasons discussed above.

YOUNG I. KIM (11344/8826)

Respectfully submitted,

GERALD J. LUSTIG, M.D.

MELINDA AIKINS BASS

PATRICK J. PICARIELLO

Dated: January 25, 1991

MELINDA AIKINS BASS

Dated: January 25, 1991

PATRICK J. PICARIELLO

EXHIBIT "J"

TERMS OF PROBATION
OF THE REGENTS REVIEW COMMITTEE

YOUNG I. KIM

CALENDAR NOS. 11344/8826

1. That respondent shall make quarterly visits to an employee of and selected by the Office of Professional Medical Conduct of the New York State Department of Health, unless said employee agrees otherwise as to said visits, for the purpose of determining whether respondent is in compliance with the following:

   a. That respondent, during the period of probation, shall act in all ways in a manner befitting respondent's professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by respondent's profession;

   b. That respondent shall, at respondent's expense, during the period of probation, have a female person, selected by respondent and previously approved, in writing, by the Director of the Office of Professional Medical Conduct of the New York State Department of Health, physically present with respondent at all times when respondent is rendering services to any female patient; and that the name, address, and telephone number of that person shall 1) be made part of the record kept for that patient and 2) be made available to the Director of the Office of Professional Medical Conduct of the New York State Department of Health upon written request therefor;

   c. That respondent shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Albany, NY 12234 of any employment and/or practice, respondent's residence, telephone number, or mailing address, and of any change in respondent's employment, practice, residence, telephone number, or mailing address within or without the State of New York;

   d. That respondent shall submit written proof from the Division of Professional Licensing

Services (DPLS), New York State Education Department (NYSED), that respondent has paid all registration fees due and owing to the NYSED and respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation; and

e. That respondent shall submit written proof to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1) respondent is currently registered with the NYSED, unless respondent submits written proof to the New York State Department of Health, that respondent has advised DPLS, NYSED, that respondent is not engaging in the practice of respondent's profession in the State of New York and does not desire to register, and that 2) respondent has paid any fines which may have previously been imposed upon respondent by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation;

2. If the Director of the Office of Professional Medical Conduct determines that respondent may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents.

ORDER OF THE COMMISSIONER OF
EDUCATION OF THE STATE OF NEW YORK

YOUNG I. KIM

CALENDAR NOS. 11344/8826

The University of the State of New York

IN THE MATTER

OF

YOUNG I. KIM
(Physician)

DUPLICATE ORIGINAL VOTE AND ORDER
NOS. 11344/8826

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar Nos. 11344/8826, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (February 21, 1991): That, in the matter of YOUNG I. KIM, respondent, the date of "August 8, 1987" be deemed corrected to read "August 8, 1985" wherever the former date appears in the July 2, 1990 report of the hearing committee; that the recommendation, by a majority vote of two to one, of the Regents Review Committee be accepted as follows:

1. The hearing committee's eight findings of fact and conclusions as to the question of respondent's guilt contained in the July 2, 1990 second report of the hearing committee be accepted, and the Commissioner of Health's September 7, 1990 second recommendation as to those findings of fact and conclusions be accepted;
2. The hearing committee's recommendation as to the measure of discipline contained in the July 2, 1990 second report of the hearing committee be modified, and the Commissioner of Health's recommendation as to the measure of discipline contained in the September 7, 1990 second recommendation of the Commissioner of Health be modified;

3. Respondent is guilty, by a preponderance of the evidence, of the first and second specifications of the charges; and

4. Respondent's license to practice as a physician in the State of New York be suspended for one year upon each specification of the charges of which respondent was found guilty, said suspensions to run concurrently, that execution of said suspensions be stayed, and respondent be placed on probation for one year under the terms prescribed by the Regents Review Committee by majority vote of two to one;

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.

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 4th day of March 1991.

Thomas Sobol

Commissioner of Education

*Vice Chancellor R. Carlos Carballada and Regent Carl T. Hayden voted to accept the dissenting opinion set forth in the Regents Review Committee report.