



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

February 2, 1995

RECEIVED

FEB 02 1995

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Irene Koch, Esq.
Assistant Counsel
NYS Department of Health
Metropolitan Regional Office
5 Penn Plaza-Sixth Floor
New York, New York 10001

Robert S. Asher, Esq.
295 Madison Avenue
New York, New York 10017

Alan M. Kurz, M.D.
61 Edgewood Avenue
Clifton, New Jersey 07012

RE: In the Matter of Alan M. Kurz, M.D.

Dear Ms. Koch, Dr. Kurz and Mr. Asher:

Enclosed please find the Determination and Order (No. 95-26) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must 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), "(t)he determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

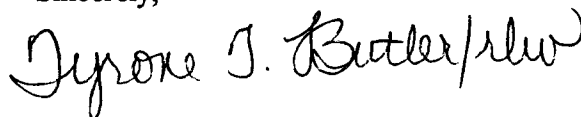
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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

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

Sincerely,

A handwritten signature in cursive script that reads "Tyrone T. Butler/rlw".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

-----X

**IN THE MATTER : DETERMINATION
OF : AND
ALAN M. KURZ, M.D. : ORDER
: BPMC-95-26
-----X**

A Notice of Hearing and Statement of Charges, each dated June 9, 1994, were served upon the Respondent, Alan M. Kurz, M.D. Thea Graves Pellman, Chairperson, Margaret H. McAloon, M.D., and C. Fred Peckham, Jr., D.O., duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230(1)(e) and 230(12) of the Public Health Law. **Jeffrey Armon, Esq.** served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this determination.

SUMMARY OF PROCEEDINGS

Notice of Hearing and Statement of Charges:	June 9, 1994
Amended Statement of Charges:	July 8, 1994
Prehearing Conference:	July 11, 1994
Dates of Hearing:	July 14, 1994 August 11, 1994 October 13, 1994 October 19, 1994

Department of Health
appeared by:

Peter J. Millock, Esq.
General Counsel
New York State Department of Health

BY: Irene Koch, Esq.
Assistant Counsel

Respondent Appeared By:

Robert S. Asher, Esq.
295 Madison Avenue
New York, New York 10017

Witnesses for Department of Health:

Patient A
Patient B
Supervisor C

Witnesses for the Respondent:

Alan M. Kurz, M.D. (Respondent)
Rodney Lawrence, R.P.A.
Raquel Wilkes
Charlene Simmons
Michael Crooks, M.D.
Harris S. Huberman, M.D.

Deliberations held:

November 30, 1994

AMENDMENTS TO THE STATEMENT OF CHARGES

On July 11, 1994, an Amended Statement of Charges, dated July 8, 1994, (Ex. 1-A) was received in to evidence as a substitute for the Statement of Charges, dated June 9, 1994, (Ex. 1) served on the Respondent on June 21, 1994. On October 19, 1994, the Department's motion to amend Factual Allegations B.2.a., b and c., contained in Exhibit 1-A, to include the phrase "or words to that effect", was granted. A copy of the Amended Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

Numbers in parenthesis refer to transcript pages or exhibits, and they denote evidence that the Hearing Committee found persuasive in determining a particular finding. Conflicting evidence,

if any, was considered and rejected in favor of the evidence cited. All Hearing Committee findings were unanimous unless otherwise specified.

NOTE: Petitioner's Exhibits are designated by Numbers.
 Respondent's Exhibits are designated by Letters.
 T. = Transcript

GENERAL FINDINGS

A. The Respondent was authorized to practice medicine in New York State on December 24, 1986 by the issuance of license number 169006 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine.

B. Respondent was employed by the Montefiore Comprehensive Health Care Center from 1991-1992 as an internal medicine physician and coordinator for AIDS services. One of his responsibilities was to identify patients seen in the adult medicine area who may have been at high risk for having HIV-related conditions. (Ex. B, T. 211, 233-4)

FINDINGS AS TO PATIENT A

1. Respondent treated Patient A, a female aged 38 years at that time, on July 18, 1991 at the Montefiore Comprehensive Health Care Center. (Ex. 3; T. 252-3)
2. The purpose of Patient A's seeking medical treatment on July 18, 1991 was to receive

medication to relieve her menstrual pain, her sore throat and a cough. Patient A testified further that she communicated these complaints to the Respondent while in his office before undergoing a physical examination. (Ex. 3; T. 132, 182)

3. Patient A testified that Respondent asked her if she was married and whether she had a boyfriend while she was in his office prior to undergoing a physical examination. (T. 130-1, 163-4)
4. Respondent and Patient A proceeded to an examination room where he instructed her to remove her blouse and/or sweater but not her bra. (Ex. 5, T. 132-3, 177, 264)
5. During the course of the examination, Respondent stood within arm's length of the patient while she was seated on the edge of the examination table. Respondent looked into Patient A's eyes and held her hands for an extended period of time. (Ex. 5, T. 132-3, 141-2, 165-6)
6. Respondent testified that he attempts to maintain eye contact with his patients in his practice and that Patient A did not indicate to him that he was standing closer to her than she felt comfortable with during the physical examination. He further testified that he may have held the patient's hands in an attempt to gain her confidence and to relieve the anxiety that she exhibited. (T. 267-8)
7. During the course of the physical examination, Respondent briefly pressed the area of Patient A's breasts not covered by her bra while asking her if she was experiencing pain. (T. 133, 148-9, 191-3)

8. Respondent did not perform a comprehensive breast exam of Patient A on July 18, 1991. (T. 280-1)
9. Respondent recorded in Patient A's medical record a finding of "breasts negative" after he conducted the physical examination, which he intended to mean a finding of normal breast tissue. (Ex. 3, p. 19; T. 301-2)

FINDINGS AS TO PATIENT B

10. Respondent treated Patient B, a female aged 31 years at that time, for a complaint of eye pain on October 15, 1991 at Montefiore Comprehensive Health Care Center. (Ex. 4; T. 74-5, 377, 379)
11. Patient B testified that she had experienced eye pain for several days, was tired from working from approximately midnight until 7:30 am and was therefore in a poor frame of mind when she saw Respondent on the morning of October 15, 1991. (T. 75-79)
12. Respondent conducted a physical examination of the patient, during which he stood facing Patient B, while she was seated on the side of a table in an examination room. Throughout the examination, the patient remained fully clothed. (T. 78, 109-111, 390-1, 393-4)
13. Respondent first examined the patient's eyes, the results of which provided no indication for the cause of her complaint of pain. Respondent then performed a screening physical examination to assess her general health status. (T. 79, 387-8)

14. During the course of the physical examination, Respondent placed both hands under the patient's sweatshirt and briefly squeezed her breasts over her bra. (T. 79-82, 86-7, 89-90)
15. Respondent did not conduct a comprehensive breast exam of Patient B while performing the screening physical exam. (T. 395, 432)
16. During the course of the physical examination, while Respondent's hands were under the patient's sweatshirt, he pinched or squeezed the area around Patient B's waist or hips and made a comment about her excess weight. (T. 82-3, 116-7)
17. While performing the physical examination, Respondent questioned Patient B about her menstrual cycle. (T. 399-400)
18. Respondent failed to document in Patient B's medical record any findings of his screening physical examination, other than those findings related to his examination of her eyes. (Ex. 4, p. 70; T. 432-3)
19. Respondent was unable to determine the cause of Patient B's eye pain and referred her for an ophthalmologic evaluation. (Ex. 4, p. 70; T. 83, 383-5)

FINDINGS AS TO SUPERVISOR C

20. Respondent was employed with Supervisor C, a female aged 31 at the time, at the Montefiore Comprehensive Health Care Clinic on April 15, 1991. Supervisor C was employed as a patient accounts supervisor at said facility. (T. 25-6, 440)

21. Supervisor C testified that between approximately 12:00 and 1:00 p.m. on April 15, 1991 she was standing in a doorway between the facility's Adult Medicine Unit and reception area when she felt two hands pressing on her buttocks. She further testified that she quickly turned around and saw the Respondent standing directly behind her. (T. 26-8)
22. A medical receptionist was seated approximately five to six feet from the doorway where Supervisor C was standing at the time of the alleged incident. (T. 26-7, 41-2)
23. Supervisor C testified that she "yelled in a rather loud and booming voice" at the Respondent after feeling the squeeze on her buttocks and seeing him behind her. (T. 28-9, 53-4)
24. The medical receptionist testified that she never heard of any incident between Respondent and Supervisor C and stated that any yelling by Supervisor C would have been overheard because the clinic was small (T. 474-5)
25. Respondent testified that he had no recollection of any incident, as testified to by Supervisor C, occurring and denied ever hearing her yell or shout at him about any such incident. (T. 443-4, 453)
26. Supervisor C testified that she discussed the incident with friends and family on the day it occurred. She further stated that she advised the Montefiore Center's Director of Ambulatory Care of such incident about one month later. (T. 31-4, 63-5)
27. Supervisor C never spoke with Respondent to discuss the incident, other than shouting at him after feeling the squeeze of her buttocks, and never filed any report of such incident with the Montefiore Center. (T. 55-6, 65)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee concluded that the following Factual Allegations should be sustained. The citations in parentheses refer to the Findings of Fact which support each Factual Allegation:

Paragraph A.: (1);
Paragraph B.: (10);
Paragraph B.1.a.: (12-15, 18);
Paragraph B.1.b.: (12-13, 16, 18);
Paragraph C.: (20);

The Hearing Committee further concluded that the following Factual Allegations should not be sustained:

Paragraphs A.1.a and A.1.b.;
Paragraphs B.2.a., B.2.b. and B.2.c.;
Paragraph C.1.

The Hearing Committee concluded that the following Specification of Charges should be sustained. The citation in parentheses refers to the Factual Allegations which support the Specification:

Seventh Specification: (B., B.1.a. and B.1.b.)

The Hearing Committee further concluded that the following Specifications of Charges should not be sustained:

First through Sixth Specifications; Seventh Specification, as it related to the facts contained in Paragraphs B.2.a., B.2.b. and B.2.c.

DISCUSSION

Respondent was charged with multiple Specifications alleging professional misconduct within the meaning of Education Law §6530. This statute sets forth numerous forms of actions which constitute professional misconduct, but does not provide definitions of such categories of misconduct. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by Peter J. Millock, Esq., General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law", sets forth suggested definitions for certain types of professional misconduct, including practicing the profession fraudulently.

During its deliberations, the Hearing Committee utilized the following definition of the fraudulent practice of medicine:

Fraudulent practice of medicine is an intentional misrepresentation or concealment of a known fact.

The Committee utilized this definition in its consideration of the Fourth and Fifth Specifications of misconduct. The rationale for its determination is set forth below.

In general, the Hearing Committee believed that both Patient A and Patient B were credible in their testimony. However, the Committee concluded that the perceptions of the two women of the actions of the Respondent were affected by their emotional and physical state at the time. The Committee did not infer any malicious intent on the part of the three complainants. However, the members felt that the events did not occur exactly as testified to due to misunderstandings on their part. The Committee did determine to sustain a portion of Factual Allegation Seven as it believed Patient B was credible in her testimony that the Respondent willfully intended to harass or intimidate her by squeezing her breasts and sides and by commenting on her weight.

ALLEGATIONS RELATED TO PATIENT A

The Committee found Patient A to be credible in her testimony that the Respondent briefly pressed the area of her breasts not covered by her bra while he examined her. However, it concluded that, based on her complaint of premenstrual pain, such physical contact was for an appropriate medical purpose. At one point the patient indicated an understanding that Respondent had to touch her breasts, based on her complaint of premenstrual pain. (T. 149) She also testified that he asked if she was experiencing pain as he was pressing her breasts over he bra. The Committee felt that asking such a question was an indication that Respondent's actions were for a proper medical purpose. While the Patient later testified that she made no specific complaint of breast pain, a general complaint of premenstrual pain and a request for medication to relieve such pain led the Committee to conclude that his pressing of her breast could have been for a proper diagnostic purpose and was therefore appropriate. As a result, the Committee determined to not sustain Factual Allegation A.1.a.

The Committee was unable to conclude that Respondent's holding of Patient A's hands was

for an inappropriate medical purpose, as alleged by the Department. Patient A's testimony was believed to reflect a misunderstanding of Respondent's actions. She may have felt uncomfortable by Respondent's proximity to her during the examination and such feelings may have been compounded by his looking directly into her eyes so that she believed "he wanted to have a relationship with her." (T.146) The Hearing Committee believed Respondent's testimony that he held her hands to gain the patient's confidence and to reduce her anxiety to be reasonable. While the Respondent may have used poor techniques in putting the patient at ease and in explaining his actions, the Committee concluded that his actions clearly did not rise to the level of professional misconduct. Therefore, Factual Allegation A.1.b. was not sustained.

ALLEGATIONS RELATED TO PATIENT B

The Committee found Patient B's testimony concerning Respondent's squeezing of her breasts and sides and comment about her weight to be credible. It noted that Respondent testified he placed his hands under Patient B's sweater. (T. 394) He stated that the purpose for this act was to assess her chest wall by palpating her axilla. Respondent further testified that he may have felt the patient's hips to understand her frame and musculoskeletal system and also may have commented on the patient's weight. (T. 397-8) The Committee considered Respondent's testimony as it related to the physical examination of Patient B to be self-serving and less than direct. In contrast, Patient B was consistent in stating that she felt a squeeze of her breasts followed by a squeeze in the area around her waist in conjunction with a comment about her weight. Based on these considerations, the Committee determined to sustain Factual Allegations B.1.a and B.1.b.

The Committee considered Patient B's allegations of inappropriate comments made by the Respondent related to her temperament or sexual habits to be instances of misperceptions of medically appropriate questions. In reaching this conclusion, the Committee noted her testimony that she was in "kind of a bad mood" on the day of the exam due to being tired and in pain and did not

fully remember all of the questions asked by Respondent. (T.79, 91-2) The patient recalled being asked "are you always so bitchy" which could be perceived differently than "are you always such a bitch" as alleged by the Department. (T. 107-8) The Respondent testified that it was likely that he asked the Patient about the regularity or timing of her menstrual cycle. This would be considered appropriate, particularly because of his responsibility to assess individuals at high risk for HIV-related conditions. The Committee felt the questions may have been poorly communicated to the Patient, but did not conclude that Respondent, by asking them, engaged in inappropriate conduct rising to the level of professional misconduct. It did not believe that Respondent's words were precisely those alleged by the patient in her testimony. Factual Allegation B.2. was not sustained.

ALLEGATIONS RELATED TO SUPERVISOR C

The Hearing Committee found the testimony of the medical receptionist, in which she stated that she knew of no incident between Supervisor C and the Respondent, to be very credible and most persuasive. Supervisor C specifically identified that receptionist as the individual in the reception area where the incident allegedly occurred. (T. 41-2) She further testified that the receptionist was seated only a few feet away from where Supervisor C yelled loudly at the Respondent following the alleged inappropriate physical contact. The Committee believed it to be reasonable that the receptionist would have been aware of such a confrontation had it occurred in the manner described by Supervisor C. Other employees of Montefiore testified that they were not aware of any incident having occurred between the two individuals. (T. 244-5, 486) The Committee found their testimony to be credible and believed that there would have been some knowledge of the alleged incident in a small and open area had it occurred. In addition, Supervisor C testified that she had discussed the alleged offensive contact with family, friends and the Director of Ambulatory Care at the Health Care Center. No witnesses appeared to testify to this contention. The credibility of those witnesses

testifying on behalf of the Respondent, plus the absence of any evidence in the record which corroborated the allegation of Supervisor C, led the Committee to conclude that the events did not occur in the manner as testified to by her. The Department failed to demonstrate by a preponderance of the evidence that Respondent inappropriately touched Supervisor C and Factual Allegation C.1. was not sustained.

SPECIFICATION OF CHARGES

Factual Allegations B.1.a. and B.1.b. were the only two which were sustained by the Hearing Committee. The facts in those Allegations provided the basis for the Department to charge the Respondent with conduct evidencing moral unfitness to practice medicine, fraudulent practice of medicine and willfully harassing, abusing or intimidating a patient, either physically or verbally. For the reasons set forth below, the Committee determined to sustain only the Seventh Specification of Charges by concluding that the Respondent was guilty of professional misconduct by his willful harassment, abuse or intimidation of Patient B during the physical examination he conducted on October 15, 1991.

The Hearing Committee unanimously agreed that the inappropriate actions by the Respondent during his examination of Patient B were not taken for any sexual gratification on his part. The inappropriate squeeze of her breasts and sides and comment about her weight were very brief in duration and occurred while the Patient was dressed. (T. 80-1) The Committee reviewed the Respondent's testimony regarding the manner in which he conducted a screening physical examination. The Committee considered the description of the Respondent by fellow practitioners at Montefiore as being known as a conscientious and competent physician highly regarded by both patients and colleagues. (T. 540) The Committee had the clear impression that the Respondent's improper acts in his treatment of Patient B were not based on any sexual motivation. Accordingly,

it was determined that the Respondent's conduct did not evidence a moral unfitness to practice medicine.

As set forth above, the Committee utilized the definition of the fraudulent practice of medicine as being an intentional misrepresentation or concealment of a known fact. Applying this definition, it reasoned that the Respondent could be found as practicing fraudulently only if an examination of Patient B's breasts and sides would not have been for a proper medical purpose. It was noted that Patient B's complaint was for eye pain. However, the Committee felt that proper medical practice could reasonably include a procedure such as what the Respondent characterized as a screening physical examination to assess the patient's general health status. The Committee also believed that the palpation of Patient B's breasts and sides would have been an appropriate component of a screening physical examination. It therefore concluded that the Respondent's inappropriate conduct did not constitute the fraudulent practice of medicine.

The Hearing Committee concluded that the Respondent's squeeze of Patient B's breasts and sides, plus comment about her weight, were willful acts intended to harass, abuse or intimidate the patient. It considered that the patient indicated she was in a bad mood because she was tired and in pain when seen by the Respondent. The Respondent testified that the patient was "difficult" and "not particularly pleasant." (T. 407-8) The Committee reasoned that the patient was assertive and verbal about the need to relieve her pain and that the Respondent inappropriately squeezed her breasts and sides and commented on her weight to quiet her and to maintain control of the examination. The Committee considered these actions to be intentional and willful and determined to sustain Specification Seven.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that the Respondent receive a censure and reprimand in satisfaction

of the charges brought against him. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. The Hearing Committee was convinced that the Respondent's inappropriate actions were not the result of any desire for sexual gratification. It was their firm conviction that the allegations against the Respondent were essentially caused by poor communication with patients and problems with interpersonal relationships. Patient A clearly felt uncomfortable and anxious and the Respondent apparently failed to address her feelings during the physical examination. Patient B may have been impatient and "not pleasant to deal with" as the Respondent described her, but he had a responsibility to not let his professional attitude fail under such circumstances. The Committee believed that if the Respondent was having difficulty in conducting Patient B's examination, he properly should have addressed that problem directly. The Respondent was obligated to clearly describe his purpose in performing the screening exam and to request the patient's cooperation.

The decision that the issuance of a censure and reprimand would be the most appropriate penalty was based on the Hearing Committee's conclusion that the improvement of physician-patient communication is developed through experience and cannot effectively be learned through formalized training. It was further noted that no allegations relating to inappropriate medical care or treatment were made against the Respondent. The Committee believed that the imposition of such a penalty would cause the Respondent to recognize that his actions, which resulted in the finding of professional misconduct, would not be tolerated or condoned.

ORDER

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

1. The following Specification of Charges, as set forth in the Statement of Charges (Ex. 1A) are **SUSTAINED**.
 - a. Seventh Specification, as it related to the facts contained in Paragraphs B.1.a. and B.1.b.

2. The following Specifications of Charges, as set forth in the Statement of Charges (Ex. 1A) are **NOT SUSTAINED**.
 - a. First through Third Specifications;
 - b. Fourth through Fifth Specifications;
 - c. Sixth Specification;
 - d. Seventh Specification, as it related to the facts contained in Paragraphs B.2.a., B.2.b., and B.2.c.

3. The Respondent shall receive a Censure and Reprimand in satisfaction of the charges brought against him.

DATED: Albany, New York
1/31 1995



THEA GRAVES PELLMAN (CHAIRPERSON)

MARGARET H. McALOON, M.D.
C. FRED PECKHAM, JR., D.O.

TO: Irene Koch, Esq.
Assistant Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza-Sixth Floor
New York, New York 10001

Robert S. Asher, Esq.
295 Madison Avenue
New York, New York 100017

Alan M. Kurz, M.D.
61 Edgewood Avenue
Clifton, New Jersey 07012

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

-----X AMENDED
IN THE MATTER : STATEMENT
OF : OF
ALAN M. KURZ, M.D. : CHARGES
-----X

ALAN M. KURZ, M.D., the Respondent, was authorized to practice medicine in New York State on December 24, 1986 by the issuance of license number 169006 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, 1993 through December 31, 1994 at 61 Edgewood Avenue, Clifton, New Jersey 07012.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A, a 38 year old female, at Montefiore Comprehensive Health Care Center, located at 230 East 162nd Street, Bronx, New York, on or about July 18, 1991. (The identities of Patient A and the other patient and supervisor are disclosed in the attached Appendix). Patient A came for a follow-up appointment for her asthma condition.

PLAINTIFF'S
DEFENDANT'S
COMPANY'S
DEPARTMENT'S
PETITIONER'S
RESPONDENT'S
DATE 7/11/94 REPORTER NM
EXHIBIT 1A
for identification
in evidence NM
STERLING REPORTING SERVICE, INC.

1. In the course of a purported physical examination, but not for a proper medical purpose, Respondent touched Patient A inappropriately as follows:

a. Respondent placed his hands on Patient A's breasts over her bra and felt her breasts.

b. Respondent held and/or caressed Patient A's hands and/or arms.

B. Respondent treated Patient B, a 31 year old female at Montefiore Comprehensive Care Center, located at 230 East 162nd Street, Bronx, New York, on or about October 15, 1991. Patient B's chief complaint was sharp pain in her right eye accompanied by headaches.

1. In the course of a purported physical examination, but not for a proper medical purpose, Respondent touched Patient B inappropriately as follows:

a. Respondent placed both his hands on Patient B's breasts, under her shirt and over her bra, and squeezed her breasts.

b. Respondent lowered both his hands under Patient B's shirt and squeezed her side and/or sides; while doing so, Respondent made a remark about the excess weight on Patient B's side and/or sides above her hip and/or hips.

2. Respondent engaged in inappropriate conduct as follows:

10/19 ja
a. Respondent asked Patient B: "Are you always such a bitch?" *or words to that effect.*

10/19 ja
b. Respondent asked Patient B: "Is it that time of the month?" *or words to that effect.*

10/19 ja
c. Respondent asked Patient B: "Are you getting enough?" *or words to that effect.*

C. Respondent worked with Supervisor C, a 31 year old patient accounts supervisor, at Montefiore Comprehensive Care Center, located at 230 East 162nd Street, Bronx, New York, on or about April 15, 1991.

1. On or about April 15, 1991, while Supervisor C was standing in the middle of the doorway outside the Comprehensive Care Center reception area, Respondent touched Supervisor C inappropriately by placing his hands on, and squeezing, her buttocks.

SPECIFICATIONS OF CHARGES

FIRST THROUGH THIRD SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with conduct in the practice of medicine which evidences moral unfitness to practice medicine, under N.Y. Educ. Law Section 6530(20) (McKinney Supp. 1994), in that Petitioner charges:

1. The facts contained in paragraph A, A.1, A.1.a, and/or A.1.b.
2. The facts contained in paragraph B, B.1, B.1.a, B.1.b, B.2, B.2.a, B.2.b, and/or B.2.c.
3. The facts contained in paragraph C, and C.1.

FOURTH THROUGH FIFTH SPECIFICATIONS

PRACTICING FRAUDULENTLY

Respondent is charged with practicing the profession fraudulently, under N.Y. Educ. Law Section 6530(2) (McKinney Supp. 1994), in that Petitioner charges:

4. The facts contained in paragraph A,
A.1, A.1.a, and/or A.1.b.

5. The facts contained in paragraph B,
B.1, B.1.a, B.1.b, B.2, B.2.a, B.2.b,
and/or B.2.c.

SIXTH THROUGH SEVENTH SPECIFICATIONS

WILLFULLY HARASSING, ABUSING OR INTIMIDATING PATIENTS

Respondent is charged with willfully harassing, abusing or intimidating patients either physically or verbally, under N.Y. Educ. Law Section 6530(31) (McKinney Supp. 1994), in that Petitioner charges:

6. The facts contained in paragraph A,
A.1, A.1.a, and/or A.1.b.

7. The facts contained in paragraph B,
B.1, B.1.a, B.1.b, B.2, B.2.a, B.2.b,
and/or B.2.c.

DATED: New York, New York
July 8 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct