



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

July 26, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael Kelton, Esq.
Lippman, Krasnow & Kelton
711 Third Avenue
New York, NY 10017

Thuc H. Nguyen, M.D.
8539 54th Avenue
Elmhurst, NY 11373

Sylvia Finkelstein, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, NY 10001

RE: In the Matter of Thuc H. Nguyen, M.D.

Dear Mr. Kelton, Dr. Nguyen and Ms. Finkelstein:

Enclosed please find the Determination and Order (No. BPMC-93-109) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

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.

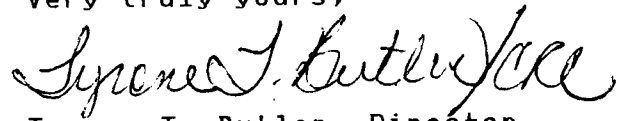
The notice of review served on the Administrative Review Board should be forwarded to:

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

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

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

Very truly yours,

A handwritten signature in cursive script that reads "Tyrone T. Butler". The signature is written in black ink and is positioned above the typed name.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

STATE OF NEW YORK ; DEPARTMENT OF HEALTH
-----X
IN THE MATTER ; DETERMINATION
OF ; AND ORDER
THUC H. NGUYEN, M.D. ; NO. BPMC 93-109
-----X

ROBIN N. BUSKEY, R.P.A, Chairperson, STEPHEN A. GETTINGER, M.D. and ROBERT J. O'CONNOR, M.D. 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 Section 230(10)(e) of the Public Health Law. MICHAEL P. MCDERMOTT, ESQ., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

SUMMARY OF THE PROCEEDINGS

Notice of Hearing and Statement of Charges:	March 25, 1993
Pre-Hearing Conference:	April 9, 1993
Hearing Dates:	April 28, 1993 May 5, 1993 May 27, 1993
Place of Hearing:	NYS Department of Health 5 Penn Plaza New York, New York
Date of Deliberations:	June 30, 1993

Petitioner appeared by: ^f Peter J. Millock, Esq.
General Counsel
NYS Department of Health
BY: Sylvia Finkelstein, Esq.
Associate Counsel

Respondent appeared by: Lippman, Krasnow & Kelton
711 Third Avenue
New York, NY 10017
BY: Michael Kelton, Esq.

STATEMENT OF CHARGES

Essentially, the Statement of Charges charges the Respondent with engaging in conduct in the practice of medicine which evidences moral unfitness to practice the profession; with wilfully harassing, abusing or intimidating a patient either physically or verbally; and with fraudulent practice.

The charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto and made a part hereof.

WITNESSES

For the Petitioner:

Patient A

Patient B

Patient C

Patient D

For the Respondent:

Thuc H. Nguyen, M.D., the Respondent

FINDINGS OF FACT

Numbers in parentheses refer to transcript page numbers

or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous unless otherwise specified.

GENERAL FINDINGS

1. Thuc H. Nguyen, M.D., the Respondent, was authorized to practice medicine in New York State on March 11, 1983 by the issuance of license number 153488 by the New York State Education Department (Pet's. Ex. 1A; Resp's. Ex. A).

2. The Respondent is currently registered with New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 from 23 Van Dam Street, Brooklyn, New York 11222 (Pet's. Exs. 1A and 2).

FINDINGS AS TO PATIENT A

3. The Respondent treated Patient A, a 25 year old female, at the Staten Island Medical Group - HIP (hereinafter HIP Center), 1050 Clove Road, Staten Island, New York 10301, where he was employed as an internist (Pet's. Ex. 3; Tr. 17-21, 509).

4. On July 8, 1992, Patient A came to the HIP Center complaining of a sore throat and was seen by the Respondent.

Patient A also mentioned to the Respondent that she suffered from recurrent yeast infections (Pet's Ex. 3; Tr. 22-24, 509-514).

5. Patient A consented to the Respondent performing an internal examination of her vaginal area. In the course of the pelvic examination allegedly to ascertain if she had a yeast infection, the Respondent inserted the index and middle fingers of his right hand into her vagina. He moved these fingers all around and pressed his thumb against her clitoris (Tr. 26-29, 514, 521).

6. Subsequently, the Respondent removed his fingers and told Patient A he did not see any sign of infection. The Respondent did not use a speculum (Tr. 31, 101, 525, 535).

7. The Respondent reinserted his fingers in Patient A's vagina and began moving them hard and fast, in an in and out motion, while rubbing her clitoris with his thumb (Tr. 32-34, 106-109).

8. Using his left hand, the Respondent lifted up Patient A's sweatshirt and bra and exposed her breast while the fingers of his right hand remained inside her vagina. The Respondent squeezed her nipples and rubbed her breast in a circular motion with his left hand and continued to move the fingers of his right hand in and out of her vagina in a hard and fast motion while rubbing her clitoris with his thumb (Tr. 33-45).

9. In his office, after the examination, the Respondent gave Patient A a prescription for Ampicillin for her sore throat, and told her that if she had any sharp pain of the pelvis, she should call him or the HIP Center at any time (Tr. 528).

10. Patient A had approximately 30-35 gynecological examinations over the years, and had never experienced a simultaneous vaginal and breast examination as was performed by the Respondent. She reported the incident immediately to the receptionist who encouraged her to report it to Mr. Jenkins, the HIP Executive Director (Tr. 47-49, 141).

11. At approximately 10:40 p.m. on July 8, 1992 Patient A presented to the emergency room of Staten Island University Hospital, complaining that she had had a forceful digital vaginal exam that day and was in pain. There was no vaginal bleeding. The examination at the hospital did not reveal any external abrasions or contusions. She was treated with Advil and told to have a follow-up with an OB-GYN physician (Pet. Ex. 3A).

FINDINGS AS TO PATIENT B

12. On May 14, 1992, Patient B, a 40 year old female went to the HIP Center complaining of sinus headaches and was seen by the Respondent (Pet's. Ex. 4; Tr. 154-161).

13. In the course of the physical examination, Patient B sat on the examining table with her legs hanging over the

edge. The Respondent stood in front of her and pressed his crotch against her knees and legs as he looked at her ears, nose and throat while speaking to her (Tr. 162-164, 179-180).

14. During a discussion with Patient B about self breast examination, the Respondent abruptly raised Patient B's blouse and bra and exposed her breasts. Patient B was in the sitting position and didn't expect a breast examination. The Respondent proceeded to squeeze her breasts and nipples asking her "Do you know what this is" (Tr. 165-172, 195-197, 200-201).

FINDINGS AS TO PATIENT C

15. On July 3, 1992, Patient C, a 30 year old female, experienced a sore throat and earache. She called the HIP emergency care phone number and was instructed to report to the HIP Center located at 1050 Clove Road, Staten Island, where she was seen by the Respondent (Pet's. Ex. 5; Tr. 211-214).

16. While Patient C was sitting on the edge of the examining table, the Respondent rubbed Patient C's bare arms and legs with both hands. He rubbed her inner thigh up to her shorts and continued to rub her arms and legs throughout the visit (Tr. 215-216, 217-223, 232, 233).

17. On several occasions during the visit the Respondent also put his arm around Patient C's shoulders and

pressed his cheek against her cheek (Tr. 217).

18. On Monday July 6, 1992, Patient C went to the HIP Center and reported the July 3, 1992 incident with the Respondent to Mrs. Van Pelt who suggested that she write a letter to Karen Scherer, Administrator of the HIP Center. On July 7, 1992, Patient C wrote to Mrs. Scherer describing the incident (Pet's. Ex. 8; Tr. 224, 235).

FACTS AS TO PATIENT D

19. On May 14, 1992 Patient D, a 62 year old female, went to the HIP Center complaining of a sore throat and was seen by the Respondent. Patient D also mentioned to the Respondent that she suffered from chronic sinus problems. During the course of this visit, which was a baseline visit, the Respondent suggested that he perform a breast exam. While Patient D was sitting on the edge of the examining table, the Respondent caressed or fondled her breasts and nipples with both hands (Tr. 252-254).

20. The Respondent repeatedly told Patient D that she was beautiful (Tr. 251, 255, 270, 276).

21. The page for the baseline physical examination of May 14, 1992 is missing from the patients chart (Pet's. Ex. 6; Tr. 648-649; 668).

22. On May 26, 1992, Patient D went to the HIP Center complaining of pain in the buttocks area. She was seen by the Respondent who diagnosed external hemorrhoids and skin abrasion in the intergluteal area. Patient D was instructed

to return in one week (Pet's. Ex. 6; Tr. 256-259).

23. On June 8, 1992 Patient D returned for a follow-up visit and was seen by the Respondent who told her to pull down her pants and bend over the examining table. The Respondent had Patient D remain in this position for a long period of time. Upon being told by the Respondent that she could get up, Patient D raised herself, turned around, and observed the Respondent pulling up his pants zipper. She observed a piece of cloth sticking out of the Respondent's pants zipper (Tr. 260-263, 291,293,302).

CONCLUSIONS AS TO PATIENTS A, B, C AND D

The Hearing Committee found Patients A, B, C and D to be very credible witnesses. None of the Patients knew each other; they had no apparent reason to conspire against the Respondent and they registered four independent complaints against him. Their testimony was consistent and remained so during extensive direct and cross examination. On the other hand, the Hearing Committee found the Respondent's testimony to be evasive, self serving at times conflicting and just not credible.

The Hearing Committee concludes that the Respondent's actions towards Patients A, B, C and D were a violation of professional trust which evidenced moral unfitness to practice the profession and constituted the wilful harassing, abusing and intimidating a patient.

FINDINGS ON THE ISSUE OF FRAUD

24. On or about September 10, 1986, the Office of Professional Medical Conduct issued charges against Respondent which resulted in O.P.M.C. hearings held from December 1986 through February 1987. At the conclusion of that hearing, the Hearing Committee unanimously voted and recommended that the Respondent be found not guilty of any of the specifications. On or about May 20, 1988, the Board of Regents voted to find the Respondent guilty of some of the specifications, but not guilty of others, resulting in the issuance of Education Commissioner's Order No. 7957, with attachments, finding the Respondent guilty of professional misconduct, including, willful physical abuse of a patient and moral unfitness to practice the profession as related to the Respondent's fondling the breasts of a minor patient and of a hospital employee. Further, the Respondent was found guilty of fraud, and willfully making and filing a false report, in the submission of a forged letter of recommendation in connection with applications for hospital employment. The penalty imposed upon the Respondent consisted of one year suspension of his license to practice medicine, the last ten months of said suspension were stayed (two months actual suspension), and ten months probation under terms which included the requirement that whenever the Respondent treated or examined a female patient another female had to be present at all times (Pet's. Ex. 2;

Tr. 377).

25. On or about September 15, 1989, the Respondent prepared and submitted an Application for Employment for the position of staff physician to the Workman's Circle Home & Geriatric Center, located at 3155 Grace Avenue, Bronx, New York 10469 (Pet's Ex. 9; Tr. 400-401).

26. In an Addenda to Physician Application appended thereto, in response to question 1., "Have you ever had your license to practice medicine in New York suspended, revoked or otherwise limited in any way?" The Respondent answered "yes". In the "Comment" section the Respondent stated "2 months suspension 1988 for false accused of Harassment (incidence occurred in 1983)" when the Respondent knew that that response was not complete (See Finding of Fact No. 24) (Pet's. Ex. 2 and 9, Tr. 377, 384-386, 401-402, 485-487, 499-500).

27. The Respondent also knowingly and intentionally attempted to mislead Workmen's Circle Home and Geriatric Center by providing said institution with a copy of what purportedly was Order 7957 with significant material omitted (Tr. 402-403).

28. In connection with his Application for Employment to Workmen's Circle Home & Geriatric Center, the Respondent submitted a Curriculum Vitae which the Respondent knew contained omissions of adverse information (Pet's. Ex. 9; Tr. 362-364, 371-372, 466-473).

29. The Respondent was employed by the HIP Center, as an internist from April 20, 1992 through July 8, 1992 (Pet's. Exs. 8 and 10; Tr. 420-421).

30. On June 15, 1992, the Respondent submitted a letter to the Medical Director of the HIP Center which stated that his license was suspended for two months for an occurrence in 1983-84, when he refused to send an employee home while she was on duty. The Respondent further stated that the employee harassed him and then accused him of harassing her. The Respondent indicated that a committee from the New York State Department of Health found him not guilty when the Respondent knew that the Commissioner of Health and the Board of Regents subsequently reversed the decision and found him guilty of some of the specifications. The Respondent also knowingly and intentionally attempted to mislead the HIP Center by providing said institution with a copy of what purportedly was Order 7957 with significant material omitted (Pet's. Exs. 2 and 10; Tr. 421-423, 429, 435, 487-488, 500-501).

31. On June 1, 1992, the Respondent submitted an Application for Appointment to the Medical Staff to Bayley Seton Hospital, 75 Vanderbilt Avenue, Staten Island, New York 10304-3850 (Pet's. Ex. 11).

32. In the accompanying questionnaire entitled "Professional Sanctions", in response to question 1. "Has your license to practice medicine... in any jurisdiction,

state or country ever been, or are they in the process of being denied, revoked, suspended, reduced, not renewed or voluntarily relinquished?", Respondent answered "License was suspended for 2 months. Please see attached explanation papers." The Respondent knowingly and intentionally attempted to mislead Bayley Seton Hospital by providing said institution with a copy of what purportedly was Order 7957 with significant material omitted (Pet's. Ex. 11; Tr. 488-491).

33. In the accompanying questionnaire entitled "Professional Sanctions", in response to question 2. "Have you ever been found guilty of professional misconduct, as defined in the Education Law of the state of New York, or unprofessional conduct as defined by the Board of Regents?" Respondent knowingly and falsely answered "no" (Pet's. Exs. 2 and 11).

34. In the accompanying questionnaire, entitled "Professional Sanctions", in response to question 4. "Have you ever been the subject of any prior professional misconduct proceedings in this state or any other state and if so what are the findings of such proceedings?" The Respondent answered "Please see answer to questions 1 and attached explanation papers". The Respondent knowingly and intentionally attempted to mislead Bayley Seton Hospital by providing said institution with a copy of what purportedly was Order 7957 with significant material omitted (Pet's.

Exs. 2 and 11; Tr. 488-491).

35. On or about June 1, 1992, the Respondent submitted a letter to Bayley Seton Hospital, appended to his Application for Appointment to the Medical Staff, which stated that his license was suspended for two months for an occurrence in 1983, when he refused to send an employee home while she was on duty. The Respondent further stated that the employee harassed him and then accused him of harassing her. The Respondent indicated that a committee from the New York State Department of Health found him not guilty when Respondent knew that the Commissioner of Health and the Board of Regents subsequently reversed the decision and found him guilty of some of the specifications (Pet's. Exs. 2 and Ex. 11, p. 7).

36. In connection with his Application for Appointment to the Medical Staff of Bayley Seton Hospital, the Respondent knowingly and intentionally submitted a Curriculum Vitae which omitted adverse information (Pet's. Exs. 9 and 11; Tr. 360-364, 371-372, 403-407, 466-473).

37. On June 1, 1992, the Respondent submitted an Application for Appointment to the Medical Staff to St. Vincent's Medical Center of Richmond, 355 Bard Avenue, Staten Island, New York 10310-1699 (Pet's. Ex. 12).

38. In the accompanying "Addendum to Medical Staff Application", in response to question 2. "Is there, or has there ever been, any professional misconduct proceedings

against you in this or any other state...?", Respondent knowingly and falsely answered "No. License was suspended for 2 months. Please see attached explanation papers." The Respondent knowingly and intentionally attempted to mislead St. Vincent's Medical Center of Richmond by providing said institution with a copy of what purportedly was Order 7957 with significant material omitted (Pet's. Exs. 2 and 12; Tr. 499-504).

39. In the accompanying "Addendum to Medical Staff Application", in response to question 6. "Has your license, certification and/or registration to practice any profession in this or any other state ever been suspended, restricted, curtailed, terminated, not renewed or voluntarily surrendered? If yes, provide details, including but not limited to, the nature of the allegations & status". The Respondent answered "Yes. see attached explanation papers." The Respondent knowingly and intentionally attempted to mislead St. Vincent's Medical Center of Richmond by providing said institution with a copy of what purportedly was Order 7957 with significant material omitted. The Respondent submitted a letter which stated that his license was suspended for two months for an occurrence in 1983, when he refused to send an employee home while she was on duty. The Respondent further stated that the employee harassed him and then accused him of harassing her. The Respondent indicated that a committee from the New York State

Department of Health found him not guilty when the Respondent knew that the Commissioner of Health and the Board of Regents subsequently reversed the decision and found him guilty of some of the specifications Pet's. Exs. 2 and 12; Tr. 422-423, 488, 499-503).

40. In connection with his Application for Appointment to the Medical Staff of St. Vincent's Medical Center of Richmond, the Respondent knowingly and with intent to deceive submitted a Curriculum Vitae which contained omissions of adverse information (Pet's. Ex. 12, p. 20; Tr. 362-364, 371-372, 403-407, 467-473).

VOTE OF THE HEARING COMMITTEE

(All votes were unanimous unless otherwise specified)

FIRST THROUGH FOURTH SPECIFICATIONS:

(ENGAGING IN CONDUCT IN THE PRACTICE OF MEDICINE WHICH EVIDENCES MORAL UNFITNESS TO PRACTICE THE PROFESSION)

SUSTAINED as to all charges

NOTE: Although the evidence is insufficient to support the allegation in paragraph B(1)(b) of the **STATEMENT OF CHARGES** that the Respondent touched Patient B's breasts simultaneously, the Hearing Committee has determined that the evidence is sufficient to support the other allegations charged in B(1)(b) and is therefore sufficient to **SUSTAIN** the charge.

FIFTH THROUGH EIGHTH SPECIFICATIONS

(WILFULLY HARASSING, ABUSING OR INTIMIDATING A PATIENT
EITHER PHYSICALLY OR VERBALLY)

SUSTAINED as to all charges

NOTE: Although the evidence is insufficient to support the allegation in paragraph B(1)(b) of the **STATEMENT OF CHARGES** that the Respondent touched Patient B's breasts simultaneously, the Hearing Committee has determined that the evidence is sufficient to support the other allegations charged in B(1)(b) and is therefore sufficient to **SUSTAIN** the charge.

NINTH THROUGH TWELFTH SPECIFICATIONS

(FRAUDULENT PRACTICE)

SUSTAINED as to all charges

NOTE: Although the evidence is insufficient to support the allegations in F(1)(b), F(3)(e) and F(4)(c) of the **STATEMENT OF CHARGES** that the Respondent's Curriculum Vitae contained false statements the Hearing Committee has determined that the evidence is sufficient to support the allegation that the Respondent, knowingly and with intent to deceive, submitted Curriculum Vitae which contained omissions of adverse information and is therefore sufficient to **SUSTAIN** the charge.

DETERMINATION

The Hearing Committee has voted to **SUSTAIN** all of the charges against the Respondent.

It should be noted that the charges in this case are similar in nature to those charges which were **SUSTAINED** by the Commissioner of Health and the Board of Regents in a prior case against the Respondent and which resulted in the issuance of Education Commissioner Order 7957.

The penalty imposed upon the Respondent under Order

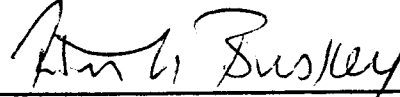
7957 consisted of one year suspension of his license to practice medicine, the last ten months of said suspension were stayed (two months actual suspension), and ten months probation under terms which included the requirement that whenever the Respondent treated or examined a female patient another female had to be present at all times.

The Hearing Committee determined that the Respondent's actions toward Patient A, B, C and D and his fraudulent actions in the filing of employment applications are individually and collectively sufficient to evidence a moral unfitness to practice the profession of medicine. The Respondent's license to practice should be **REVOKED**.

ORDER

The Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

DATED: Mount Vernon, New York
7/21, 1993



ROBIN N. BUSKEY, R.P.A.
Chairperson

STEPHEN A. GETTINGER, M.D.
ROBERT J. O'CONNOR, M.D.

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

IN THE MATTER
OF
THUC H. NGUYEN, M.D.

STATEMENT
OF
CHARGES

THUC H. NGUYEN, M.D., the Respondent was authorized to practice medicine in New York State on March 11, 1983, by the issuance of license number 153488 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 from 23 Van Dam Street, Brooklyn, New York 11222. Respondent's residence address is 8539 54th Avenue, Elmhurst, New York 11373.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A, (the identity of Patient A and all other patients is disclosed in the annexed Appendix), a 25 year old female, at the Staten Island Medical Group - HIP (hereinafter referred to as HIP Center), 1050 Clove Road, Staten Island, New York 10301, where he was employed as an internist. On or about July 8, 1992, Patient A came to the HIP Center complaining of a sore throat and was seen by Respondent. Patient A mentioned to Respondent that she also suffered from recurrent yeast infections.

1. In the course of purportedly performing a pelvic examination, Respondent engaged in conduct as follows:

(a) Respondent inserted the index and middle fingers of his right hand into Patient A's vagina. He hardly moved these fingers; he did however, repeatedly move his thumb against her clitoris. Subsequently Respondent removed his fingers and told Patient A he did not see any sign of infection.

(b) Respondent reinserted his fingers in Patient A's vagina and began moving them in an in and out direction while rubbing her clitoris with his thumb.

(c) Respondent lifted up Patient A's sweatshirt and bra and exposed her breasts while his index and middle fingers remained inside her vagina. Respondent began moving his fingers in and out in a fast and hard motion while rubbing the Patient's clitoris with his hand.

B. Respondent treated Patient B, a 40 year old female, at the HIP Center. On or about May 14, 1992, Patient B went to the HIP Center complaining of sinus headaches and was seen by Respondent.

1. In the course of purportedly performing a physical examination, Respondent engaged in conduct as follows:

(a) While Patient B sat on the examining table with her legs hanging over the edge, Respondent stood in front of her and pressed his crotch against her knees and legs while he looked at her throat, ears and nose while speaking to her.

(b) Respondent abruptly raised Patient B's blouse and bra and exposed her breasts. He then used both hands to touch her breasts simultaneously. Respondent repeatedly squeezed her breasts and nipples with both hands.

C. On or about July 3, 1992, Patient C, a 30 year old female, experienced a sore throat and earache. She called the HIP emergency care phone number and was instructed to report to the HIP Center located at 1050 Clove Road, Staten Island, where she was seen by Respondent.

1. Respondent engaged in conduct as follows:

(a) Patient C was sitting on the edge of the examining table. Respondent rubbed Patient C's bare arms and legs with both hands. He rubbed her inner thigh up to her shorts. Respondent continued to rub her arms and legs throughout the visit.

(b) On several occasions, Respondent put his arm around Patient C's shoulders and pressed his cheek against her cheek.

D. Respondent treated Patient D, a 62 year old female, at the HIP Center.

1. Respondent engaged in conduct as follows:

(a) On or about May 14, 1992 Patient D went to the HIP Center complaining of a sore throat and was seen by Respondent. Patient D also mentioned to Respondent that she suffered from chronic sinus problems. During the course of this visit, Respondent suggested that he perform a breast exam. While Patient D was sitting on the edge of the examining table, Respondent rubbed her breasts and nipples with both hands for a long period of time. Respondent told Patient D repeatedly that she was beautiful.

(b) On or about May 26, 1992, Patient D went to the HIP Center complaining of pain in the buttocks area. She was seen by Respondent who diagnosed external hemorrhoids and skin abrasion in the intergluteal area. Patient D was instructed to return in one week. On or about June 8, 1992 Patient D returned for a follow-up visit and was seen by Respondent who told her to pull down her pants and bend over the examining table. Respondent had the Patient remain in this position for a long period of time. Respondent said "It looks beautiful" and touched her buttocks. Neither of these acts was for a proper medical purpose but was instead, for Respondent's sexual gratification. Upon being told by Respondent that she could get up, Patient D raised herself, turned

around, and observed Respondent pulling up his pants zipper. She observed a piece of cloth sticking out of Respondent's pants zipper.

E. Respondent treated Patient E, a 23 year old female, at the HIP Center.

1. Respondent engaged in conduct as follows:

(a) On or about June 24, 1992 Patient E went to the HIP Center complaining of a rash on her face. She was seen by Respondent. While Patient E was sitting on the edge of the examining table, Respondent held her hand and told her that she is a beautiful Americal girl. Respondent continued to hold her hand and told her that she is a young and beautiful blooming flower who was expected to have some acne. Respondent then informed Patient E that he was going to perform a breast exam and instructed Patient E to lie down on the examining table. Respondent unbuttoned her blouse. Respondent touched and caressed Patient E's breasts with both hands for a long period of time, during which time he also pulled and rubbed her nipples.

(b) On or about July 2, 1992, Patient E went to the HIP Center complaining of a bump and pain on her left knee. She was sitting on the edge of the examining table. Respondent sat in a chair in front of her and lifted Patient E's legs and outstretched them, placing her feet on his thighs. Respondent then rubbed Patient E's bare legs up and down with both hands while telling her that if he

were on a beach he would not be looking at her knee and that her legs are beautiful as they are.

(c) In the course of the visit of July 2, 1993, Respondent noticed that Patient E's chest was sunburned and began rubbing her chest. Respondent told Patient E that he wanted to see how far the sunburn went, he then put his hands underneath her blouse and unbuttoned her bra; Respondent lifted her blouse exposing her breasts. Thereafter, Respondent told Patient E that she needed another breast exam and instructed her to lie down. Respondent touched Patient E's breasts simultaneously with his hands for a long period of time and he pulled and rubbed her nipples.

F. On or about July 1, 1988, the Commissioner of the State Education Department issued Order No. 7957, with attachments, finding the Respondent guilty of professional misconduct, including, willful physical abuse of a patient and moral unfitness to practice the profession as related to Respondent's fondling the breasts of a minor patient and of a hospital employee. Further, Respondent was found guilty of fraud, and willfully making and filing a false report, in the submission of a forged letter of recommendation in connection with applications for hospital employment. The penalty imposed upon Respondent consisted of one year suspension of his license to practice medicine, the last ten months of said suspension were stayed (two months actual suspension), and ten months probation under terms which included the

requirement that whenever Respondent treated or examined a female patient another female had to be present at all times.

1. On or about September 15, 1989, Respondent prepared and submitted an Application for Employment for the position of staff physician to the Workmen's Circle Home & Geriatric Center, located at 3155 Grace Avenue, Bronx, New York 10469.

(a) In an Addenda to Physician Application appended thereto, in response to question 1., "Have you ever had your license to practice medicine in New York State suspended, revoked or otherwise limited in any way?" Respondent answered "yes". In the "Comment" section Respondent stated "2 months suspension 1988 for false accused of Harassment (incidence occurred in 1983)" when Respondent knew that was not the complete penalty imposed and that was not the basis of the findings of guilt. Respondent also knowingly and intentionally attempted to mislead Workmen's Circle Home and Geriatric Center by providing said institution with a copy of what purportedly was Order 7957 with significant material omitted.

(b) In connection with his Application for Employment to Workmen's Circle Home & Geriatric Center, Respondent submitted a Curriculum Vitae which Respondent knew contained false statements and omissions of adverse information.

2. Respondent was employed by the HIP Center, as an internist from on or about April 20, 1992 through on or about July 8, 1992.

(a) On or about June 15, 1992, Respondent submitted a letter to the Medical Director of the HIP Center which stated that his license was suspended for two months for an occurrence in 1983-84, when he refused to send an employee home while she was on duty. Respondent further stated that the employee harassed him and then accused him of harassing her. Respondent indicated that a committee from the New York State Department of Health found found him not guilty when Respondent knew that was not the complete penalty imposed and that was not the basis of the findings of guilt. Respondent also knowingly and intentionally attempted to mislead the HIP Center by providing said institution with a copy of what purportedly was Order 7957 with significant material omitted.

3. On or about June 1, 1992, Respondent submitted an Application for Appointment to the Medical Staff to Bayley Seton Hospital, located at 75 Vanderbilt Avenue, Staten Island, New York 10304-3850.

(a) In the accompanying questionnaire entitled "Professional Sanctions", in response to question 1. "Has your license to practice medicine ... in any jurisdiction, state or country ever been, or are they in the process of being denied, revoked, suspended, reduced, not renewed or voluntarily relinquished?", Respondent answered

"License was suspended for 2 months. Please see attached explanation papers." Respondent knowingly and intentionally attempted to mislead Bayley Seton Hospital by providing said institution with a copy of what purportedly was Order 7957 with significant material omitted.

(b) In the accompanying questionnaire entitled "Professional Sanctions", in response to question 2. "Have you ever been found guilty of professional misconduct, as defined in the Education Law of the state of New York, or unprofessional conduct as defined by the Board of Regents?" Respondent knowingly and falsely answered "no".

(c) In the accompanying questionnaire, entitled "Professional Sanctions", in response to question 4. "Have you ever been the subject of any prior professional misconduct proceedings in this state or any other state and if so what are the findings of such proceedings?" Respondent answered "Please see answer to questions 1 and attached explanation papers". Respondent knowingly and intentionally attempted to mislead Bayley Seton Hospital by providing said institution with a copy of what purportedly was Order 7957 with significant material omitted.

(d) On or about June 1, 1992, Respondent submitted a letter to Bayley Seton Hospital, appended to his Application for

Appointment to the Medical Staff, which stated that his license was suspended for two months for an occurrence in 1983, when he refused to send an employee home while she was on duty.

Respondent further stated that the employee harassed him and then accused him of harassing her. Respondent indicated that a committee from the New York State Department of Health found him not guilty when Respondent knew that was not the complete penalty imposed and that was not the basis of the findings of guilt.

(e) In connection with his Application for Appointment to the Medical Staff of Bayley Seton Hospital, Respondent knowingly and intentionally submitted a Curriculum Vitae which contained false statements and omissions of adverse information.

4. On or about June 1, 1992, Respondent submitted an Application for Appointment to the Medical Staff to St. Vincent's Medical Center of Richmond, located at 355 Bard Avenue, Staten Island, New York 10310-1699.

(a) In the accompanying "Addendum to Medical Staff Application", in response to question 2. "Is there, or has there ever been, any professional misconduct proceedings against you in this or any other state...?", Respondent knowingly and falsely answered "No. License was suspended for 2 months. Please see attached explanation papers." Respondent knowingly and intentionally

attempted to mislead St. Vincent's Medical Center of Richmond by providing said institution with a copy of what purportedly was Order 7957 with significant material omitted.

(b) In the accompanying "Addendum to Medical Staff Application", in response to question 6. "Has your license, certification and/or registration to practice any profession in this or any other state ever been suspended, restricted, curtailed, terminated, not renewed or voluntarily surrendered? If yes, provide details, including but not limited to, the nature of the allegations & status". Respondent answered "Yes. see attached explanation papers." Respondent knowingly and intentionally attempted to mislead St. Vincent's Medical Center of Richmond by providing said institution with a copy of what purportedly was Order 7957 with significant material omitted.

Respondent submitted a letter which stated that his license was suspended for two months for an occurrence in 1983, when he refused to send an employee home while she was on duty. Respondent further stated that the employee harassed him and then accused him of harassing her. Respondent indicated that a committee from the New York State Department of Health found him not guilty when Respondent knew that was not the complete penalty imposed and that was not the basis of the findings of guilt.

(c) In connection with his Application for Appointment to the Medical Staff of St. Vincent's Medical Center of Richmond, Respondent knowingly and with intent to deceive submitted a Curriculum Vitae which contained false statements and omissions of adverse information.

SPECIFICATION OF CHARGES

FIRST THROUGH FIFTH SPECIFICATIONS

ENGAGING IN CONDUCT IN THE PRACTICE OF MEDICINE WHICH EVIDENCES MORAL UNFITNESS TO PRACTICE THE PROFESSION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law section 6530(20) (McKinney Supp. 1993) by engaging in conduct in the practice of medicine which evidences moral unfitness to practice the profession. in that Petitioner charges:

1. The facts in paragraph A, A.1, A.1(a), A.1(b), and/or A.1(c).
2. The facts in paragraph B, B.1, B.1(a), and/or B.1(b).
3. The facts in paragraph C, C.1, C.1(a), and/or C.1(b).
4. The facts in paragraph D, D.1, D.1(a), and/or D.1(b).
5. The facts in paragraph E, E.1, E.1(a), E.1(b) and/or E.1(c).

SIXTH THROUGH TENTH SPECIFICATIONS

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

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(31) (McKinney Supp. 1993) by willfully harassing, abusing or intimidating a patient either physically or verbally, in that Petitioner charges:

6. The facts in paragraph A, A.1, A.1(a), A.1(b) and/or A.1(c).
7. The facts in paragraph B, B.1, B.1(a) and/or B.1(b).
8. The facts in paragraph C, C.1, C.1(a) and/or C.1(b).
9. The facts in paragraph D, D.1, D.1(a) and/or D.1(b).
10. The facts in paragraph E, E.1, E.1(a), E.1(b) and/or E.1(c).

ELEVENTH THROUGH FOURTEENTH SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(2) (McKinney Supp. 1993) by practicing the profession fraudulently, in that Petitioner charges:

11. The facts in paragraphs F, F.1, F.1(a) and/or F.1(b).
12. The facts in paragraphs F, F.2, and/or F.2(a).
13. The facts in paragraphs F, F.3, F.3(a), F.3(b), F.3(c), F.3(d) and/or F.3(e).
14. The facts in paragraphs F, F.4, F.4(a), F.4(b), and/or F.4(c).

DATED: NEW YORK, NEW YORK

March 25, 1993

A handwritten signature in black ink, appearing to read "Chris Stern Hyman", written over a horizontal line.

CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct