



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

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

Karen Schimke
Executive Deputy Commissioner

August 20, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Karen Carlson, Esq.
NYS Department of Health
Corning Tower-25th Floor
Empire State Plaza
Albany, New York 12237

Douglas E. Rowe, Esq.
16 East Main Street, Suite 400
Rochester, New York 14614

Murli M. Agrawal, M.D.
51 East Main Street
Hornell, New York 14843

RE: In the Matter of Murli Agrawal, M.D.

Dear Ms. Carlson, Mr. Rowe and Dr. Agrawal:

Enclosed please find the Determination and Order (No. 96-190) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays 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.

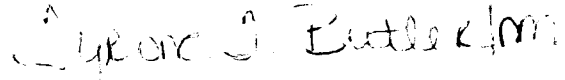
The notice of review served on the Administrative Review Board should be forwarded to:

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 black ink that reads "Tyrone T. Butler" followed by a date "1/11/11". The signature is written in a cursive style.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

IN THE MATTER
OF
MURLI AGRAWAL, M.D.

DETERMINATION
AND
ORDER
BPMC-96- 190

STEVEN V. GRABIEC, M.D., Chairperson, WILLIAM W. FALOON, M.D. and TRENA DEFRANCO, 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(10)(e) 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 and Order.

SUMMARY OF PROCEEDINGS

Notice of Hearing:	April 12, 1996
Statement of Charges:	April 12, 1996
Dates of Hearing:	May 9, 1996 May 15, 1996 June 4, 1996
Final Submissions Received:	Department: June 28, 1996 Respondent: July 9, 1996

Department of Health
appeared by:

Henry M. Greenberg, General Counsel
NYS Department of Health

BY: Karen Carlson, Esq.
Assistant Counsel
NYS Department of Health
Corning Tower
Albany, New York 12237

Respondent appeared by:

Douglas E. Rowe, Esq.
16 East Main Street, Suite 400
Rochester, New York 14614

Witnesses for the Department
of Health:

Patient A
Daughter of Patient A
Ian Frankfort, M.D.
Patient B

Witnesses for the Respondent:

Cari Raish
Donna Raleigh
Pratap Gupta, M.D.
Murli M. Agrawal, M.D. (Respondent)
Lawrence B. Tilis, M.D.
Vera Fudge
William E. Fudge

Deliberations held:

July 10, 1996

NOTE: The deadline for final submissions was scheduled by the Administrative Law Judge to be June 28, 1996. (T. 681) Respondent's written submission was not received until July 9, 1996, one day before the scheduled deliberations. No request for additional time was made by Respondent and no explanation for the delay was provided. Consequently, the Administrative Law Judge determined to not provide the Respondent's written submission to the Hearing Committee prior to its deliberations.

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

A copy of the Statement of Charges (Ex. 1) is attached to this Determination and Order as Appendix I.

GENERAL FINDINGS

- A. The Respondent was authorized to practice medicine in New York State on March 7, 1975 by the issuance of license number 123000 by the New York State Education Department.

- B. A breast examination may be conducted with the patient either sitting or lying down. It includes observing the breasts for lesions or abnormal contours, gentle palpation in a systematic, complete and thorough manner, examining the nipple area for signs of discharge or bleeding and under the armpit for indications of enlarged lymph nodes. (T. 169-170)

- C. Breast examinations are part of routine health care wellness maintenance for women. It is not inappropriate to examine the breasts as a part of a general health assessment.
(T. 414-415)

FINDINGS RELATED TO PATIENT A

1. Respondent provided medical care to Patient A, a 37 year old female, on June 16, 1993 in his office in Hornell, New York for an examination at the request of a disability insurance company related to the patient's carpal tunnel syndrome. (Ex. 4; T. 18-19)
2. Patient A was accompanied by her daughter and grandson on the day that she was treated by Respondent. She had never met Respondent prior to June 16, 1993. (T. 20)
3. Respondent greeted Patient A in the waiting area and requested that she remove her shoes to enable him to measure her height and weight. After he measured her height and weight, Respondent led Patient A into an examination room. The patient's daughter and grandson remained in the waiting area. (T. 21, 489)
4. Patient A assumed a position on the end of the examination table with her legs hanging over the end. Respondent then proceeded to undertake a physical examination of the patient. Respondent did not request that the patient remove her shirt prior to the start of his examination. (T. 23)
5. Respondent examined Patient A's heart with a bell diaphragm stethoscope by first placing the stethoscope on her chest over her shirt and then placing it beneath the top of her shirt.
(T. 24, 497, 553, 559)

6. Respondent then stood behind or beside Patient A and had her lift her shirt up over her back. The shirt of Patient A was lifted both in front and in back exposing her back and exposing her bra in front. Respondent listened to the lungs of Patient A by placing the stethoscope on her back. (T. 24-27)
7. Respondent next unhooked the patient's bra while standing behind her on her right side. (T. 25, 78)
8. Respondent reached his right hand under the bra and briefly touched his hand on first the right breast then on the left breast while stating that he needed to do a breast examination. He did not squeeze the patient's breasts. (T. 25-26, 80-81)
9. It is rarely improper to conduct a breast examination during the course of a physical examination of a female. It is also not improper for a physician to unhook a brassiere to conduct a breast examination. (T. 196-198, 210-211)
10. Respondent left the room at the completion of the examination. Patient A got off of the table and called to her daughter in the waiting area. The daughter came into the examination room and hooked the brassiere at her mother's request. (T. 27-28, 119-121)
11. Respondent recorded the findings of his physical examination of Patient A in her medical record. He recorded her height, weight, respiration and pulse. He noted an examination of her eyes and neck. He recorded findings of a chest and heart examination as being normal. An examination of the abdomen included findings related to the liver, spleen and kidneys. A scar related to a Cesarian section was noted. Normal findings following an examination of Patient A's extremities and a neurological examination were also recorded. Respondent

did not note the findings of a breast examination nor did he record any contact with her breasts in the medical record. (Ex. 4; T. 492-506)

FINDINGS RELATED TO PATIENT B

12. Respondent provided medical care to Patient B, a 45 year old female, on September 27, 1993 in his Brockport, New York office. Respondent was covering for Patient B's regular physician who was away on vacation. (T. 226-228, 517-519)
13. Patient B presented to Respondent with complaints of right knee pain. She had never seen Respondent as a patient prior to September 27, 1993. (T. 227-228)
14. Patient B wore shorts and a long-sleeved T-shirt on the day of the examination. Respondent saw the patient in the examination room.
15. At the start of the examination, both Respondent and Patient B sat at the same level on chairs or stools. He examined her knees while she was seated and then asked the patient to stand and observed her knee in the front and back. He next requested that she walk. (T. 232)
16. Respondent stated he should make sure that there was nothing else wrong with the patient and proceeded to conduct an examination while she was standing. He requested that she lift her shirt. The patient complied by raising her shirt to a level which exposed her brassiere. (T. 233-234, 263)

17. Respondent stood in front of Patient B and placed each of his hands simultaneously on her brassiere and felt her breasts while the brassiere remained in place. Respondent's fingers briefly squeezed the patient's breasts during which time he said nothing. (T. 234-236)
18. Respondent recorded the findings of his physical examination of the patient in her medical record. He noted a history and presenting complaint, weight and blood pressure, findings of an examination of the head, eyes, ears, nose, throat, lungs, heart, neurological systems and joints. He recorded findings of a breast examination as "no masses". His plan of care was noted as having the patient stop running for five to seven days and use warm water soaks. Respondent prescribed Naprosyn, a nonsteroidal, anti-inflammatory drug as further treatment. (Ex. 5; T. 255, 524-530)
19. Respondent met acceptable standards of medical care by performing a breast examination on Patient B. (T. 401-402, 413-414)
20. Patient B did not make a complaint about her examination by Respondent to her regular physician or his staff. She filed a complaint with the Office of Professional Medical Conduct on or about June 12, 1994, approximately nine months after the physical examination. (ALJ Ex. 2; T. 247, 262))

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.

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:

<u>Paragraph A.</u>	(1);
<u>Paragraph A.1.</u>	(B, 8);
<u>Paragraph A.3.</u> (in part):	(B, 8);
<u>Paragraph B.</u>	(12);
<u>Paragraph B.1.</u>	(B, 17);
<u>Paragraph B.2.</u> (in part):	(B,17).

The Hearing Committee determined that all other Factual Allegations should **NOT** be sustained.

The Hearing Committee concluded that the following Specification of Charges should be sustained:

FIFTH SPECIFICATION, as it relates only to the facts in Factual Allegations A. and A.1. and that portion of A.3. relating to the failure to perform an adequate physical examination, and B. and B.1. and that portion of B.2. relating to the failure to perform an adequate physical examination .

The Hearing Committee concluded that all other Specifications of Charges should **NOT** be sustained.

DISCUSSION

Respondent was charged with multiple Specifications of Charges 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 the 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.

During its deliberations, the Hearing Committee utilized the following definition of practicing the profession with incompetence:

The incompetent practice of medicine is a lack of the skill or knowledge necessary to practice the profession.

The Committee utilized this definition in its consideration of the Fifth Specification of Charges. The rationale for its determination is set forth below.

The Committee considered Patient A, her daughter and Patient B to each be credible based on a review of their testimony and personal observation of their demeanor. The patients' recollection of the manner of Respondent's examinations of their breasts were clear and remained consistent on cross-examination. The Committee rejected contentions that their testimony was rehearsed in some manner and reached the conclusion that their testimony was both truthful and persuasive. The credibility of Patient A was enhanced by the testimony of her daughter, who offered corroborating testimony that she entered the examination room to rehook her mother's brassiere. The Committee felt that Respondent's credibility was diminished both by his denial that he unhooked the brassiere and his denial that he performed a breast examination on Patient A.

The Committee also rejected contentions by Respondent that the testimony of each patient was not credible because it differed from the descriptions of the incidents as related in the original complaints (ALJ Ex. 1, 2). The written complaints were intended to merely be short summations of

the problems experienced with Respondent and the absence of certain details brought forth by direct and cross-examination did not alter the Committee's evaluation of their credibility.

The Hearing Committee did not conclude that Patient B's credibility was lessened because she did not make a complaint until about nine months later. The Committee reasoned that when the complaint was made was not relevant to a determination as to whether or not the conduct complained of actually occurred. The suggestion by Respondent that Patient B was somehow made aware of the earlier complaint by Patient A which thereby encouraged Patient B to come forward was dismissed as unsubstantiated speculation.

CONCLUSIONS RELATED TO PATIENT A

The Hearing Committee concluded that Respondent touched Patient A's breasts in an attempt to conduct a cursory breast examination. This examination was undertaken in a manner which failed to conform to accepted standards of medical care. The Committee noted the testimony of the Department's own expert, who stated that a breast exam is a component of a general health assessment, in determining that it was medically justified for Respondent to touch the patient's breasts. The performance of a breast exam on a patient presenting with a diagnosis of carpal tunnel syndrome was considered to be within acceptable standards of care. That fact did not relieve Respondent from the obligation to perform the exam in an acceptable manner.

Respondent was found to be not credible in his denial that he performed a breast examination on Patient A. The Committee accepted the patient's testimony as being an accurate recollection of the examination and rejected the contention that any contact of Respondent's hands with the breasts occurred inadvertently while he examined her chest and heart with a stethoscope. Respondent and medical experts for each party testified as to the proper procedures in conducting an adequate breast examination. The brief touching of each breast as described by the patient clearly failed to conform with those procedures. Factual Allegation A.1. was sustained.

The record is clear that it may be medically necessary for a physician to unhook a patient's brassiere when performing a complete physical examination. The Committee reasoned that if Respondent was justified in conducting the breast examination, he was similarly justified in unhooking her brassiere to assist in the performance of the examination. The Committee determined that Patient A was credible in testifying that Respondent unhooked the brassiere. Factual Allegation A.2. was not sustained because such action was found to be medically justified.

The Committee determined that Respondent performed and documented an adequate physical examination of Patient A, but for the manner in which the breast examination was performed. The inadequate breast examination rendered the overall physical examination substandard. All other organ systems were examined and findings were appropriately noted in the patient's medical chart. The failure to record the breast examination or findings of such examination was considered as only a failure to record a negative finding not directly related to the principal purpose of the entire physical examination; that being the evaluation of her carpal tunnel syndrome for disability insurance purposes. The Committee believed the entire medical record adequately reflected Respondent's treatment of Patient A. The portion of Factual Allegation A.3. relating to the failure to perform an adequate physical examination was sustained; the portion alleging the failure to adequately document the exam was not sustained.

CONCLUSIONS RELATED TO PATIENT B

The conclusions of the Committee concerning the Factual Allegations related to Patient B's treatment were similar to those made about Patient A's treatment. It was determined that Respondent touched Patient B's breasts for a reason that was medically justified, but in a manner which did not conform to acceptable standards of medical care. The Committee believed that Respondent intended to conduct a superficial examination of the patient's breasts as part of a brief physical examination. The Committee considered Patient B's recollection of the touching of her breasts to be clear and

considered her testimony credible. The Committee believed that Respondent had justification to conduct the breast exam, even if the patient's chief complaint was knee pain. It was clear that Respondent's touching of the patient's breasts did not conform to the accepted standard for a breast examination. Factual Allegation B.1. was sustained.

It was determined that the performance of an inadequate breast examination would necessarily result in the performance of an inadequate overall physical examination. The portion of Factual Allegation B.2. relating to the failure to perform such an adequate exam was sustained. The Committee found no evidence to support the Department's contention that the Respondent failed to document an adequate physical examination of Patient B. The patient's medical record reflects Respondent's examination, diagnosis and treatment of the patient's knee pain. It contains brief results of the examination of each of her systems. Findings of the breast examination are noted as "no masses". The portion of Factual Allegation B.2. relating to Respondent's documentation of the physical exam was not sustained.

SPECIFICATIONS OF CHARGES

The Hearing Committee strongly believed that Respondent's actions in briefly touching the breasts of the two patients were not based on any motivation for sexual gratification. It was noted that the inappropriate contact complained of was very short in duration. The Committee evaluated Respondent's testimony and demeanor as well as that of an associate, his employees and other patients and came to the conclusion that his conduct in treating Patients A and B did not evidence moral unfitness in the practice of medicine. The First and Second Specifications were not sustained.

The Committee concluded that Respondent's actions did not constitute the willful physical abuse of either Patient A or Patient B. There was no evidence to indicate that Respondent intended to abuse the patients by briefly touching their breasts. It was determined that Respondent only intended to perform quick breast examinations when he touched the breasts of the two patients. The Third and Fourth Specifications were not sustained.

The Committee relied upon the definition of incompetence as set out above in determining that Respondent's breast examinations of the two women reflected a lack of the skill or knowledge necessary to practice medicine. Respondent clearly demonstrated a lack of proper technique in the performance of a breast examination. The Committee reasoned that a component of the proper technique includes the adequate preparation of a patient for what is about to occur in the examining room. It believed that his lack of sensitivity for the patient's perceptions of the touching of their breasts demonstrated a deficiency in a vital element of the requisite skill deemed necessary to practice. The failure of the Respondent to clearly communicate that he was about to perform a breast examination contributed to the conclusion that the examination was improperly conducted. This inadequate "bedside manner" was viewed by the Committee as a factor evidencing the lack of the skill necessary to practice. This failure of communication plus cursory touching of the patients' breasts constituted the incompetent practice of medicine which led to the sustaining of the Fifth Specification of Charges, as it related to Factual Allegations A.1., B.1. and the portions of A.3. and B.2. related to the performance of an adequate physical examination.

The Committee did not believe that Respondent failed to maintain records accurately reflecting the evaluation and treatment of the patients. The absence of a notation of Patient A's breast exam in her record was viewed as the failure to record a negative finding for a system not directly related to the chief complaint. The overall chart was considered to be above average in clarity and completeness. A finding for Patient B's breast examination was noted in her record. The Sixth and Seventh Specifications were not sustained.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be suspended for a one year period, said suspension to be stayed, and that Respondent be placed on probation during said one year period of suspension, during which time he be required to complete a specific continuing medical education course as set out in greater detail in Appendix II of this Determination and Order. 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 Committee specifically rejected the imposition of a requirement that a chaperon be present at all examinations by Respondent of female patients because of its' conclusion that his actions were not motivated by a need for sexual gratification. The Committee did not believe Respondent's female patients face a danger of abuse or mistreatment. The requirement for a medical records review of a sample of Respondent's charts was not imposed because there was no determination that his records were inadequate. It was also believed impractical to impose a requirement that his manner of conducting breast examinations be supervised because a breast examination is so commonly performed. A third-party would need to be present whenever Respondent treats a female patient for such a requirement to be effective.

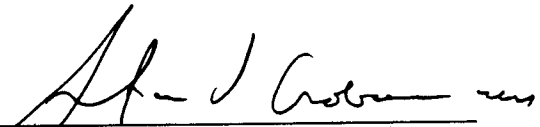
The Committee believed Respondent to be deficient in his communication skills with his female patients and to lack a certain sensitivity toward those patients when examining their anatomy. It was felt that improvement of those communication skills and an increase in the Respondent's awareness of female patient perceptions when being examined by a male physician would eliminate the inadequacies found in his treatment of Patients A and B. The Hearing Committee believed that the most practical and effective requirement to impose on Respondent to address these failings would be a continuing medical education course in the proper technique of conducting breast examinations.

ORDER

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

1. The Fifth Specification of Charges, as it relates to only those facts in Factual Allegations A. and A.1, B. and B.1. and to only those portions of A.3. and B.2. related to the performance of an adequate physical examination, is **SUSTAINED**.
2. All other Specifications of Charges are **NOT SUSTAINED** and are hereby **DISMISSED**.
3. Respondent's license to practice medicine in New York State is **SUSPENDED** for a period of one year from the effective date of this Order, said suspension to be **STAYED**.
4. Respondent's license shall be placed on **PROBATION** during the period of suspension, and he shall comply will all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order.

DATED: Albany, New York
8/19/, 1996



STEVEN V. GRABIEC, M.D.
(Chairperson)

WILLIAM W. FALON, M.D.
TRENA DEFRANCO



TO: Karen Carlson, Esq.
Assistant Counsel
NYS Department of Health
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Albany, New York 12237

Douglas E. Rowe, Esq.
16 East Main Street, Suite 400
Rochester, New York 14614

Murli M. Agrawal, M.D.
51 East Main Street
Hornell, New York 14843

APPENDIX II
TERMS OF PROBATION

1. Respondent shall conduct himself at all times in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.
2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Respondent shall submit written proof to the Director of the OPMC in writing at the address indicated below that he has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department. If Respondent elects not to practice in New York State, he shall submit written proof to the Director of the OPMC that he has notified the New York State Education Department of such fact.
4. Respondent shall submit written notification to the Board addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, addresses, (residence or professional) telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.

5. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.

6. In the event that Respondent leaves New York to reside or practice outside the State, he shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.

7. Respondent shall enroll in and successfully complete a continuing medical education course which includes, in whole or as part of a broader subject area, instruction in the proper technique of conducting breast examinations on female patients. Such a course shall address psycho-social issues relating to the conduct of such examinations including the preparation of patients and communications with patients prior to, and during, breast examinations. This course shall be subject to the prior approval of the Director of the Office of Professional Medical Conduct and shall be completed within one hundred and twenty (120) days of the effective date of this Order. Respondent shall be responsible for providing to the Director verification of his successful completion of this continuing medical education course.

8. Respondent shall comply with all terms, conditions, restrictions, and penalties to which she is subject pursuant to the Order of the Board. Respondent may continue to practice his profession as long as there is full compliance with all Terms of Probation, as set forth herein. A violation of any of these Terms of Probation shall be considered professional misconduct. On receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law §230(19) or any other applicable laws.

9. All expenses, including but not limited to, those of complying with these Terms of Probation and the Determination and Order, shall be the sole responsibility of the Respondent.

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

-----X

IN THE MATTER : STATEMENT
OF : OF
MURLI AGRAWAL, M.D. : CHARGES

-----X

MURLI AGRAWAL, M.D., the Respondent, was authorized to practice medicine in New York State on March 7, 1975 by the issuance of license number 123000 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, 1995 through January 1, 1997 with a registration address of 51 E. Main Street, Hornell, New York 14843.

FACTUAL ALLEGATIONS

- A. On or about June 16, 1993, Respondent provided medical care to Patient A [Patients are identified in Appendix] in his office at 51 East Main Street, Hornell, New York.
1. Respondent touched Patient A's breasts which was not medically justified and/or in a manner that did not conform to accepted standards of medical care.

2. Respondent unhooked Patient A's bra which was not medically justified.

3. Respondent failed to perform and/or document an adequate physical examination of Patient A.

B. On or about September 27, 1993, Respondent provided medical care to Patient B in his office at 80 West Avenue, Brockport, New York.

1. Respondent touched Patient B's breasts which was not medically justified and/or in a manner that did not conform to accepted standards of medical care.

2. Respondent failed to perform and/or document an adequate physical examination of Patient B.

SPECIFICATION OF CHARGES

FIRST THROUGH SECOND SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with professional misconduct under

N.Y. Educ. Law §6530(20) (McKinney Supp. 1996) by reason of his conduct evidencing moral unfitness in the practice of medicine in that Petitioner charges:

1. The facts in paragraphs A and A.1 and/or A.2.
2. The facts in paragraphs B and B.1.

THIRD THROUGH FOURTH SPECIFICATIONS

WILLFUL PHYSICAL ABUSE

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(31) (McKinney Supp. 1996) by reason of his willful physical abuse of a patient in that Petitioner charges:

3. The facts in paragraphs A and A.1 and/or A.2.
4. The facts in paragraphs B and B.1.

FIFTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(5) (McKinney Supp. 1996) by reason of his practicing the profession with incompetence on more than one occasion in that Petitioner charges:

5. The facts in paragraphs A and A.1, A and A.2, A and A.3, B and B.1, and/or B.2.

SIXTH THROUGH SEVENTH SPECIFICATIONS
MAINTAINING INADEQUATE RECORDS

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(32) (McKinney Supp. 1996) by reason of his failing to maintain records which accurately reflect the evaluation and treatment of the patient in that Petitioner charges:

6. The facts in Paragraphs A and A.3.
7. The facts in Paragraphs B and B.2.

DATED: *April 12*, 1996
Albany, New York

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