



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Lorna McBarnette  
Executive Deputy Commissioner

May 20, 1992

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Paul Stein, Esq.  
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NYS Department of Health  
5 Penn Plaza  
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Jeffrey H. Rudell, M.D.  
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New York, NY 10128

Dennis T. Bernstein, Esq.  
Apicella, Bernstein & Milano  
111 Lake Avenue  
P.O. Box 269  
Tuckahoe, New York 10707

**RE: In the Matter of Jeffrey H. Rudell, M.D.**

Dear Mr. Stein, Dr. Rudell and Mr. Bernstein:

Enclosed please find the Determination and Order 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.

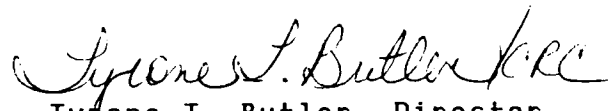
As prescribed by the New York State Public Health Law, §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he determination of a committee on professional medical conduct may be reviewed by the administrative review board for professional medical conduct."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

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 of the Hearing Committee's Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to the New York State Department of Health, Bureau of Adjudication, Corning Tower - Room 2503, Empire State Plaza, Albany, New York 12237-0030, **Attention: James F. Horan, Esq., Administrative Law Judge.** 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,



Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:crc  
Enclosure

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

-----X  
IN THE MATTER

OF

JEFFREY HOLMES RUDELL, M.D.  
-----X

X

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X

DETERMINATION

AND

ORDER

BPMC 92-40

Edmund O. Rothschild, M.D., Chairman, Albert L. Bartoletti, M.D. and Eugenia Herbst 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 submits this Determination and Order.

**SUMMARY OF THE PROCEEDINGS**

Notice of Hearing and Statement of Charges:	December 30, 1991
Pre-Hearing Conference:	February 20, 1992
Hearing Dates:	February 21, 1992 March 12, 1992 March 13, 1992 March 25, 1992 May 1, 1992 May 5, 1992

Place of Hearing: NYS Department of Health  
5 Penn Plaza  
New York, NY

Date of Deliberations: May 13, 1992

Petitioner appeared by: Peter J. Millock, Esq.  
General Counsel  
NYS Department of Health  
By: Paul Stein, Esq.  
Associate Counsel

Respondent appeared by: Dennis T. Bernstein, Esq.  
Apicella, Bernstein & Milano  
111 Lake Avenue  
P.O. Box 269  
Tuckahoe, New York 10707

**WITNESSES**

**For the Petitioner:**

Patient A

Allan Lind

Diedre Goldwire

Stanley Cortell, M.D.

**For the Respondent:**

Marshall Stokols, D.P.M.

Julian Hyman, M.D.

Genoveva Ramos

Jeffrey H. Rudell, M.D., Respondent

**STATEMENT OF CHARGES:**

Essentially, the Statement of Charges charges the Respondent with fraudulent practice, moral unfitness and

willfully abusing a patient.

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

#### 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 FINDING

The Respondent is a physician duly licensed to practice medicine in the State of New York under license number 101320 issued by the State Education Department (Pet's. Ex.2).

#### FINDINGS RELATIVE TO PATIENT A

1. On March 21, 1991, the Respondent treated Patient A, a 26 year old female, at his offices at 40 East 66th Street, New York, N.Y. Patient A presented with a complaint of blood in her stools (Pet's. Ex. 9; Tr. 19-21).

2. The Respondent began to perform a colonoscopy but did not complete the procedure. He advised Patient A to make an appointment to come back to repeat the examination (Pet's. Ex. 9; Tr. 22-23).

3. There are no charges against the Respondent relative to his treatment of Patient A on March 21, 1991 (Pet's. Ex. 1).

4. On March 28, 1991, Patient A returned to the Respondent's office for a colonoscopy (Pet's. Ex. 9; Tr. 22).

5. There was no one else present in the examination room while the Respondent was there with Patient A (Tr. 24-25).

6. During this visit the Respondent engaged in the following improper conduct toward Patient A:

(a) While Patient A was sitting on the examination table, the Respondent felt Patient A's breasts and nipples and rubbed them. He put his entire hand on her breast and held her breast for a long period of time. This was unlike any previous breast examination performed on her by a physician (Tr. 23-25, 262-268).

(b) The Respondent moved his finger in and out of Patient A's vagina in a manner unlike any previous vaginal examination performed on her by a physician (Tr. 27, 272-273).

(c) The Respondent asked Patient A if she wanted him to smell her vagina to see if she had a discharge, and despite her stating that she did not want him to do so, the Respondent put his head between her legs and sniffed. He blew onto her vagina with

his mouth and licked her vagina with his tongue (Tr. 27, 28, 30, 185, 242-243).

(d) At the beginning of the visit of March 28, 1991, the Respondent asked Patient A to give him her underwear, but she refused. At the conclusion of the visit Patient A realized that her panty hose was missing. When she asked the Respondent about the panty hose he retrieved them from his briefcase and gave them to her (Tr. 22, 30, 235, 246, 264-265, 1022-1023)

7. Patient A had only a patient/physician relationship with the Respondent. She was never informed by the Respondent that he intended to perform any sexual acts on her nor did she ever give him any permission to do so (Tr. 34).

8. Following her visit to the Respondent's office on March 28, 1991, Patient A returned to her own office and phoned her roommate. She told her roommate that the Respondent had put his head between her legs and licked her vaginal area (Tr. 31, 310).

9. After completing the phone call to her roommate, Patient A told her office manager that she had just had a bad experience at the Respondent's office. The office manager called her own physician who gave her the telephone number of the Office of Professional Medical Conduct. Patient A then called OPMC (Tr. 33-34).

10. In the weeks immediately following the visit of March 28, 1991, the Respondent attempted to contact Patient A by phone on four occasions, twice at her office and twice at her home.

On one of the phone calls to the home, the Respondent succeeded in reaching Patient A's roommate. The Respondent repeatedly kept saying he was very sorry for what had happened and asked if there was anything he could do. He also said that he wanted to speak with Patient A.

On one of the phone calls to the office he spoke with Patient A and asked if there was anything he needed to smooth over with her and she answered "No" (Tr. 35-36, 312-314, 359-360).

11. By letter dated April 4, 1991, Patient A informed the Respondent that, " I have sought professional advice elsewhere and am no longer in need of your services. Please do not contact me further" (Pet's. Ex. 6).

12. On April 17, 1991, the Office of Professional Medical Conduct arranged to tape a telephone conversation between Patient A and the Respondent. The tape of the telephone conversation is Exhibit 8 in evidence in this case (Pet's. Ex. 8).

13. During the taped conversation, the Respondent acknowledged that he smelled Patient A's vagina. Also, in response to Patient A's question, "you licked my vagina, what would you call that?", the Respondent answered, "I



wouldn't call it harassment" (Pet's Ex. 8).

14. On May 1, 1992, the Hearing Committee visited the Respondent's offices at 40 East 66th Street, New York, N.Y. The dimensions of the room and the table were such that with the head of the table flush against the left hand wall there was a measured difference of 7 5/8 and 8 1/8 inches between the foot of the table and the right hand wall. It was possible for the Hearing Committee Chairman to stand at the foot of the table, flex his body at the waist and touch his head to the examination table top (Tr. 1092-1096).

**FINDINGS RELATIVE TO THE RESPONDENT'S**  
**APPLICATION TO ST. CLARE'S HOSPITAL**

1. On or about May 8, 1985, the Respondent filled out an Application for Appointment to Medical Staff (the application) and submitted it to St. Clare's Hospital and Health Center, 415 West 51st Street, New York, New York (Pet's. Exs. 3 and 4; Tr. 674)

2. In response to the first part of question 29 of the application, "Was your participation in any of the above internship, residency, fellowship or other training programs, terminated by the institution concerned, prior to the completion of the year?", "The Respondent answered "yes" (Pet's. Exs. 3 and 4; Tr. 675).

3. In response to the second part of question 29 of the application, "If so designate and state the reasons

given by each such institution, "The Respondent answered, "St. Lukes Nephrology 12/84 funding" (Pet's. Ex. 3 and 4, Tr. 675).

4. Sometime prior to December, 1984, Stanley Cortell, M.D., Chief of the Division of Nephrology at St. Luke's-Roosevelt Hospital, met with the Respondent and personally informed him that he would not be permitted to continue through the normal term of the nephrology fellowship because his background in internal medicine was not sufficient to supply him with the foundation necessary for him to complete the fellowship (Tr. 377).

5. Dr. Cortell terminated the Respondent from his nephrology fellowship in December 1984 because his background in internal medicine was not solid enough to give him the foundation he needed to complete his fellowship (Pet's. Ex. 5; Tr. 376).

6. Funding or anything related to funding was not a part of the reason why the Respondent had to leave the nephrology fellowship program (Tr. 377).

7. No nephrology fellow has ever been terminated from the St. Luke's-Roosevelt Hospital nephrology fellowship program because of funding (Tr. 377).

8. Dr. Cortell did not mention funding or anything related to funding to the Respondent as part of the reason the Respondent had to leave the nephrology fellowship program before its normal course had run (Tr. 377).

9. At the time the Respondent filled out the St. Clare's application, he knew that the reason he had been terminated from his St. Lukes-Roosevelt Hospital nephrology fellowship was that his background in internal medicine was not sufficient to supply him with the foundation necessary for him to complete the fellowship (Tr. 376-377, 407).

### CONCLUSIONS

The Hearing Committee had the opportunity of observing and questioning Patient A during her testimony and finds that she was a very credible witness. Her testimony was straightforward and consistent and she was forthcoming when she could not remember or had only vague recollections of some details. She reported the incidents involving the Respondent's behavior almost immediately to her roommate, to her office manager, and to the Office of Professional Medical Conduct. The corroborating testimony of her roommate, who had a prior satisfactory patient/physician relationship with the Respondent, and who in fact had recommended the Respondent to Patient A, supported Patient A's testimony and was credible.

The Hearing Committee also had the opportunity of observing and questioning the Respondent during his testimony and finds that he was not a credible witness. During his testimony he denied smelling Patient A's vagina, but in the taped telephone conversation between him and

Patient A (Petitioner's Ex. 8) he acknowledged doing so. His description of his pelvic examination technique is not believable. He distorted and exaggerated his status and rank relative to his hyperbaric medical responsibilities and his academic rank at New York Medical College. He also incorrectly represented the dimensions and weight of his examination table.

Based on the entire record, the Hearing Committee concludes that Patient A's version of the events in the Respondent's office on March 28, 1991 and thereafter is true and that the Respondent's version is not.

The Hearing Committee further concludes that the Respondent's conduct toward Patient A on March 28, 1991, did not constitute or even resemble any medically accepted examination or treatment for rectal bleeding or for any other medical complaint expressed by Patient A.

The Respondent's conduct toward Patient A was sexual in nature, it was deliberate and intentional, and it was verbally and physically abusive to the patient.

By failing to inform Patient A that he was ceasing medical evaluation and treatment and commencing a sexually abusive series of acts, the Respondent intentionally and knowingly concealed from Patient A the true nature of his acts, intending that she continue to submit to intimate physical conduct under the false belief that medical care was being rendered.

The Hearing Committee also concludes that in filling out the application for appointment to the medical staff of St. Clare's Hospital and Health Center, the Respondent intentionally misstated the reason he had been terminated from the St. Lukes-Roosevelt Hospital nephrology fellowship program with the intent of deceiving St. Clare's Hospital and Health Center.

**VOTE OF THE HEARING COMMITTEE**

(All votes were unanimous unless otherwise specified)

**FIRST AND SECOND SPECIFICATIONS: (FRAUDULENT PRACTICE)**

**SUSTAINED** as to the charges specified in paragraphs A, A1, A2, A3, A4, A5, B and B1.

With regard to the charge specified in paragraph A3, there is insufficient evidence in the record to determine whether or not the Respondent's finger was gloved or ungloved. Nonetheless the Hearing Committee votes to **SUSTAIN** the charge.

**THIRD SPECIFICATION: (MORAL UNFITNESS)**

**SUSTAINED** as to the Charges specified in paragraphs A, A1, A2, A3, A4 and A5.

**FOURTH SPECIFICATION: (WILLFULLY ABUSING A PATIENT)**

**SUSTAINED** as to the Charges specified in paragraphs A, A1, A2, A3, A4 and A5.

**DETERMINATION OF THE HEARING COMMITTEE AS TO PENALTY**

It is the unanimous determination of the Hearing Committee that the Respondent's license to practice medicine in the State of New York be **REVOKED**.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Respondent's license to practice medicine in the State of New York is **REVOKED**.

DATED: New York, N.Y.  
May 19, 1992

BY:   
EDMUND O. ROTHSCHILD, M.D.  
Chairperson

ALBERT L. BARTOLETTI, M.D.  
EUGENIA HERBST