

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

July 6, 1990

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

Julio M. Soto, Physician
124 Scarsdale Road
Crestwood, N.Y. 10707

Re: License No. 121833

Dear Dr. Soto:

Enclosed please find Commissioner's Order No. 10693. This Order and any penalty contained therein goes into effect five (5) days after the date of this letter.

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

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations
By:

MOIRA A. DORAN
Supervisor

DJK/MAH/er
Enclosures

CERTIFIED MAIL- RRR

cc: Anthony Z. Scher, Esq.
Wood & Scher
Suite 512
Scarsdale, N.Y. 10583

**REPORT OF THE
REGENTS REVIEW COMMITTEE**

JULIO M. SOTO

CALENDAR NO. 10693



The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

JULIO M. SOTO

No. 10693

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

REPORT OF THE REGENTS REVIEW COMMITTEE

On May 4, May 12, May 22, June 16 and June 23, 1989, a hearing was held in the instant matter before a hearing committee of the State Board for Professional Medical Conduct.

The hearing committee rendered a report of its findings, determination, and recommendation, a copy of which is annexed hereto, made a part hereof, and marked as Exhibit "A".

The hearing committee unanimously determined that respondent was guilty of the first, second, third and fourth specifications of the charges and unanimously recommended that respondent's license to practice as a physician in the State of New York be revoked. The hearing committee further recommended that, prior to any consideration of a restoration of respondent's license, respondent should be required to submit proof of a psychiatric

JULIO M. SOTO (10693)

evaluation and any corresponding treatment, if warranted, and that, in the event respondent's license is ever restored, respondent should be required to provide a chaperone to be present whenever respondent examines a female patient.

The Commissioner of Health recommended to the Board of Regents that the findings of fact and conclusions of the hearing committee be accepted in full and that the recommendation of the hearing committee be accepted. A copy of that recommendation is attached hereto, made a part hereof, and marked as Exhibit "B".

On April 5, 1990, respondent appeared before us in person and was represented by his attorney, Anthony Scher, Esq., who presented oral argument on behalf of respondent. Sylvia P. Finkelstein, Esq., presented oral argument on behalf of petitioner.

Petitioner's recommendation as to the penalty to be imposed, should respondent be found guilty, was revocation.

Respondent's recommendation as to the penalty to be imposed, should respondent be found guilty, was a five year suspension; execution stayed; probation for five years with community service and a requirement that a female assistant be present during gynecologic examinations of female patients.

We have considered the record as transferred by the Commissioner of Health in this matter.

We note that there is no authority for the recommendations of the hearing committee and Commissioner of Health regarding any

JULIO M. SOTO (10693)

restoration application of respondent and that, at best, they are merely non-binding suggestions which, in our unanimous opinion, need not be passed upon by this Committee or the Board of Regents.

We unanimously recommend the following to the Board of Regents:

1. The findings, conclusions, and recommendation of the hearing committee as well as the Commissioner of Health's recommendation with respect thereto be accepted, except that the aforesaid non-binding suggestions not be passed upon;
2. Respondent be found guilty, by a preponderance of the evidence, of the first, second, third and fourth specifications of the charges. A copy of said specifications is set forth in the exhibit annexed hereto, made a part hereof, and marked as Exhibit "C"; and
3. Respondent's license to practice as a physician in the State of New York be revoked upon each specification of the charges of which we recommend respondent be found guilty. Respondent may, pursuant to Rule 24.7(b) of the Rules of the Board of Regents, apply for restoration of said license after one year has elapsed from the effective date of the service of the order of the Commissioner of Education to be issued herein; but said application shall not be granted automatically.

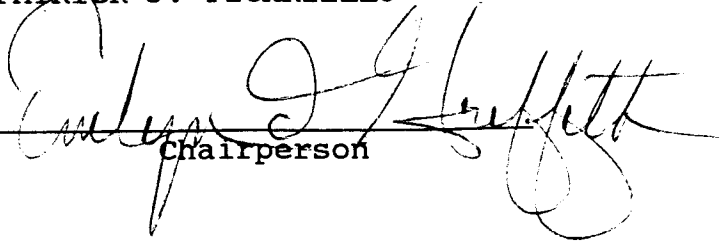
JULIO M. SOTO (10693)

Respectfully submitted,

EMLYN I. GRIFFITH

JANE M. BOLIN

PATRICK J. PICARIELLO


Chairperson

Dated: 5/30/90

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

-----X
IN THE MATTER : REPORT OF
of : THE HEARING
JULIO M. SOTO, M.D. : COMMITTEE
-----X

TO: The Honorable David Axelrod, M.D.
Commissioner of Health, State of New York

ALBERT L. BARTOLETTI, M.D. (Chair). LUTRICA THOMAS,
R.N., and MACHELLE HARRIS ALLEN, 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. Larry G. Storch, Esq., served as
Administrative Officer for the Hearing Committee.

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

SUMMARY OF PROCEEDINGS

Date of Service of Notice
of Hearing and
Statement of Charges
against Respondent: March 23, 1989

Answer to Statement of Charges: None

Pre-Hearing Conference: May 4, 1989

EXHIBIT "A"

Dates and Places of Hearings:

May 4, 1989
8 East 40th Street
New York, New York

May 12, 1989
8 East 40th Street
New York, New York

May 22, 1989
8 East 40th Street
New York, New York

June 16, 1989
33 West 34th Street
New York, New York

June 23, 1989
8 East 40th Street
New York, New York

Intra-Hearing Conferences:

May 12, 1989
May 22, 1989

Adjournments:

None

Received Petitioner's Proposed
Findings of Fact and
Conclusions of Law:

August 8, 1989

Received Respondent's Proposed
Findings of Fact and
Conclusions of Law:

August 7, 1989

Final Deliberations:

September 15, 1989
October 24, 1989

Department of Health
appeared by:

Silvia Pastor
Finkelstein, Esq.
Associate Counsel

Respondent appeared by:

Wood & Scher
One Chase Road
Scarsdale, New York
10583
Anthony Z. Scher, Esq.,
of Counsel

Hearing Committee Absences:

None

Witnesses for Department
of Health:

Margaret A. McQuillan
Det. Jaime Valentin
Patient A
Susan Stabinski, M.D.
Louis Gasparini

Witnesses for Respondent:

Jose Cartagena
Fr. Patrick Emanuel
Fr. Ruben Colon
Julio M. Soto, M.D.

STATEMENT OF CASE

The Department's charges allege, in substance, that Respondent engaged in fraudulent conduct in the practice of medicine. It is further alleged that Respondent willfully physically abused a patient, failed to maintain an accurate medical record, and engaged in conduct in the practice of medicine which evidences moral unfitness to practice the profession.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. 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.

1. Respondent was authorized to practice medicine in New York State on September 16, 1974 by the issuance of license number 121833 by the New York State Education Department. (Department's Exhibit # 2).

2. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1989 through December 31, 1991 at 124 Scarsdale Road, Crestwood, New York 10707. (Department's Exhibit # 2).

3. Respondent maintains private practice offices at the following locations: 2830 Grand Concourse, Bronx, New York 10458 and at 124 Scarsdale Road, Crestwood, New York 10707. (328, 419).

4. Commencing on or about December 1, 1987, the Respondent was employed by Fordham University Health Center, located at Thebaud Hall, East Fordham Road, Bronx, New York 10458, as a physician for the purpose of offering consultation, examinations, diagnosis and treatment to students enrolled at said University. (24, 331).

5. At all times mentioned Patient A was a full-time student enrolled at Fordham University, Bronx, New York. (118).

6. On or about January 5, 1988, Patient A went to the Fordham University Health Center to seek medical treatment for complaints including bloody urine, abdominal pain and fever, secondary to a urinary tract infection. (28-29, 129, 131-132).

7. On or about January 5, 1988, Margaret McQuillan, R.N., evaluated Patient A at the Fordham University Health Center, determined that she needed further treatment and referred Patient A, by phone to the Respondent. (29-30). Respondent asked Patient A to come to his private office located at 2830 Grand Concourse, Bronx, New York, for Treatment. (30, 134-35, 334; Department's Exhibit # 3).

8. On or about January 5, 1988, Respondent performed a gynecological examination of Patient A. Respondent obtained a urine sample from Patient A. Respondent diagnosed a mixed vaginitis and prescribed a Betadine douche and Mycostatin cream. (144, 339-340, 345).

9. During the course of said examination, Respondent informed Patient A that an ulceration present on the vaginal wall could have been caused by the Herpes II virus. (138-141). Respondent placed a vaginal smear on a slide and told Patient A that he would run a viral smear and that if it came back positive, she should have a blood test for Herpes II. (139, 142, 144, 345-346).

10. On or about January 7, 1988, Patient A telephoned the Respondent to obtain the results of her tests. She was told by the Respondent that she was suffering from a yeast infection and that in order to determine whether she was suffering from Herpes II it would be necessary to do a blood test. (147, 356-358).

11. On or about January 7, 1988, Patient A went to the Respondent's office located at 2830 Grand Concourse, Bronx, New

York. Respondent mentioned the possibility that Patient A might be infected by the Herpes II virus and that in order to make that determination a blood test was necessary. On that date, Respondent drew blood from Patient A. (147-148, 151-152, 356-358).

12. Respondent repeatedly advised Patient A of the potentially devastating effects of Herpes on those who suffer from the disease. (140, 147, 150, 447, 514-515, 519-521).

13. On or about January 7, 1988, Respondent falsely told Patient A that a newly discovered and not yet approved controversial vaccine/cure for Herpes II was available to him through a friend involved in the research thereof. Respondent offered to obtain and administer to Patient A the controversial vaccine in the event that her blood test was positive for the disease. (140-141, 148-151, 449).

14. At the time that Respondent drew blood from Patient A, on January 7, 1988, as well as on February 3, 1988, he had no intention of running a test for the presence of the Herpes II virus. In fact, Respondent did not send Patient A's blood to a laboratory for analysis. (439, 459, 506, 507, 510; Respondent's Exhibit B; Department's Exhibit #6, page 9).

15. Respondent deliberately planned to falsely tell Patient A that the blood test was positive and that she was suffering from Herpes II. (358-360, 440, 446-447).

16. On January 9, 1988, Respondent telephoned Patient A and falsely told her that the blood test was positive and that she was suffering from Herpes II. (155-157, 361). Respondent

further told Patient A that he had obtained the experimental vaccine and could administer it to her that evening at his office. (156, 361-362).

17. On or about the evening of January 9, 1988, Respondent and Patient A met at his private office, located at 2830 Grand Concourse, Bronx, New York. Respondent knowingly reported false statistics regarding the success rate of the vaccine in the control groups involved in the research and development of the purported vaccine. Respondent drew a diagram to illustrate his clinical explanation of how the vaccine attacked the Herpes II virus and the need to empty certain vaginal glands through sexual stimulation to render the vaccine effective. (161-170, 448-449; Department's Exhibit # 9).

18. Respondent informed Patient A that in order to administer the Herpes vaccine in a manner which would render it most effective, it would be necessary for the Respondent to have sexual intercourse with Patient A. (164-166).

19. During the visit of January 9, 1988, in the course of purportedly rendering medical care to cure Herpes, Respondent had sexual intercourse with Patient A at his office. (172-175).

20. Respondent knew that no cure for Herpes II exists, yet he intentionally and falsely told Patient A that she was suffering from the disease and that he could provide a cure. Respondent injected Patient A with a clear liquid which he knew was not a vaccine for Herpes II. (166, 170-172, 175, 359-360, 390-391, 440, 446-447, 449).

21. Respondent failed to make entries in his medical records to reflect the actual medical treatment rendered to Patient A, including but not limited to: (1) the diagnosis of Herpes II; (2) the tests actually rendered and/or administered (including the blood test for Herpes of January 9, 1988, and the blood test for Herpes of February 3, 1988); (3) the administration of the "vaccine"; (4) the visit of January 9, 1988 and all that transpired therein, and (5) clinical information transmitted to Patient A during telephone conversations. (Department's Exhibit # 7).

22. Patient A was under the care and treatment of Susan Stabinski, M.D., a board certified psychiatrist. Dr. Stabinski's treatment commenced on or about April, 1986 and continued at least through March 1, 1988. (621,626; Respondent's Exhibit A).

23. Dr. Stabinski's medical records regarding Patient A reflect that she sought treatment because of feelings of depression and loneliness. The patient also stated that she had also experienced "hallucinations" at some time in the past. (627-629; Respondent's Exhibit A).

24. During her initial examination of Patient A, Dr. Stabinski found her to be alert, oriented, bright and well-related with clear speech and coherent thought. She performed reality testing on the patient and found her to be in touch with reality. (632-633; Respondent's Exhibit A).

25. Dr. Stabinski's initial diagnosis for Patient A was borderline personality disorder. She saw the patient in her

office on essentially a weekly basis, commencing on or about April, 1986. (630-631; Respondent's Exhibit A).

26. During the course of her treatment of Patient A, Dr. Stabinski changed the patient's diagnosis to that of a depersonalization disorder. Dr. Stabinski defined a depersonalization disorder as a neurotic disorder in which a person feels detached from themselves, and in a dreamlike state, but with intact reality testing. (633).

27. Dr. Stabinski's office records regarding Patient A indicate that she had a treatment session on January 5, 1988 - the same date as the patient's initial visit to Respondent. (635; Respondent's Exhibit A).

28. Dr. Stabinski next saw the patient on January 12, 1988. She testified that Patient A was acting very withdrawn. She stated that it was unusually difficult to engage in conversation with the patient. Eventually, Patient A described to her a sequence of events substantially similar to that described by the patient during examination at this hearing. (635-637; Respondent's Exhibit A).

29. Dr. Stabinski testified that, based on her training and her experience in dealing with Patient A, she did not have any reason to suspect the patient to be suffering from delusions. (639).

CONCLUSIONS

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise. Numbers in parentheses refer to the specific Findings of Fact which support each conclusion.

First Specification

Respondent is charged with professional misconduct within the meaning of Section 6509(2) of the Education Law by engaging in fraudulent conduct in the practice of the profession. During the course of its deliberations on this charge, the Hearing Committee consulted a memorandum, dated September 19, 1988, prepared by Peter J. Millock, Esq., General Counsel for the Department. This document, entitled "Definitions of Professional Misconduct under the New York Education Law", sets forth, inter alia, a suggested definition for the fraudulent practice of medicine. (The Education Law does not set forth definitions.) Fraudulent practice is defined, in pertinent part, as:

"...A false representation or concealment of a fact, made in connection with the practice of medicine, which is intended to deceive another person so that that person may act upon it either to his detriment, or to the gain of the licensee...."

Utilizing this definition as a framework for its deliberations, the Hearing Committee concluded that, by a

preponderance of the evidence, the First Specification should be sustained. The rationale for this conclusion is set forth below.

The testimonial evidence, including the testimony of Respondent, presents overwhelming proof of his deceptions. Respondent knowingly, and with intent to mislead, informed Patient A that he needed to draw her blood to be sent to a laboratory for analysis in order to confirm a diagnosis of Herpes II, when in fact Respondent had no intention of having the blood tested. He then informed Patient A that her blood test was 1 to 800 positive for the presence of the Herpes II virus, when in fact no such laboratory report existed.

Additionally, Respondent knowingly, and with intent to mislead, informed Patient A that she was suffering from Herpes II and that a controversial, not yet approved vaccine/cure could be obtained by him. He informed Patient A of the potential risks and symptoms of Herpes II not only for herself, but also for her future children, when in fact Respondent knew that Patient A was not suffering from the disease. Respondent told Patient A that he had obtained the vaccine/cure for Herpes II and advised her of false clinical research data, when in fact he knew that no such vaccine/cure existed.

Respondent knowingly, and with intent to mislead, told Patient A that the vaccine/cure would be most effective if administered in connection with sexual intercourse. Respondent had intercourse with Patient A and thereafter injected her with a substance, which he indicated was the purported vaccine/cure, when in fact he knew that no such vaccine existed.

Respondent has conceded that he falsely told Patient A that she had Herpes II and that he could cure it. However, he contends that this was a misguided, yet well-intentioned attempt to help her with a purported psychological/sexual dysfunction. He further contends that Patient A initiated the act of sexual intercourse. However, Respondent did not present a consistent account of the events in question. In fact, he presented three versions of the events in question: his office medical record for Patient A; the statements made during an interview with Office for Professional Medical Conduct (OPMC) investigators on March 16, 1988, and his testimony during the hearing. There are significant differences between these versions.

The Medical Record

Respondent's office record for Patient A (Respondent's Exhibit B) contains the following information, in pertinent part:

During the January 5, 1988 initial visit, Patient A talked about being very active sexually; worried about being classified as a "slut"; talked about "frigidity", and mentioned that she had once arranged an abortion for a friend, and then backed out of the arrangements. The chart also notes "May need psychological counseling".

A progress note dated January 7, 1988, states that Respondent talked to Mr. Cartagena, a sex therapist known to Respondent, about possible therapy for the patient for "frigid states".

The next and last entry is dated February 3, 1988. This note indicates that Mr. Cartagena would probably see the

patient. The chart also notes the Patient's date of her last menstrual period, and that a pregnancy test was done.

Respondent's office record does not contain any entries for January 9, 1988. It does not mention any laboratory work to test for the Herpes II virus, does not mention the administration of a vaccine or other injection, and does not mention the act of sexual intercourse which took place between Respondent and Patient A.

It should also be noted that Patient A flatly denied saying anything about promiscuity, etc. during her January 5, 1988 visit. However, the record reflects that the patient did make such statements to Respondent, during a phone conversation, approximately one month later. Unbeknownst to Respondent, this phone conversation was tape-recorded by the New York Police Department (NYPD). (Department's Exhibits # 5A, 5B, and 6).

Respondent was also unaware that Patient A was in the midst of a long-term (approximately 1 1/2 years) therapeutic relationship with Dr. Stabinski. Dr. Stabinski testified that, while she had discussed personal relationships with the patient, there was never any discussion of promiscuity or frigidity. (640-641).

Dr. Stabinski's records also indicate that Patient A had a session with her on January 5, 1988, prior to the patient's visit to Respondent. The Hearing Committee concluded that it would be highly unlikely that Patient A discussed these matters

with Respondent during an initial visit. Consequently, the Committee did not give the office records any credence.

The March 16, 1988 Interview

On March 16, 1988, Respondent was interviewed by two investigators employed by OPMC. Respondent was accompanied by his counsel, and had advance knowledge that the interview would be concerned with the medical care rendered to Patient A. (683-684). Respondent conveyed the following additional information, in pertinent part, to the OPMC investigators:

Respondent initially saw Patient A at the Fordham Health Center during late December, 1987 or early January, 1988. His recollection was that she presented at the center with abdominal complaints not responding to medication. Respondent scheduled her for an office visit to do a complete history and physical examination.

During the January 5, 1988 visit, the patient was in a hurry and did not complete the medical history form. During the examination, she spontaneously volunteered her concerns about promiscuity, etc. Respondent told the patient that she may need counseling.

On January 7, 1988, Respondent discussed the case with Mr. Cartagena, and obtained an estimate of treatment costs. Later in the day, Respondent saw Patient A in his office. He told her that he could refer her to a counsellor - either one at Fordham or Mr. Cartagena.

Later that evening (January 7), Respondent received a call from Patient at his office in Crestwood, New York. She told him she wanted to know more about counseling, but worried about money. He offered to lend her the money for therapy with Mr. Cartagena (\$300-\$600). She insisted on meeting with him. They met outside Respondent's Bronx office, and went to Montezuma's Restaurant (a nearby Mexican Restaurant). They talked for 30-45 minutes, then he offered to take her home. She insisted on going to his office. Once at the office, Patient A kissed Respondent three times. He then told her he had to leave and drove her back to Fordham. She appeared to be annoyed.

On February 3, 1988, Patient A returned for a scheduled visit. She was amenable to psychotherapy. He told her that Cartagena could see her. She then asked for \$5,000 to help pay for her studies. When Respondent objected, she said "you may not know, but I know how to get much more." (Department's Exhibit #15).

There are several major flaws in this version of events. First, Patient A's records at the Fordham Health Center document that she was never seen by Respondent at the Center. (Department's Exhibit # 3). Second, Patient A denied ever going to Montezuma's Restaurant with Respondent. Respondent also placed them at the restaurant and his office on the wrong date (January 7 instead of January 9). Respondent was unable to provide any independent corroboration of their presence at the restaurant. Additionally, Respondent failed to disclose anything

concerning the supposed herpes vaccine and the act of sexual intercourse.

Further, Respondent's description of the February 3, 1988 office visit was a complete fabrication. The transcript of the conversation which took place between Respondent and Patient A (also recorded by the NYPD) show that there was no discussion of psychological counseling; nor did Patient A attempt to extort \$5,000 from Respondent, or threaten him in any way. (Department's Exhibit # 6).

Respondent's Testimony at the Hearing

Respondent testified before the Hearing Committee on May 23 and June 16, 1989. His testimony provided yet another version of the events in question:

At the January 7, 1988 visit, Respondent drew a blood sample with the intention of having it tested for some of the more common types of infection. He was convinced that, irrespective of the test results, Patient A would continue to believe that there was something wrong with her.

Sometime between January 7 and January 9, 1988, Respondent, motivated by his perception of Patient A's low self-esteem, decided on a treatment plan in which he would tell her she had a serious disease (Herpes II) but that she could be "cured". This would then increase her feelings of self-worth.

On January 9, 1988, Respondent telephoned Patient A and told her that she had tested positive for Herpes, but that he had an experimental cure which he would discuss with her on the

following Monday, in his office. Patient A asked to see him that night to discuss the cure. He agreed to meet her in front of his Bronx office. While at Montezuma's Restaurant, they discussed Patient A's "condition". Respondent told Patient A that he wanted to see her in his office on Monday. They got into his car to take Patient A back to the Fordham University campus. He received a page on his beeper, and stopped at his office to answer the page.

While in his office, Patient A kissed him twice and aggressively made sexual overtures to him, to which he succumbed. He then had sexual intercourse with Patient A. Afterwards, he gave her an injection of vitamin B-12, which he told her contained the Herpes vaccine. Patient A then requested a loan of \$300 for counseling. She then asked for \$5,000, and then, \$10,000. (336-394).

It was only when Respondent was faced with incontrovertible evidence of his actions, that he acknowledged the false diagnosis and "treatment" for herpes, as well as the act of sexual intercourse. Nevertheless, he maintained that the sex was initiated by Patient A and was thus a consensual act.

The Hearing Committee recognized that its deliberations on this specification must be based on its assessment of the credibility of Patient A and Respondent. There is no physical evidence to support either party's position. Thus, it found Respondent's deceptions and fabrications troubling.

In contrast, Patient A's testimony was straightforward and unwavering. She did not become confused by details. Further, the records of Dr. Stabinski document that on January 12, 1988 (three days after the incident), Patient A gave her a description of the circumstances surrounding the events of January 9, 1988 which was essentially identical to her sworn testimony.

Therefore, the Hearing Committee concluded that it would give credence to the testimony of Patient A, while discounting that of Respondent. Further, the Committee also concluded that Respondent's conduct was intended to deceive Patient A so that she would act upon it, for Respondent's gratification, and to the detriment of the patient. The Hearing Committee concludes that Respondent's conduct in this matter did constitute the fraudulent conduct in the practice of medicine, and that the First Specification should be SUSTAINED. (1-29).

Second Specification

Respondent is also charged with a violation of Section 6509(a) of the Education Law, which defines professional misconduct as, inter alia, committing unprofessional conduct as defined in regulations promulgated by the Commissioner of the Education Department and approved by the Board of Regents. 8 NYCRR 29.2(a)(2) defines unprofessional conduct, in pertinent part, as "willfully harassing, abusing or intimidating a patient either physically or verbally...." Neither the statute, nor the regulations define the terms "willful" and "abuse". Therefore, the Hearing Committee looked to other sources for guidance.

The Committee consulted Black's Law Dictionary (5th Ed.). Black's (at page 1434) defines "willful", in pertinent part, as:

"....Proceeding from a conscious motion of the will; voluntary. Intending the result which actually comes to pass; designed; intentional; not accidental or involuntary... A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently...."

Black's Law Dictionary also defines the term "abuse", at page 10:

"....Everything which is contrary to good order established by usage. Departure from reasonable use; immoderate or improper use. Physical or mental maltreatment...."

Utilizing these definitions as a framework for its deliberation, the Hearing Committee concluded that, by a preponderance of the evidence, the charge should be sustained.

It has already been established that Respondent intentionally misled Patient A into believing that she had herpes, and that her only treatment option was to receive a vaccine/cure to be administered in connection with sexual intercourse. Further, Respondent knew that this was not an accepted medical practice. (See, Tr., pp. 439-440). Thus, it is clear that Respondent's conduct was willful, as defined in Black's.

The Hearing Committee concluded that, by having sexual intercourse with Patient A upon intentionally deceiving the patient by telling her that such intercourse was necessary to

render the phony "vaccine/cure" most effective, contrary to accepted medical practice, Respondent did willfully physically abuse Patient A within the meaning of 8 NYCRR 29.2(a).

Therefore, the Hearing Committee further concluded that the Second Specification should be SUSTAINED. (11, 14, 16, 17, 18, 19).

Third Specification

Respondent is charged with engaging in unprofessional conduct within the meaning of 8 NYCRR 29.1(b)(5) by engaging in conduct in the practice of medicine which evidences moral unfitness to practice the profession. The record clearly established that Respondent, through misrepresentation and deceit convinced Patient A that she was suffering from Herpes II and that the only cure available would be effective if administered in conjunction with sexual intercourse. Respondent went to great lengths to support and document his misrepresentations to Patient A.

Conduct which evidences moral unfitness can arise either from conduct which violates a trust related to the practice of the profession or from activity which violates the moral standards of the professional community to which the Respondent belongs. The Committee finds that the Respondent's actions constitute a violation of professional trust. Moreover, a physician is expected to subordinate his needs and desires to the best interests of his/her patients.

Therefore, the Hearing Committee concluded, by a preponderance of the evidence, that Respondent engaged in conduct

which evidences moral unfitness to practice medicine in that the facts demonstrate Respondent's violation of his professional trust and the ethical standards of the medical community. Accordingly, the Committee concluded that the Third Specification should be SUSTAINED. (1 - 21).

Fourth Specification

Respondent is also charged with a failure to maintain accurate records, in violation of 8 NYCRR 29.2(a)(3). Again, the record clearly established that Respondent failed to document any of the significant events which transpired during his treatment of Patient A. The Hearing Committee concluded, by a preponderance of the evidence, that Respondent failed to maintain an accurate medical record for Patient A which would reflect the actual evaluation, treatment, treatment dates, and/or diagnostic procedures rendered and/or ordered. Accordingly, the Committee concluded that the Fourth Specification should be SUSTAINED.

RECOMMENDATIONS

The Hearing Committee, pursuant to its Findings of Fact and Conclusions herein unanimously recommends that Respondent's license to practice medicine in the State of New York be revoked. This recommendation was reached after due consideration of the full spectrum of available penalties, including suspension, probation, censure and reprimand, or the imposition of civil penalties of up to \$10,000 per violation.

Any individual who receives a license to practice medicine is placed into a position of public trust. Respondent

used his position of trust for his own personal gratification, to the detriment of his patient's welfare. His fraudulent and deceptive conduct constituted a serious breach of the public trust.

The principal issue in this case is Respondent's moral unfitness to be a physician, rather than his clinical skills. It was the unanimous opinion of the Hearing Committee that a mere suspension would not instill Respondent with the degree of moral character necessary to be a physician. Thus, the circumstances warrant revocation.

Further, the Hearing Committee unanimously recommended that, prior to any consideration of a restoration of Respondent's license, Respondent be required to submit proof of a psychiatric evaluation and any corresponding treatment, if warranted. Additionally, in the event his license is ever restored, Respondent should be required to provide a chaperone to be present whenever he examines a female patient.

Based upon the foregoing, the Hearing Committee made the following recommendations:

1. That Specifications One through Four, as set forth in Department's Exhibit #1, be SUSTAINED;

2. That Respondent's license to practice medicine in New York State be REVOKED, and

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

-----X
IN THE MATTER :
OF :
JULIO M. SOTO, M.D. :
-----X

COMMISSIONER'S
RECOMMENDATION

TO: Board of Regents
New York State Education Department
State Education Building
Albany, New York

A hearing in the above-entitled proceeding was held on May 4, 1989, May 12, 1989, May 22, 1989, June 16, 1989 and June 23, 1989. Respondent, Julio M. Soto, M.D., appeared by Anthony Z. Scher, Esq. The evidence in support of the charges against the Respondent was presented by Silvia P. Finkelstein, Esq.

NOW, on reading and filing the transcript of the hearing, the exhibits and other evidence, and the findings, conclusions and recommendation of the Committee,

I hereby make the following recommendation to the Board of Regents:

- A. The Findings of Fact and Conclusions of the Committee should be accepted in full;
- B. The Recommendation of the Committee should be accepted; and
- C. The Board of Regents should issue an order adopting and incorporating the Findings of Fact and Conclusions and further adopting as its determination the Recommendation described above.

The entire record of the within proceeding is transmitted with this Recommendation.

DATED: Albany, New York

January 26, 1989



DAVID AXELROD, M.D.
Commissioner of Health
State of New York

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

-----X
IN THE MATTER : STATEMENT
OF : OF
JULIO M. SOTO, M.D. : CHARGES
-----X

JULIO M. SOTO, M.D., the Respondent, was authorized to practice medicine in New York State on September 16, 1974 by the issuance of license number 121833 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, 1989 through December 31, 1991, at 124 Scarsdale Road, Crestwood, New York 10707.

FACTUAL ALLEGATIONS

A. At all times mentioned and commencing on or about December 1, 1987, the Respondent was employed by Fordham University Health Center, located at Thebaud Hall, East Fordham Road, Bronx, New York 10458, as a physician for the purpose of offering consultation, examination, diagnosis and treatment to students. Respondent also maintained a private practice located at 2830 Grand Concourse, Bronx, New York 10458. At all times mentioned Patient A (who is identified in the annexed Appendix)

was a student enrolled at Fordham University, located in New York City.

1. On or about January 5, 1988, Patient A went to the Fordham University Health Center, to seek medical treatment for complaints including bloody urine, fever, and pelvic pain. The Fordham University Health Center referred Patient A to the Respondent, who was contacted by phone and asked Patient A to come to his private office located at 2830 Grand Concourse, Bronx, New York.
2. On or about January 5, 1988, Respondent performed a gynecological examination of Patient A and sent the patient's urine to a laboratory for culture and routine analysis. Respondent prescribed Betadine douche and Myostat Cream for Patient A. During said initial examination, the Respondent informed Patient A that she might be suffering from an infection which could have been caused by the Herpes II virus and advised Patient A to contact him on January 7, 1988, when the results of certain tests would be available to him.
3. On or about January 7, 1988, Patient A was told by the Respondent that she was suffering from a yeast infection and that blood tests were necessary to determine whether or not she suffered from Herpes II. On that date, Patient A made an appointment and went to the Respondent's private office located at 2830 Grand Concourse, Bronx, New York. The Respondent took a sample of Patient A's blood. Respondent offered to obtain and administer to Patient A a newly discovered and not yet approved vaccine/cure for Herpes II, in the event her blood test was positive for the disease.

4. On or about January 9, 1988, in a telephone conversation, Respondent falsely told Patient A that she was suffering from the Herpes II Virus. Respondent further told her that he had obtained the experimental vaccine and could administer it to her that evening at his office.

5. On or about January 9, 1988, at approximately 9:00 P.M., Patient A went to the Respondent's private office located at 2830 Grand Concourse Bronx, New York, at which time Respondent informed Patient A that in order to administer the Herpes vaccine in a manner which would render it effective, it would be necessary for the Respondent to have sexual intercourse with Patient A. Thereafter, in the course of purportedly rendering medical care by administering an experimental herpes vaccine, Respondent sexually abused Patient A by having sexual intercourse with her.

6. Respondent failed to make entries in his medical records to accurately reflect the diagnoses, treatment and/or testing actually rendered and/or administered to Patient A, including, but not limited to, the diagnosis of Herpes II, the results of a blood test, the visit of January 9, 1988, and the administration of a vaccine/cure for Herpes II.

* * * * *

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

FRAUDULENT CONDUCT

The Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6509(2) (McKinney 1985) by engaging in fraudulent conduct in the practice of the profession, in that Petitioner charges:

1. The facts in Paragraph A, A1, A2, A3, A4, A5, and A6.

SECOND SPECIFICATION

PATIENT ABUSE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6509(9) (McKinney 1985) in that he engaged in unprofessional conduct within the meaning of 8 N.Y.C.R.R. 29.2 (2) (1987), by willfully abusing a patient physically, in that Petitioner charges:

1. The facts in Paragraph A and A5.

THIRD SPECIFICATION

MORAL UNFITNESS

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6509(9) (McKinney 1985) in that he engaged in unprofessional conduct within the meaning of 8 N.Y.C.R.R. Sec. 29.1(b)(5) (1987) 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, A1, A2, A3, A4, and A5.


FOURTH SPECIFICATION

FAILURE TO MAINTAIN ACCURATE RECORDS

The Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6509(9) (McKinney Supp. 1987) in that he committed unprofessional conduct within the meaning of 8 N.Y.C.R.R. Sec. 29.2(a)(3) (1987) in that he failed to maintain records which accurately reflect the evaluation and treatment of Patient A, in that Petitioner charges:

1. The facts in Paragraph A, A1, A2, A3, A4, A5, and A6.

DATED: New York, New York
February 9, 1989

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

CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

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

JULIO M. SOTO

CALENDAR NO. 10693



The University of the State of New York

IN THE MATTER

OF

JULIO M. SOTO
(Physician)

**DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 10693**

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 10693, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (June 22, 1990): That, in the matter of JULIO M. SOTO, respondent, the recommendation of the Regents Review Committee be accepted as follows:

1. The findings, conclusions, and recommendation of the hearing committee as well as the Commissioner of Health's recommendation with respect thereto be accepted, except that the non-binding suggestions of the hearing committee and Commissioner of Health not be passed upon;
2. Respondent is guilty, by a preponderance of the evidence, of the first, second, third and fourth specifications of the charges; and
3. Respondent's license to practice as a physician in the State of New York be revoked upon each specification of the charges of which respondent was found guilty. Respondent may, pursuant to Rule 24.7(b) of the Rules of the Board of Regents, apply for restoration of said license after one year has elapsed from the effective date of the service of the order of the Commissioner of

JULIO M. SOTO (10693)

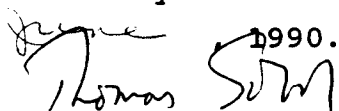
Education to be issued herein; but said application shall not be granted automatically; and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote and the provisions thereof are hereby adopted and **SO ORDERED**, and it is further

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Thomas Sobol, Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 29th day of

 1990.

Commissioner of Education