



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

May 28, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Karen E. Carlson, Esq.
NYS Department of Health
Coming Tower Room 2503
Empire State Plaza
Albany, New York 12237

Robert Tichell, M.D.
125 Lattimore Road
Rochester, New York 14620-4107

John C. Herbert, Esq.
Harter, Secrest & Emery
700 Midtown Tower
Rochester, New York 14604

RE: In the Matter of Robert Tichell, M.D.

Dear Ms. Carlson, Dr. Tichell and Mr. Herbert:

Enclosed please find the Determination and Order (No. 97-121) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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 penalties **other than suspension or revocation** 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
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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,

Handwritten signature of Tyrone T. Butler in black ink, appearing as "Tyrone T. Butler/nm".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

-----X
IN THE MATTER : DETERMINATION
: AND
OF :
: ORDER
ROBERT TICHELL, M.D. :
-----X

BPMC - 97-121

A Notice of Hearing and Statement of Charges, both dated January 29, 1997, were served upon the Respondent, Robert Tichell, M.D. **THERESE G. LYNCH, M.D. (Chair)**, **CLAUDIA GABRIEL**, and **STEPHEN A. GETTINGER, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Karen E. Carlson, Esq., Assistant Counsel. The Respondent appeared by Harter, Secrest & Emery, John C. Herbert, Esq., of Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Date of Service of Notice of Hearing and Statement of Charges:	February 3, 1997
Pre-Hearing Conference:	February 13, 1997
Dates of Hearings:	February 24, 1997 February 25, 1997 March 10, 1997 March 11, 1997
Received Petitioner's Proposed	

Findings of Fact, Conclusions of
Law and Recommendation:

March 24, 1997

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

March 24, 1997

Witnesses for Department of Health:

Patient A
Nancy Baldwin
Patient B
Neil O'Brien
Patient C
Patient D

Witnesses for Respondent:

Robert Tichell, M.D.
Kathleen Wesline
Diane M. Cunningham, M.D.
David L. Gandell, M.D.
Joseph G. Scibetta, M.D.
Naomi L. Adler, Esq.
Raymond J. Mayewski, M.D.

Deliberations Held:

March 31, 1997

STATEMENT OF CASE

The Petitioner has alleged that the Respondent, a board-certified obstetrician/gynecologist engaged in sexual misconduct with regard to four patients. More specifically, the Petitioner has charged the Respondent with eight specifications of professional misconduct, including four specifications of moral unfitness in violation of N.Y. Educ. Law §6530(20), and four specifications of willful, physical and/or verbal harassment and/or abuse of a patient in violation of N.Y. Educ. Law §6530(31).

A copy of the Notice of Hearing and Statement of Charges is attached to this Determination and Order in Appendix I.

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. Robert H. Tichell, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on July 30, 1964 by the issuance of license number 092682 by the New York State Education Department. Respondent is a board certified obstetrician/gynecologist and practices in Rochester, New York. (Pet. Ex. #3).

Patient A

2. Respondent provided gynecological care to Patient A from 1969 through approximately 1990. (T. 13).

3. Patient A had been the recipient of many hugs from Respondent in previous office visits. She considered these hugs to be friendly hugs and she was not uncomfortable with them. (T. 15, 32).

4. Since 1977 Respondent had shown progressively more attention to Patient A by giving her longer hugs, embraces, and by commenting on her appearance. (T. 14, 33, 45).

5. Patient A was seen by Respondent in 1986 for a pre-operative visit prior to a tubal ligation. (Pet. Ex. #4).

6. At the 1986 office visit, Respondent kissed Patient A on the mouth. (T. 15-16).

7. Sometime after that 1986 visit, Patient A decided she would not return to Respondent for her medical care. (T. 17, 35).

8. In December of 1989 Patient A was seen by her internist and was told she needed immediate care from a gynecologist for a mass on her ovary. (T.17).

9. Patient A made an appointment with Respondent as she was nervous about her medical condition and had no other gynecologist to see. She was concerned she would have to wait a considerable amount of time before being able to be seen by a new gynecologist. (T. 18).

10. In January of 1990 Patient A was seen by Respondent for the mass on her ovary. (T. 18-19).

11. Patient A had not seen or been in contact with Respondent since 1986. (T. 18).

12. Respondent entered the examining room and told Patient A how great she looked. (T. 20).

13. Patient A was given a sheet to cover herself. Respondent performed a physical examination. (T. 20-21).

14. Respondent, after a proper examination and while standing at the end of the examining table, pulled Patient A up to a sitting position. (T. 21-22).

15. Respondent french-kissed Patient A on the mouth several times, fondled her breasts and buttocks, and told her he wanted to see her outside the office. (T. 22).

16. Respondent repeatedly pulled Patient A's hand to his penis. (T. 22-23).

17. Patient A told Respondent that she was nervous and to please stop. She did not yell or call anyone. Patient A attempted to push Respondent away but initially was unable to do so. (T. 23-25).

18. Respondent finally left the examining room. (T. 25).

19. Patient A left the room and made another follow-up appointment. Patient A had no intention of keeping that appointment. (T. 26).

20. Patient A went back to work and was very upset. She told her co-workers what had just happened with Respondent and called her internist to tell him. Her internist found her another OB/GYN who called her that night. (T. 27-28, 60).

21. Patient A did not make a complaint to the Office of Professional Medical Conduct and told only family and some friends about the incident. (T. 47).

Patient B

22. Patient B was provided gynecological care by Respondent from approximately 1990 through April of 1991. (Pet. Ex. #6).

23. Patient B had been diagnosed with bi-polar illness and Respondent was aware of this. Respondent was also aware of her history of a violent rape. (T. 70; Pet. Ex. #6).

24. Patient B had received hugs from Respondent in the past and was not uncomfortable with them. (T. 73).

25. Patient B's last appointment with Respondent was in April of 1991. (T. 70; Pet. Ex. #6).

26. Patient B was seen on that date for a consultation to follow-up on blood work which had been done earlier. (T. 71, 81; Pet. Ex. #6).

27. Patient B did not undress for this office visit and was not physically examined by Respondent. (T. 72).

28. Respondent discussed Patient B's blood work with her while they were both seated at the table in the examining room. (T. 72).

29. Patient B testified that Respondent asked her what she does when she gets horny, or words to that effect. (T. 73, 82-83).

30. Patient B was uncomfortable with the conversation and got up to leave the office. (T. 74-75).

31. Respondent placed both his arms around Patient B in a hug and told her she was very pretty and that she had a hard life. (T. 74-75).

32. Patient B testified that Respondent played with her hair and leaned her head towards him as if to kiss her. (T. 74-75).

33. Patient B broke away and left the office. (T. 75-76).

34. Patient B did not pay the outstanding bill for the last office visit and reported the reason to the office staff of Respondent's practice. (T. 76).

35. Respondent noted in the chart that he could "recall no incident or statement that could have led to this perception." (T. 325; Pet. Ex. #6).

36. Patient B reported the incident to the police and to the Office of Professional Medical Conduct. (T. 77-78, 96).

Patient C

37. Respondent provided gynecological care to Patient C for approximately seven years ending in September of 1980. (T. 112; Pet. Ex. #8).

38. Patient C's final visit with Respondent was in September of 1980. (T. 112).

39. Patient C was seen for an annual gynecological examination on that date. (T. 113, 115; Pet. Ex. #8).

40. Patient C was given a sheet to cover herself with during the examination. (T. 115).

41. Respondent performed an appropriate breast examination. (T. 115).

42. After the breast examination, Respondent lowered the sheet down to Patient C's thighs, exposing her torso and pelvic area. (T. 116, 134).

43. Patient C testified that Respondent told her "nice tan lines" or words to that effect. Respondent acknowledged that he might have said this. (T. 116, 304).

44. Respondent proceeded to perform an appropriate pelvic examination on Patient C. (T. 117, 138-139).

45. After the examination was completed, Respondent went around to the patient's side, and helped her to a sitting position. As he did this he pulled her towards him and hugged her from the side. (T. 118).

46. Patient C did not return to Respondent for her

care. (T. 119).

47. Patient C did not make a complaint to the Office of Professional Medical Conduct. (T. 120).

Patient D

48. Respondent provided gynecological care to Patient D on two occasions. (T. 149; Pet. Ex. #7).

49. Patient D was aware that Respondent gave hugs to his patients and was not uncomfortable with this. (T. 150).

50. Patient D had no complaints with Respondent's conduct on her first annual examination in 1994. (T. 159).

51. Patient D saw Respondent in the spring of 1995 for a second annual examination. Patient D told Respondent at the beginning of the visit, while she was fully clothed, that she was experiencing pain upon intercourse. (T. 152).

52. Respondent conducted an appropriate breast and pelvic examination, including an examination for her complaint of painful intercourse. (T. 154).

53. Respondent, while examining the vagina of Patient D, stated to her that "unless your boyfriend is really big, I do not know what the problem is", or words to that effect. (T. 154-155).

54. Patient D was uncomfortable with Respondent's comments and did not respond to them. (T. 156).

55. Patient D did not return to Respondent for her care and reported the incident to the Office of Professional Medical Conduct. (T. 158).

CONCLUSIONS OF LAW

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

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

Paragraph A: (2-21) ;
Paragraph A.1: (6) ;
Paragraph A.2.a: (10, 13-14) ;
Paragraph A.2.b: (10, 13-14) ;
Paragraph A.2.c: (10, 15) ;
Paragraph A.2.d: (10, 15) ;
Paragraph A.2.e: (10, 16) ;
Paragraph A.3: (10, 15) ;
Paragraph B: (22-36) ;
Paragraph B.1: (29) ;
Paragraph B.2: (31) ;
.. Paragraph B.3: (31-32) ;
Paragraph C: (37-47) ;
Paragraph C.2: (38-39, 42-43) ;
Paragraph C.3: (45) ;
Paragraph D: (48-55) .

The Hearing Committee further concluded that the following Factual Allegation was not sustained:

Paragraph C.1.

The Hearing Committee further concluded that the following Specifications should be sustained. The citations in parentheses refer to the Factual Allegations which support each Specification:

Fifth Specification: (A, A.1, A.2.b, A.2.c, A.2.d, A.2.e and A.3);

Sixth Specification: (B, B.1, B.2 and B.3).

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

First Specification;

Second Specification;

Third Specification;

Fourth Specification;

Seventh Specification;

Eighth Specification.

DISCUSSION

Respondent is charged with four specifications alleging moral unfitness to practice medicine within the meaning of Education Law §6530(20) and four specifications of willful harassment and/or abuse of a patient either physically or verbally, within the meaning of Education Law §6530(31). The statute sets forth numerous forms of conduct which constitute professional misconduct, but does not provide definitions of the various types of misconduct.

The Hearing Committee consulted Black's Law Dictionary

(5th Ed., 1979) where the following definitions were obtained:

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

Willful: Proceeding from a conscious motion of the will; voluntary. Intending the result which actually comes to pass; designed; intentional; not accidental or involuntary.

It is not enough to find that Respondent's conduct was merely intentional. It must be shown that it was in fact done for an inappropriate reason. See, Murray v. Chassin 213 A.D.2d 858 (3rd Dept. 1995). In the Murray decision the Court held that "while a person's intent can be inferred from his or her actions [citations deleted], it may not be inferred merely from another person's response to what otherwise would be considered reasonable conduct". Murray 213 A.D.2d 858, 859-860.

Using the above-referenced definitions as a framework for its deliberations, the Hearing Committee unanimously concluded, by a preponderance of the evidence, that Respondent's conduct with respect to Patients A and B constituted willful harassment and abuse. The Hearing Committee further concluded that Respondent's conduct with regard to Patients C and D did not constitute willful harassment and abuse. Finally, the Committee concluded that Respondent's conduct with regard to each of the four patients did not rise to the level of moral unfitness to practice the profession. The rationale for the Committee's conclusions is set forth below.

At the outset, the Hearing Committee evaluated the credibility of the witnesses presented by both sides. The Petitioner presented the testimony of Patients A, B, C and D. Each of the patients testified in a clear and forthright manner regarding their interactions with Respondent. No motive for falsification or fabrication of testimony was put forth by Respondent. The Committee found the testimony of Patient B to be credible. The patient's bi-polar illness did not interfere with her ability to accurately perceive the events which occurred. She also stated that she is able to tell the difference between threatening hugs and non-threatening hugs. (See, T. 78-79). This is substantiated by the fact that Patient B had received several hugs from Respondent in the past and was not uncomfortable or complaining about them.

The Hearing Committee concluded that all four patients were generally credible and gave substantial weight to their testimony. Petitioner also presented testimony of Nancy Baldwin - a co-worker of Patient A. Petitioner also presented Neil O'Brien - the police officer who investigated the complaint made by Patient B regarding Respondent. The Committee considered their testimony to be generally credible, but not central to its decision-making process.

Respondent presented testimony of four physicians, three of whom are members of his practice. The physicians all testified as to Respondent's good character and his medical skills and expertise, but could shed little light on the factual issues at the heart of this case. Respondent also presented

Naomi Adler - a current patient. Ms. Adler testified as to her positive experiences with Respondent, but also was unable to testify regarding the factual issues in this matter.

Respondent presented Kathleen Wesline - the office manager of his practice. She testified at some length regarding office procedures concerning the use of gowns and billing procedures. She also testified regarding positive patient survey results concerning Respondent.

Respondent also testified on his own behalf. Although he denied the most serious allegations regarding Patients A and B, he did not have specific recollections of any of his encounters with the four patients at issue here. He neither admitted nor denied making many of the verbal comments attributed to him by the patients. The Hearing Committee recognizes that all of these encounters took place two to seventeen years ago.

Patient A

The Hearing Committee found that Respondent did kiss Patient A on the mouth during the 1986 office visit. The Committee further found that during the January, 1990 office visit Respondent hugged the patient. He subsequently pulled Patient A to him following the medical examination and then fondled her bare breasts and buttocks while repeatedly kissing her on the mouth. He also repeatedly placed Patient A's hand on his clothed penis and told her that he wanted to see her outside his office.

Respondent's conduct with regard to Patient A was clearly intentional in nature. With the exception of his hugging

of the patient, the Committee concluded that Respondent's conduct with regard to Patient A was willful and abusive, as defined previously. Consequently, the Committee voted to sustain the Fifth Specification. The Committee considered Respondent's actions to be impulsive and poorly controlled, but concluded that there was no evidence of premeditation to his actions. The Committee further concluded that Respondent's conduct did not evidence moral unfitness and did not sustain the First Specification.

Patient B

Respondent failed to act within appropriate standards of medical care in his treatment of Patient B. Respondent asked Patient B what she did when she got horny. The question was not within any context which could be construed as being for a valid medical purpose. Patient B testified that her conversation with Respondent concerned her lack of menstrual periods for several months. There was no conversation initiated by her regarding sexuality issues. (See, T. 82).

Given the lack of appropriate context it is reasonable that Patient B should feel uncomfortable due to this remark. Further, given the lack of justifiable medical context, the Committee concluded that this comment was intentionally made by Respondent.

Respondent then hugged Patient B as she got up to leave, holding her arms down. Respondent then proceeded to put his hands in her hair while telling her she was a pretty woman who had a hard time. Finally, he moved her head in a position as

if to kiss her mouth. These actions are entirely outside of any appropriate contact between a physician and patient. There is no evidence that this contact was accidental or incidental to a valid medical purpose.

The Hearing Committee concluded that Respondent's conduct with regard to Patient B constituted willful physical and verbal abuse and harassment. Consequently, the Committee sustained the Sixth Specification. The Committee again considered Respondent's actions to be impulsive and poorly controlled, but concluded that there was no evidence of premeditation to his actions. The Committee further concluded that Respondent's actions did not rise to the level of moral unfitness to practice the profession, and did not sustain the Second Specification.

Patient C

Respondent saw Patient C for a routine annual gynecologic examination in September, 1980. He performed appropriate breast and pelvic examinations. As he uncovered the patient's torso and pelvic area in preparation for the pelvic examination, he told the patient that she had "nice tan lines", or words to that effect. Following the examination, Respondent went around to the patient's side, and helped her to a sitting position. He then hugged her from the side.

Respondent's comments regarding the patient's "tan lines" may have been somewhat immature. However, mere boorishness is not actionable professional misconduct. Moreover, the Committee concluded that the manner in which Respondent

hugged Patient C (from the side) was not abusive or harassing. Consequently, the Hearing Committee voted to dismiss the Third and Seventh Specifications.

Patient D

Respondent performed an annual gynecologic examination on Patient D on June 8, 1995. At the beginning of the visit, while still fully clothed, Patient D told Respondent that she was experiencing pain during intercourse. Respondent subsequently performed appropriate breast and pelvic examinations, including an examination for the complaint of painful intercourse. Respondent, while examining the patient's vagina, stated to her that "unless your boyfriend is really big, I do not know what the problem is", or words to that effect. Patient D was uncomfortable with Respondent's observations and did not respond to them.

Respondent's comments regarding Patient D's boyfriend may have been somewhat unartfully made, but were not inappropriate in the context of his evaluation of the patient's complaint of painful intercourse. The comments obviously made Patient D uncomfortable. However, that does not make them actionable. The Hearing Committee unanimously concluded that Respondent's comments to Patient D did not constitute willful verbal harassment or abuse, nor did they demonstrate moral unfitness. As a result, the Committee voted to dismiss the Fourth and Eighth Specifications.

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 as a physician in New York State should be suspended for a three year period. The last thirty-three months of the suspension shall be stayed and the Respondent placed on probation. The terms of probation shall be determined by the Director of the Office of Professional Medical Conduct. In addition, the Respondent's medical license shall be limited to permit practice only in a group practice or Article 28 - licensed facility. He shall also be required to have a chaperon present, paid for by the group practice or Article 28 - licensed facility, whenever he sees a female patient for either physical examination or consultation. 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.

All of the witnesses who testified at these proceedings (including the patients) acknowledged that Respondent is an excellent OB/GYN, with great compassion for his patients. He is held in high regard by the medical community. He has excellent medical skills which he uses to treat indigent patients, and has influenced others in his practice to treat indigent patients.

It is the considered opinion of the members of this Hearing Committee that Respondent's misconduct represents isolated incidents of impulsive behavior, rather than

premeditated conduct. It also became apparent to the Committee that Respondent has learned from his experiences. He now uses chaperons during pelvic examinations and is comfortable with explaining the need for chaperons to his patients.

The Hearing Committee considered and unanimously determined that revocation was not appropriate in this case. Respondent has shown that he has the potential for rehabilitation by his willingness to use chaperons with his patients. At the same time, his misconduct does represent a serious breach of the public trust and warrants a significant sanction. After much discussion, the Committee determined that a period of actual suspension, followed by a lengthy term of probation, will provide adequate punishment. In order to protect the public, the Hearing Committee further determined that Respondent's medical license should be limited to permit him to practice only in a group practice setting or Article 28 - licensed facility. Further, he shall be required to have a chaperon present, paid for by the group or facility, whenever he sees a female patient for physical examination or consultation. These measures will provide assurance that Respondent does not have the opportunity to engage in inappropriate behavior in the future.

The Hearing Committee strongly believes that this sanction strikes the appropriate balance between the needs to punish Respondent, protect the public, and allow for the possibility of rehabilitation.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The Fifth and Sixth Specifications of professional misconduct, as set forth in the Statement of Charges

(Petitioner's Exhibit # 1) are SUSTAINED;

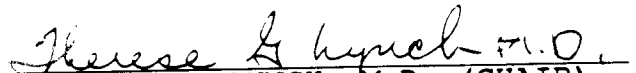
2. The First, Second, Third, Fourth, Seventh and Eighth Specifications are DISMISSED;

3. Respondent's license to practice medicine as a physician in New York State be and hereby is SUSPENDED for a period of THREE YEARS commencing on the effective date of this Determination and Order. The last thirty-three months of said three year suspension shall be stayed, and the Respondent placed on probation. The terms of probation shall be determined by the Director of the Office of Professional Medical Conduct in accordance with the provisions of Public Health Law §230(18)(a);

4. Respondent's medical license shall be and hereby is LIMITED to permit him to practice only in a group practice setting or an Article 28 - licensed facility. A chaperon, paid for by said group practice or Article 28 - licensed facility, shall be with Respondent whenever he sees a female patient for either physical examination or consultation;

5. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York
May 23, 1997


THERESE G. LYNCH, M.D. (CHAIR)

CLAUDIA GABRIEL
STEPHEN A. GETTINGER, M.D.

TO: Karen E. Carlson, Esq.
Assistant Counsel
New York State Department of Health
Corning Tower - Room 2503
Empire State Plaza
Albany, New York 12237

Robert Tichell, M.D.
125 Lattimore Road
Rochester, New York 14620-4107

John C. Herbert, Esq.
Harter, Secrest & Emery
700 Midtown Tower
Rochester, New York 14604

PIA

APPENDIX I

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

-----X
IN THE MATTER : NOTICE
OF : OF
ROBERT TICHELL, M.D. : HEARING
-----X

TO: Robert Tichell, M.D.
125 Lattimore Road
Rochester, New York 14620-4107

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 24th day of February, 1997, at 10:00 in the forenoon of that day at the Alliance Building, 183 East Main Street, Rochester, New York and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and

you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.


Pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(c) you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the date of the hearing. Any Charge and Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

At the conclusion of the hearing, the committee shall make

findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO THE OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW SECTION 230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
January 29, 1997


PETER D. VAN BUREN
Deputy Counsel

Inquiries should be directed to: Karen Eileen Carlson
Assistant Counsel
Division of Legal Affairs
Bureau of Professional
Medical Conduct
Corning Tower Building
Room 2503
Empire State Plaza
Albany, New York 12237-0032
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
ROBERT H. TICHELL, M.D. : CHARGES

-----X

Robert H. Tichell, M.D., the Respondent, was authorized to practice medicine in New York State on July 30, 1964 by the issuance of license number 092682 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 September 30, 1997, with a registration address of 125 Lattimore Road, Rochester, New York 14620-4107.

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FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A [all patients are identified in Appendix] from, among other times, approximately 1986 through on or about January 1990. Respondent engaged in the following conduct:

1. Respondent, on or about 1986, kissed Patient A on her mouth.

2. Respondent, on or about January 2, 1990,
- hugged Patient A
 - hugged and kissed Patient A while she was undressed, ~~during a pelvic examination~~
 - placed his hands on Patient A's breasts, without medical justification
 - placed his hands on Patient A's buttocks without medical justification
 - took hold of Patient A's hand and placed it onto Respondent's clothed penis
3. Respondent asked to see Patient A "outside of work" or words to that effect.

B. Respondent provided medical care to Patient B, among other times, on or about April 16, 1991. Respondent engaged in the following conduct:

- Respondent asked Patient B what "she does when she gets horny" or words to that effect
- Respondent hugged Patient B
- Respondent attempted to kiss Patient B

C. Respondent provided medical care to Patient C, among other times, on or about ~~1979 through~~ ^{September 9,} on or about 1980. Respondent engaged in the following conduct:

amended by
Pet. 3/10/97
JLS

898 amended
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Pet.
2/24/99

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1. Respondent, ~~during a pelvic examination of Patient C~~ pulled off the sheet covering her unclothed body, exposing her, without medical justification
 2. Respondent told Patient C that she "had nice tan lines" or words to that effect
 3. Respondent hugged Patient C
- D. Respondent provided medical care to Patient D on or about June 8, 1995. Respondent, during a pelvic examination of Patient D, made a comment to and/or asked Patient D about whether her "boyfriend was really big" or words to that effect.

SPECIFICATION OF CHARGES

FIRST THROUGH FOURTH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(20) (McKinney Supp. 1996) by reason of his conduct in the practice of medicine which evidences moral unfitness to practice medicine in that Petitioner charges:

1. The facts in Paragraphs A and A.1, A and A.2.a, A and A.2.b, A and A.2.c, A and A.2.d, and/or A and A.2.e.

2. The facts in Paragraphs B and B.1, B and B.2 and or B and B.3.
3. The facts in Paragraphs C and C.1, C and C.2 and/or C and C.3.
4. The facts in Paragraph D.

FIFTH THROUGH EIGHTH SPECIFICATIONS

**WILLFUL, PHYSICAL AND/OR VERBAL HARASSMENT AND/OR ABUSE OF A
PATIENT**

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(31) (McKinney Supp. 1996) by reason of his willful harassment and/or abuse of a patient, either physically or verbally, in that Petitioner charges:

5. The facts in Paragraphs A and A.1, A and A.2.a, A and A.2.b, A and A.2.c, A and A.2.d, and/or A and A.2.e.
6. The facts in Paragraphs B and B.1, B and B.2 and/or B and B.3.
7. The facts in Paragraphs C and C.1, C and C.2 and/or C and C.3.
8. The facts in Paragraph D.

DATED: *January 29*, 1997
Albany, New York

Peter D. Van Buren

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