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

January 27, 1998

CORRECTED COPY

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Timothy J. Mahar, Esq.
NYS Department of Health
Empire State Plaza
Corning Tower - Rom 2509
Albany, New York 12237

Charles T. Williams, R.P.A., D.O.
324 West North St.
Geneva, New York 14456

Robert J. Hirsch, Esq.
Jason Botticelli, Esq.
Hirsch & Tubiolo
1000 Arcade Building
16 East Main Street
Rochester, New York 14614-1796

RE: In the Matter of Charles T. Williams, R.P.A., D.O.

Dear Mr. Mahar, Mr. Williams and Mr. Hirsch:

Enclosed please find the Determination and Order (No. BPMC 98-18) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:lcc
Enclosure

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

COPY

IN THE MATTER

OF

CHARLES T. WILLIAMS, R.P.A., D.O.

DECISION
AND
ORDER
OF THE
HEARING COMMITTEE

ORDER NO.
BPMC 98- 18

The undersigned Hearing Committee consisting of **WILLIAM P. DILLON, M.D., Chairperson, DONALD F. BRAUTIGAM, M.D., MICHAEL R. GONZALEZ, R.P.A.,** was duly designated and appointed by the State Board for Professional Medical Conduct. **JONATHAN M. BRANDES, ESQ.,** Administrative Law Judge, served as Administrative Officer.

The hearing was conducted pursuant to the provisions of Section 230(10) and 230(12) of the New York State Public Health Law and Sections 301-307 and 401 of the New York State Administrative Procedure Act to receive evidence concerning alleged violations of provisions of Section 6530 of the New York Education Law by **CHARLES T. WILLIAMS, R.P.A., D.O.** (hereinafter referred to as "Respondent").

Under Section 230(12) of the Public Health Law, where the Commissioner of Health finds that a physician constitutes an imminent danger to the public and that it would be prejudicial to the interests of the people to delay action until the physician has had an opportunity to be heard, the commissioner may issue an order suspending the license of the physician. A hearing is then convened and the State has the burden of going forward to show that the physician constitutes an imminent danger to the public. Such an order was issued in this case on August 22, 1997. This proceeding ensued from that order.

Witnesses were sworn or affirmed and examined. A stenographic record of the hearing was made. Exhibits were received in evidence and made a part of the record. The Committee deliberated on the issue of imminent danger and on the issue of professional misconduct under Section 6530 of the New York

Education Law. The Committee has considered the entire record in the above captioned matter and hereby renders its decision with regard to the issue of imminent danger and the charges of medical misconduct.

RECORD OF PROCEEDING

Summary Order Signed / Served	Dated: August 22, 1997	Served: August 22, 1997
Amended Statement of Charges	Dated: September 30, 1997	Served: October 1, 1997
Notice of Hearing returnable:	October 21, 1997[1]	
Committee Decision Regarding Imminent Danger Dated	October 28, 1997 (Stated on the record)	
Location of Hearing:	Alliance Building, Rochester, New York	
Respondent's answer dated / served:	October 2, 1997	
The State Board for Professional Medical Conduct (hereinafter referred to as "Petitioner" or "The State") appeared by:	**HENRY M. GREENBERG, ESQ.** General Counsel by **TIMOTHY J. MAHAR, ESQ.** Associate Counsel Bureau of Professional Medical Conduct Albany, New York	
Respondent appeared in person and was represented by:	**ROBERT J. HIRSCH, ESQ.,** **JASON BOTTICELLI, ESQ.,** Hirsch & Tubiolo 1000 Arcade Building, 16 East Main Street Rochester, New York 14614-1796	
Respondent's present address:	324 West North St. Geneva, NY 14456	
Respondent's License:	Number: 14456	Registration Date: February 6, 1991
Pre-Hearing Conference Held:	October 1, 1997	

[1]Petitioner and Respondent negotiated a delay in the trial schedule herein. Subsequent to the stipulation and due to circumstances beyond anyone's control, the first actual day of hearing was October 28, 1997. For the purposes of setting time limits, the trial in this matter commenced on October 28, 1997.

Hearings held on:	October 28, 1997
Conferences held on:	
Closing briefs received:	December 8, 1997
Record closed:	December 11, 1997
Date of Deliberation:	December 12, 1997

SUMMARY OF PROCEEDINGS

The relevant portion of the Statement of Charges in this proceeding alleges three grounds of misconduct:

1. Respondent has committed **verbal abuse or harassment** as set forth in N.Y. Education Law Section 6530 (31)

2. Respondent has committed **physical abuse or harassment** as set forth in N.Y. Education Law Section 6530 (31)

3. Respondent committed **acts evidencing moral unfitness** as set forth in N.Y. Education Law Section 6530 (20)

The allegations arise from a single patient incident on June 3, 1997. The allegations are more particularly set forth in the Statement of Charges which is attached hereto as Appendix One.

Respondent entered a denial of each of the charges.

Petitioner called one witness:[2]

Patient A — Fact Witness

[2]A second witness was called for the purposes of an evidentiary motion. The Committee heard only one witness.

Respondent did not testify Respondent called three witnesses:

Elaine Burch	Fact/Character Witness
Linda Cramer	Fact/Character Witness
Cynthia Cramer	Fact/Character Witness

SIGNIFICANT LEGAL RULINGS:

DECLINATION TO HEAR ADDITIONAL CHARGES

Pursuant to Section 230(12) of the Public Health Law, this matter was brought as a Summary Proceeding. Under the provisions of Section 230(12) Respondent's license to practice medicine was suspended prior to the commencement of a due process hearing. Section 12, also establishes certain standards of time designed to provide a physician whose license has been suspended, with as expedited a hearing as possible without sacrificing due process. It is also in the best interest of the people of this state for matters before the Board for Professional Medical Conduct to be completed as expeditiously as possible, again, without sacrificing due process.

At the close of the evidence from both the State and Respondent as to the first Factual Allegation, here, an accusation of oral sodomy, the Committee retired to consider whether the evidence established that Respondent represented an imminent danger to the people of this state. The Committee also considered whether Respondent had committed medical misconduct. The Committee found in the affirmative on both issues. It was the opinion of the Committee that the Factual Allegations had been established, that Respondent posed an imminent danger to the public and that the allegations constituted medical misconduct[3].

[3]Further deliberations were held on December 12, 1997. Prior to that time, both parties had been given an opportunity to submit closing statements and proposed findings of fact. On December 12, the Committee considered the charges established and imposed the penalty which appears in the Order herein.

At the close of the initial deliberations, with the concepts of expediency without sacrificing due process in mind, it was the decision of the Administrative Law Judge that the proceedings would be concluded. It was stated on the record that the remaining charges were not being dismissed and, hence, could be brought at a later time. However, at the point the Committee ruled that Respondent had committed oral sodomy on a patient, there was no question in the minds of the panel members that the license of Respondent to practice medicine in this state should be revoked and that the Commissioner's Order should remain in effect. Based upon that finding by the Committee, the Administrative Law Judge found the remaining charges to be unnecessary to reach a result herein.

ADMISSION OF TAPED CONVERSATIONS BETWEEN RESPONDENT AND PATIENT A

The State offered recordings of conversations alleged to have taken place between Respondent and Patient A on June 5 and June 10, 1997[4]. Respondent interposed two objections to receipt of these tape recordings. First, Respondent asserted that the tapes violate the best evidence rule because the physical cassette received in evidence here, is not the original cassette used to record the conversations. This objection cannot be sustained. It is well settled that the best evidence rule does not apply in an administrative proceeding. Furthermore, since both the police officer, under whose auspices the tapes were made, and Patient A testified to the bona fides of the tapes in issue, whether the physical cassette was the original or not, Respondent had every opportunity to attack its credibility as a piece of evidence through the examination of the participants in its creation. Furthermore, the trier of fact was informed of the circumstances in which the recordings were created. The trier of fact was instructed that they could take the facts and circumstances of the recordings into consideration with regard to the weight to be given to the tapes as evidence.

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[4] The conversations were recorded on two different sides of the same tape cassette. When referring to this issue, each conversation will be referred to as a separate "tape". Hence two tapes (one for each conversation) were received in evidence notwithstanding that both conversations (i.e.. both "tapes") are contained on one cassette.

In Respondent's second argument against admission of the tapes is that he alleges gaps exist in the tapes. Two points arise: First, there was a technical error in the production of the copy of the tape which was moved into evidence. The police officer who created the technical error testified regarding what occurred and Respondent was allowed cross-examination. As a matter of law, the explanation offered by the officer was entirely satisfactory to overcome the objection to entry. (See pre-hearing conference, 10/28/97, Tr. 67-68) The trier of fact was instructed that they could consider the technical error and the explanation for same with regard to what, if any, weight to give the tapes as evidence. (Tr. 34)

Second, Respondent points to gaps in the conversation on the tapes. The implication is that the gaps indicate that the tapes were in some way compromised. As a matter of law, the Administrative Law Judge listened to the tapes and heard no ellipses in the content that would be consistent with erasure or other editing function. The testimony by the police officer with regard to the technical flaws and the overall creation of the tapes was entirely convincing. Furthermore, where there are periods of relative silence on the tapes, the silence is consistent with the audio which announces the caller is being "placed on hold." Finally, and most important, the parts of the tapes that contain the conversations between Respondent and Patient A had no gaps of any kind. All the above led the Administrative Law Judge to allow the tapes to be admitted. The trier of fact was instructed to consider this controversy with regard to the weight to be given the taped conversations. However, as a matter of law, they were entirely admissible.

INSTRUCTIONS TO THE TRIER OF FACT

The Administrative Law Judge issued the following instructions to the Committee with regard to the issues in this proceeding.

1. The standard of proof in this proceeding is "a preponderance of the evidence." This means that the State must prove the elements of the charges to a level wherein the trier of fact finds that a given event is more likely than not to have occurred. All findings of fact made herein by the Hearing Committee were established by at least a preponderance of the evidence. Unless otherwise stated, all findings and conclusions herein were unanimous.

2. The Committee was instructed that in deciding the issues in this case, the members may consider only the exhibits which have been admitted in evidence and the testimony of the witnesses as it was heard in this hearing. However, arguments and remarks of the attorneys or the Administrative Law Judge are not evidence.

3. To sustain an allegation of moral unfitness, the State must show Respondent committed acts which "evidence moral unfitness." There is a distinction between a finding that an act "evidences moral unfitness" and a finding that a particular person is, in fact, morally unfit. In a proceeding before the State Board for Professional Medical Conduct, the Committee is asked to decide if certain conduct is suggestive of, or would tend to prove, moral unfitness. The Committee is not called upon to make an overall judgement regarding a Respondent's moral character. It is noteworthy that an otherwise moral individual can commit an act "evidencing moral unfitness" due to a lapse in judgement or other temporary aberration.

4. The Committee was instructed that they could use the ordinary English definitions of the terms "verbal or physical harassment, abuse, or intimidation."

5. The standard for moral unfitness in the practice of medicine is twofold: First, there may be a finding that the accused has violated the public trust which is bestowed upon one by virtue of his licensure as a physician. Physicians have privileges that are available solely due to the fact that one is a physician. The public places great trust in physicians solely based upon the fact that they are physicians. For instance, physicians have access to controlled substances and billing privileges that are available to them solely because they are physicians. Patients are asked to place themselves in potentially compromising positions with physicians, such as when they disrobe for examination or treatment. Hence, it is expected that a physician will not violate the trust the public has bestowed upon him by virtue of his professional status. This leads to the second aspect of the standard: Moral unfitness can be seen as a violation of the moral standards of the medical community which the Committee, as delegated members of that community, represent.

6. The theory of negative inference applies to this proceeding. Respondent chose to remain silent during this proceeding in that he chose not to testify. Respondent has the constitutional right to refuse to testify about any or all matters before the Committee. However, where a Respondent refuses to comment about a charge or element of the charges, the Committee may, but need not, draw the most negative inference the evidence will allow. The Committee may, but need not, infer that if Respondent testified truthfully, unfavorable information would have been established. Where a negative inference is drawn, the Committee must so state and indicate the basis for the inference.

7. This Committee heard two tape recorded conversations. In assessing what, if any, weight to give to the tape recordings, the Committee was told to consider the technical flaws heard on one of the tapes and any other irregularity which a panel member may have heard.

8. The Committee was instructed that the content and credibility of the tapes was disputed by Respondent. This dispute may also be considered with regard to what, if any weight to be given to the tapes. Finally, with regard to the tapes, the Committee was instructed that the transcripts of the tapes which were distributed were not evidence. Rather, only the tapes themselves are evidence. Any conflict between the transcript and what a trier of fact heard must be resolved in favor of what was heard on the tape (Tr. 34).

9. The Trier of Fact was instructed that they must not engage in any speculation regarding any portions of the audio tape recordings which were inaudible. The evidence of the tapes must be weighed accordingly. Any gaps and/or unintelligible portions must be considered in the weight to be given the evidence.

10. There was police activity referred to in this proceeding. The Committee was instructed that they must keep an open mind regarding the allegations and testimony. The Committee was reminded that as was instructed at the hearing, the fact that there may have been police activity in this matter has absolutely nothing to do with the proceeding. It does not add or delete credibility to or from the witnesses or the charges. The fact that the police were involved does not in any way add weight to a given charge or circumstance. Any finding by the trier of fact must be established on its own merits and cannot be established or even bolstered because of police involvement.

11. The Committee was further instructed that if it is found that any witness has willfully testified falsely as to any material fact, the law permits the trier of fact to disregard completely the entire testimony of that witness upon the principle that one who testifies falsely about one material fact is likely to testify falsely about everything. The Committee was told that they are not required, however, to consider such a witness as totally unworthy of belief. The trier of fact may accept so much of a witnesses testimony as is deemed true and disregard what is found to be false.

FINDINGS OF FACT

The findings of fact which follow, were made after review of the entire record. References to transcript pages (Tr.__) and/or exhibits (Ex.__) denote evidence that was found persuasive in determining a particular finding. Evidence or testimony which conflicted with any finding of this Hearing Committee was considered and rejected. Some evidence and testimony was rejected as irrelevant. All findings of fact made by the Hearing Committee were established by at least a preponderance of the evidence. Unless otherwise stated, all findings and conclusions herein were unanimous.

FINDINGS OF FACT

1. Respondent is a licensed physician and a registered physician's assistant in the State of New York. He currently practices as a physician and specializes in obstetrics and gynecology. He is part of a medical group which practices in Geneva, New York, with a satellite office in Penn Yan, New York (Exhibit 2)[5].

[5]Page references are to the transcript of the proceedings conducted on October 28, 1997.

2. Patient A has been Respondent's patient since May of 1993 (T. 11).

3. Respondent delivered Patient A's two children and has provided routine gynecological care to her since May of 1993 (T. 12).

4. Patient A last saw Respondent on June 3, 1997 for an annual gynecologic examination at his office in Penn Yan, New York (T. 12). Her appointment was at 9:30 a.m.

5. After Patient A arrived at Respondent's office on June 3, 1997, her menstrual history, blood pressure, pulse and weight were taken by a nurse (T. 13).

6. Patient A was shown into an examination room by the nurse. She was instructed to undress completely and to dress in a paper gown and drape (T. 14-15). Patient A undressed and put on the gown and drape as instructed (T.15). She sat at the foot of an examination table which was in the room.

7. Respondent then entered the examination room. Respondent performed a breast examination while Patient A was sitting at the foot of the examination table, and then, after instructing Patient A to lie back on the examination table, Respondent performed an abdominal examination (T. 15-16).

8. During the breast and abdominal examinations, Respondent and Patient A discussed her children and her employment (T. 16-17).

9. After the abdominal examination, Respondent placed Patient A's feet in the stirrups of the examination table and instructed her to slide down towards the foot of the table so that her knees

were flexed and her buttocks were just at the end of the table (T. 17-18). Patient A's torso remained laying on the examination table (T. 23).

10. Respondent performed a Pap smear with the aid of a speculum, followed by an internal examination of Patient A's pelvis with his fingers (T. 21-22).

11. The internal examination was similar to those Patient A had had on other occasions (T. 22).

12. Respondent was sitting on a stool between Patient A's legs during the Pap smear (T. 21).

13. While performing the Pap smear, Respondent asked Patient A, "How is your sex life?" Respondent had asked Patient A this same question during prior obstetrical examinations (T. 19-20).

14. In response to Respondent's question on this occasion, Patient A identified certain issues pertaining to her sex life. Respondent continued to perform the Pap smear and then the internal examination (T. 19-20).

15. At this point, Respondent asked Patient A whether she liked to "give or receive?". Patient A responded in effect that it depended on the circumstances (T. 19-20).

16. Respondent then stated that he wished that he could make Patient A feel better (T. 19-20).

17. Patient A told Respondent that he could not help her and that she would have to face these issues on her own (T. 19-20).

18. After the pelvic examination Patient A, who was still on the examination table, felt Respondent's tongue on her clitoris for approximately three to five seconds (T. 22, 49).

19. Patient A is married. The sensation of Respondent's tongue was consistent with what she had experienced in her marriage as oral sex (T. 22, 49).

20. Patient A had no forewarning as to Respondent's conduct. Respondent had not told her he was going to have sexual contact with her (T. 23-24).

21. Patient A was shocked by the sexual contact. It was difficult for her to sit up on the examination table. She was eventually able to sit up (T. 23).

22. Respondent then stood up and asked Patient A if he was "being too forward". Patient A responded "You think?" (T. 23).

23. Respondent stated that he was sorry and asked Patient A to forgive him (T. 23).

24. Respondent told Patient A to dress and then to meet him in his office. Respondent left the examining room (T. 24)

25. Patient A dressed and went to Respondent's office. In the office, Respondent was rubbing his forehead while speaking to Patient A about her examination. Patient A observed perspiration on Respondent's face which she had not observed during the examination. Patient A observed Respondent appeared nervous (T. 24-25).

26. After leaving Respondent's office, Patient A went to the nurse's station and paid the co-payment portion of her medical bill (T. 65).

27. She then went to the waiting area where she met her sister-in-law, who was also Respondent's patient. Patient A said nothing to her sister-in-law as to what had occurred during the examination (T. 26-27).

28. Patient A was in a state of denial over what had occurred (T. 26-27).

29. Later that day, Patient A told her sister-in-law, her mother and husband what had occurred during Respondent's examination (T. 28).

30. Two days later, on June 5, 1997, Patient A spoke to Respondent by telephone. The conversation was tape recorded under the auspices of the local police (Exhibits 4A, 4C).

31. Respondent apologized to Patient A for his conduct. He told Patient A that he had had "feelings" for her for the last three years (Exhibits 4A, 4C).

32. On June 10, 1997, Patient A had a second telephone conversation with Respondent. This conversation was also recorded under the auspices of the local police. During that conversation, Respondent acknowledged performing oral sex on Patient A (Exhibits 4B; 4D, p. 5 L 9-11).

33. Respondent stated that he had done so because he had thought she had been sad and that he had wanted her to know that he would like to make her happy (Exhibits 4B, 4D).

34. Respondent again stated that he had had "feelings" for Patient A for three years. He apologized a number of times for his conduct (Exhibit 4B, 4D).

35. Approximately one year earlier, in June, 1996, Patient A was pregnant with her second child. On June 8, 1996 Patient A was in the Geneva General Hospital after her membranes had ruptured (T. 28).

36. On that day, Respondent told Patient A, while she was in the hospital, that she should not tell anyone, but he had the "hots" for her (T. 28).

37. Patient A did not take the remark seriously at that time. She laughed in response to Respondent's statement (T. 28).

CONCLUSIONS WITH REGARD TO FACTUAL ALLEGATIONS

The Committee finds that on June 8, 1996 Respondent told Patient A, he "had the hots" for her. The Committee finds that on June 3, 1997, while in the course of a gynecologic examination, Respondent touched the genitals of Patient A with his mouth and tongue.[6] In so finding, the Committee concludes that both acts together and individually constitute evidence of moral unfitness, verbal abuse and harassment as well as physical abuse and harassment.

[6]For the purposes of the discussion herein, the Committee will refer to the acts of Respondent as "oral sodomy" notwithstanding any technical legal definition of the term "oral sodomy."

The basis for the above conclusions of the Committee are found in the testimony of Patient A. The Committee found her to be entirely credible. She showed no hint of a hidden agenda. She presented her testimony in a straight forward and measured manner. Her demeanor during both direct and cross examination was that of an honest person recounting an experience. There was no hint of vengeance in her choice of words or attitude. Her recitation of the facts made sense and had the logic of facts truthfully presented. She did not waver on cross examination either in demeanor or in the factual presentation contained in her testimony. The Committee dismisses the suggestion that her actions after the oral sodomy were inconsistent with those to be expected of an abused individual. On the contrary, the Committee finds that Patient A's actions were consistent with a patient who was in a deep state of shock and denial. The Committee notes that within hours if the incident, Patient A had the courage to inform her family and the police.

The Committee finds that the testimony of this witness was sufficient in weight and credibility to establish by much more than a preponderance[7] of the evidence that the events charged did occur. However, the Committee further finds that the taped conversations which were heard were clear and convincing. The words spoken were distinct. There is no room for any explanation of the conversation by Respondent that would take his comments from the realm of an admission. More specifically, the Committee refers to this exchange between Patient A and Respondent:[8]

Patient A:	I'm having a hard time understanding and dealing with what happened the other day.
Dr. Williams:	Oh?
Patient A:	And it --it's still bothering me

[7] In other words, the State met its burden of proof and went beyond the burden of proof in convincing the trier of fact that the events alleged occurred as alleged.

[8] This exchange is taken from Exhibit 4D, Page 5. Exhibit 4D is a transcript of the June 10 1997 conversation between Respondent and Patient A. While Exhibit 4D is not in evidence, it was found to be a totally accurate recitation of what was on the tape. The Committee takes notice that it is the tape which is the evidence. However, for ease of reference, the transcript has been used as a tool by the trier of fact.

Dr. Williams: Uh-huh.

Patient A: Um, the biggest thing I was wondering is, *can I catch anything from you doing the oral sex to me*?(emphasis supplied).

Dr. Williams: No.

Patient A: Okay. It just--it just surprised me when that happened.

Dr. Williams: Oh. Well, I --well, it was because I thought that --I was -- I had the impression that that's what you wanted, and, um--and it was due to, I think it's because of my feelings for you for the past three years, trying to be very, um, not obvious of my feelings. And at that time I thought that you were sad , and I wanted you to know that I would love to make you happy.

The above quotation of the tape in evidence shows that when Patient A asked Respondent if she could "catch anything" ie. get a disease, from what Respondent did, his immediate reply was no.[9] The Committee finds it is not within the realm of plausible possibility that such an answer to such a question would be rendered by an innocent person. Had Respondent not committed the acts alleged, the Committee finds he surely would have asked for some sort of clarification. Here however, Respondent is heard to have immediately understood what Patient A was asking and why.

Likewise, although the testimony of Patient A would have been sufficient to amply support the charges herein, the Committee takes notice of the doctrine of negative inference. The Committee is aware that Respondent may have been advised by counsel not to testify so as to avoid further difficulties with other authorities. However, the Committee finds that in this case, Respondent's failure to testify denotes a lack of a truthful defense to the allegations made by Patient A. The Committee repeats that the testimony of Patient A was sufficient in and of itself to support the conclusions herein. However, the fact that Respondent refused to testify, which is his right under the Fifth Amendment to the United States Constitution, indicates that he

[9]Rather than quote the transcript of the conversation which is not in evidence, or create further controversy by trying to quote the tape verbatim, the Committee has chosen to report what they heard, in sum and substance. The point to be made is not in the specific words used. Rather, it is in the clear and unequivocal meaning of the words in the conversation.

wished to shield himself from cross-examination and the disclosure of facts which would have supported the assertions of Patient A. Hence, the doctrine of negative inference serves to affirm the conclusions of the Committee which were based upon the testimony of Patient A.

Therefore:
Factual Allegations A.1 and A.2 ARE SUSTAINED

CONCLUSIONS WITH REGARD TO SPECIFICATIONS[10]

Respondent is charged herein with physical abuse or harassment of a patient (First Specification) and verbal abuse or harassment of a patient (Third Specification) as well as moral unfitness(Eighth Specification). The Committee sustains each of the specifications.

CONCLUSIONS WITH REGARD TO THE FIRST SPECIFICATION
(Physical Abuse or Harassment)

With Reference to the First Specification, the act of sodomy on a patient is, by any reasonable definition of the terms, physical abuse and harassment. While consent is not an element of these charges, it is not unreasonable to point out that there was not the slightest hint of consent on the part of Patient A. What occurred here was a completely and absolutely unauthorized physical contact between a physician and his patient. It occurred during a pelvic examination which, by its very nature, places a patient in a completely

[10]This proceeding was brought with twelve specifications involving five patients. As set forth earlier, having proven the allegations regarding the first patient, Patient A, it was the decision of the Administrative Law Judge to decline to hear the remaining charges. Therefore, the discussion of specifications will be limited only to those specifications which relate to Patient A. The remaining specifications are NOT DISMISSED. They simply were not heard by the trier of fact in this proceeding.

vulnerable and virtually helpless position. Respondent took advantage of this patient's vulnerability and helplessness. His tape recorded comments seem to suggest that he thought he had been bestowed with the liberty to perform this act. The Committee rejects this assertion as totally inconsistent with the evidence as well as the standards of a civilized society. With regard to the actions proven herein, Respondent has been shown by clear and convincing evidence to have molested a patient with a vulgar and entirely self serving act. This constitutes physical abuse and harassment of a patient.

Therefore:
The First Specification is SUSTAINED

CONCLUSIONS WITH REGARD TO THE THIRD SPECIFICATION
(Verbal Abuse or Harassment)

In the Third Specification, Respondent is alleged to have abused or harassed Patient A by virtue of comments made to her on June 8, 1996. The State has proven by clear and convincing evidence that on that date Respondent told Patient A "Don't tell anyone, but I've got the hots for you." This was said to Patient A while she was in the hospital, about to deliver a baby. As stated previously, Patient A was an entirely credible witness. She testified regarding this event and the Committee finds her testimony entirely credible. Moreover, as stated with reference to the doctrine of negative inference, the Committee finds that Respondent refused to testify regarding this incident because he had no truthful defense. Finally, the actions of Respondent on June 3, 1997 are consistent with the statement alleged in that Respondent said he was sexually attracted to Patient A and in fact performed a sexual assault on her. Again, the taped conversations between Respondent and Patient A affirm her testimony in that Respondent is heard to say he thought Patient A had sexual feelings for him.

Standing on its own, the statement made by Respondent might be mitigated as some sort of inappropriate encouragement to a woman in labor. The statement would still constitute verbal abuse and harassment but could be interpreted as a joke, albeit a geste in extremely poor taste and evidencing terrible judgment. That is apparently how Patient A interpreted the statement since she did not bring charges at that time. However, in the context of the events a year later, here an act of oral sodomy, the comments take on a much more serious and sinister meaning. Respondent was apparently not joking when he told this patient, who was in labor at the time, that he was sexually attracted to her. Hence we have not a joke or an ill executed effort at encouragement, but rather a statement of fact made in an entirely inappropriate manner at an entirely inappropriate time to an entirely inappropriate person. It is a violation of the most basic standards of a civilized society, not to mention accepted standards of medicine[11], for a physician to express the feelings so stated by Respondent at any time. The violation of standards is all the more egregious given the time and place chosen by Respondent to say the words he said. His comments constitute a clear molestation of this patient and hence constitute verbal abuse and harassment.

Therefore:
The Third Specification is SUSTAINED

[11]The Committee finds and it is the ruling of the Administrative Law Judge that no expert testimony is required to establish the elements of accepted standards of medicine when the issue involves the overlap of the practice of medicine and the basic rules of society. The violations herein have nothing to do with the actual practice standards of obstetrics and gynecology.

CONCLUSIONS WITH REGARD TO THE EIGHTH SPECIFICATION
(Moral Unfitness)

Finally, the Committee turns its attention to the last Specification, actions evidencing moral unfitness to practice medicine. As were set forth earlier, to sustain a finding of moral unfitness, the State must show that Respondent either violated the trust bestowed upon him by virtue of his licensure as a physician or he violated the moral standards of the medical community, or both. This Committee finds egregious violations in both factual allegations of both standards.

There is little to be said in support of the proposition that verbal and physical abuse of a patient violates the trust bestowed upon a physician, solely because of his position as a physician. Patient A trusted Respondent with intimate details of her home life. She trusted him to be present at the delivery of her child. His use of that trust as an opportunity to become attracted to Patient A, and far worse, to take verbal action on that attraction, constitutes the most serious kind of betrayal of trust.

With regard to the act of oral sodomy, the violation is even more egregious. Patient A would not have been in a private room, in a totally compromised physical position and virtually helpless, but for the fact that Respondent is a licensed physician. Patient A and all female patients must suspend some of the most basic rules of society in order to allow, what amounts to a stranger, the opportunity to touch them in their most private places. When a physician violates that trust for his own self serving amusement, it is a violation of the most basic moral standards of the medical, or for that matter any community.

Therefore, it is the finding of this Committee that by speaking to Patient A as he did and by committing oral sodomy on this patient, Respondent verbally and physically abused and harassed this patient. The verbal or physical abuse of a patient under the circumstances of this case violates the trust bestowed upon

Respondent solely by virtue of his licensure as a physician and violates the moral principles of the medical community.

Therefore:
The Eighth Specification is SUSTAINED

CONCLUSIONS WITH REGARD TO PENALTY

The Committee now turns its attention to penalty. The purpose of a penalty in a proceeding before the Board For Professional Medical Conduct is twofold: First, it must punish a Respondent for unacceptable behavior. Second it must be designed to act as a deterrent to others as well as an expression of the position of the Board with regard to the facts adduced.

There is no question that this practitioner has egregiously and in the most serious manner possible violated basic tenets of medicine and, for that matter, a civilized society. There is no possible excuse or mitigation for his acts. There can be no tolerance for such abysmal behavior. There is indeed only one possible outcome to this proceeding, given the facts adduced, and that is revocation of this physician's license with an admonition to any future reviewing body that this person should never be allowed to practice the medical arts again.

In so finding the Committee considered the thoughts expressed previously in the conclusions of this decision. In addition, there are other factors to be considered in the choice of a penalty herein. In the extreme violation of patient trust perpetrated by Respondent herein, he has damaged the reputation of all those who practice medical arts. From physicians to aides in health care facilities, this sort of unmitigated behavior disrupts the necessary trust which must flow from patient to practitioner and back again if medical care is to be provided. With regard to the particular patient herein, the trust she developed over a life time for all practitioners of the medical arts has been permanently damaged. Furthermore, incidents of the kind

established herein serve to discourage persons in need of medical care to obtain same lest they become the victim of another individual like Respondent herein. The public often has difficulty accepting the services and advice of the medical community. When that community is blemished by acts like those established herein, the harm cannot be undone quickly if ever.

This Committee further takes note that Physician Assistants are a relatively new addition to the ranks of medical care providers. Respondent, as an R.P.A. turned physician has engendered great harm to this relatively new community. How are patients to trust the judgment and care rendered by a physician's assistant when they learn of the type of incidents established herein?

Respondent has shown himself to be what has come to be known as a sexual predator, that is, one who uses his position of trust and power to obtain personal gratification. This sort of individual will not be tolerated by the medical community of this state.

ORDER

WHEREFORE, Based upon the foregoing facts and conclusions,

It is hereby **ORDERED** that:

1. The Factual allegations in the Statement of Charges (Appendix One) are **SUSTAINED**

Furthermore, it is hereby **ORDERED** that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

3. The **SUMMARY ORDER** issued by the Commissioner on August 22, 1997, **SHALL BE AFFIRMED WITHOUT MODIFICATION**;

Furthermore, it is hereby **ORDERED** that;

4. The license of Respondent to practice medicine in the State of New York is **REVOKED**;

Furthermore, it is hereby **ORDERED** that;

5. The license of Respondent to practice as a Registered Physician's Assistant in the State of New York is **REVOKED**;

Furthermore, it is hereby **ORDERED** that;

6. This order shall take effect **UPON RECEIPT** or **SEVEN (7) DAYS** after mailing of this order by Certified Mail.

DATED: Buffalo, New York

11/14, **1998**

WILLIAM P. DILLON, M.D., Chairperson,

DONALD F. BRAUTIGAM, M.D.,
MICHAEL R. GONZALEZ, R.P.A.

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Bureau of Professional Medical Conduct
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CHARLES T. WILLIAMS, R.P.A., D.O.
324 West North St.
Geneva, New York 14456

APPENDIX ONE

STATE OF NEW YORK : DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

----------X

IN THE MATTER : STATEMENT

OF : OF

CHARLES T. WILLIAMS, R.P.A., D.O. : CHARGES

----------X

CHARLES T. WILLIAMS, R.P.A., D.O., the Respondent, was authorized to practice medicine in New York State on February 6, 1991 by the issuance of license number 184942 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine for the period March 1, 1997 through February 28, 1999, with a registration address of 324 West North Street, Geneva New York 14456. Respondent was authorized to practice as a physician's assistant in New York State on August 26, 1976 by the issuance of registration number 000526 by the New York State Education Department. Respondent is currently not registered as a physician's assistant.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A (patients are identified in Appendix A) from approximately May, 1993 through June 3, 1997 at his office at 324 West North Street, Geneva, New York (Geneva office), at his office at the Soldiers and Sailors Memorial Hospital, 418 North Main Street, Penn Yan, New York (Penn Yan office) and at the

Geneva General Hospital at 196-198 North Street, Geneva, New York.

1. Respondent, on or about June 8, 1996, at Geneva General Hospital stated to Patient A, or used words of similar effect, "Don't tell anyone, but I've got the hots for you."

2. Respondent on or about June 3, 1997 during the course of a gynecologic examination of Patient A, touched Patient A's genitals with his mouth and/or tongue.

B. Respondent provided medical care to Patient B from approximately January 7, 1993 through October 2, 1995 at his Geneva office and at the Geneva General Hospital.

1. Respondent, on various occasions prior to October 2, 1993, and during the course of gynecologic examinations, referred to Patient B's breasts as "titties."

2. Respondent, during the course of a gynecologic examination in 1995, stated to Patient B or used words of similar effect:

   (a) "You have beautiful titties."
   (b) "Let's name this one 'tutti' and this one 'frutti'", referring to Patient B's breasts.

(c) "If your husband cannot satisfy you, come back and see me."

3. Respondent, during a gynecologic examination of Patient B in 1995, engaged in the following conduct:

(a) Respondent ripped Patient B's paper examination gown from the neck down and exposed her breasts.

(b) Respondent kissed the nipple of each of Patient B's breasts.

C. Respondent provided medical care to Patient C at his Geneva office in approximately February, 1992, including performing two outpatient procedures. Following one of the outpatient procedures performed in 1992, Respondent stated to Patient C, or used words of similar effect:

1. "No sexual intercourse. Your boyfriend will have to play with the little man in the boat."

D. Respondent provided medical care to Patient D at his Geneva office from approximately January 21, 1993 through February 13, 1997. Respondent made the following statements to Patient D, or used words of similar effect:

1. Respondent, during an obstetrical visit in 1994, when

discussing with Patient D as to how a vasectomy procedure is performed, stated to Patient D, "All your husband would have to do is lay his balls on the table and the doctor will snip [or clip] them."

2. Respondent, during an obstetrical visit in 1994, while discussing with Patient D her husband's concerns regarding erections if he was to have a vasectomy, stated to Patient D, "You and I could have sex, and you would not be able to tell that I had a vasectomy."

3. Respondent in approximately November, 1995, stated to Patient D prior to a gynecologic examination, "Oh, I get to get in you today."

4. Respondent on or about February 13, 1997 in response to Patient D's question as to how she may have contracted genital herpes, stated, "Whoever ate you had a cold sore."

5. Respondent on or about February 13, 1997 stated to Patient D after being told by Patient D that her sister had a cold sore, "You mean you touched your sister's cold sore then played with yourself?"

E. Respondent provided medical care to Patient E at his Geneva office and at his office located at 165 East Union Street,

Newark, New York from approximately November 2, 1992 through June 3, 1994. Respondent made the following statements to Patient E or used words of similar effect:

1. Respondent, after performing a gynecologic examination of Patient E in 1993, responded to Patient E's question regarding the effect of Depo-Provera on sexual desire, as follows, "Do you eat him?" referring to Patient E's husband.

2. Respondent, during a gynecologic examination in 1993, responded to Patient E's question as to whether a mole near her navel should be of concern by stating, "No I wouldn't worry, I think it looks sexy."

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

PHYSICAL ABUSE OR HARASSMENT

Respondent is charged with professional misconduct under N.Y. Educ. Law § 6530(31) by reason of his willfully harassing, abusing, intimidating a patient physically, in that Petitioner charges:

1. The facts in paragraphs A and A.2.
2. The facts in paragraphs B and B.3(a) and/or B and B.3(b).

THIRD THROUGH SEVENTH SPECIFICATIONS

VERBAL ABUSE OR HARASSMENT

Respondent is charged with professional misconduct under N.Y. Educ. Law § 6530(31) by reason of his willfully harassing, abusing, intimidating a patient verbally, in that Petitioner charges:

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

EIGHTH THROUGH TWELFTH SPECIFICATIONS

MORAL UNFITNESS

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

8. The facts in paragraphs A and A.1 and/or A and A.2.
9. The facts in paragraphs B and B.1, B and B.2(a), B and B.2(b), B and B.2(c), B and B.3(a) and/or B and B.3(b).
10. The facts in paragraphs C and C.1.

11. The facts in paragraphs D and D.1, D and D.2, D and D.3, D and D.4, and/or D and D.5.

12. The facts in paragraphs E and E.1 and/or E and E.2.

DATED: August 19, 1997
Albany, New York

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