STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

October 27, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel Guenzburger, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Christ Louis Zois, M. D.
2 East 80th Street
New York, New York

Baer, Marks & Upham
Eugene R. Scheiman, Esq. and
Anthony De Toro, Esq.
805 Third Avenue
New York, New York 10022

RE: In the Matter of Christ Louis Zois, M. D.

Dear Mr. Guenzburger, Dr. Zois and Mr. De Toro:

Enclosed please find the Determination and Order (No. 94-227) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt **or** seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in

the manner noted above.

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

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

Tyrone T. Butler, Director
Bureau of Adjudication

TTB: rlw

Enclosure

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

IN THE MATTER OF CHRIST LOUIS ZOIS, M.D.	**DETERMINATION** **AND** **ORDER** NO. BPMC-94-227

NAOMI GOLDSTEIN, M.D. (Chair), **ANDREW CONTI, M.D.** and **EUGENIA HERBST** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)(e) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health appeared by **DANIEL GUENZBURGER, ESQ.**, Associate Counsel.

Respondent, **CHRIST LOUIS ZOIS, M.D.**, appeared personally and was represented by **BAER, MARKS & UPHAM**, by **EUGENE R. SCHEIMAN, ESQ.** and **ANTHONY DE TORO, ESQ.**, of counsel.

Evidence was received, witnesses were sworn or affirmed and examined. Transcripts of the proceedings were made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

PROCEDURAL HISTORY

Date of Notice of Hearing:	April 1, 1994
Date of Service of Notice of Hearing:	On or about April 13, 1994
Date of Statement of Charges:	January 27, 1994
Date of Service of Statement of Charges:	On or about April 13, 1994
Pre-Hearing Conference Held:	May 10, 1994
Hearing Held:	May 18, 1994 June 15, 1994 June 27, 1994
Received Petitioner's Closing Statement, Proposed Findings of Fact, Conclusions of Law and Recommendation of Penalty:	August 22, 1994
Received Respondent's Proposed Findings of Fact, Conclusion and Objection:	August 22, 1994
Witnesses called by the Petitioner, Department of Health:	Christ Louis Zois, M.D. Jacques M. Quen, M.D.
Witnesses called by the Respondent, Christ Louis Zois, M.D.:	Christ Louis Zois, M.D.
Significant Legal Ruling Issued: Collateral Estoppel:	June 23, 1994 (Final)
Deliberations Held:	September 12, 1994

STATEMENT OF CASE

This case was brought pursuant to §230 of the Public Health Law of the State of New York (hereinafter P.H.L.). Respondent, CHRIST LOUIS ZOIS, M.D., (hereinafter "Respondent") is charged with six specifications of professional misconduct as delineated in §6530 of the Education Law of the State of New York (hereinafter Education Law). In this case, the Respondent is charged with: (1) professional misconduct by reason of practicing the profession with negligence on more than one occasion[1]; (2) professional misconduct by reason of practicing the profession with incompetence on more than one occasion[2]; (3) professional misconduct by reason of practicing the profession with gross negligence on a particular occasion[3]; (4) professional misconduct by reason of practicing the profession with gross incompetence[4]; (5) professional misconduct by reason of practicing the profession fraudulently[5]; and (6) professional misconduct by reason of exercising undue influence on the patient in such manner as to exploit the patient for the financial gain of the licensee (Respondent) or of a third party[6].

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[1] Education Law §6530(3) and First Specification of Petitioner's Exhibit # 1

[2] Education Law §6530(5) and Second Specification of Petitioner's Exhibit # 1

[3] Education Law §6530(4) and Third Specification of Petitioner's Exhibit # 1

[4] Education Law §6530(6) and Fourth Specification of Petitioner's Exhibit # 1

[5] Education Law §6530(2) and Fifth Specification of Petitioner's Exhibit # 1

[6] Education Law §6530(17) and Sixth Specification of Petitioner's Exhibit # 1

The charges concern the psychiatric care and treatment provided by Respondent to Patient A[7].

A copy of the 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. These facts represent evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence or testimony, if any, was considered and rejected in favor of the cited evidence. Unless otherwise noted, all Findings and Conclusions herein were unanimous.

1. Respondent was authorized to practice medicine in New York State on July 1, 1970, by the issuance of license number 106437 by the New York State Education Department. (Petitioner's Exhibit # 1 and # 2)[8]; [T-16][9]

2. Respondent obtained his medical degree from New York Medical College in 1969, performed his internship in straight medicine, from 1969 to 1970, at New York Medical College and obtained his psychiatric training from Cornell Medical College, at the Payne Whitney Psychiatric Clinic of New York Hospital between 1970 and 1973. (Respondent's Exhibit # 1); [T-17; T-189]

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[7] The patient is identified in an Appendix to the Statement of Charges, Petitioner's Exhibit # 1.

[8] Refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit) or by Christ Louis Zois, M.D.. (Respondent's Exhibit).

[9] Numbers in brackets refer to transcript page numbers. [T-]

3. David Trenary attempted to personally serve the Notice of Hearing and the Statement of Charges on Respondent on April 6, 1994 at 3:30 P.M., April 6, 1994 at 4:45 P.M., April 7, 1994 at 4:30 P.M., April 7, 1994 at 5:15 P.M. and on April 8, 1994 at 8:30 P.M., at five (5) separate addresses. (Petitioner's Exhibit # 1)

4. David Trenary, having been unsuccessful at personal service, mailed, by certified mail, on or about April 13, 1994, the Notice of Hearing and the Statement of Charges to Respondent, at two (2) separate addresses, one of which was Respondent's last known address. In addition, David Trenary mailed a copy, by certified mail, of the Notice of Hearing and the Statement of Charges to the offices of Respondent's attorney. (Petitioner's Exhibit # 1)

5. In 1969, when Respondent graduated from New York Medical College, Respondent took the Hippocratic oath, which he acknowledges is an oath of a code of behavior and ethics for physicians[10]. [T-255]

6. Patient A was first seen by Respondent in February 1973, at the New York Hospital emergency room. [T-17] Patient A presented herself as anxious and upset, with a history of a great deal of stress, anxiety and pressures. [T-18] The pressures presented by the patient included, amongst others: past therapy conflicts, significant financial problems, marital problems, depression and alcohol and Valium abuse. [T-18-20; T-102; T-196; T-230-232]

7. While Respondent was a resident in psychiatry, he treated Patient A at the Payne Whitney Psychiatric Clinic ("Clinic") as an out-patient from February 1973 to July 1973. [T-17-20] Respondent recommended to the Clinic that Patient A be

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[10] Hippocratic oath: An oath of ethical professional behavior sworn by new physicians, attributed to Hippocrates. The American Heritage Dictionary, Third Edition.

treated (as an outpatient) at a reduced rate. [T-19] Thereafter, and until March, 1986, Patient A was treated by Respondent as a private patient. [T-20]

8. From February 1973 through March 1986, Respondent rendered psychiatric care and treatment to Patient A. [T-17; T-20; T-26-29] Patient A's treatment by Respondent included the prescription of antidepressant medication, such as Sinequan, for the entire period of treatment. [T-18; T-28] From 1973 through March 1986, a patient-physician relationship existed between Patient A and Respondent. [T-98]

9. From July, 1973 through the middle of 1976, Respondent charged Patient A, $100.00 an hour. [T-21] However, Respondent had an arrangement with Patient A, wherein she would pay $35.00 per session and the remainder of the balance ($65.00) was deferred and would accumulate as a debt. [T-24; T-195] Starting in the middle of 1976 until 1980, Patient A completely stopped making payments to Respondent for psychiatric services, which services were being provided at least once a week and sometimes three times a week. [T-21-26]

10. From 1973 through 1980, Patient A accumulated, with Respondent's awareness, a debt of $61,300.00 for psychiatric services provided by Respondent. (Petitioner's Exhibit # 9)

11. On December 10, 1980 and January 9, 1981, Patient A's business agent and attorney, Thomas Andrews, issued checks for a total sum of $61,300.00 for psychiatric services provided by Respondent[11]. (Petitioner's Exhibit # 10)

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[11] It is noted that neither Respondent's bills nor the total amount paid by the checks, which match exactly the total amount of the bills, reflect the numerous payments of $35.00 per hour made by Patient A, from July 1973 to 1976, to Respondent. [T-24-25] and (Petitioner's Exhibit # 10)

12. Patient A's business agent and attorney, Thomas Andrews, (hereinafter "Andrews") was a close personal friend of Respondent. [T-32]

13. In 1978, Respondent went to Patient A's husband's wake and funeral. Thereafter, a gradual, growing, friendly relationship between Respondent and Patient A developed. Within a few months, Respondent formed a close personal relationship with Patient A. [T-33-34; T-198-199] Patient A's children and Respondent's children frequently spent time together. [T-34] Patient A's family and Respondent's family frequently spent holidays together. [T-34] Respondent had extensive social involvement with Patient A. [T-40; T-223-224]

14. Respondent and his family went to Europe in 1980 with Patient A and her family. [T-34-35] While in Europe, Patient A paid for hotels, food and other expenses incurred by Respondent and his family. [T-35]

15. In 1981, Patient A bought and gave Respondent a $6,000 watch as a Father's Day gift. [T-35; T-209; T-223-224]

16. In 1980, Respondent and Andrews formed a 50/50 partnership called A to Z Associates (hereinafter "A to Z"). [T-35-36] Between January 1980 and until March 1986, A to Z served as Patient A's manager and licensing agent. [T-36; T-210]

17. In accordance with the Legal ruling of the Administrative Officer, Respondent failed to reveal to Patient A that Respondent and Andrews, through A to Z, had a business relationship with Patient A.

18. Respondent earned, as an agent or partner of A to Z, at least $750,000.00 from Patient A. [T-37; T-213]

19. Respondent and Andrews socialized with each other and with Patient A and also engaged in a variety of business transactions with Patient A. [T-35-36; T-209-210] Respondent had a business relationship with Patient A. [T-40; T-210; T-223-224]

20. Sometime after January 1980, but before March, 1986, the focus or goal of the relationship between Respondent, Andrews and Patient A was to make money for all of them to "have enough to live on". [T-220-221]

21. Respondent is not presently, nor previously (between 1973 and 1986), a member of the American Psychiatric Association ("APA") or a member of any other professional organization. [T-207; T-258-259]

22. Except for some training in short-term dynamic psychotherapy and one (1) lecture on malpractice, Respondent has not attended any professional training programs or continuing medical education programs or lectures or seminars, in his twenty (20) plus years of psychiatric practice. [T-259]

23. Respondent does not subscribe to nor review any professional journals on psychiatry. [T-260-261]

24. Since 1954, it has been an accepted fundamental principle that a psychiatrist should not get involved with a patient in any situation that is not directly relevant to treatment goals of a psychotherapeutic situation. This was the accepted medical standard in 1973 when Respondent finished his residency program at the Clinic. [T-107-109]; (Petitioner's Exhibits # 5, 6, 7 and 8)

25. Since 1915, it has been an accepted principle in psychiatry that a psychiatrist should not have an extensive social involvement with a patient. [T-118]; (Petitioner's Exhibits # 5, 6, 7 and 8)

26. Since 1915, it has been an accepted principle in psychiatry that a psychiatrist should not have a business relationship with a patient. [T-119]; (Petitioner's Exhibits # 5, 6, 7 and 8)

27. Although formal, specific courses on ethics may not have been taught at the Clinic, the prevalent and then current Code of Ethics and issues related thereto were communicated to psychiatric residents through supervision, class discussions and discussions with mentors. [T-137-138]

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the following Factual Allegations, from the January 27,1994, Statement of Charges, are sustained [12]:

Paragraph A.	:	(6, 7, 8, 12, 16, 18 and 19) except as to the date (October 1978) that Patient A retained Thomas Andrews, Esq. as her attorney.
Paragraph A.1.a	:	(6 - 8 ; 16 and 18 - 20)
Paragraph A.1.b	:	(6 - 8 ; 13 - 15 and 19)
Paragraph A.1.c	:	(6 - 8 and 14 - 15)
Paragraph A.1.d	:	(6 - 11)
Paragraph A.2	:	(5 - 8 ; 16 - 21)

[12] The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation.

The Hearing Committee further concludes that the following Specifications of Charges are sustained [13]:

FIRST SPECIFICATION:	(Paragraphs: A, A.1.a, A.1.b, A.1.c and A.1.d)
SECOND SPECIFICATION:	(Paragraphs: A, A.1.a, A.1.b, A.1.c and A.1.d)
THIRD SPECIFICATION:	(Paragraphs: A, A.1.a, A.1.b, A.1.c and A.1.d)
FOURTH SPECIFICATION:	(Paragraphs: A, A.1.a, A.1.b, A.1.c and A.1.d)
FIFTH SPECIFICATION:	(Paragraphs: A, A.1.a, A.1.b, A.1.c, A.1.d and A.2)
SIXTH SPECIFICATION:	(Paragraphs: A, A.1.a, A.1.b, A.1.c and A.1.d)
SIXTH SPECIFICATION:	(Paragraph: A.2)

DISCUSSION

The Respondent is charged with six (6) specifications alleging professional misconduct within the meaning of §6530 of the Education Law. §6530 of the Education Law sets forth a number and variety of forms or types of conduct which constitute professional misconduct. However, except for the charge of exercising undue influence, §6530 of the Education Law does not provide definitions or explanations of the types of misconduct charged in this matter.

The Administrative Law Judge issued instructions to the Hearing Committee with regard to the definitions of medical misconduct as alleged in this proceeding. These definitions were obtained from a memorandum, prepared by Peter J. Millock, General Counsel for the New York State Department of Health, dated February 5,

[13] The citations in parentheses refer to the Factual Allegations which support each Specification

1992. This document, entitled: Definitions of Professional Misconduct under the New York Education Law, (hereinafter "Misconduct Memo"), sets forth suggested definitions of practicing the profession: (1) fraudulently; (2) with negligence on more than one occasion; (3) with gross negligence; (4) with incompetence on more than one occasion and (5) with gross incompetence.

During the course of its deliberations on these charges, the Hearing Committee consulted the definitions contained in the Misconduct memo, which are as follows:

Fraudulent practice of medicine is an intentional misrepresentation or concealment of a known fact. An individual's knowledge that he/she is making a misrepresentation or concealing a known fact with the intention to mislead may properly be inferred from certain facts.

Negligence is failure to exercise the care that would be exercised by a reasonably prudent licensee (physician) under the circumstances.

Gross Negligence is the failure to exercise the care that would be exercised by a reasonably prudent physician under the circumstances, and which failure is manifested by conduct that is egregious or conspicuously bad. Gross Negligence may consist of a single act of negligence of egregious proportions.

Incompetence is a lack of the skill or knowledge necessary to practice the profession.

Gross Incompetence is an unmitigated lack of the skill or knowledge necessary to perform an act undertaken by the licensee in the practice of medicine. Gross Incompetence may consist of a single act of incompetence of egregious proportions.

The Hearing Committee was instructed, by the Administrative Law Judge, to use ordinary English usage and understanding for all other terms, allegations and

charges. For example, the Hearing Committee was told that the term Egregious means a conspicuously bad act or an extreme, dramatic or flagrant deviation from standards. The hearing Committee was told that the term Exploit or Exploitation means[14]: 1. To employ to the greatest possible advantage; 2. To make use of selfishly or unethically; 3. To advertise; promote; 4. To control to one's own advantage by artful or indirect means. The Hearing Committee concluded that exploitation, in this case, meant an unjust or improper use of another person for one's own profit or advantage.

With regard to the testimony presented herein, including Respondent's, the Hearing Committee evaluated each witness for possible bias. The witnesses were also assessed according to their training, experience, credentials, demeanor and credibility.

Jacques M. Quen, M.D., as Petitioner's expert, presented an impartial and objective approach with no prior professional association with the Respondent. Dr. Quen has an impressive Curriculum Vita and has been licensed to practicing medicine for almost 40 years. Dr. Quen completed his psychiatric residency at Yale University and is certified by the American Board of Psychiatry and Neurology (1961) and by the American Board of Forensic Psychiatry (1979). Dr. Quen testified in a direct and forthright manner. He had no stake in the outcome of these proceedings and no motive for falsification or fabrication of his testimony was alleged or shown. The Hearing Committee found Dr. Quen to be an eminently credible witness and gave his testimony great weight.

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[14] The American Heritage Dictionary, Third Edition.

The Respondent, Dr. Zois, offered some credible testimony and some incredible testimony. Respondent was untruthful when necessary to bolster his position. At times Respondent's testimony conflicted with documentary evidence and defied common sense. One recurring example involves Respondent's testimony on the building of debt by Patient A. Respondent claims that in 1973, 1974 and 1975, the building of debt by Patient A "wasn't one of the priorities at the time." [T-196] Respondent claims that he first became aware "towards the end of 1980.", "that one of the self-defeating problems that Patient A had was with respect to paying debts and managing finances". [T-41] However, on direct examination, Respondent indicated that Patient A had a lot of pressures including debts and being tight for cash. [T-18] Respondent acknowledged that one of the goals of treatment of Patient A was a reduction in her anxiety level (which were to a great extent caused by her significant financial problems) [T-18-20]. From the very beginning, when Respondent met and started treating Patient A at the Clinic, Respondent knew of Patient A's, financial predicament. Respondent even interceded with the Clinic to lower the cost of treatment for Patient A and did obtain reduced fees for her outpatient treatment from the Clinic.

In a deposition taken several years ago[15], Respondent testified "...From the first time I did an evaluation, which was when I was a resident at Cornell, and right through[,] her financial difficulties were one of the main themes that she dealt with with me." (Petitioner's Exhibit # 13, at page 17). Respondent further indicated that one of the focus of treatment of Patient A was understanding and interpreting "what

[15] Petitioner's Exhibit # 13, Deposition of Christ L. Zois in an action brought in New York Supreme Court, New York County, by A to Z Associates, Thomas A. Andrews and Christ L. Zois, against various defendants, including Patient A, under Index No. 23408/88.

it meant for her life in general, that she owed a lot of people..." (Petitioner's Exhibit # 13, at page 25-26). It is clear that Respondent had no difficulty in contradicting himself when he deemed it was necessary.

Obviously Respondent had the greatest amount of interest in the results of these proceedings. Respondent presented no independent corroboration for his opinions regarding the treatment and care of Patient A or the ethical considerations which should have applied. A great deal of Respondent's testimony was found to be mostly self-protecting and not credible, especially when compared to exhibits in evidence. As a result, the Hearing Committee gave little weight to Respondent's testimony, unless otherwise supported.

With regard to a finding of medical misconduct, the Hearing Committee assessed Respondent's medical treatment and care of the Patient, without regard to outcome but rather as a step-by-step assessment of patient situation, followed by medical response provided by the Respondent. Where medical misconduct has been established, the outcome may be, but need not be, relevant to penalty, if any. Patient harm need not be shown to establish negligence in a proceeding before the Board for Professional Medical Conduct.

Using the above definitions and understanding, including the remainder of the Misconduct Memo, the Hearing Committee, unanimously concludes that the Department of Health has shown by a preponderance of the evidence that Respondent's conduct constituted professional misconduct under the laws of New York State. The Department of Health has met its burden of proof as to the six (6) specifications of misconduct contained in the January 27, 1994 Statement of Charges and the Hearing Committee, unanimously votes to sustain the six (6) Charges.

The rationale for the Hearing Committee's conclusions is set forth below.

I. **Service of Charges and of Notice of Hearing.**

P.H.L. §230(10)(d) requires that the Charges and Notice of Hearing be served on the licensee personally, at least twenty (20) days before the Hearing. If personal service cannot be made, due diligence must be shown and certified under oath. Thereafter, registered or certified mail to the licensee's last known address must be served, at least fifteen (15) days before the Hearing.

From the affidavit submitted, five attempts at personal service were made as more fully set forth in said affidavit. In determining whether due diligence has been exercised, no rigid rule can properly be prescribed. Each case must be viewed on its own separate facts. Barnes v. City of New York, 51 N.Y.2d 906 (1980).[16]

Pursuant to §6502(5) of the Education Law, a licensee, such as Respondent, is under a duty to notify the Department of Education of any change of mailing address within thirty (30) days of such change. Matter of Tarter v. Sobol, 189 A.D.2d 916 (Third Dep't. 1993).

Respondent was mailed, by certified mail, on or before April 13, 1994, a copy of the Notice of Hearing and the Statement of Charges. In addition, a copy of the Charges and Notice of Hearing was mailed, by certified mail, to Respondent's attorney, Respondent appeared at the Hearing and had no objection to the manner or appropriateness of the service of the Statement of Charges and the Notice of Hearing.

[16] For example, in Barnes, 4 attempts on 4 different occasions, during normal working hours, on people who were employed was not sufficient to meet due diligence requirements of the New York Civil Practice Law and Rules §308(4).

As set forth above, combined with the duty of a licensee to maintain a current address, it is determined that Petitioner has shown due diligence in this case.

Therefore, service of the Notice of Hearing and the Statement of Charges by Certified Mail to Respondent's last known address, was proper and timely.

II. **Negligence on more than one occasion**

Respondent had a business relationship with Patient A. Whether Patient A knew of the business relationship or not is not relevant for the Findings and Conclusions on this particular Charge of misconduct. The business relationship was significant and was a deviation from psychiatrically accepted standards. It is beyond belief to accept that the behavior of Respondent, as a psychiatrist, whether it be conscious or unconscious behavior, would be totally unaffected by his business dealing with Patient A during his care and treatment of Patient A. Respondent was negligent in beginning and continuing his significant business dealings with Patient A, while she continued to receive psychiatric services from Respondent.

Respondent maintained extensive social involvement with Patient A and her family. Respondent's role of psychotherapist and role of family friend and confidante were incompatible. The two roles played by Respondent could not co-exist without damaging the therapeutic process (potentially causing harm to the patient) or influencing the therapeutic decisions made by Respondent (also, potentially, causing harm to the patient). The Respondent deviated from accepted psychiatric standards by having extensive social involvement with his patient. Therefore, Respondent was negligent in beginning, maintaining and continuing an extensive social involvement with Patient A, while she continued to receive psychiatric services from Respondent.

Respondent accepted, from Patient A, the expensive and substantial gift of a watch and the expensive and substantial gift of payment of numerous expenses on a trip to Europe for Respondent and his family. Accepting these gifts was a deviation from accepted psychiatric standards. Respondent was negligent in accepting and keeping gifts from Patient A, while she continued to receive psychiatric services from Respondent.

Respondent allowed, and in fact encouraged, Patient A to accumulate a debt of approximately $61,300.00, when he knew that one of Patient A's reasons for seeking therapy was her anxiousness in regard to her debt accumulations and financial condition. Respondent deviated from accepted psychiatric standards by allowing his patient to accumulate such an extensive debt for the psychiatric services rendered by Respondent. Respondent was negligent in beginning, maintaining and continuing a large accounts receivable with Patient A, while she continued to receive psychiatric services from Respondent.

The Hearing Committee determines that Respondent's deviation from medically accepted standards of psychiatry in his treatment of Patient A was more than errors in judgment or mistakes, it was incompetent and negligent.

Respondent was negligent in his care and treatment of Patient A on numerous occasions and for, at least, four (4) separate types of conduct. Respondent was negligent on more than one occasion and is guilty of professional misconduct under the laws of the State of New York.

The charge of practicing the profession with negligence on more than one occasion, within the meaning of §6530(3) and as defined by the Misconduct Memo is sustained.

III. Incompetence on more than one occasion

Respondent has shown his failure to possess the requisite skill and knowledge to practice psychiatry. Respondent's lack of appreciation of the complexities involved in providing psychotherapeutic care and treatment to a patient is evident throughout the record. Respondent continually denies that his various relationships with Patient A had any other meaning or affect than those that he intended. This fact is contrary to accepted psychiatric standards and ethics. Even if Respondent could consciously juggle his different relationships and conduct to and with Patient A, he failed to account for any unconscious or subconscious reactions, all to the potentially detriment of his patient. Respondent's depiction of himself as the innocent and gullible one is not acceptable or believable from a review of the record.

Respondent's position with regard to his conduct and his continuing belief that each case must be viewed independently in regard to whether a business relationship, a social relationship or receiving substantial gifts would be appropriate, represents lack of care for the appropriate standards of treating patients in psychiatric settings. Respondent's position shows a lack of care and diligence, as well as, an egregious violation of accepted standards of knowledge and expertise. The Hearing Committee finds that any physician who wishes to practice psychiatry in this State must, at least, be cognitive of the importance of the relationships and effect that his or her conduct may have on and with the patient and the different character which those relationships may take outside of the psychiatrist's office.

Respondent's management of the care and treatment of Patient A evidenced a clear failure of the skill and knowledge expected of a practitioner in this State. In so finding, the Hearing Committee also cites the reasons set forth in ¶ II above.

A physician exhibiting appropriate levels of skill and expertise would not have continued his relationship with Patient A as her psychiatrist. A psychiatrist exhibiting appropriate levels of skill and expertise would have recognized the inappropriateness and potential for harm that a business relationship, extensive social involvement, accepting of large gifts and allowing a large debt to accumulate would cause. A psychiatrist exhibiting appropriate levels of skill and expertise would be aware of the intense emotional atmosphere that is engendered at times, the great dependency that the patient develops on the psychiatrist and the vulnerability of exploitation of the patient that occurs in a psychotherapeutic situation. A psychiatrist exhibiting appropriate levels of skill and expertise would understand that a psychotherapeutic situation is a unique situation in a patient's life and that the patient is particularly vulnerable to exploitation or influence in that type of relationship. A psychiatrist exhibiting appropriate levels of skill and expertise would understand that the only reason that the relationship exists is to work on the psychiatric needs and problems of the patient.

The formation of a business relationship by Respondent with Patient A shows a lack of the necessary skill and expertise to be a competent psychiatrist. Whether Patient A knew of the business relationship or not is not relevant for the Findings and Conclusions on this particular Charge of misconduct.

The formation of an extensive social relationship by Respondent with Patient A shows a lack of the necessary skill and expertise to be a competent psychiatrist. Patient A had a past history of sexual relations with her prior psychiatrist, which history was known to Respondent. This fact alone should have cause Respondent to be even more careful and conscientious of Patient A's vulnerability.

The accepting of expensive and substantial gifts by Respondent from Patient A shows a lack of the necessary skill and expertise to be a competent psychiatrist.

The permitting of the accumulation of substantial debts for extended periods of time by Respondent, in his treatment of Patient A, shows a lack of the necessary skill and expertise to be a competent psychiatrist.

Respondent was incompetent in his care and treatment of Patient A on numerous occasions and for, at least, four (4) separate types of conduct. Therefore, Respondent was incompetent on more than one occasion and is guilty of professional misconduct under the laws of the State of New York.

The charge of practicing the profession with incompetence on more than one occasion, within the meaning of §6530(5) and as defined by the Misconduct Memo is sustained.

IV. Gross Negligence

The record clearly establishes that Respondent had a business relationship, a social relationship and received substantial gifts from Patient A while he continued to provide psychiatric services to that patient. Whether Patient A knew of the business relationship or not is not relevant for the Findings and Conclusions on this particular Charge of misconduct. Respondent also allowed the patient to accumulate substantial debt to him for his fee for psychiatric services for extended periods of time. Respondent's actions, taken separately, would not rise to the definition of gross negligence. However, the combination of all four negligent actions by Respondent, as more fully and individually explained in ¶ II above, is the type of conduct which the Hearing Committee considers to be egregious. Respondent disregarded any and all consequences that his acts may have had on the care and

treatment of his patient, as well as ability to help his patient, as opposed to harming her.

Respondent's assertion of his ability to maintain separate relationships with Patient A, not only defies believability, but is contrary to basic psychiatric ethics and standards. (see Petitioner's Exhibits # 5, 6, 7 and 8)

Respondent's contention that he received absolutely no ethical training or exposure in psychotherapeutic settings is incredulous[17]. Respondent's deviation from accepted psychiatric standards in his treatment of Patient A was more than a mere error or mistake, it was of egregious proportions. Respondent was grossly negligent in his care and treatment of Patient A and is guilty of professional misconduct under the laws of the State of New York.

The charge of practicing the profession with gross negligence , within the meaning of §6530(4) and as defined by the Misconduct Memo is sustained.

V. Gross Incompetence

Whether Patient A knew of the business relationship or not is not relevant for the Findings and Conclusions on this particular Charge of misconduct. The combination of the four specific type of conduct of incompetence by Respondent, as more fully and individually explained above, in ¶¶ II and III is the type of conduct which the Hearing Committee considers to be egregious. Respondent disregarded any and all consequences that his acts may have had on the care and treatment of his patient, as well as ability to help his patient, as opposed to harming her.

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[17] Even without ethical training Respondent acknowledges that going to bed with a psychiatrist is inappropriate. [T-235] Respondent also acknowledged that he "technically" violated the AMA and APA Code of Ethics. [T-267]

Respondent's failure to exhibit any of the qualities (appropriate levels of skill and expertise, as discussed in ¶ III above) that a psychiatrist would exhibit under the circumstances, makes his behavior an extreme and flagrant deviation from accepted standards of skill and expertise, and hence grossly incompetent. Respondent's deviation from accepted medical standards in his treatment of Patient A was more than a lapse of knowledge, it was of egregious proportions.

Similarly is Respondent's claim of no exposure to any ethical standards during his three (3) years of psychiatric training. Although formal ethics courses may not have been offered, at the Clinic, it is beyond conception and common sense and Dr. Quen's testimony, to believe that Respondent had no exposure to proper conduct with patients and ethical situations that inevitably arise during care and treatment of patients. Respondent's contention is like a criminal claiming that he was never actually told (or taught) that murder or stealing was against the general rules of conduct of our society. Failure to know the law is not a defense. Neither is failure to know the appropriate Code of Ethics. Respondent's attempt to argue otherwise is, in this case, egregious conduct.

Respondent was grossly incompetent in his care and treatment of Patient A and is guilty of professional misconduct under the laws of the State of New York.

The charge of practicing the profession with gross incompetence, within the meaning of §6530(6) and as defined by the Misconduct Memo is sustained.

VI. Fraudulent practice

It is undisputed that Respondent had a business relationship with Patient A. The legal ruling, by the Administrative Law Judge, on the issue of Collateral Estoppel requires the Hearing Committee to accept the fact that Respondent failed to disclose

to Patient A the existence of Respondent's business relationship with Patient A.

Therefore, based on the above and the allegations contained in ¶ A.2, the Hearing Committee must first determine if Respondent had a professional medical relationship with Patient A at the time of the business relationship. The Hearing Committee must also determine whether there was a duty by Respondent to disclose that he had a business relationship to Patient A.

Respondent has admitted that from February 1973 through March 1986, he rendered psychiatric care and treatment to Patient A. Therefore, the Hearing Committee finds that, at all times relevant, there was a patient-physician relationship between Patient A and Respondent. It was inappropriate for Respondent to have a business relationship with Patient A. The function of the relationship between psychiatrist and patient is for the treatment of the patient. The psychiatrist and patient relationship is incompatible with a business relationship where the major function or goal is one of profit. The Hearing Committee finds that even if it was not incompatible for Respondent to have a business relationship with Patient A, he had, at the very least, a duty to disclose that business relationship to Patient A.

Respondent deviated from psychiatrically accepted standards by failing to disclose to Patient A that he had a business relationship with her during a six (6) year period that Patient A was receiving care, psychiatric and therapeutic treatment from Respondent. The business relationship was not of a minor nature, but was substantial and significant to both the lives of Patient A and Respondent. A patient who enters into a treatment relationship with a psychiatrist has the right to reasonably assume that the psychiatrist will focus on treatment. A business relationship, whether concealed or not, always has the potential of placing the interests of the

patient and the interests of the psychiatrist in conflict. Respondent practiced medicine by concealing a known fact from his patient. This concealment could have been for no other reason but to mislead and take advantage of Patient A. Therefore, the Hearing Committee infers from the Record and concludes that the concealment was intentional.

"A physician should not dispose of his services under terms or conditions which tend to interfere with or impair the free and complete exercise of his medical judgment and skill or tends to cause a deterioration of the quality of medical care."[18] Respondent violated that principle by maintaining an extensive social relationship and a substantial business relationship with Patient A.

Respondent exploited Patient A for his own personal financial and social gratification, in violation of accepted medical and psychiatric standards of ethics.[19]

Respondent exploited Patient A and used the psychotherapeutic situations to influence Patient A in a manner not directly relevant to treatment goals.[20]

Respondent practiced his profession fraudulently in his care and treatment of Patient A and is guilty of professional misconduct under the laws of the State of New York.

The charge of practicing the profession fraudulently, within the meaning of §6530(2) and as defined by the Misconduct Memo is sustained.

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[18] Petitioner's Exhibit # 5, Section 6; [T-157].

[19] Petitioner's Exhibit # 5, Section 1, ¶1 of Principles with Annotations; [T-158-159].

[20] Petitioner's Exhibit # 5, Section 1, ¶3 of Principles with Annotations; [T-159].

VII. Exercising Undue Influence

Pursuant to §6530(2) of the Education Law, exercising undue influence on a patient, includes the promotion of the sale of services, goods, appliances and drugs in such a manner as to exploit the patient for the financial gain of the licensee or of a third party. Whether the patient gains or loses from the exploitation is not a part of the definition and is irrelevant to the charge. Similarly irrelevant is Respondent's claim that there was mutual benefit from the business relationship. Whether Patient A knew of the business relationship or not is not relevant for the Findings and Conclusions on this particular Charge of misconduct.

Respondent exploited Patient A by using her selfishly and unethically for his own financial gain. Respondent exploited Patient A by using her for the financial gain of his childhood friend and business partner Andrews. Respondent controlled Patient A for his own advantage and for the benefit of his partner Andrews and their partnership A to Z. Respondent's conduct constitutes the exercising of undue influence. (See also the discussion of ethical violations in ¶ VI above.)

In addition, the extensive socialization and expensive and substantial gifts received give an inference that Respondent exercised undue influence on Patient A.

Respondent practiced his profession by exercising undue influence in his care and treatment of Patient A and is guilty of professional misconduct under the laws of the State of New York.

The charge of practicing the profession by exercising undue influence, within the meaning of §6530(17) is sustained.

VIII. Unreasonable Delay

Respondent claims and has objected to these proceedings on the ground that Petitioner has unreasonably delayed in commencing these disciplinary proceedings.

The Administrative Officer has advised the Hearing Committee that 10 NYCRR §51.11(d)(10)(b)(ii)[21] precludes the Hearing Committee from considering, sustaining or rejecting a claim of unreasonable delay occurring before a hearing is requested or noticed. Therefore, Respondent's objection has not been considered.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED. In addition, Respondent should be assessed a penalty of $50,000.00.

Whether Patient A knew of the business relationship or not is only relevant for the Conclusions reached as to the fifth charge of misconduct, that is, practicing the profession fraudulently. The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, except for the fifth specification, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED[22]. In addition, Respondent should be assessed a penalty of the

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[21] Codes, Rules and Regulations of the State of New York, Title 10, HEALTH, Part 51, as amended to February 1994.

[22] This alternate Determination as to penalty is made pursuant to a request by Petitioner. The Hearing Committee determines that the issue of Collateral Estoppel has no effect or relevance to the first four charged specifications. As to the sixth specification, the Hearing Committee sustains that charge without relying on whether Respondent concealed the business relationship or not.

maximum fine for each specification of which Respondent is determined to be guilty of (a total of five charges, under this alternate Determination) for a total of $50,000.00.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

Respondent's lack of integrity, character and moral fitness is evident in his course of conduct, as represented by the testimony and the documents in evidence. Respondent's failure to abide by or even acknowledge an ethical standard of practicing his profession is unacceptable. Respondent's irresponsible care and treatment of Patient A evidences an inability to fulfill the ethical responsibilities of a New York State practice in psychiatry.

Respondent has failed to take responsibility for his misconduct. He acknowledges that he "technically" violated ethical guidelines, but would have to review, on a case by case basis, whether he would do it again. Respondent does not subscribe to professional psychiatric journals because they do not hold his interests. Respondent's lack of continual medical education training, subsequent to his relationship with Patient A, is an indication of his incompetence, his failures and possibly his claimed, but not believable, lack of exposure to any ethical guidelines whatsoever. Similarly is Respondent's failure to belong to any professional organizations. However, Respondent's lack of association or membership with the

American Psychiatric Association or with any other professional organizations or associations does not insulate him from ethical guidelines or principles of medical ethics promulgated by those organizations. In fact, ethics are learned before, during and after psychiatric residency, if not in formal courses, at the very least, through supervision, class discussions, discussions with mentors and peers, reading professional journals, attending training courses and life experiences.

Patient A presented herself to Respondent after a negative and unethical relationship with her previous psychiatrist. Respondent should have been sensitive to his patient's past history and should have conducted himself accordingly, as opposed to aggravating the allowable patient-physician relationship. In short, by accepting the responsibility for the care and treatment of Patient A, Respondent was way over his head and ability. Rather than recognizing that fact, Respondent took advantage of the situation for his own personal and financial gain.

Respondent repeatedly proclaimed that his business relationship, his extensive social involvement, his large account receivable and the gifts received had no effect on his course of therapeutic treatment to Patient A and certainly did no harm to her. The goal of care and treatment to Patient A should have been to help her handle herself better, not whether any harm would occur. Respondent failed to attempt that goal, realize its presence and totally lacked understanding of what a proper psychotherapeutic relationship should have been.

Respondent's unjust, unethical and improper use and exploitation of Patient A for his own gratification cannot be tolerated or accepted by the Hearing Committee.

The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the health and welfare of patients in New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances. The additional sanction of $50,000 is imposed because of the excessive exploitation of Patient A by Respondent, as well as a deterrent to others in regards to the type of egregious conduct committed by this Respondent.

ORDER

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

1. The Specifications of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit # 1) are **SUSTAINED,** and

2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED,** and

3. Respondent is assessed a fine of **Fifty Thousand ($50,000.00) Dollars.**

DATED: Albany, New York
October, 27 **1994**

NAOMI GOLDSTEIN, M.D. (Chair),

ANDREW CONTI, M.D.
EUGENIA HERBST

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ANTHONY DE TORO, ESQ.,
805 Third Avenue
New York, NY 10022

APPENDIX I

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

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IN THE MATTER	:	STATEMENT
OF	:	OF
CHRIST LOUIS ZOIS, M.D.	:	CHARGES

----------X

CHRIST LOUIS ZOIS, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1970 by the issuance of license number 106437 by the New York State Education Department. The Respondent is not currently registered to practice medicine with the New York State Education Department. The Respondent's last registration to practice medicine in New York State expired on December 30, 1990.

FACTUAL ALLEGATIONS

A. On or about and between February, 1973 and March, 1986 the Respondent rendered psychiatric treatment to Patient A. (Patient A is identified in the attached Appendix.) Respondent treated Patient A for interpersonal and family conflicts, alcohol abuse, and problems related to work, including problems stemming from Patient A's habitual indebtedness.

On or about October 1978 Patient A retained Thomas Andrews Esq. as her attorney. Thomas Andrews was a long time personal friend of Respondent. On or about and between January 1980 and March 1986 Respondent and Thomas Andrews, through a partnership known as A to Z Associates, engaged in numerous business transactions with Patient A, including serving as Patient A's licensing agent and business manager.

During the period of treatment regarding Patient A:

1. Respondent deviated from medically accepted standards by inappropriately:

    a. Engaging in a business relationship with Patient A.

    b. Maintaining extensive social involvement with Patient A and her family.

    c. Accepting large gifts from Patient A, including a $6,000.00 watch and the payment of Respondent's expenses for a vacation in Europe.

d. Permitting Patient A to accumulate substantial debt by either partially or completely deferring payment of his fee for psychiatric services for extended periods of time.

2. Respondent intentionally withheld information that he had a duty to disclose by failing to reveal to Patient A that he and Thomas Andrews, through A to Z Associates, had a business relationship with Patient A.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with professional misconduct by reason of practicing the profession with negligence on more than one occasion within the meaning of N.Y. Educ. Law Section 6530(3)(McKinney Supp. 1994), in that Petitioner charges that Respondent committed two or more of the following:

1. The facts in Paragraphs A and A1, A1(a), A1(b), A1(c), A1(d) and/or A2.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with professional misconduct by reason of practicing the profession with incompetence on more than one occasion within the meaning of N.Y. Educ. Law Section 6530(5) (McKinney Supp. 1994), in that Petitioner charges that Respondent committed two or more of the following:

2. The facts in Paragraphs A and A1, A1(a), A1(b), A1(c), A1(d) and/or A2.

THIRD SPECIFICATION

GROSS NEGLIGENCE

Respondent is charged with professional misconduct by reason of practicing the profession of medicine with gross negligence on a particular occasion within the meaning of N.Y. Educ. Law Section 6530(4)(McKinney Supp. 1994), in that Petitioner charges:

3. The facts in Paragraphs A and A1, A1(a), A1(b), A1(c), A1(d) and A2.

FOURTH SPECIFICATION

GROSS INCOMPETENCE

Respondent is charged with professional misconduct by reason of practicing the profession of medicine with gross incompetence on a particular occasion within the meaning of N.Y. Educ. Law Section 6530(6)(McKinney Supp. 1994), in that Petitioner charges:

4. The facts in Paragraphs A and A1, A1(a), A1(b), A1(c), A1(d) and A2.

FIFTH SPECIFICATION

FRAUDULENT PRACTICE

Respondent is charged with professional misconduct by reason of practicing the profession fraudulently within the meaning of N.Y. Educ. Law Section 6530(2)(McKinney Supp. 1994), in that Petitioner charges:

5. The facts in Paragraphs A and A2.

SIXTH SPECIFICATION

EXERCISING UNDUE INFLUENCE

Respondent is charged with professional misconduct under N.Y. Educ. Law Section 6530(17), (McKinney Supp. 1994) by exercising undue influence on the patient in such manner as to exploit the patient for the financial gain of the licensee or of a third party, in that Petitioner charges:

6. The facts in Paragraphs A, A1, A1(a), A1(b), A1(c), A1(d), and A2.

DATED: New York, New York
January 27, 1994

Chris Stern Hyman
Counsel
Bureau of Professional Medical Conduct