

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

IN THE MATTER  
OF  
IVAN A. D'SOUZA, M.D.

COMMISSIONER'S  
ORDER AND  
NOTICE OF  
HEARING

TO: Ivan A. D'Souza, M.D.  
21 East Main Street  
Springville, NY 14141

AND

Ivan A. D'Souza, M.D.  
1026 Union Road  
West Seneca, NY 14224

The undersigned, Richard F. Daines, M.D., Commissioner of Health, after an investigation, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined that the continued practice of medicine in the State of New York by IVAN A. D'SOUZA, M.D. the Respondent, constitutes an imminent danger to the health of the people of this state.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law §230(12), that effective immediately, Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Pub. Health Law §230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on May 15 and 16, 2007, at 10:00 a.m., at the Comfort Inn University, One Flint Road, Amherst, New York,

14226, and at such other adjourned dates, times and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.


At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed

or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

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

DATED: Albany, New York

May 4, 2007

  
Richard F. Daines, M.D.  
Commissioner of Health  
State of New York Department of Health

Inquiries should be directed to:

Michael A. Hiser  
Associate Counsel  
N.Y.S. Department of Health  
Division of Legal Affairs  
(518) 473-4282

## **SECURITY NOTICE TO THE LICENSEE**

The proceeding will be held in a secure building with restricted access. Only individuals whose names are on a list of authorized visitors for the day will be admitted to the building

No individual's name will be placed on the list of authorized visitors unless written notice of that individual's name is provided by the licensee or the licensee's attorney to one of the Department offices listed below.

The written notice may be sent via facsimile transmission, or any form of mail, but must be received by the Department **no less than two days prior to the date** of the proceeding. The notice must be on the letterhead of the licensee or the licensee's attorney, must be signed by the licensee or the licensee's attorney, and must include the following information:

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Licensee's Name \_\_\_\_\_ Date of Proceeding \_\_\_\_\_

Name of person to be admitted \_\_\_\_\_

Status of person to be admitted \_\_\_\_\_  
(Licensee, Attorney, Member of Law Firm, Witness, etc.)

Signature (of licensee or licensee's attorney) \_\_\_\_\_

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This written notice must be sent to:

New York State Health Department  
Bureau of Adjudication  
Hedley Park Place  
433 River Street, Fifth Floor South  
Troy, NY 12180  
Fax: 518-402-0751

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

IN THE MATTER  
OF  
IVAN A. D'SOUZA, M.D.

STATEMENT  
OF  
CHARGES

IVAN A. D'SOUZA, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 3, 1993, by the issuance of license number 193603 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Respondent provided gynecologic medical care to Patient A [patients are identified in the attached Appendix], a 39 year old female patient, at various times from on or about June 2005 through July 2006, at the Buffalo General Hospital, 100 High Street, Buffalo, New York, ["Buffalo General"], and at Respondent's offices at the Evergreen Women's Health Group, 1026 Union Road, West Seneca, New York, 14224, and 21 East Main Street, Springville, New York 14141 ["Respondent's Office"]. Respondent also performed a laparoscopically assisted vaginal hysterectomy ["LAVH"] on Patient A on or about July 30, 2005, at Buffalo General. Respondent's care of Patient A failed to meet accepted standards of practice, in that:
1. Respondent, on the morning of July 31, 2005, the day after Patient A's surgery, touched and/or massaged Patient A's breasts under the pretext of performing a breast examination. There was no medical indication and/or documentation of indication for such a breast examination.
  2. Respondent, in early 2006, during the course of an unchaperoned office visit with Patient A, performed a breast exam on the patient. Upon completion of the breast exam, Respondent stated to Patient A that she had "breasts like those of a twenty year old", or words to that effect.
  3. Respondent, in the Spring of 2006, saw Patient A for an unchaperoned office visit. In the course of that visit, Respondent

asked the patient whether "she liked oral sex", whether she "like receiving oral sex", and whether she "like giving oral sex", or words to that effect.

4. Respondent, in the Spring of 2006, saw Patient A for an unchaperoned office visit. In the course of that visit, in relation to his comments about performing and/or receiving oral sexual stimulation, Respondent stated to Patient A, "If you ever need someone, give me a call. I would leave my wife for you", or words to that effect. Respondent also stated, "Call me anytime, day or night", or words to that effect.
5. Respondent, in the course of a subsequent office visit with Patient A in approximately June 2006, repeated his comment to Patient A to "Give me a call", or words to that effect.
6. Respondent, on or about July 17, 2006, performed a physical examination of Patient A in his office in an unchaperoned setting. Near the end of an apparent examination of the patient's vagina, Respondent began rubbing the upper part of the patient's vagina. Respondent asked the patient, "Does that feel good?", or words to that effect. Respondent also asked the patient, "Do you want me to stop?", or words to that effect. Respondent's physical contact with Patient A was without adequate medical indication and/or without documentation of adequate medical indication.

B. Respondent provided gynecologic medical care to Patient B, a female patient approximately 30 years old at the time treatment began, at various times including 1996 to 1997, at Respondent's office at 130 Empire Drive, West Seneca, New York, 14224 ["Respondent's 1997 Office"], and also from 2003 through 2004 at Respondent's office at 21 East Main Street, Springville, New York 14141. Respondent also provided care to the patient at the Buffalo General Hospital in or about February 2004 for the performance of a hysterectomy. Respondent's care of Patient B failed to meet accepted standards of practice, in that:

1. Respondent, on numerous occasions in late 1996, while purporting to examine Patient B for legitimate reasons, would fondle Patient B's breasts and genitals, for no adequate medical reason.
2. Respondent, in the Fall of 1996, following the performance of vaginal examinations of Patient B, on several occasions also fondled the patient's breasts, and kissed her. When on one occasion Patient B

pushed him away, Respondent apologized, but then stated, "If you don't feel comfortable in the office, would you meet me outside the office?", or words to that effect.

3. Respondent, on several occasions in the Fall of 1996 and early 1997, contacted Patient B by telephone at her home for no adequate medical reason, and sought to convince her to meet him at various places, including at offices when he was on call there.
4. Respondent, on several occasions in the Fall of 1996 and early 1997, contacted Patient B by telephone at her home for no adequate medical reason. During one or more of such telephone conversations, Respondent told Patient B that he was fondling his genitals or otherwise stimulating himself sexually during the conversation.
5. Respondent, on at least one occasion in late 1996 or early 1997, arranged for Patient B to come to his home; when she did, the Respondent and Patient B engaged in sexual activity, including intercourse.
6. Respondent, in late 1996 or early 1997, met with Patient B on at least two occasions at other than his house and the office, for reasons not related to the provision of medical care. On such occasions, Respondent would discuss his personal and romantic attraction for Patient B.
7. Respondent and Patient B ceased their personal and professional contact beginning in early 1997 through approximately the summer of 2003. In the late summer or Fall of 2003, Patient B began to see Respondent solely for medical care. Respondent thereafter performed a hysterectomy on the patient on or about February 5, 2004. The day after the surgery, Respondent came to Patient B's hospital room, closed the curtains around the bed, and proceeded to (1) touch and/or massage Patient B's breasts for no adequate medical reason, and (2) told her that he "would really love" Patient B to perform oral sex on him at that time, or words to that effect.

C. Respondent provided obstetric and/or gynecologic medical care to Patient C, an approximately 28 year old female patient, at various times from on or about December 2003 through January 2006, at Respondent's Evergreen Office, and at the Buffalo General Hospital. Respondent's care of Patient C failed to meet accepted standards of practice, in that:

1. Respondent, on or about August 9, 2005, following an unchaperoned office visit with Patient C, and while she was still disrobed, approached Patient C while she remained seated on the examination table, then:

- A. stood in close physical proximity to Patient C, between her open knees;
  - B. hugged Patient C;
  - C. kissed Patient C on the cheek;
  - D. kissed Patient C on the neck;
  - E. kissed Patient C on the ear; and then
  - F. held Patient C's face with his hands and kissed her on the lips.
2. Respondent, after he engaged in the acts described in Paragraphs C.1(A) – (F), then said to Patient C, "Nice kisses", or words to that effect.
- D. Respondent provided obstetric and/or gynecologic medical care to Patient D, an approximately 19 year old female patient, at various times from early 2006 through 2007, at Respondent's Office. Respondent's care of Patient D failed to meet accepted standards of practice, in that:
- 1. Respondent, in mid to late 2006, performed a physical examination of Patient D in his office in an unchaperoned setting. After being told by Patient D that she had reduced sensation in her breasts related to breast feeding, the Respondent massaged Patient D's breasts and nipples, while asking on more than one occasion, "Can you feel this?", "Does this feel good?", "Does this bring you pleasure?" "Does my stimulating your nipples turn you on?" or words to those effects. Respondent's physical contact with the patient was without adequate medical indication and/or without documentation of adequate medical indication.
  - 2. Respondent, in mid to late 2006, performed a physical examination of Patient D in his office in an unchaperoned setting. Following the conversation with Patient D relating to her reduced sensation, Respondent began massaging Patient D's clitoris with his ungloved fingers, while asking on one or more occasion, "Does this feel good?", "Can you feel yourself becoming engorged?" "Does this bring you pleasure?", or words to those effects. Respondent's physical contact with the patient was without adequate medical indication and/or without documentation of adequate medical indication.
- E. Respondent provided obstetric and/or gynecologic medical care to Patient E, an approximately 36 year old female patient, at various times from on or



about 1998 through at least April 2006, at Respondent's Office, and at the Empire Drive Medical Center of Health Care Plan. Respondent's care of Patient E failed to meet accepted standards of practice, in that:

1. Respondent, on or about April 24, 2006, at the end of an office visit and examination of Patient E, and while she was still disrobed, approached Patient E while she remained seated on the examination table, then told Patient E that he "really like[d] her bra", or words to that effect.
2. Respondent, on or about April 24, 2006, at the end of an office visit and examination of Patient E, and while she was still disrobed, approached Patient E while she remained seated on the examination table, and kissed her on the mouth with his mouth partially open.

F. Respondent provided gynecologic medical care to Patient F, an approximately 28 year old female patient, on February 6, 2007, at the William E. Mosher Health Center, 899 Main Street, Buffalo, New York 14203. Respondent's care of Patient F failed to meet accepted standards of practice, in that:

1. Respondent, on February 6, 2007, performed an unchaperoned physical exam on Patient F. During the course of the examination, Respondent massaged Patient F's vagina with his fingers on more than one occasion, while inquiring of her each time, "Is this your G spot", or words to that effect. Respondent's physical contact with the patient was without adequate medical indication and/or without documentation of adequate medical indication.
2. Respondent, on February 6, 2007, performed an unchaperoned physical exam on Patient F. During the course of the examination, Respondent asked the patient "What [sexual] position is best for you", "Is the missionary position good", and "How big is your husband", or words to those effects.

G. Respondent provided obstetric and/or gynecologic medical care to Patient G, an approximately 38 year old female patient, at various times from on or about 1996 through early 2004, including at Respondent's Office. Respondent's care of Patient G failed to meet accepted standards of practice, in that:

1. Respondent, in or about October 2003, at the end of an office visit and examination of Patient G, approached Patient G as she sat on the examination table, put his arms on her shoulders, kissed her lips and put his tongue in her mouth. When Patient G pulled away from him, Respondent stated, "Is everything OK", or words to that effect.
  2. Respondent, in approximately February or March of 2004, during an office visit with Patient G, told Patient G he had kissed her as described in Paragraph "1", above, because he "wanted [her] to have an affair with [him]", and that he thought that he and Patient G "could get together", or words to those effects.
- H. Respondent provided obstetric and/or gynecologic medical care to Patient H, an approximately 27 year old female patient, at various times from in or about 2002 through approximately 2005, at Respondent's Office. Respondent's care of Patient H failed to meet accepted standards of practice, in that:
1. Respondent, on or about November 8, 2005, performed a physical examination of Patient H in his office. During the purported examination of the patient, Respondent massaged Patient H's labia and clitoris, without adequate medical indication and/or without documentation of adequate medical indication.
- I. Respondent provided obstetric and/or gynecologic medical care to Patient I, an approximately 36 year old female patient, at various times from approximately 1994 through the Spring of 2004, at Respondent's Office, and at the Lifetime Health facility in West Seneca, New York. Respondent's care of Patient I failed to meet accepted standards of practice, in that:
1. Respondent, during the course of office visits with Patient I, on several occasions told Patient I that he "really like[d] her panties", that she "had a nice body", and that he "liked the way [she] trimmed her pubic hair", or words to those effects.
  2. Respondent, on or about March 29, 2004, at the end of an office visit and examination of Patient I, and while she was still disrobed, approached Patient I while she remained seated on the examination table, placed his hands on her shoulders, leaned in her direction, kissed her lips and put his tongue in her mouth.
- J. Respondent provided obstetric and/or gynecologic medical care to Patient J,

an approximately 35 year old female patient, at various times from on or about 1997 through 2006, including at Respondent's Office. Respondent performed, among other procedures, a laparoscopically assisted vaginal hysterectomy on the patient on or about September 23, 2004.

Respondent's care of Patient J failed to meet accepted standards of practice, in that:

1. Respondent, in or about February, 2006, performed a physical examination of Patient J in his office in an unchaperoned setting. After discussing the patient's decreased sexual response, the Respondent used his ungloved hand to stimulate Patient J's clitoris while asking on one or more occasion whether Patient J was feeling "any tingling", or words to that effect. Respondent's physical contact with the patient was without adequate medical indication and/or without documentation of adequate medical indication.

K. Respondent provided gynecologic medical care to Patient K, an approximately 33 year old female patient, at various times from approximately 1996 through the Summer of 2006, including at Respondent's Office. Respondent's care of Patient K failed to meet accepted standards of practice, in that:

1. Respondent, in the Summer of 2006, during or after an unchaperoned office examination of Patient K, performed a breast exam on the patient. Upon completion of the breast exam, Respondent stated to Patient K that "Women would pay to have breasts like these. You should show them off more often", or words to those effects.
2. Respondent, in the Summer of 2006, following the examination described in "1", above, approached Patient K while she remained seated on the examination table, and asked her to give him a kiss. When Patient K kissed him on the cheek, Respondent stated, "No, I want you to give me a real kiss", or words to that effect. Respondent at that point leaned forward, kissed Patient K on the lips, and slipped his tongue into her mouth.
3. Respondent, after he kissed Patient K as described in "2", above, then told the patient, "If you ever want to get together on the side, you have my pager number. You can call me", or words to those effects.

## **SPECIFICATION OF CHARGES**

### **FIRST THROUGH ELEVENTH SPECIFICATIONS**

#### **WILFUL PHYSICAL AND VERBAL ABUSE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(31) by wilfully harassing, abusing, or intimidating a patient either physically or verbally, as alleged in the facts of the following:

1. The facts in Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, and/or A and A.6.
2. The facts in Paragraphs B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, and/or B and B.7.
3. The facts in Paragraphs C and C.1(A), C and C.1(B), C and C.1(C), C and C.1(D), C and C.1(E), C and C.1(F), and/or C and C.2.
4. The facts in Paragraphs D and D.1, and/or D and D.2.
5. The facts in Paragraphs E and E.1, and/or E and E.2.
6. The facts in Paragraphs F and F.1, and/or F and F.2.
7. The facts in Paragraphs G and G.1, and/or G and G.2.
8. The facts in Paragraphs H and H.1.
9. The facts in Paragraphs I and I.1, and/or I and I.2.
10. The facts in Paragraphs J and J.1.
11. The facts in Paragraphs K and K.1, K and K.2, and/or K and K.3.

## **TWELFTH THROUGH TWENTY-SECOND SPECIFICATIONS**

### **MORAL UNFITNESS**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice, as alleged in the facts of:

12. The facts in Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, and/or A and A.6.
13. The facts in Paragraphs B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, and/or B and B.7.
14. The facts in Paragraphs C and C.1(A), C and C.1(B), C and C.1(C), C and C.1(D), C and C.1(E), C and C.1(F), and/or C and C.2.
15. The facts in Paragraphs D and D.1, and/or D and D.2.
16. The facts in Paragraphs E and E.1, and/or E and E.2.
17. The facts in Paragraphs F and F.1, and/or F and F.2.
18. The facts in Paragraphs G and G.1, and/or G and G.2.
19. The facts in Paragraphs H and H.1.
20. The facts in Paragraphs I and I.1, and/or I and I.2.
21. The facts in Paragraphs J and J.1.
22. The facts in Paragraphs K and K.1, K and K.2, and/or K and K.3.

## **TWENTY-THIRD THROUGH TWENTY-EIGHTH SPECIFICATIONS**

### **FRAUDULENT PRACTICE**

Respondent is charged with committing professional misconduct as defined

by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

23. The facts in Paragraphs A and A.1, and/or A and A.6.
24. The facts in Paragraphs B and B.1, and/or B and B.7.
25. The facts in Paragraphs D and D.1, and/or D and D.2.
26. The facts in Paragraphs F and F.1, and/or F and F.2.
27. The facts in Paragraphs H and H.1.
28. The facts in Paragraphs J and J.1.

## **TWENTY-NINTH THROUGH THIRTY-FOURTH SPECIFICATIONS**

### **GROSS NEGLIGENCE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following:

29. The facts in Paragraphs A and A.2, A and A.3, A and A.4, and/or A and A.5.
30. The facts in Paragraphs B and B.6.
31. The facts in Paragraphs C and C.1(A), C and C.1(B), C and C.1(C), C and C.1(D), C and C.1(E), C and C.1(F), and/or C and C.2.
32. The facts in Paragraphs F and F.2.
33. The facts in Paragraphs I and I.1.
34. The facts in Paragraphs K and K.1.

## **THIRTY-FIFTH THROUGH FORTIETH SPECIFICATIONS**

### **GROSS INCOMPETENCE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(6) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

35. The facts in Paragraphs A and A.2, A and A.3, A and A.4, and/or A and A.5.
36. The facts in Paragraphs B and B.6.
37. The facts in Paragraphs C and C.1(A), C and C.1(B), C and C.1( C), C and C.1(D), C and C.1(E), C and C.1(F), and/or C and C.2.
38. The facts in Paragraphs F and F.2.
39. The facts in Paragraphs I and I.1.
40. The facts in Paragraphs K and K.1.

## **FORTY-FIRST SPECIFICATION**

### **NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

41. The facts in Paragraphs A and A.2, A and A.3, A and A.4, A and A.5, B and B.6, C and C.1(A), C and C.1(B), C and C.1( C), C and C.1(D), C and C.1(E), C and C.1(F), C and C.2, F and F.2, I and I.1, and/or K and K.1.

**FORTY-SECOND SPECIFICATION**  
**INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

42. The facts in Paragraphs A and A.2, A and A.3, A and A.4, A and A.5, B and B.6, C and C.1(A), C and C.1(B), C and C.1(C), C and C.1(D), C and C.1(E), C and C.1(F), C and C.2, F and F.2, I and I.1, and/or K and K.1.

**FORTY-THIRD SPECIFICATION**  
**FAILURE TO MAINTAIN RECORDS**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

43. The facts in Paragraphs A and A.1, A and A.6, D and D.1, D and D.2, F and F.1, F and F.2, H and H.1, and/or J and .1.

DATE: May 3, 2007  
Albany, New York

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