

Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

August 24, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael Eisenberg, M.D.

REDACTED

Michael Eisenberg, M.D.
One Expressway Plaza, Suite 201
Roslyn Heights, New York 11577

Alexander G. Bateman, Esq.
Ruskin, Moscou & Faltischek, P.C.
1425 RXR Plaza, East Tower, 15th Floor
Uniondale, New York 11556

Jean Bresler, Esq.
NYS Department of Health
Division of Legal Affairs
145 Huguenot Street
New Rochelle, New York 10801

RE: In the Matter of Michael Eisenberg, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 10-153) 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 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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,
REDACTED

James F. Horan, Acting Director
Bureau of Adjudication

JFH: djh

Enclosure

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

COPY

IN THE MATTER
OF
MICHAEL EISENBERG, M.D.

DETERMINATION
AND
ORDER

BPMC NO. 10-153

A Notice of Hearing and Statement of Charges were served on MICHAEL EISENBERG, M.D., Respondent, on October 15, 2009. Hearings were held pursuant to N.Y. Public Health Law §230 and New York State Admin. Proc. Act §§ 301-307 and 401 on November 20 and December 18, 2009, continuing on February 12, March 12, March 15, April 9, April 19, and May 3, 2010. All hearings were held at the Offices of the New York State Department of Health, 90 Church Street, New York, New York ("the Petitioner"). **Alan Kopman, FACHE, CHAIR, Diane M. Sixsmith, M.D., and Krishna R. S. Gujavarthy, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **Thomas G. Conway, Esq.**, General Counsel, by **Jean Bresler, Esq.**, Associate Counsel, New York State Department of Health, of Counsel. The Respondent appeared with counsel, **Alexander G. Bateman, Esq.** Evidence was received, witnesses were sworn or affirmed, and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Date of Service of Notice Of Hearing and Statement of Charges:	October 15, 2009
Answer Filed:	October 23, 2009
Pre-Hearing Conference:	November 10, 2009
Hearing Dates:	November 20, 2009 December 18, 2009 February 12, 2010 March 12, 2010 March 15, 2010 April 9, 2010 April 19, 2010 May 3, 2010
Witnesses for Petitioner:	Patient "A" Amy S. Hoffman, M.D. Catherine Liberatore Michael Haber
Witnesses for Respondent:	Michael Eisenberg, M.D. Dr. Leslie Nadler, Ph. D. Edwin Salsitz, M.D.
Deliberations Date:	June 28, 2010

It is noted that the reporting service made an error in pagination and not all transcript volumes were sequential in pagination. March 12, 2010 was the fourth hearing day in this matter; however, the transcript for this date begins again at page one. This pagination continues on March 15, 2009. When referring to testimony occurring on these two dates

(3/12/10 & 3/15/10), citation is given not only to the page number but also to the date, either March 12 or March 15, so as to avoid confusion.

STATEMENT OF THE CASE

Petitioner charged Respondent, a physician practicing addiction medicine, with eight (8) specifications of professional misconduct. The first specification charged Respondent with committing professional misconduct as defined in N.Y. Educ. Law §6530(44)(a) by engaging in physical contact of a sexual nature between the licensee and a patient while in the practice of psychiatry.

The second specification charged Respondent 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.

In the third specification Respondent was 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.

In the fourth specification Respondent was 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.

In the fifth specification Respondent was 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.

The sixth specification charged the Respondent with committing professional

misconduct as defined in N.Y. Educ. Law §6530(6) by practicing the profession of medicine with gross incompetence.

In the seventh specification Respondent was 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.

Finally, in the eighth specification, Respondent was charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(31) by willfully harassing, abusing, or intimidating a patient either physically or verbally.

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

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to transcript page numbers or exhibits, denoted by the prefixes "T." or "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Respondent was authorized to practice medicine in New York State in 1979 by the issuance of license number 139536 by the New York State Education Department. His office is currently located at One Expressway Plaza, Suite 201, Roslyn Heights, New York 11577. (Ex. 35)

2. In January 2007, Patient A began treatment with the Respondent. Patient A was referred by her psychiatrist, Dr. Raymond Behr. At this time she was twenty-six years old. (T. 42, 233)

3. Dr. Eisenberg treated Patient A for addiction to alcohol and related illnesses. (T. 45, 47, Ex. E, pages 2-3,8,9,10,14-15) In an e-mail to Dr. Behr, Dr. Eisenberg indicated that he was treating her not only for addiction but also for anxiety, panic, and issues related to sexual abuse and self-esteem. (Ex. E, pp. 8, 10, 14)

4. Alcohol addiction is a psychiatric disorder designated by The Diagnostic and Statistical Manual of Mental Disorders (DSM). Although Dr. Eisenberg treated Patient A primarily for addiction to alcohol he also treated her anxiety disorder, depression, self-injurious behavior (including suicide attempts), sexual impulsivity, low self-esteem, fear of abandonment and abuse of other substances. (T. 43-47,Ex.E)

5. Initially, Patient A saw Dr. Eisenberg once per week for an hour and paid a fee of \$150.00 per session. Soon the treatment sessions went to twice per week and the length of the session increased. Patient A testified that when she lost her job, Dr. Eisenberg reduced his fee and eventually did not require any payment at all. Patient A testified that Dr. Eisenberg told her that he did this for "a lot of other patients." (T. 43)

6. Patient A's treatment with Dr. Eisenberg involved face to face meetings and frequent telephone contact. At the time Patient A was referred to Dr. Eisenberg and throughout most of their relationship, Patient A's alcoholism was out of control. She was engaging in frequent binge drinking. She blacked out frequently and found herself in dangerous situations. Although Patient A was teaching music when she began treatment with Dr. Eisenberg, she was drinking in school and she eventually lost her job. When she

began seeing Dr. Eisenberg, Patient A testified that her symptoms were getting worse and worse. Her binges would involve drinking two pints of vodka at a time in addition to beer, wine, and any other alcohol she could get. She testified that she was seeking oblivion and she could not stop. During her treatment with Dr. Eisenberg, Patient A was raped by an individual she met outside a public restroom. She suffered heart palpitations, tremors and immense fears. (T. 47) Patient A shared all that she was going through with Dr. Eisenberg. He not only encouraged her to share these incidents with him, but he also demanded that she remain in constant contact with him. (T.45-47), Ex. E, T. (3/15/10), 297-302, 306 [Note that the date is included to distinguish these pages from the first set of pages 1 through 321 due to pagination error]

7. Although Patient A began seeing Dr. Behr in 2001, her care was primarily transferred to Dr. Eisenberg when she was referred to him in 2007. After beginning therapy with Dr. Eisenberg, she saw Dr. Behr infrequently. Both Dr. Behr's records and the e-mail exchange support the testimony of both Patient A and Dr. Eisenberg that once she began seeing Dr. Eisenberg her contact with Dr. Behr was infrequent and usually related to Dr. Behr dealing with her parents. (T. 3/12/10) 76, (T. 3/15/10) p. 312, Ex.9)

8. Patient A became emotionally attached to Dr. Eisenberg soon after treatment began. She stated that he made her feel safe and that she was not alone. She testified that, at that time in her life, she felt like she was dying. She stated that when she walked into Dr. Eisenberg's office "I was literally dying. I was just broken. I just wanted help. And I felt safe. He would hug me after each session. He would just tell me everything I wanted to hear to make me not feel alone." (T. 43) In addition to the intimate nature of her

treatment in the office, they remained in constant contact over the phone. Dr. Eisenberg told Patient A to call his cell phone any time of the day or night. (T.53, Ex.12A, Ex. 14)

9. About three months into Patient A's treatment with Dr. Eisenberg, she began having feelings for him. (T.53) Around this time their hugs became longer and their talk became more sexual. They became flirtatious. He told her that she was beautiful and complimented her. Patient A testified that she wanted to believe that his statements were true. Patient A testified, "I felt like I loved him." (T. 54, 254-255, 258-260)

10. During the course of the first four months of Patient A's treatment with Dr. Eisenberg, she continued to deteriorate. All aspects of her illness got worse. She became too ill to be treated in an out-patient setting. Patient A's parents arranged for her to go to an in-patient program where she remained for several weeks. (Ex. 32 pp. 4,7,10,11)

11. In May and June of 2007, while Patient A was an in-patient at a treatment facility in Connecticut, High Water Farm, she remained in contact with Dr. Eisenberg by letter and pay phone. (T .49-50)

12. In May 2007, when Patient A left High Water Farm and returned to her parent's home in Long Island she began, once more, seeing Dr. Eisenberg regularly at his office. (T.49-50) At this point in time, Respondent began holding her hands, embracing her for longer periods of time and at times moaning in her ear while they hugged. Eventually she began sitting opposite him. He would hold her or hold her hands. (T. 50-51) In June of 2007, Patient A began drinking again and wound up in at Franklin General Hospital on June 6, 2007. (Ex.30) These hospital records indicate that Patient A was discharged to her private physician, "Dr. Eisenberg". (Ex. 30, p.54) The records from Franklin Hospital reflect that Patient A had an appointment to see Respondent on June 7, 2007. (Ex. 30, p.

54) Dr. Raymond Behr's records confirm that Patient A was seeing Dr. Eisenberg at this time. (Ex. 9, p. 20)

13. Patient A was readmitted to High Water Farm in June of 2007 and remained there for several months. Dr. Eisenberg wrote letters to her, spoke to her on the phone and came to visit her. (T. 52, 55-56), [3/15/10] 165-166, 173,174) After leaving High Water Farm after this second admission, Patient A stayed in contact with Dr. Eisenberg by phone. (T. 61) Patient A testified that it was around this time that Dr. Eisenberg became "like God to her." (T. 59)

14. Approximately three weeks after being discharged from High Water Farm in June of 2007 , Patient A returned to Respondent's office. In the period of time between these two admissions Patient A lived with her parents and visited Dr. Eisenberg. Patient A's cell phone records demonstrate that, except for times when she was not permitted to have her cell phone at High Water Farm, Patient A and Dr. Eisenberg stayed in almost constant cell phone contact. (Ex.14, 12A)

15. Dr. Eisenberg testified that, after Patient A left High Water Farm for the second time, he paid for a hotel room and food for Patient A in Connecticut. Respondent also learned that she was again drinking heavily, blacking out and was physically assaulted. (T. [3.15/10] 177-178) Patient A maintained contact with Dr. Eisenberg throughout this period. If she was unable to use her cell phone, they remained in contact by letter and pay phone. In July, August and September of 2007, Patient A and Dr. Eisenberg exchanged over 400 text messages and 26 phone calls. (Ex. 12A, 14) These text messages included discussions of recovery, Dr. Eisenberg, according to these text messages in the record, checked to see if Patient A was attending meetings and whom she was with. This was

practicing addiction medicine. The text messages during this period became flirtatious. (T. 57, 62)

16. On October 25, 2007, phone sex began between Patient A and Dr. Eisenberg. They described sexual acts over the phone to each other. (T. 64-65) This type of phone sex began while Dr. Eisenberg was attending a conference in Washington DC. The cell phone records document calls between 11:30 PM on October 25th through 1:55 AM on October 26, 2007. Dr. Eisenberg admits that it was at this time that he began having phone sex with Patient A. (T. [3/15/10] 182-184)

17. Prior to their engaging in phone sex, Dr. Eisenberg knew Patient A was drinking again. He knew she was engaging in high-risk self-injurious behavior. Dr. Eisenberg knew that Patient A was suffering from alcohol abuse, severe anxiety and sleep disorder, the very same conditions she came to him to be treated for in January 2007. In response to learning about this circumstance, Dr. Eisenberg, rather than directing her to treatment, assured her that he would never abandon her and began engaging in phone sex with her. (T. [3/15/10] 183-185)

18. Patient A testified that, after the phone sex, she told Dr. Eisenberg that she now felt uncomfortable seeing him at his office. Respondent told Patient A that he hoped that what happened on the phone didn't change their doctor-patient relationship. Patient A testified that Respondent called her, came to pick her up at home and repeatedly apologized. Patient A went with Dr. Eisenberg to his office soon after the phone incident on October 25, 2007. (T. 68)

19. On November 4, 2007, Patient A was hospitalized at North Shore University Hospital for conditions related to alcohol abuse. On November 6, 2007, Patient A left North

Shore Hospital against medical advice. Patient A called Dr. Eisenberg who told her to come to his office so that he could arrange a place for her to stay. She went to Dr. Eisenberg's office because she still relied upon Dr. Eisenberg to deal with her addiction illness. Upon seeing her and evaluating her condition Dr. Eisenberg told Patient A to wait in his waiting room while he saw patients and when he finished he would arrange for her to go to a "sober house". Dr Eisenberg assessed her condition and offered to arrange for her care. (T. 192-194)

20. In the Summer of 2009, Dr. Eisenberg made arrangements for Patient A to go to New Directions, a rehabilitation facility in upstate New York, where Dr. Eisenberg sends many of his patients. (T. 105,220,235, 272-273)

21. The hospital records from North Shore University Medical Center establish that Patient A was taken from Dr. Eisenberg's office to the hospital on June 22, 2007. (Ex. 33. pp. 3, 93, 97) Dr. Eisenberg was forced to acknowledge this visit by the patient because it is documented in the hospital record. He further acknowledged visiting Patient A at the hospital (T. [3/15/10] 165-166, 172-173)

22. Because Patient A was still very ill, she left Dr. Eisenberg's office and became intoxicated and blacked out. She was then raped and beaten up. She returned to Dr. Eisenberg's office. Again Dr. Eisenberg told Patient A to stay in his waiting room until he finished seeing patients. Patient A eventually passed out in Dr. Eisenberg's office and was transported from his office back to North Shore University Hospital. At some point during this meeting Patient A testified that she kissed Dr. Eisenberg on the mouth. (T.67)

23. Patient A testified that during this admission to North Shore University Hospital, Dr. Eisenberg visited her at the hospital. When her parents came into the hospital and

saw Dr. Eisenberg, her father became upset and told Dr. Eisenberg to stay away from Patient A. (T.69)

24. Dr. Eisenberg knew that what had happened on the phone on October 25, 2007 was wrong, a violation of professional and ethical standards and was, in his own words, his fault. (T. [3/15/10] 185-190) Respondent knew, in October 2007, that Patient A was still very sick and very vulnerable. Respondent knew that Patient A was now being treated at a major hospital with addiction and psychiatric professionals and services. Dr. Eisenberg knew that Patient A's parents were in her life and they asked him to stay away from her. Dr. Eisenberg testified repeatedly that he had no choice but to continue his relationship with Patient A. This was one of many opportunities Dr. Eisenberg had to make the correct professional and ethical choice to terminate his contact with Patient A. Instead he chose to aggressively pursue the relationship.

25. Patient A was discharged from North Shore University Hospital to a residential facility in Manhattan, the Salvation Army facility. She maintained contact with Dr. Eisenberg through letters, pay phones, and her cell phone. (T.70-71) Patient A was asked to leave this program because she started drinking again; at which point she was moved to a residential facility in upstate New York. (T.71) Letters written by Respondent to Patient A in November of 2007 demonstrate that Dr. Eisenberg aggressively pursued his relationship with her at this time. (Ex.4a)

26. Patient A and Dr. Eisenberg maintained contact while she was at this upstate facility through phone calls and letters. It was so important to Dr. Eisenberg to maintain contact with Patient A that he violated the rules of this facility by writing to Patient A using a fictitious name and address. (Ex. 4a, T. 72-73, 674-675)

This behavior on the part of Dr. Eisenberg was not only a deviation from acceptable practice but it also negatively impacted Patient A's recovery. Dr. Hoffman testified that this conduct was an effort to subvert the rules of the treatment program and encouraged Patient A to lie. When an individual enters in-patient treatment, the rules that limit the patient's contact with the outside world have important therapeutic implications. When a therapist encourages a patient to subvert these rules it is very difficult for the patient to "engage" in the treatment being offered. The harm to patient A was that she would not be getting the treatment she went there to get. (T. 321,323)

27. In January of 2008 Patient A left another residential facility, the Walter Hoving Home on Long Island, and went to New York City where Dr. Eisenberg paid for her to stay at the YMCA for two nights. She then became a resident of the Salvation Army facility. (T. 73-74)

28. Explicit sexual talk, that is the description of sexual acts or phone sex, began between Dr. Eisenberg and Patient A on October 25, 2007, and continued for one year except for periods of time when Patient A was a resident at treatment centers where she was not able to have her cell phone. (T. 64-65) During these periods they communicated through letters (Ex. 4) and Dr. Eisenberg gave Patient A phone cards so that she could call him. (T. 205) These facts are corroborated by the cell phone records for both Patient A and Dr. Eisenberg, by letters sent by Dr. Eisenberg to Patient A, (Ex.4) and the actual text messages contained on Patient A's cell phone and placed in evidence. (Ex 16, 20, 31, T. 37-39) Patient A identified the cell phone, Exhibit 16, in her testimony as well as the cell phone text messages from Dr. Eisenberg. At T. 63, Patient A identified her phone number and Dr. Eisenberg's telephone numbers.

29. Dr. Eisenberg continued treating Patient A after April 2007. For example, Patient A's records at Franklin General Hospital indicate that in June she was discharged to her private "psychotherapist" -- Dr. Eisenberg. (Ex.30, pp. 51-52)

30. Cell phone records document that between January 2007 and April 2007, the time period when Dr. Eisenberg admits having a physician-patient relationship with Patient A, Patient A made 261 calls to Dr. Eisenberg and Dr. Eisenberg made 72 calls to Patient A. During this period of time Patient A sent 521 text messages to Dr. Eisenberg. Exhibits 14 and 12A set forth the voluminous record of this phone texting. See, in particular, Ex. 14, pp. 39-41,55,55-76,76-109,111-134,167-170. Text messaging is set forth in the record at T. 94-105, 110,135,,135-142,142-166,179-187,188 and Ex. 12A pp. 32-41, 41-55,55-66.

31. During periods of time when Patient A was unable to use her cell phone, Dr. Eisenberg maintained contact with Patient A through pay phones and letters. (T. 61,70,71,74) Fourteen of the letters written by Dr. Eisenberg to Patient A while at residential facilities are in evidence as Exhibit 4.

32. The letters in Exhibit 4 evidence a combination of a personal, sexual and therapeutic relationship continuing between Dr. Eisenberg and Patient A well after April of 2007. Dr. Eisenberg admitted that he wrote these letters to Patient A while she was in residential treatment and unable to have a cell phone after April 2007. (T. [3/15/10] 218)

33. Exhibit 4a is a letter written to Patient A by Dr. Eisenberg while she was a resident of a facility that did not permit contact with men. (T. 72, 218 [3/15/10], 674) In this letter, on page 1, it is clear that Dr. Eisenberg initiated contact with Patient A. This letter demonstrates that he continued in letters exactly what he testified that he does in treatment, counseling Patient A on the 12 steps of recovery and counseling her about the

roots of addiction. This letter also documents the fact that Respondent sent Patient A phone cards to maintain contact with him and it makes veiled references, at page 4, to his strong personal feelings for her. In this letter Dr. Eisenberg pretends to be "Nancy" because of the restriction this treatment facility places on patients having contact with the opposite sex. This letter makes it clear that Dr. Eisenberg initiated contact with Patient A and encouraged her to keep in contact with him. He states, "I waited until now hoping to hear from you." It is also clear that these letters continue the type of 12 step, AA counseling, which is the treatment provided by Dr. Eisenberg in his practice of addiction medicine. Dr. Eisenberg acknowledged that the letters in exhibit 4, dated November 2007, relate to while Patient A was in the Salvation Army facility in November of 2007. This date is well after the time when he claims to have stopped treating her as her doctor. (T. 675)

34. In Exhibit 4b, Dr. Eisenberg counsels Patient A about how to endure the difficulties she is going through, and makes sexual references. In Exhibit 4c, Respondent counsels Patient A that she is in the right treatment facility, questions her maladaptive assumptions about her own worthlessness, tells her that he understands addiction better than she does, and asks to see her when she is off restriction. In Exhibit 4d, at page 2, Respondent refers to himself as Patient A's doctor and encourages her to share her feelings with him. In Exhibit 4e, Respondent counsels Patient A on the 12 steps, discusses cycles of addiction, counsels her about dealing with rage and, in Exhibit 4f, he asks her to "please call me." Exhibit 4h makes clear the fact that Dr. Eisenberg is not only pursuing Patient A but that he is getting personal gratification from their contact, he states: "I think your allowing me to be part of your life will bring such happiness to me." In Exhibit 4j, Dr. Eisenberg encourages Patient A's dependence upon him and his power to influence her.

In Exhibit 4I, written in November of 2007, he tells her he truly hopes she still wants his help and tells her to "put me down as your doctor."

35. Dr. Amy S. Hoffman testified that the letters sent to Patient A expressing love and devotion to her would represent a boundary violation which would have also negatively impacted Patient A. The risk of harm to the patient in mixing both a message of recovery with the message conveyed in "I Love you, I Love you, I Love you" would not only be confusing to a patient but it would also make it more difficult for the patient to engage in a useful effective treatment relationship with the staff of the in-patient treatment facility. (T.328-329)

36. During Patient A's stay at the Salvation Army in 2008 she did not see a psychiatrist or an addiction counselor. Dr. Eisenberg never referred her to a treatment professional or suggested that she see another professional. (T.89)

37. In September 2008, Patient A left the Salvation Army because she completed the program. She went back to her parent's home on Long Island. In September of 2008, Patient A relapsed. (T. 96)

38. In September of 2008, contact between Patient A and Dr. Eisenberg ended. Patient A called Dr. Eisenberg's wife and told her what had been going on between them. Patient A told her parents who brought her to Dr. Behr. Dr. Behr told Patient A and her father that Dr. Eisenberg's conduct should be reported to OPMC. (Ex.9, pp. 22-23, T. 94, 87-89)

39. When Dr. Eisenberg learned that Patient A had contacted his wife, he threatened to kill himself. He blamed Patient A for making him homeless, destroying his life, and taking away his grandchild. (T. 87, 95, Ex. 18)

40. After seeing Dr. Behr on September 9, 2008 (Ex. 9 p.22) and ending her relationship with Dr. Eisenberg, Patient A went into a variety of facilities for detoxification and for rehabilitation. (T. 97) Eventually, Patient A entered a halfway house in Freeport and was doing well, when in the Spring of 2009, Dr. Eisenberg contacted her on face book. She felt that she had been "sucked down a hole" and contacted him by phone. During the call Dr. Eisenberg told her he still cared for her and asked her to help him get out of the "mess" with the Health Department. (T. 97-99)

41. Dr. Hoffman testified that counseling is a form of psychotherapy. She testified that when a physician treats a patient utilizing the 12-step model or program as the basis of their treatment or counseling, they are conducting psychotherapy. (T. 382) Dr. Hoffman testified that utilization of the 12-step model is an important part of any treatment of an addicted patient. She testified that it is a large part of the treatment of addicts and that this is an appropriate treatment modality. She testified that she herself had used this model as part of her treatment of patients. She testified that when non-psychiatrist physicians use this approach in their treatment those individuals are engaging in a form of treatment that is done by psychiatrists. So what they are doing with the patient is, or could be, the same as what a psychiatrist is doing with a patient. (T. 384-385) Dr. Hoffman testified that when a physician provides counseling to a patient based upon the 12-step model he or she is practicing psychotherapy. (T. 382)

42. Dr. Eisenberg identified himself as practicing addiction psychiatry on his physician profile. Although it is clear that Dr. Eisenberg is not a trained psychiatrist, Dr. Eisenberg claims he choose to identify himself as practicing addiction psychiatry because of all the AMA designated codes, this designation code came the closest to describing what he

actually did. Dr. Eisenberg has no hospital affiliations; he performed no laboratory tests and requested none for Patient A. Dr. Eisenberg did not obtain a medical history or perform or request physical examinations for Patient A. Dr. Eisenberg attempted to treat psychiatric disorders with talk therapy. That is why he designated himself as practicing addiction psychiatry.

43. Dr. Eisenberg filled out a written application for his physician profile and signed it. On this application he designated "addiction psychiatry" as his field of practice. Exhibit 7 documents this fact. Dr. Eisenberg identified his signature. (T. [3/15/10] 252)

44. Ms. Liberatore testified that because of an error on the part of her office staff, the material supplied by Dr. Eisenberg in his 2004 handwritten application did not get processed into the data bank. She testified that, based upon her review of the data bank, Dr. Eisenberg entered his on-line profile in July 2008 and again added "addiction psychiatry" as his field of practice. According to Ms. Liberatore, no one, other than the physician, including the DOH and her staff, has access to make changes to the on-line surveys. Access requires a password created by the physician. (T. 540-542 548, 625)

45. Dr. Eisenberg wrote a letter to Maximus requesting changes to his profile only after he was informed by the Department of Health, in a letter to him offering him an interview, that he was being investigated for having an inappropriate relationship with Patient A. (T. [3/15/10] - 249-252)

46. Dr. Hoffman testified that she has worked with many physicians who have special training in addiction but who are not psychiatrists. Generally, those physicians primary treatment deals with medical interventions. (T. 380) There is no evidence that Dr. Eisenberg provided any medical evaluation, care or intervention for Patient A.

47. Dr. Hoffman testified that when a physician's primary form of treatment is counseling or psychotherapeutic treatment, he or she should be informed about those techniques and should have received training to do so. (T.381) Dr. Eisenberg's sole treatment of Patient A involved counseling/psychotherapy for addiction. However, his failure to receive training is not a defense to his failure to meet appropriate practice and ethical standards.

48. Dr. Eisenberg's claim that he was forced to continue the personal, counseling and sexual relationship with Patient A in order to prevent her suicide is not only refuted by the evidence but it is irrational. The record, and especially Exhibits 4, 12, 14, 16, 20, and 31, unequivocally establish that Dr. Eisenberg initiated contact with Patient A on many occasions and engaged in a personal and sexual relationship with Patient A for his own gratification and at the expense of Patient A's well being.

49. Dr. Eisenberg admitted that he did not refer Patient A to another physician or therapist. This is evidence of the fact that he encouraged Patient A's dependency upon him and that he was gratified by the relationship. Dr. Eisenberg admitted that, in spite of all the difficulty he experienced separating from Patient A because of her suicidal threats, he never contacted any of her therapists at any of the facilities where she was treated. This fact also supports the conclusion that, at least for a considerable period of time, he derived gratification from their relationship and then manipulated her to cover up his behavior.

50. Dr. Eisenberg admitted that, following their phone sex in October of 2007, he knew that what he had done with Patient A was wrong. (T. [3/15/10] 185-190) At page 185 in the transcript, Dr. Eisenberg states "I so regret doing that." At page 188, Dr. Eisenberg testified that he wanted to say to Patient A "I am so sorry, I really made a

mistake." At page 185, Dr. Eisenberg testified that he knew it was one of the worst mistakes of his life. He testified that he wanted to explain to her "...what I had done that was totally on me, ...I made a terrible mistake that's on me, it has nothing to do with you and I just want to say I am sorry." (T. [3/15/10]189-190) However, in spite of recognizing that the sexual interaction was wrong and harmful and that it was his responsibility to stop, he chose to continue the sexual relationship. The record shows that he encouraged the sexual relationship and participated in intensifying it.

51. Dr. Eisenberg admitted to the sexual behavior between himself and Patient A because he was forced to. The letters, phone records and actual text messages document Patient A's account of the relationship. (T. 71,73,82,98)

52. On or about March 18, 2007, Dr. Eisenberg wrote a prescription for Patient A for Suboxone, a drug which is used to treat opioid addiction. At the same time, Dr. Eisenberg dispensed Suboxone to Patient A from a quantity he kept in his office from medication discarded by other patients. Dr. Eisenberg dispensed Suboxone to Patient A without obtaining or recording a sufficient history. (T. 306-307)

53. Respondent dispensed Suboxone without insuring that the patient was not abusing alcohol. Respondent inappropriately dispensed and prescribed Suboxone to Patient A without performing a requisite pregnancy test. In addition, Dr. Eisenberg inappropriately prescribed Suboxone to Patient A in spite of the fact that she tested positive for Benzodiazepines. Benzodiazepines and alcohol taken with Suboxone increase the risk of respiratory arrest. Patient A was an active binge alcoholic. It was a deviation from acceptable medical standards to dispense Suboxone to Patient A without administering a breathalyzer test. It was a deviation from acceptable medical standards to dispense

Suboxone and prescribe Suboxone to Patient A given that she tested "positive" for Benzodiazepines and Dr. Eisenberg admitted he believed that she was abusing Benzodiazepines. (T. 459-462) It was a deviation from acceptable medical conduct to dispense and prescribe Suboxone to Patient A without administering a pregnancy test, as Suboxone has not been established safe in pregnancy.

54. Although Dr. Salsitz testified that Dr. Eisenberg's prescribing of Suboxone was acceptable, he cautioned that, in his own practice, before prescribing Suboxone, he does a complete history. (T. 922-935)

55. Dr. Salsitz testified that Dr. Eisenberg practices medicine "differently" than he does and that he did not condone Respondent's behavior with Patient A. (T. 969)

CONCLUSIONS OF LAW

Pursuant to the Findings of Fact as set forth above, the Hearing Committee unanimously concludes that the Factual Allegations and Specifications as set forth in the Statement of Charges, are resolved as follows:

1. The First Specification of professional misconduct, as set forth in the Statement of Charges, is **NOT SUSTAINED;**
2. The Second Specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED;**
3. The Third and Fourth Specifications of professional misconduct, as set forth in the Statement of Charges, are **NOT SUSTAINED;**

4. The Fifth Specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**;

5. The Sixth Specification of professional misconduct, as set forth in the Statement of Charges, is **NOT SUSTAINED**;

6. The Seventh Specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**;

7. The Eighth Specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**;

These specifications of professional misconduct are listed in New York Education Law §6530. This statute sets forth numerous forms of conduct, which constitute professional misconduct, but does not provide definitions of the various types of misconduct. The definitions utilized herein are set forth in a memorandum prepared by the General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law," dated January 9, 1996, sets forth suggested definitions for gross negligence, negligence, gross incompetence, and incompetence.

The following definitions were utilized by the Hearing Committee during its deliberations:

Gross Negligence is negligence that is egregious, i.e., negligence involving a serious or significant deviation from acceptable medical standards that creates the risk of potentially grave consequence to the patient. Post v. New York State Department of Health, 245 A.D. 2d 985, 986 (3rd Dept. 1997); Minielly v. Commissioner of Health, 222 A.D. 2d

750, 751-752 (3rd Dept. 1995). Gross negligence may consist of a single act of negligence of egregious proportions, or multiple acts of negligence that cumulatively amount to egregious conduct, Rho v. Ambach, 74 N.Y, 2d 318, 322 (1991). A finding of gross negligence does not require a showing that a physician was conscious of impending dangerous consequences of his or her conduct.

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

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.

Using the above-referenced definitions as a framework for its deliberations, the Hearing Committee made the following conclusions of law pursuant to the factual findings listed above. All of the above conclusions resulted from a unanimous vote of the Hearing Committee.

In arriving at its Conclusions of Law, the Hearing Committee carefully reviewed the Exhibits admitted into evidence, the transcripts of the eight (8) hearing days, the Department's Proposed Findings of Fact, Conclusions of Law, and Sanction as well as the Respondent's Proposed Findings of Fact and Conclusions of Law. During the course of its deliberations on these charges, the Hearing Committee considered the following instructions from the ALJ:

1. The Committee's determination is limited to the Allegations and Charges set forth in the Statement of Charges. (Appendix I)

2. The burden of proof in this proceeding rests on the Department. The Department must establish by a fair preponderance of the evidence that the allegations made are true. Credible evidence means the testimony or exhibits found worthy to be believed. Preponderance of the evidence means that the allegations presented are more likely than not to have occurred (more likely true than not true). The evidence that supports the claim must appeal to the Hearing Committee as more nearly representing what took place than the evidence opposed to its claim.

3. The specifications of misconduct must be supported by the sustained or believed allegations by a preponderance of the evidence. The Hearing Committee understands that the Department must establish each and every element of the charges by a preponderance of the evidence and, as to the veracity of the opposing witnesses; it is for the Hearing Committee to pass on the credibility of the witnesses and to base its inference on what it accepts as the truth.

4. Where a witness' credibility is at issue, the Committee may properly credit one portion of the witness' testimony and, at the same time, reject another. The Hearing Committee understands that, as the trier of fact, they may accept so much of a witness' testimony as is deemed true and disregard what they find and determine to be false. In the alternative, the Hearing Committee may determine that if the testimony of a witness on a material issue is willfully false and given with an intention to deceive, then the Hearing Committee may disregard all of the witness' testimony.

5. The Hearing Committee followed ordinary English usage and vernacular for all other terms and allegations. The Hearing Committee was aware of its duty to keep an open mind regarding the allegations and testimony.

EVALUATION OF TESTIMONY

With regard to the testimony presented, the Hearing Committee evaluated all the witnesses for possible bias or motive. The witnesses were also assessed according to their training, experience, credentials, demeanor, and credibility. The Hearing Committee considered whether the testimony presented by each witness was supported or contradicted by other independent objective evidence.

The central witnesses in this case were Patient A for the Department and Doctor Eisenberg for himself. The panel found that the testimony of Patient A was not fully persuasive due to her history of alcohol and substance abuse. She had testified to numerous blackouts from alcohol abuse, so her testimony, by itself, was not compelling. Nevertheless, on review of all the testimony, the panel finds that Patient A has no motive to lie or misrepresent. It is also noted that Patient A's testimony is corroborated by letters, phone records, text messages, hospital records and Dr. Eisenberg's own testimony. The Hearing Committee did not rely solely on the testimony of Patient A in reaching its conclusion that the Respondent's license should be revoked. The panel looked to the entirety of the record, including the testimony of the expert witnesses, the text messages, and the admissions made by Doctor Eisenberg himself.

The panel concluded that Dr. Eisenberg was not credible. He was consistently evasive and, on several occasions, he distorted the truth. The Hearing Committee noted that Dr. Eisenberg placed a CV in evidence, which misrepresented his education and omitted his affiliation at Syosset Hospital, a facility he was fired from. Dr. Eisenberg also

withheld information on his New York State licensure application regarding his medical education in Mexico. (T. 745, 773; T. [3/15/10] 260)

The panel did not believe Dr. Eisenberg when he claimed that his relationship with Patient A was an isolated mistake that he will not repeat. Dr. Eisenberg recognized in October of 2007, when phone sex began, that he had made a terrible mistake and that it was his responsibility to stop the sexual communication between them. Yet, Dr. Eisenberg continued in this sexual relationship for almost two years and encouraged the relationship to intensify. This is established by Patient A's testimony, cell phone records, e-mail, text messages, letters and Dr. Eisenberg's own testimony.

Dr. Nadler, a licensed psychologist, testified on behalf of Dr. Eisenberg. Dr. Nadler acknowledged that Dr. Eisenberg's behavior with Patient A crossed appropriate professional boundaries and that he behaved in a way that was injurious to the patient. (T. 868) Dr. Nadler speculated that Dr. Eisenberg's behavior toward Patient A was a result of insufficient training on the issue of professional boundaries and lack of therapy which he needed to address personal issues which led to this type of relationship. What Dr. Nadler didn't know or failed to appreciate is that Dr. Eisenberg's breach of ethical boundaries did not result from lack of knowledge or treatment. Dr. Eisenberg testified that, in October of 2007, he did in fact know that the phone sex he engaged in with Patient A was wrong and that it was his responsibility to end it. His understanding was clear in his testimony. In spite of that understanding Dr. Eisenberg continued to engage in sexual behavior with Patient A. (T. 734, 743)

It is also clear from the record that Dr. Eisenberg never reached out for help to any of Patient A's other health care providers or referred Patient A for treatment with another

addiction specialist. Once the sexual relationship began, Dr. Eisenberg never reached out for help with Patient A to Dr. Behr, Patient A's parents, or any other physicians, or substance abuse specialists . (T. 80)

Dr. Nadler further testified that with psychiatric treatment Dr. Eisenberg could gain insight into his behavior and correct it. However, the panel noted that Dr. Eisenberg testified that throughout his sexual relationship with Patient A he actually was in psychiatric treatment. (T. 760) Dr. Nadler testified that he reviewed Dr. Hoffman's testimony, Dr. Eisenberg's records for Patient A and Dr. Behr's records for Patient A. (T. 803) Dr. Nadler did not review Dr. Eisenberg's testimony so he was unaware that Dr. Eisenberg acknowledged early on that he had violated ethical boundaries and, in his own words, committed "a terrible mistake." (T. [3/15/10] 185) Dr. Nadler was also unaware of the fact that during the time Dr. Eisenberg was involved with Patient A, he was in psychiatric treatment.

In addition to the main witnesses, Dr. Eisenberg and Patient A, the Hearing Committee considered the credibility of the other witnesses, and thus the weight to be accorded their testimony. The Department presented several other witnesses and the panel found all of them credible and persuasive. The expert witness of the Department, Doctor Amy S. Hoffman, presented a cogent and persuasive scientific case that, in the estimation of the panel, clearly established, by a preponderance of the evidence, that Respondent was guilty of misconduct.

Dr. Hoffman testified for the Department and the panel found her testimony persuasive. She is board certified in psychiatry and addiction psychiatry. Between 1984 and 1991 Dr. Hoffman worked at Beth Israel Hospital in New York City in the Dual

Diagnosis Unit where she treated patients with a diagnosis of chemical dependency and an additional psychiatric diagnosis. In 1991 she became Director of Chemical Dependency services at Elmhurst Hospital and Queens Hospital. In 2008 she became chair of the Department of Psychiatry at Lincoln Hospital in the Bronx, New York. (T .290-292) In her capacity as Director of Chemical Dependency at Elmhurst Hospital and Queens Hospital she was responsible for all clinical services related to treatment of patients with chemical dependency. In that capacity, she supervised psychiatrists, psychologists, internists, social workers, drug counselors and residents all of whom were treating patients with chemical dependency. (T. 293) The panel found her to be well qualified and appreciated her testimony as an expert in this case.

Although Dr. Eisenberg contends that he did not derive any personal gratification from the sexual contact between himself and Patient A, the objective evidence clearly refutes this. This contact went on for years despite his own admission that he knew he was violating his ethical responsibilities to Patient A. The letters he wrote to Patient A demonstrate his aggressive pursuit of her. The telephone records in evidence demonstrate thousands of text messages and phone calls coming from Dr. Eisenberg to Patient A. The text messages in evidence would lead any person reading them to believe that both parties were obtaining sexual and personal gratification from the interaction. The fact that Dr. Eisenberg gave Patient A cell phones, phone cards, and train tickets -- all so that she could maintain contact with him -- is further evidence that he actively participated in this sexual relationship with an ill patient. These undisputed facts are overwhelming evidence that Dr. Eisenberg obtained personal gratification and or benefit from their romantic and sexual interaction. Even if Dr. Eisenberg did not get sexual gratification from his relationship with

Patient A, his personal beliefs are not relevant. Dr. Hoffman testified that what is relevant is that the Dr. Eisenberg's statements and behavior -- supported by the actual sexual text messages -- would cause any patient, indeed any person, to believe that Dr. Eisenberg was receiving gratification. (T. 352-353)

The record shows that Respondent visited Patient A when she was in the hospital in Long Island and wrote numerous letters to her, which were highly indicative that he continued the same counseling he began in his office in January 2007. (Ex. 4) In November of 2007, when Patient A left North Shore Hospital, Respondent told her to come to his office and he attempted to arrange for her to stay at a "sober house" and in the Spring of 2009 he gave her cell phones so that she could maintain contact with him and, in July of 2009, he arranged for Patient A to be a resident at New Directions, a treatment facility where he sends many of his patients (finding 20).

The sexual relationship between Patient A and Dr. Eisenberg grew out of the professional one. He actively encouraged her complete dependence upon him. The romantic and sexual relationship between them grew out of Patient A's psychiatric illness, anxiety, sleep disorder, flashbacks, fear of abandonment and drug abuse. Dr. Eisenberg acknowledged this in his testimony. (T. [3/15/10] 183-186)

Having been forced to acknowledge the sexual relationship between them, Dr. Eisenberg contends that he was forced into this relationship in order to save Patient A's life. This too is refuted by the evidence. Dr. Eisenberg's letters to Patient A make it clear that he was actively pursuing their relationship for his own benefit. Dr. Eisenberg regularly traveled to New York City to be with Patient A. Dr. Eisenberg telephoned and text massaged Patient A constantly. Dr. Eisenberg gave Patient A phone cards, cell phones,

train tickets and money in order to maintain and encourage their relationship. (T. 71,73,82,98)

The letters sent to Patient A while she was a resident of various treatment facilities are a clear demonstration of Dr. Eisenberg mixing the offer of therapy and counseling with satisfaction of his own personal needs. Where the therapist seeks to gratify his own needs rather than meet the needs of the patient, this is a violation of boundaries and a deviation from acceptable care. In letters sent to Patient A at treatment facilities, Dr. Eisenberg frequently wrote, "I love you, thank you for allowing me to be part of your life." (Ex. 4, p. 1) This type of communication from a therapist, according to Doctor Hoffman, will draw the Patient's emotional engagement away from the treatment being offered to her and be detrimental to her recovery. (T. 332-332)

The fact that Patient A may, at times, have been suicidal or, at times, engaged in self-destructive behavior was precipitated by her illness not by her lack of contact with Dr. Eisenberg. The fact that Dr. Eisenberg continues to maintain this position is evidence that he is not fit to treat patients suffering from addiction who may engage in self-harm or suicidal behaviors. The fact that Dr. Eisenberg contends that Patient A is only alive today because he remained in a dependent relationship with her which involved a bizarre mixture of therapy and sex is either self-delusion or a lie.

In January, 2008, Patient A began living at a residential facility for women. Initially she was not able to leave this facility or have her cell phone. During this time, she and Dr. Eisenberg communicated by letters and pay phones. In February, when she was given more freedom, Patient A and Dr. Eisenberg began meeting weekly and engaging in physical sexual contact. (T. 75-89) According to Patient A, The contact included hugging,

kissing, masturbation, and oral sex. Patient A testified that although she wanted to have intercourse with Dr. Eisenberg he never allowed any sexual contact, which involved his removing his clothes. She testified although he touched her beneath her clothing, she only touched him over his clothing because that was all he would allow her to do. Patient A obtained her cell phone again in February 2008 (T. 74, 76-77) and from February 2008 through September 2008, Patient A and Dr. Eisenberg remained in constant phone contact. (Ex. 14, Exhibit 12, 12A)

The most telling evidence that Dr. Eisenberg used Patient A to meet his own needs is the fact that, after a total absence of communication between them from September 2008 to the Spring of 2009, Dr. Eisenberg contacted the patient on line through face book. He contacted Patient A after learning that he was being investigated by The Office of Professional Medical Conduct. (T. [3/15/10] 250) In the Spring of 2009, Dr. Eisenberg resumed contact with Patient A by providing her with cell phones and engaging in regular contact with her which included sexual talk and text messaging. (Ex.16, 20, 31 T. 97-98, 215-216)

Patient A refused Respondent's request to write a letter to the Health Department but agreed to speak to his lawyer, Mr. Bateman. Dr. Eisenberg questioned Patient A about what she had said to OPMC. Before seeing Mr. Batemen, Dr. Eisenberg told Patient A that it was important get across that he was not her doctor, that he was not a psychiatrist, and that they didn't have sexual intercourse. In the spring of 2009 when she and Dr. Eisenberg resumed contact Patient A felt attached to Dr. Eisenberg and stated that she loved him. (T. 100). From her testimony, it appears that she agreed to go to Mr. Bateman's office because Dr. Eisenberg exerted emotional pressure upon her to do so. (T. 101,108)

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

SEXUAL CONTACT BY PSYCHIATRIST WITH PATIENT

The first specification charged Respondent with committing professional misconduct as defined in N.Y. Educ. Law §6530(44)(a) by engaging in physical contact of a sexual nature between the licensee and a patient in the practice of psychiatry.

VOTE: NOT SUSTAINED (3-0)

The panel concluded, unanimously, that Dr. Eisenberg was not practicing psychiatry, *per se*, and so could not sustain this charge. The panel recognized that Dr. Eisenberg used psychotherapy to treat Patient A and that addiction counseling is a form of psychotherapy. Psychotherapy is a form of treatment that involves the patient talking about his or her problems and a therapist using the verbal exchange between them to help them get better. It encompasses many different types of therapy including the 12-step model used by Dr. Eisenberg. (T. 466). Psychiatry is a field of medicine, which deals with the treatment of mental disorders. (T. 363)

It is conceded that when non-psychiatrist physicians treat addiction with talk therapy they are engaging in a form of treatment or providing a form of treatment also done by psychiatrists. (T. 384) The fact that such a physician may not have the same level of training to provide this treatment does not change the fact that the physician is treating a psychiatric illness with talk psychotherapy, which is part of the practice of psychiatry. (T. 394-395) Nevertheless, the fact remains that Dr. Eisenberg is not a psychiatrist and so the panel concluded unanimously that this charge could not stand.

The panel recognized that sexual activity between a therapist and a patient is recognized as a severe boundary violation that is likely to cause severe harm to the patient (T. 465) and the treatment of mental disorders with psychotherapy requires the therapist to create a safe space for the patient to talk about and experience very difficult feelings. The information that a psychiatrist would have as a result of treatment would be exploited if the therapist were to engage in a personal and a sexual relationship. (T. 365)

The American Psychiatric Association absolutely proscribes sexual relationships with current and former patients. The reason for the absolute ban is a recognition in the psychiatric community of the likelihood of harm coming to patients as a result of that activity due to the nature of the relationship. There is need for a trusting relationship, a safe space where the patient can talk about very difficult experiences without any fear that those thoughts, emotions and feelings expressed by the patient would be used or exploited by the therapist in a personal relationship. (T. 364-365) While it is true that the work of Dr. Eisenberg is quite similar to the care provided by psychiatrists, he was not and never has been a psychiatrist and for this reason the panel was unanimous in its determination not to sustain this charge.

In determining not to sustain this specification, the panel is fully aware that alcohol addiction is a psychiatric disorder designated by The Diagnostic and Statistical Manual of Mental Disorders and that Dr. Eisenberg treated Patient A for her other psychiatric disorders including anxiety disorder, depression, self-injurious behavior (including suicide attempts), sexual impulsivity, low self-esteem, fear of abandonment. Nevertheless, the panel found that he did so as a physician and not as a psychiatrist and so could not sustain this charge.

SECOND SPECIFICATION

MORAL UNFITNESS

The second specification charged Respondent 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.

VOTE: SUSTAINED (3-0)

The panel unanimously determined that the record clearly established that Dr. Eisenberg was morally unfit to practice medicine. The American Medical Association sets forth their standard in ethical opinion 8:14 on sexual misconduct in the practice of medicine. It states that sexual contact with a current patient is unethical and that sexual or romantic relations with a former patient are unethical if the physician used trust, knowledge, emotions or influence derived from the previous relationship. These standards are recognized by the medical community. (T. 364-367) This is exactly what Dr. Eisenberg did with Patient A and thus the panel felt compelled to sustain this charge.

Dr. Eisenberg's professional relationship with Patient A was still ongoing when sexual contact began. Hugging, hand holding, flirting began three months into treatment. (T.259-261) This is indicative of a reciprocal intimate relationship where both parties are getting gratification from the contact. This does not comport with appropriate medical treatment. (T. 343-344)

Although Dr. Eisenberg claims that the physician-patient relationship between him

and Patient A terminated at the end of April 2007, telephone records document continued cell phone contact except for periods of times when she was in facilities which did not permit her to have her cell phone. (See Exhibit 12 A)

An example of the typical text and phone contact is evidenced on March 2, 2008. Text messaging was initiated by Dr. Eisenberg at 12:29 AM and continued until 10:57 PM. (Ex.14, pp. 278-279) On April 14, 2008 Dr. Eisenberg began text messaging from his cell phone number to Patient A's cell phone number at 8:31 PM. Dr. Eisenberg continued text messaging Patient A until 11:37 PM. Patient A did not respond to Dr. Eisenberg's text messages until 11:50PM. Text messaging continued uninterrupted through 11:57 PM. Text messaging resumed On April 15, 2008 at 12:01 AM and continued. Dr. Eisenberg resumed text messaging Patient A at 2:54 AM. (Ex. 14, p. 348). On April 26 Dr. Eisenberg called Patient A at 12:51 AM. They remained on the phone for 80 minutes, (Ex. 14, p. 364). Dr. Eisenberg again called Patient A at 2:20 AM and they remained on the phone for 20 minutes. (Ex.14, p. 363) This pattern is representative of text messaging and phone calling between Patient A and Dr. Eisenberg from April 2008 through September 2008.

In order to terminate a doctor-patient relationship there not only must be clear representation by the physician that he or she will no longer treat the patient, but there must additionally be a cessation of contact. This did not occur. (T. 314-315, 725-726). The record clearly shows that that Dr. Eisenberg's professional relationship with Patient A was not terminated when the sexual, romantic relationship began.

The panel noted that, even if the doctor-patient relationship had been terminated, Dr. Eisenberg used and cultivated information he learned during the first four months of their treatment relationship to maintain Patient A's dependence upon him which began

early in their treatment, and that the therapy or counseling remained part of the personal and sexual relationship. (T. 367-368) Their romantic, sexual relationship was premised upon Patient A's feelings of isolation and fear of being abandoned because of her alcohol abuse and behaviors related to substance abuse. Their personal and romantic relationship was premised upon Dr. Eisenberg's knowledge of and use of Patient A's traumatic flashbacks, sexual abuse, suicidal behaviors, low self esteem, discord with her parents and her inability to support herself because of her addiction. Patient A's mental disorders and maladaptive behaviors were an essential part of the personal and sexual relationship between them. The record shows that if it were not for her serious mental illness and serious maladaptive, including self-injurious behaviors, there would have been no personal or sexual relationship between them. The panel concluded that if it were not for the dependence created and fostered by Dr. Eisenberg during the first four months of treatment there would have been no sexual relationship. (T.366-369)

Dr. Eisenberg had access to Patient A only because she was so sick. In Dr. Eisenberg's own words, his explicit sexual behavior began with Patient A in October 2007 right after she had been let go from a treatment program. She was again abusing alcohol, was beaten up and found unconscious in a hotel room. Dr. Eisenberg had access to Patient A only because, as her doctor, he understood the depth of her illness, the depth of her psychological pain, her fear of abandonment and hopelessness. There is no question, even according to Dr. Eisenberg's own description of their relationship, that to foster their personal romantic sexual relationship, he used what he learned during his treatment of her illness. (T. 176-178, 182-188, 193-194)

It is common in psychotherapy situations for the patient to develop positive and

sexual feelings for the therapist. When that happens it is the duty of the therapist to utilize this in the therapy to help the patient. It is the duty of the physician not to return the physical affection or engage in sexual activity with the patient. (T. 342)

Dr. Eisenberg followed no termination procedures with Patient A, and never told her he was terminating treatment. (T. 725-726, [3/12/10] 50-61, 141) Additionally, the letters in the record document clear evidence that throughout their personal relationship Dr. Eisenberg advised and counseled Patient A. (Ex. 4) The panel agreed with Dr. Hoffman that these letters are wholly inconsistent with the termination of treatment. (T.318-319)

In May of 2007 Patient A became too ill to be treated as an out-patient and she went as an in-patient at High Water Farm in Connecticut. The panel found that this move did not terminate the physician-patient relationship between Dr. Eisenberg and Patient A. Dr. Eisenberg never told Patient A that he was terminating his care of her as her physician. (725-726, T. [3/12/10] 141) Dr. Eisenberg, throughout this period, maintained continuous contact with Patient A. For example, Dr. Eisenberg continued to maintain phone contact with Patient A and he visited her when she was hospitalized. In addition, Dr. Eisenberg wrote letters to Patient A while she was at in-patient residential facilities. Exhibit 4 sets forth some of the letters he wrote to Patient A. (T. 699) Dr Eisenberg saw Patient A at his office after April 2007, as documented in hospital records and Dr. Behr's records. (Ex.9, p. 20, Franklin General Hospital record of June 6, 2007; Ex. 30 pp. 52,54) These records indicate, at page 51, that Patient A was discharged to her private psychotherapist, Dr. Eisenberg.

Furthermore, Dr. Eisenberg visited Patient A at treatment facilities. Dr. Eisenberg paid for phone cards and train tickets so that Patient A could maintain contact with him. (T.

70-74, 82, 52) In fact, Dr. Eisenberg testified that he provided Patient A with train tickets on a weekly basis because she always had problems she needed to discuss with him. (T. [3/15/10] 217)

Clearly, there was no termination of contact or termination of the doctor-patient relationship. Patient A testified that she never broke her contact with Dr. Eisenberg and that the contact was always a mixture of discussion of recovery and sex. (T. 49, 55, 58-59, 61, 77-78) This conclusion is supported by the telephone records in Exhibits 12 and 14 and the letters in Exhibit 4 as well as Dr. Eisenberg's own testimony. (T. 141 [3/12/10], 699)

The overwhelming evidence in this case clearly establishes that Doctor Eisenberg engaged in a sexual relationship with a very ill patient and that this act did her harm. The panel unanimously concluded that this misconduct is clear proof of his moral unfitness to practice medicine and so the panel sustained this charge.

THIRD SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

In the third specification Respondent was 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.

VOTE: NOT SUSTAINED (3-0)

The panel reviewed the entire record and found that this charge could not be sustained by the record in this case.

FOURTH SPECIFICATION

GROSS NEGLIGENCE

In the fourth specification Respondent was 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.

VOTE: NOT SUSTAINED (3-0)

The panel reviewed the entire record and found that this charge could not be sustained by the record in this case.

FIFTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

In the fifth specification Respondent was 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.

VOTE: SUSTAINED (3-0)

Incompetence is a lack of the skill or knowledge necessary to practice the profession. In this case, the panel found that Doctor Eisenberg did not use the knowledge or skill necessary to treat Patient A. He did not refer her to another professional when he should have and she suffered the consequences.

Accordingly, the panel determined, unanimously, that this charge was established by a preponderance of all the evidence in this case, and so this charge was sustained.

SIXTH SPECIFICATION
GROSS INCOMPETENCE

In the sixth specification Respondent was charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6) by practicing the profession of medicine with gross incompetence.

VOTE: NOT SUSTAINED (3-0)

The panel concluded, unanimously, that this charge could not be sustained as the record established incompetence but only for Patient A. While the panel found that Doctor Eisenberg did not use the knowledge or skill necessary to treat Patient A and did not refer her to another professional when he should have; nevertheless the record shows this incompetence for one patient only. The panel was of the opinion that this circumstance did not rise to the level of gross incompetence and so determined, unanimously, that this charge was not sustained.

SEVENTH SPECIFICATION
FAILURE TO MAINTAIN RECORDS

In the seventh specification Respondent was 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.

VOTE: SUSTAINED (3-0)

The records maintained by Doctor Eisenberg are woefully inadequate. The records for Patient A are devoid of history, diagnosis, treatment plans, and evaluations. They do not reflect what transpired in this case and do not show the treatment rendered this patient.

The panel was unanimous in finding that this charge should be sustained.

EIGHTH SPECIFICATION
WILLFUL PATIENT HARASSMENT, ABUSE, OR INTIMIDATION

In the eighth specification, Respondent was charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(31) by willfully harassing, abusing, or intimidating a patient either physically or verbally.

VOTE: SUSTAINED (3-0)

The panel concluded that the entire relationship between Doctor Eisenberg and

Patient A was abusive. He took advantage of the disproportionate power in their relationship to have his way with her sexually. The panel concluded that sexual intercourse was never established, but recognized the nature of the phone sex and the physical contact was such that the relationship could and should be deemed abusive.

The panel did not find harassment but did find intimidation in that Doctor Eisenberg, at one point, did threaten to kill himself so as to impose his will on Patient A and this panel found to be intimidation under the facts and circumstances of this case.

HEARING COMMITTEE DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, after due deliberation, unanimously determined that the second, fifth, seventh and eighth charges and specifications raised against Respondent were sustained. The Committee has a responsibility to protect the patients of the State. The issue before this Committee is to choose a penalty that offers the best protection to the people of the State. The Committee finds that the Respondent has committed sufficiently egregious misconduct that is worthy of the revocation of his medical license. The Committee concludes that the Respondent's conduct in this matter has so violated the public trust with regards to Patient A that revocation is the only appropriate penalty under the circumstances of this case.

In reaching this conclusion, the Committee considered the full range of penalties available in a case such as this. The Committee determined that imposing a chaperone

would be impossible and monitoring his records would be wholly ineffective to protect future patients. Dr. Eisenberg admitted that he knew immediately after the first "phone sex" incident that he had violated his responsibilities to Patient A and yet he continued for more than one year to engage in a mixture of counseling and sex. Additionally after learning about the OPMC investigation Dr. Eisenberg re-engaged Patient A in the sexual activity in an effort to manipulate her. This type of behavior does not warrant education. Counseling or therapy would likely be ineffective as Dr. Eisenberg admitted being in treatment with a psychiatrist throughout his involvement with Patient A.

Additionally Dr. Eisenberg's persistent beliefs that he was forced to maintain and continue his relationship with Patient A to keep her from killing herself demonstrates either exceedingly poor judgment, total lack of insight or self-delusion. Dr. Eisenberg testified that he was in treatment during his relationship with Patient A. Dr. Eisenberg testified that since the commencement of this proceeding he has switched psychiatrists and feels that his current psychiatrist is now more helpful to him. Nevertheless throughout his testimony he was evasive and refused to address questions put to him. Throughout his testimony he insisted that he was forced to continue his relationship with Patient A to keep her alive.

It is clear, from the facts of this case, that a penalty requiring the Respondent undergo psychiatric treatment would be no guarantee of protection to the public. The panel noted that Dr. Eisenberg's behavior toward Patient A was particularly insidious and cruel. Dr. Eisenberg continuously mixed sex with counseling. He used what he learned about Patient A in treatment and what he understands to be the weaknesses of substance abusers to engage her in an isolating, dependant and sexual relationship. If the purpose of psychotherapy is to help the patient go out into the world and form more productive

relationships and fulfill their potential, then what Dr. Eisenberg did to Patient A was the exact opposite. Dr. Eisenberg didn't just cross a boundary and have sex with a patient; he kept this patient isolated and sick.

The Committee concluded that the only way to ensure the safety of the public is to revoke Respondent's medical license. Any other penalty would risk a recurrence of this behavior. The public should not bear that risk.

ORDER

IT IS HEREBY ORDERED THAT:

1. The First, Third, Fourth, and Sixth Specifications of professional misconduct, as set forth in the Statement of Charges, are **NOT SUSTAINED;**
2. The Second, Fifth, Seventh, and Eighth Specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED;**
3. The Respondent's license to practice medicine is hereby **REVOKED;**

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

DATED: Oceanside, New York

August, 20, 2010

REDACTED

Alan Kopman, FACHE, CHAIR

Diane M. Sixsmith, M.D.

Krishna R.S. Gujavarty, M.D

TO: ..

Michael Eisenberg, M.D.

REDACTED

Michael Eisenberg, M.D.
One Expressway Plaza, Suite 201,
Roslyn Heights, New York 11577

Alexander G. Bateman, Esq.
Attorney for Dr. Eisenberg
Ruskin, Moscou, & Faltischek, P.C.
1425 RXR Plaza, East Tower, 15th Floor
Uniondale, New York 11556

Jean Bresler, Esq.
Associate Counsel
New York State Department of Health
145 Huguenot Street
New Rochelle, N.Y. 10801

APPENDIX I

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

IN THE MATTER
OF
MICHAEL EISENBERG, M.D.

NOTICE
OF
HEARING

TO: Michael Eisenberg, M.D.
REDACTED

PLEASE TAKE NOTICE:

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 November 20, 2009, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, New York, NY 10007, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here qcb

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the 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. JAMES HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (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.

Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of

the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

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

DATED: New York, New York
October 12, 2009

REDACTED


Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Jean Bresler
Associate Counsel
Bureau of Professional Medical Conduct
145 Huguenot Street
New Rochelle, NY 10801
914-654-7948

IN THE MATTER
OF
MICHAEL EISENBERG, M.D.

STATEMENT
OF
CHARGES

Michael Eisenberg, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 31, 1979, by the issuance of license number 139536 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Beginning on or about January, 2007 Respondent treated Patient A (identified in attached Appendix), for addiction to alcohol and related illness. Respondent's treatment of Patient A failed to meet accepted standards of medical practice, in that:
1. Beginning in or around June 2007, and at various times through September 2009 Respondent engaged in sexual conduct with Patient A.
 2. Throughout the period beginning January 2007 through September 2009, Respondent violated professional boundaries with Patient A in that he engaged in the following:
 - a. Respondent wrote letters of a personal nature to Patient A.
 - b. Respondent participated in and encouraged the exchange of approximately two thousand two

hundred personal and or sexual telephone calls and approximately twelve thousand personal and or sexual text messages with Patient A.

- c. Respondent paid Patient A's hotel bills in Connecticut and New York.
- d. Respondent provided Patient A with cell phones, phone cards and train tickets
- e. While Patient A was a resident of an in-patient treatment center, Respondent violated the rules of the treatment program by sending a letter to Patient A using a fictitious name and address.
- f. Respondent made numerous inappropriate statement to Patient A, including but not limited to "If you report me I will kill myself", "You have taken everything from me including my grandchild", "You are safe only with me, "You have caused my wife to throw me out of my house and I have to sleep in my office", and/or "You are causing me to loose my medical license", or words to that effect.
- g. Respondent engaged in repeated inappropriate physical contact and or sexual conduct with Patient A including hugging, kissing, phone sex, sexual talk, sexual text messaging, sexual touching, and/or oral sex.
- h. Respondent brought Patient A to Respondent's lawyer's office and instructed her what to communicate to his lawyer.

- i. Respondent requested that Patient A disclose to him her communications with OPMC.
 - j. Respondent repeatedly telephoned Patient A on or about April 2009, on a cell phone he provided to her, while she was detoxing at North Shore University Hospital. Respondent reprimanded Patient A for cooperating with OPMC and for providing OPMC with letters he had authored and information regarding cell phone communication between them.
3. Respondent failed to obtain or record a comprehensive history including a psychiatric history, substance use history, medical history, and family history.
4. Respondent inappropriately dispensed Buprenorphine to Patient A.
5. Respondent failed to make appropriate referrals to other physicians and/or healthcare professionals for patient A.
6. Respondent failed to obtain or record, a mental status examination.
7. Respondent failed to render or record a diagnosis for Patient A.
8. Respondent failed to create or record a treatment plan for Patient A.
9. Respondent failed to document numerous lengthy telephone sessions with Patient A.
10. Respondent failed to document two incidents when Patient A was transferred from his office to North Shore University Hospital.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

SEXUAL CONTACT BY PSYCHIATRIST WITH PATIENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(44)(a) by engaging in physical contact of a sexual nature between the licensee and the patient in the practice of psychiatry, as alleged in the facts of:

1. Paragraph A and A(1) and/or A(2) and A(2)(g).

SECOND SPECIFICATION

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

2. Paragraph A and A(1) and/or A(2) and A(2)(a) ,(b), (c), (d), (e), (f),(g) (h), (i), and/or (j).

THIRD 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:

3. Paragraph A and any of its subparagraphs.

FOURTH SPECIFICATION

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:

4. Paragraph A and its subparagraphs.

FIFTH 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:

5. Paragraph A and any of its subparagraphs.

SIXTH SPECIFICATION

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:

6. Paragraph A and its subparagraphs.

SEVENTH 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:

7. Paragraph A and A(3), (6), (7), (8), (9) and/or (10).

EIGHTH SPECIFICATIONS

WILLFUL PATIENT HARASSMENT, ABUSE, OR INTIMIDATION

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

8. Paragraph A and A1, A(2) and A(2),(b),(f),(g), (h), (i), and/or (j).

DATED: October 12, 2009
New York, New York

REDACTED

~~ROY NEMERSON~~
Deputy Counsel
Bureau of Professional
Medical Conduct