STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

December 15, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Stephen Coleman, M.D.
23 Woodland Drive
Sands Point, New York 11050

Michael S. Kelton, Esq.
Lippman, Krasnow & Kelton
711 Third Avenue
New York, New York 10017

Leslie Eisenberg, Esq.
NYS Department of Health
5 Penn Plaza – Sixth Floor
New York, New York 10001

RE: In the Matter of Stephen Coleman, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-343) 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), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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

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

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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

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

Sincerely,

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

IN THE MATTER OF STEPHEN COLEMAN, M.D.	DETERMINATION AND ORDER BPMC 00 - 343

DAVID T. LYON, M.D., (Chair), **PATRICK F. CARONE, M.D.**, and **DIANE C. BONANNO**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, ("ALJ") served as the Administrative Officer.

The Department of Health appeared by **LESLIE EISENBERG, ESQ.**, Assistant Counsel.

Respondent, **STEPHEN COLEMAN, M.D.**, appeared personally and was represented by **LIPPMAN, KRASNOW & KELTON LLP** by **MICHAEL S. KELTON, ESQ.**, of Counsel.

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

PROCEDURAL HISTORY

Date of Notice of Hearing:	June 19, 2000
Date of Statement of Charges:	June 19, 2000
Date of Service of Notice of Hearing and Statement of Charges:	June 28, 2000
Date of Answer to Charges:	July 21, 2000
Date of Amended Statement of Charges	August 2000, Received in evidence October 10, 2000
Date of Amended Answer	November 10, 2000
Pre-Hearing Conference Held:	July 31, 2000 & August 1, 2000
Hearings Held: - (First Hearing day):	August 1, 2000 September 8, 2000 October 10, 2000
Intra-Hearing Conferences Held:	August 1, 2000 October 10, 2000
Department's Proposed Findings of Fact, Conclusions of Law and Sanction:	Received November 10, 2000
Respondent's Summation and Proposed Findings of Fact and Conclusions of Law:	Received November 13, 2000
Witnesses called by the Petitioner, Department of Health:	Patient A [1] Amy S. Hoffman, M.D.
Witnesses called by the Respondent, Stephen Coleman, M.D.:	Sally Corriel Robert Schweitzer, Ed. D. Stephen Coleman, M.D.
Deliberations Held: (last day of Hearing)	November 28, 2000

[1] Patient A is identified in the Appendix annexed to the Amended Statement of Charges (Department's Exhibit # 1-A).

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (§230 et seq. of the Public Health Law of the State of New York ["**P.H.L.**"]).

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("**Department**") pursuant to §230 of the P.H.L.

STEPHEN COLEMAN, M.D., ("**Respondent**") is charged with nine specifications of professional misconduct, as delineated in §6530 of the Education Law of the State of New York ("**Education Law**"), former §6509(9) of the Education Law and Volume 10 of the New York Code of Rules and Regulations Part 29.

Respondent is charged with professional misconduct by reason of: (1) engaging in physical contact of a sexual nature with a psychiatric patient[2]; (2) engaging in conduct in the practice of medicine that evidences moral unfitness to practice medicine[3]; (3) practicing the profession fraudulently[4]; (4) practicing the profession with negligence on more than one occasion[5]; (5) practicing the profession with incompetence on more than one occasion[6]; (6) practicing the profession with

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[2] Education Law §6530(44) (formerly §6509[9] and 10 NYCRR §29.1[b][5] and §29.4[a][5][i]) and see also the First Specification of the Amended Statement of Charges (Department's Exhibit # 1-A).

[3] Education Law §6530(20) and see also the Second Specification of the Amended Statement of Charges (Department's Exhibit # 1-A).

[4] Education Law §6530(2) and see also the Third Specification of the Amended Statement of Charges (Department's Exhibit # 1-A).

[5] Education Law §6530(3) and see also the Fourth Specification of the Amended Statement of Charges (Department's Exhibit # 1-A).

[6] Education Law §6530(5) and see also the Fifth Specification of the Amended Statement of Charges (Department's Exhibit # 1-A).

gross negligence[7]; (7) practicing the profession with gross incompetence[8]; (8) failing to maintain a record for a patient which accurately reflects the care and treatment of the patient[9]; and (9) willfully making or filing a false report[10].

These Charges and Specifications of professional misconduct result from Respondent's alleged conduct and treatment of Patient A at his office in New York City.

Respondent admits to being licensed and registered to practice medicine in New York and admits to engaging in a personal and sexual relationship with Patient A from on or about January 3, 1991 to on or about February 9, 1991. Respondent denies all specifications of misconduct.

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

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent documentary evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Where there was conflicting evidence the Hearing Committee considered all of the evidence presented and rejected what was not relevant, believable

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[7] Education Law §6530(4) and see also the Sixth Specification of the Amended Statement of Charges (Department's Exhibit # 1-A).

[8] Education Law §6530(6) and see also the Seventh Specification of the Amended Statement of Charges (Department's Exhibit # 1-A).

[9] Education Law §6530(32) and see also the Eighth Specification of the Amended Statement of Charges (Department's Exhibit # 1-A).

[10] Education Law §6530(21) and see also the Ninth Specification of the Amended Statement of Charges (Department's Exhibit # 1-A).

or credible in favor of the cited evidence. The Department, which has the burden of proof, was required to prove its case by a preponderance of the evidence. The Hearing Committee unanimously agreed on all Findings of Fact. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was licensed to practice medicine in New York State on August 14, 1968 by the issuance of license number 102022 by the New York State Education Department (Department's Exhibits # 1-A & # 2); (Respondent's Exhibit # A-1)[11].

2. Respondent is currently registered with the New York State Education Department to practice medicine for the period of May 2000 through April 2002 (Department's Exhibit # 1-A); (Respondent's Exhibit # A-1).

3. The State Board for Professional Medical Conduct has obtained personal jurisdiction over Respondent (determination made by the ALJ; Respondent had no objection regarding service effected on him); (P.H.L. §230[10][d]); [P.H.T-9][12].

4. From at least 1989 to the present, Respondent was and is a physician practicing psychiatry with an office located at 200 East 33rd Street, Apt. 2F, New York, New York (Department's Exhibit # 11); (Respondent's Exhibits # A-1 & B).

5. Respondent was board certified as a psychiatrist in 1975 (Department's Exhibit # 11); (Respondent's Exhibit # B).

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[11] Refers to exhibits in evidence submitted by the New York State Department of Health (Department's Exhibit #) or by Dr. Stephen Coleman (Respondent's Exhibit #). Respondent's Exhibit A-1 is the Amended Answer admitted in evidence by the ALJ on November 13, 2000.

[12] Numbers in brackets refer to Hearing transcript page numbers [T-]; to Pre-Hearing transcript page numbers [P.H.T-] or to Intra-Hearing transcript page numbers [I.H.T-]. The Hearing Committee did not review the Pre-Hearing or the Intra-Hearing transcripts.

6. Respondent was certified as Diplomat of the American Academy of Pain Management in 1991 (Respondent's Exhibit # B); [T-330-336, 488-490].

PATIENT A

7. Respondent treated Patient A from July 18, 1989 through February 10, 1997 (Department's Exhibits # 3 & # 7 & # 8); [T-180-182].

8. Patient A first went to her internist, Dr. Ackert, who in turn referred Patient A to numerous specialists to try to determine the cause of her complaints. After evaluations and different treatment modalities, Patient A still did not get relief. Eventually, Patient A's internist told her that he could find nothing physically wrong with her and that perhaps, she should see a psychiatrist. Dr. Ackert provided Patient A with three names of psychiatrists, including Dr. Coleman's (Department's Exhibit # 3); [T-24, 64-67, 356, 364].

9. Patient A presented to Respondent with dizziness, cold sweats, nervousness, anxiety and multiple somatic complaints including headaches, neck and back pain (both upper and lower), pain in her arms, chest and back, ringing in her ears, stomachaches and diarrhea (Department's Exhibit # 3); [T-22-28].

10. Respondent's diagnoses at the conclusion of his first session with Patient A were anxiety attacks, chronic intractable back pain and significant psychological stress (Department's Exhibit # 3); [T-362-363].

11. The entry made by Respondent in Patient A's medical record for her first visit was cursory but complete (Department's Exhibit # 3); [T-271-272].

12. Patient A began seeing Respondent on regularly scheduled twice weekly visits from July 18, 1989 through March 14, 1991 (Department's Exhibit # 3); [T-181-182].

13. After March 14, 1991, the medical records of Patient A indicate contact with Respondent two to three times a month until September 23, 1991. Thereafter, there is one note on April 13, 1992 documenting a visit and then there are five notes (on 9/22/92, 1/6/93, 3/8/94, 3/24/94 and 2/10/97), documenting telephone contacts or responses to telephone requests for refills of prescriptions (Department's Exhibit # 3); [T-181-182, 272].

14. During the course of Patient A's treatment, Respondent did not perform an adequate physical examination of Patient A (Department's Exhibits # 3 & # 11); [T-138, 369, 412, 494-495, 522-524].

15. During the course of Patient A's treatment, Respondent did not examine or evaluate Patient A even though he continued to prescribe various controlled substances and addictive medications to her (Department's Exhibits # 3 & # 7 & # 8); [T-211-213, 500-501].

16. During the course of Patient A's treatment, Respondent did not document a comprehensive treatment plan, evaluations, updates, or reassessments for Patient A in the medical records of Patient A (Department's Exhibit # 3); [T-160-161, 205-206].

17. During the course of Patient A's treatment, especially after the end of the regularly scheduled visits, Respondent did not provide or document a rationale for prescribing particular medications (Department's Exhibit # 3); [T-206-213].

18. Commencing in November 1990, Patient A and Respondent began to discuss Patient A's feelings for Respondent, and Respondent's feelings for Patient A (Department's Exhibit # 3); [T-30-34, 104-108, 246].

19. Respondent had sexual intercourse with Patient A on two separate occasions in Respondent's office (Department's Exhibit # 11); (Respondent's Exhibit # A-1); [T-29-32, 36-37, 446-449].

20. While Patient A was in therapy with Respondent, he gave her, on separate occasions, a Valentine's Day card, a necklace and a pair of earrings (Department's Exhibits # 5 & # 6 & # 11); (Respondent's Exhibit # A-1); [T-39-41, 120-123, 136-137, 447-448, 452-454].

21. Respondent told Patient A numerous things about himself and about his personal life including discussions about having problems with his wife, about his children and other revealing information (Respondent's Exhibit # A-1); [T-41-43, 454-455].

22. Respondent acknowledges that having acted on his feelings was wrong and that having had intimate sexual relations with his patient was wrong (Respondent's Exhibit # A-1); [T-451].

23. Respondent acknowledges that giving Patient A gifts was wrong. Respondent acknowledges that giving Patient A a Valentine's Day card was wrong (Respondent's Exhibit # A); [T-448].

24. From November 13, 1991 through February 10, 1997 Respondent issued 41 prescriptions to Patient A that included Prozac, Fiorinal, Erythromycin Base, Ativan, Soma Compound, Xanax, Butalbital asa Caffeine, Percocet, Didrex, Welbutrin, Valium and Claritin. Patient A obtained these prescriptions from Respondent by calling and requesting a prescription. Patient A spoke to Respondent's secretary, left a message or called the pharmacy directly. Patient A only spoke directly to Respondent on a few occasions. (Department's Exhibits # 3 & # 7 & # 8 & # 11); [T-50, 210-211, 465-466, 481].

25. Respondent failed to document most of the prescriptions he issued to Patient A from November 1991 through February 1997. During that time period, Respondent only made five entries in the record indicating telephone contact he had with Patient A. In those five entries, Respondent referred to eight medications. The entries made in Patient A's medical record by Respondent are incomplete in terms of specific information about the prescription, number of tablets, directions to the patient and rationale for prescribing the medications (Department's Exhibits # 3 & # 11); [T-210-213].

26. After Patient A's regularly scheduled visits ceased (July 18, 1989 through September 23, 1991), Respondent continued prescribing medications, including addictive medications, to Patient A without adequately and appropriately evaluating and examining Patient A; without monitoring her to determine if the medications prescribed were appropriate medications or if she was taking the medication as directed; or if the medications were having the desired effect and if she was experiencing any side effects (Department's Exhibits # 3 & # 11); [T-211-213, 500-501].

27. On those occasions when Patient A would actually speak with Respondent on the telephone (subsequent to September 1991), Respondent assured Patient A that if she needed him he was there for her. Respondent told Patient A that she could come in and see him any time she wanted [T-49, 132].

28. Patient A and Respondent discussed her complaints of pain on numerous visits. Patient A's continued complaints of pain are periodically documented throughout Respondent's chart (Department's Exhibit # 3); [T-400-401].

29. Respondent submitted bills to Patient A's insurance company for medical services rather than for psychotherapy services because medical services are reimbursed at a higher rate than psychiatric services. Respondent believed he was entitled to the higher rate of reimbursement (Department's Exhibit # 3); [T-468-473, 536-537].

30. In December, 1990 Respondent responded to Patient A's insurance company indicating that Patient A was improving with her current therapy regime, her reduction in pain and her increased level of activities (Department's Exhibit # 3); [T-370-371].

31. On January 3, 1991, the day which Respondent admits to being the first incident of sexual intercourse between himself and Patient A, Respondent billed Patient A's medical insurance plan for an office visit (Department's Exhibit # 3); [T-516-517].

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions as to the allegations contained in the Amended Statement of Charges were by a unanimous vote of the Hearing Committee unless otherwise noted.

The Hearing Committee concludes that the following Factual Allegations, in the August 2000 Amended Statement of Charges are **SUSTAINED:**[13]

Paragraph A.	:	(4 - 7, 12 - 13, 24 - 27)
Paragraph A.1.a.	:	(4 - 7, 18 - 23, 31)
Paragraph A.1.b.	:	(4 - 17, 24 - 27)
Paragraph A.1.c.	:	(4 - 27, 31)

The Hearing Committee concludes that the following Factual Allegations, in the August 2000, Amended Statement of Charges, are **NOT SUSTAINED:**

Paragraph A.2.	:	(4 - 12, 28 - 30)

Based on the above and the complete Findings of Fact, the Hearing Committee concludes that the SECOND, THIRD, FOURTH, FIFTH, and EIGHTH SPECIFICATIONS contained in the Amended Statement of Charges are **SUSTAINED**.

The Hearing Committee does not sustain the FIRST SPECIFICATION because we find it to be a duplication of the SECOND SPECIFICATION under the law and regulations in effect at the time of the physical contact between Respondent and Patient A (see discussion). The Hearing Committee concludes that the SIXTH (vote of 2 to 1), SEVENTH and NINTH SPECIFICATIONS contained in the Amended Statement of Charges are **NOT SUSTAINED**.

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

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

DISCUSSION

Respondent is charged with nine specifications alleging professional misconduct within the meaning of former §6509 and current §6530 of the Education Law. §6530 of the Education Law sets forth a number and variety of forms or types of conduct which constitute professional misconduct. However §6530 of the Education Law does not provide definitions or explanations of many of the types of misconduct charged in this matter.

The ALJ provided to the Hearing Committee the definitions of medical misconduct as alleged in this proceeding. These definitions were obtained from a memorandum, prepared by the New York State Department of Health[14]. This document, entitled: Definitions of Professional Misconduct under the New York Education Law, ("**Misconduct Memo**"), sets forth suggested definitions of practicing the profession: (1) fraudulently; (2) with negligence on more than one occasion; (3) with gross negligence; (4) with incompetence on more than one occasion; and (5) with gross incompetence. During the course of its deliberations on these charges, the Hearing Committee consulted the relevant definitions contained in the Misconduct Memo, which are as follows:

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

Gross Negligence is the failure to exercise the care that would be exercised by a reasonably prudent physician under the circumstances, and which failure is manifested by conduct that

[14] A copy of this memorandum was made available to Respondent [P.H.T-90].

is egregious or conspicuously bad. Gross Negligence may consist of a single act of negligence of egregious proportions. Gross Negligence may also consist of multiple acts of negligence that cumulatively amount to egregious conduct. Gross Negligence does not require a showing that a physician was conscious of impending dangerous consequences of his conduct.

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

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

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

The Hearing Committee was told that the term "egregious" means a conspicuously bad act or an extreme, dramatic or flagrant deviation from standards. A psychiatrist is a physician and the terms are used interchangeably.

The Misconduct Memo does not contain a discussion of moral unfitness. The Hearing Committee determined that to sustain an allegation of moral unfitness, the Department must show that Respondent committed acts which "evidence moral unfitness". There is a distinction between a finding that an act "evidences moral unfitness" and a finding that a particular person is, in fact, morally unfit. In a proceeding before the State Board for Professional Medical Conduct, the Hearing Committee is asked to decide if certain conduct is suggestive of, or would tend to prove, moral unfitness. The Hearing Committee is not called on to make an overall judgment regarding a Respondent's moral character. The Department is not required to prove that a physician is morally

unfit to practice psychiatry. The Department must prove that a physician committed an act or acts which shows a lack of moral fitness to practice medicine. It is noteworthy that an otherwise moral individual can commit an act "evidencing moral unfitness" due to a lapse in judgment or other temporary aberration.

The standard for moral unfitness in the practice of medicine or psychiatry has two separate and independent possibilities. First, there may be a finding that the accused has violated the public trust which is bestowed by virtue of his or her licensure as a physician. The public places great trust in physicians solely based on the fact that they are physicians. For instance, physicians have access to controlled substances and billing privileges that are available to them solely because they are physicians. Patients may be asked to place themselves in potentially compromising positions with physicians, such as when they disrobe for examination or treatment. Hence, it is expected that a physician will not violate the trust the public has bestowed on him or her by virtue of his or her professional status.

Second, moral unfitness can be seen as a violation of the moral standards of the medical community which the Hearing Committee, as delegated members of that community, represent. The Hearing Committee determined that an act that evidences moral unfitness is synonymous with an act of immoral conduct.

The Hearing Committee was aware of its duty to keep an open mind regarding the allegations and testimony. With regard to the testimony presented herein, including Respondent's, the Hearing Committee evaluated each witness for possible bias. The witnesses were also assessed according to their training, experience, credentials, demeanor and credibility. The Hearing Committee understood that as the trier of fact they may accept so much of a witnesses testimony as is deemed true and disregard what is found to be false. The Hearing Committee found this case to

be different in terms of credibility since Respondent did not deny the sexual and personal relationship between himself and his patient. Therefore, credibility of the witnesses was not a critical concern.

Patient A testified as to the events that transpired between her and Respondent. Patient A was generally credible but was vindictive and argumentative.

Obviously Respondent had the greatest amount of interest in the result of this proceeding. The Hearing Committee found Respondent to be mostly credible, but lacking in professional judgment as to Patient A and not appearing as remorseful as he attempted to express.

The Hearing Committee concludes that Respondent had sexual intercourse with Patient A on two occasions. The Hearing Committee concludes that Respondent gave Patient A two gifts, a necklace and a pair of earrings and a Valentines Day card. The Hearing Committee concludes that Respondent revealed his own thoughts and feelings to Patient A. The Hearing Committee concludes that the above constituted inappropriate boundary violations between Respondent and Patient A.

A reasonably prudent psychiatrist must evaluate a patient by reviewing the patient's history, performing a mental status examination, the equivalent of a physical examination and, communicate with other treating physicians. A reasonable psychiatrist then arrives at a diagnostic impression, the initial idea of what is wrong with the patient, develops a treatment plan and communicates this to the patient. Psychiatrists must maintain medical records. Medical records aid the treating physician in recalling details of treatment for each patient and enable the physician to periodically update the course of therapy by reviewing previous notes.

In addition, medical records enable a subsequent treating physician to know the patient's prior condition and treatment. At a minimum, there should be some entry in the patient record for each patient visit. Respondent failed to act as a reasonable prudent psychiatrist in the evaluation, treatment and maintenance of a medical record for Patient A.

Respondent, on numerous occasions between July 18, 1989 and February 10, 1997, deviated from minimally accepted medical standard of care by prescribing medications for Patient A without documenting his rationale for the medication, the particular choice of the specific drug, the name of the drug, the strength of the tablet or liquid, the number of tablets, the directions to the patient, and whether a discussion was held with the patient discussing the benefits and side effects of the medication. When Respondent changed medication or stopped a particular medication, Respondent failed to note the change and reason in Patient A's medical records. Respondent also failed to document Patient A's responses to the medications.

Psychotherapy as a treatment has different phases. Initially, the patient and psychiatrist get to know each other and agree on what the problems are to be addressed and develop a plan of how to treat the patient's problems. After that comes the working phase, where the plan is implemented. Once the work is finished, the psychiatrist and patient discuss terminating therapy in the termination phase. Each of these phases should be documented in the patient record. Failure to document this information constitutes a deviation from minimally accepted standards of care. Respondent did not meet minimally accepted standards of care in that he failed to document any of the treatment phases for Patient A.

Transference refers to an unconscious phenomena that occurs in the context of psychotherapy, where the patient begins to transfer onto the therapist feelings, thoughts and ways of relating to other people from other parts of their life. Transference is an important development and a useful tool in therapy and considered part of the beginning of the second, or working, phase of psychotherapy since work is done within the context of transference enabling the therapist and patient to work through conflicts that are happening in the patient's inner psychological life. The development of transference and how it is addressed is something that should be documented by the

therapist in the patient record and failing to do so is a deviation from minimally accepted medical standard of care.

Counter-transference is a similar phenomena to transference that occurs in the therapist rather than the patient. Therapists can have reactions to certain patients and in turn begin to respond to their patients as if the patient were the therapist's spouse or someone else significant in the therapist's life. This phenomena tells the therapist something about the patient as well as something about the therapist, allowing those feelings to be evoked. However, it is the psychiatrist's responsibility to deal with this phenomena outside of the therapy relationship either with supervision, consultation or the psychiatrist's own therapy. Although Respondent may have recognized the transference and counter-transference issues between himself and Patient A, he failed to deal appropriately with those issues and deviated from accepted standards of care by having a sexual and personal relationship with Patient A. Respondent also failed to record his observations of the transference and counter-transference that occurred.

The Hearing Committee does not sustain the factual allegation that "Respondent, with intent to deceive, submitted bills and/or explanations to Patient A's health insurance, claiming that he was treating Patient A for chronic back pain, without indicating that he was treating her with psychotherapy". The Hearing Committee believes that it was Respondent's intent to be compensated, at the highest rate, for services that he believed that he was providing to Patient A. Respondent was not double billing. Respondent was merely billing at the higher rate. Since we believe there was no intention to deceive and we believe there was no intentional misrepresentation Factual Allegation A(2) is not sustained.

CONCLUSIONS WITH REGARD TO THE FIRST SPECIFICATION

The Hearing Committee finds that the first specification, alleging "physical contact between a psychiatrist and patient" should not be sustained because Education Law §6530(44) became effective July 26, 1991. The physical contacts of a sexual nature between Respondent and Patient A occurred prior to July 26, 1991. Prior to the effective date of §6530(44), §6509(9) of the Education Law referred to the rules of the Board of Regents or of the regulations of the Commissioner of Health. The relevant rules of the Board of Regents (in effect at the time of the sexual contact between Patient A and Respondent) were contained in 8 NYCRR Part 29. §29.4(a)(5)(i) provided that physical contact of a sexual nature between a physician (in the practice of psychiatry) and a patient would constitute immoral conduct. Respondent's immoral conduct is addressed in the second specification alleging moral unfitness. Since we believe, that in this case, moral unfitness is synonymous with immoral conduct (see discussion above), we do not sustain the first specification because we interpret it to be a duplication of the second specification.

CONCLUSIONS WITH REGARD TO THE SECOND SPECIFICATION

To sustain a finding of moral unfitness, the Department must show that Respondent either violated the trust bestowed on him by virtue of his licensure as a physician or he violated the moral standards of the medical community, or both. The Hearing Committee finds that Respondent violated both. Respondent took advantage of his patient's vulnerability and failed to appropriately address his own vulnerability outside of the therapy environment. In addition to having a personal and sexual relationship with Patient A, Respondent committed a number of boundary violations including revealing his own thoughts and feeling to Patient A, giving her gifts and prescribing medications without monitoring or rationale. Respondent also evidenced moral unfitness when he charged Patient A's medical insurance for an office visit on the date that he and Patient A had sexual relations.

Respondent is guilty of the second specification, as defined in New York Education Law §6530(20), by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness. The Hearing Committee unanimously concludes that the Department of Health has shown by a preponderance of the evidence that Respondent's conduct constituted professional misconduct under §6530(20) of the Education Law.

CONCLUSIONS WITH REGARD TO THE THIRD SPECIFICATION

The Hearing Committee did not sustain the factual allegation against Respondent regarding the health insurance claims and explanations because we did not believe that Respondent submitted the claims and explanations with the intent to deceive the health insurance company. We believe that Respondent submitted his bills to Patient A's health insurance indicating the highest reimbursable treatment provided in order to be paid for his services. Insufficient proof has been provided to determine that Respondent was required to indicate that he was treating Patient A for other maladies and we are not convinced, by a preponderance of the evidence, that Respondent was intentionally misrepresenting or misleading his services to Patient A's health insurance company. However, we are of the opinion that the billing of Patient A's health insurance plan for the January 3, 1991 visit was fraudulent. Therefore, Respondent is guilty of the third specification, as defined in New York Education Law §6530(2), by practicing the profession of medicine fraudulently (on one occasion). The Hearing Committee unanimously concludes that the Department of Health has shown by a preponderance of the evidence that Respondent's conduct constituted professional misconduct under §6530(2) of the Education Law.

CONCLUSIONS WITH REGARD TO THE FOURTH SPECIFICATION

The Hearing Committee finds Respondent guilty of the fourth specification, alleging negligence on more than one occasion, by virtue of the two separate occasions that Respondent

engaged in sexual contact with Patient A and the boundary violations which occurred between Respondent and Patient A. In addition, Respondent failed to adequately evaluate Patient A and failed to act on or address Patient A's transference issues and his counter-transference issues. In effect the Hearing Committee finds Respondent is guilty of separate acts of negligent misconduct for each visit after November 1990 when he noted the transference but failed to address Patient A's transference phenomena.

Respondent committed a separate act of negligence each time he had sex with Patient A and committed a separate act of negligence each time he issued prescriptions to Patient A without rationale, recordation and evaluation.

Respondent is guilty of the fourth specification, as defined in New York Education Law §6530(3), by practicing the profession of medicine with negligence on more than one occasion. The Hearing Committee unanimously concludes that the Department of Health has shown by a preponderance of the evidence that Respondent's conduct constituted professional misconduct under §6530(3) of the Education Law.

CONCLUSIONS WITH REGARD TO THE FIFTH SPECIFICATION

Respondent was incompetent in the practice of psychiatry because he failed to recognize how far out of control he was in his "treatment" of Patient A. Respondent failed to obtain outside assistance in dealing with the counter-transference events which were occurring during his own marital problems. Even if Respondent was confident in his abilities, he incompetently failed to recognize his inability to refuse Patient A. No reason was explained by Respondent for his failure to obtain a second opinion from a colleague. On numerous occasions after November 1990, Respondent exhibited a lack of the skill or knowledge necessary to practice the profession of psychiatry by not tending to Patient A's transference issues as well as not tending to his own counter-

transference phenomena. Respondent also exhibited a lack of the skill or knowledge necessary to practice the profession of psychiatry by engaging in a sexual and personal relationship with his patient on more than one occasion.

Respondent is guilty of the fifth specification, as defined in New York Education Law §6530(5), by practicing the profession of medicine with incompetence on more than one occasion. The Hearing Committee unanimously concludes that the Department of Health has shown by a preponderance of the evidence that Respondent's conduct constituted professional misconduct under §6530(5) of the Education Law.

CONCLUSIONS WITH REGARD TO THE SIXTH SPECIFICATION

By a vote of 2 to 1 the Hearing Committee determines that Respondent did not commit gross negligence with regards to the treatment of Patient A. Within the context of treatment, Respondent never represented to Patient A that the sexual relationship or the personal relationship was in any way beneficial to her. Although the two sexual acts occurred in Respondent's office, the Hearing Committee determines that sex was never represented as a treatment modality by Respondent and, therefore, gross negligence did not occur within the realm of the treatment of the patient. In addition, the Hearing Committee cannot conclude that Respondent's failure to address the transference and counter-transference events was egregious conduct by Respondent.

Respondent is found not guilty of the sixth specification, as defined in New York Education Law §6530(4), in that he did not practice the profession of medicine with gross negligence. The Hearing Committee, by a vote of 2 to 1, concludes that the Department of Health has not shown by a preponderance of the evidence that Respondent's conduct constituted professional misconduct under §6530(4) of the Education Law.

CONCLUSIONS WITH REGARD TO THE SEVENTH SPECIFICATION

The Hearing Committee determines that Respondent did not commit gross incompetence with regards to the treatment of Patient A. Within the context of treatment, Respondent knew that the sexual relationship or the personal relationship was not beneficial to Patient A. The Hearing Committee cannot conclude that Respondent's failure to address the transference and counter-transference events was egregious conduct by Respondent or that Respondent exhibited a total lack of skill or knowledge as opposed to presenting a consecutive lapse in judgment.

Respondent is found not guilty of the seventh specification, as defined in New York Education Law §6530(6), in that he did not practice the profession of medicine with gross incompetence. The Hearing Committee unanimously concludes that the Department of Health has not shown by a preponderance of the evidence that Respondent's conduct constituted professional misconduct under §6530(6) of the Education Law.

CONCLUSIONS WITH REGARD TO THE EIGHTH SPECIFICATION

The Hearing Committee finds and determines that even if the medical records of Patient A, as maintained by Respondent, could be characterized as spare but adequate, the failure of Respondent to record the sexual acts, the personal relationship, the gifts, the transference, and the counter-transference events would be sufficient to find Respondent guilty of this specification. During treatment of Patient A, a set and series of catastrophically grave events occurred within the context of the physician/patient relationship. There is nothing in the medical records of Patient A to indicate this catastrophic event. This failure is a gross deficit in record keeping.

In addition, the Hearing Committee finds the medical records to be lacking in evaluation, initiation of treatment, middle of treatment or working phase, and termination of treatment plans. Respondent's psychotherapy treatment plans for Patient A are non-existent in Patient A's medical

records. There is no continuity, no objectives and no methods. The same can be said regarding Respondent's prescription modality for Patient A. No rationale.

Respondent is guilty of the eighth specification, as defined in New York Education Law §6530(32), because he failed to maintain a record for a patient which accurately reflected the care and treatment of the patient. The Hearing Committee unanimously concludes that the Department of Health has shown by a preponderance of the evidence that Respondent's conduct constituted professional misconduct under §6530(32) of the Education Law.

CONCLUSIONS WITH REGARD TO THE NINTH SPECIFICATION

The Hearing Committee did not sustain factual allegation A(2) and, therefore, the ninth specification cannot be sustained. The Hearing Committee recognizes that the billing of Patient A's health insurance plan for the January 3, 1991 (sex) visit is the making or filing of a false report. However, Respondent was not charged for that conduct by the Department (*see* Department's Exhibit # 1-A at page 5, Ninth Specification involves "Paragraphs A and A[2]" *compare* with page 3, Third Specification which involves "Paragraph A and each of its subparagraphs").

Respondent is not guilty of the ninth specification, as defined in New York Education Law §6530(21), in that he did not willfully make or file false reports to Patient A's health insurance with intent to deceive as set forth in paragraph A(2) of the Amended Statement of Charges. The Hearing Committee unanimously concludes that the Department of Health has not shown by a preponderance of the evidence that Respondent's conduct constituted professional misconduct under §6530(21) of the Education Law.

DETERMINATION AS TO PENALTY

The Hearing Committee pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above determines, by a vote of 2 to 1, that Respondent's license to practice medicine in New York should be SUSPENDED FOR 5 YEARS WITH ACTUAL SUSPENSION OF THE FIRST 6 MONTHS AND STAYED SUSPENSION OF THE NEXT 54 MONTHS. In addition Respondent should be placed on PROBATION DURING THE 54 MONTHS of stayed suspension with the standard terms of probation (see attached Appendix III) plus the requirement that Respondent obtain PSYCHIATRIC TREATMENT from a Board Certified psychiatrist acceptable to the Office of Professional Medical Conduct ("**OPMC**"); enroll in a psychiatric ETHICS COURSE, acceptable to the OPMC; and a medical (psychiatric) RECORD KEEPING COURSE, acceptable to the OPMC[15].

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

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

There is no question that Respondent's misconduct was serious. The Hearing Committee struggled between the above penalty and revocation of Respondent's license. In favor of revocation, the Hearing Committee believes that in today's society there should be a zero tolerance for sexual

[15] The dissenting member voted to revoke Respondent's license.

contact between a psychiatrist and his patient. Respondent's mishandling of the physician-patient relationship with Patient A calls into question his capacity for objective professional judgment. Some of Respondent's other practices, as testified to by his own witness, are not acceptable. Respondent took no voluntary corrective action such as an ethics medical education course, a record keeping course or therapy.

By way of mitigating factors and in opposition to revocation, the Hearing Committee is mindful that the boundary violations occurred in 1991. Further, the Hearing Committee finds that at no time did respondent represent to Patient A that these boundary violations would be beneficial to her. In fact, Respondent emphasized to Patient A that it was bad for her. The Hearing Committee finds that Respondent has acknowledged that the boundary violations were his fault, and not the fault, in any way, of Patient A. Respondent has accepted full and unconditional responsibility for the boundary violations. We believe that Respondent was sorry as soon as the sex occurred but was unable or too weak, due to his own personal problems, to extricate himself from his predicament and poor judgment. Respondent did attempt to transfer her care but the patient refused. The sexual relationship was short. Respondent has acknowledged his weakness, lack of recognition and lack of resistence. Overall we believe that Respondent is not a "bad" person and it was evident that he cared for Patient A and refused to leave her "high and dry" and without medications and in pain. Finally, Respondent, unlike many guilty individuals, did not deny the existence of a sexual and personal relationship. His admission is a factor which should be recognized and acknowledged.

In assessing the appropriate penalty to be imposed on Respondent, the Hearing Committee has attempted to balance the seriousness of the violations committed by Respondent with the mitigating factors documented above. We have much confidence that it is not likely that Respondent

will ever repeat this sort of misconduct. We believe there is adequate room and sufficient justification in this case to show a little bit of leniency to Respondent.

The Hearing Committee believes that neither public service nor monetary penalties are appropriate sanctions under the circumstances presented in this case. Similarly, censure and reprimand are wholly inadequate in this case. The Hearing Committee does believe that re-training or attendance at CME seminars is appropriate because Respondent's medical record keeping is deficient and can be improved. Similarly Respondent needs to attend an ethics course to obtain a better view of other potential boundary violations which he appears to not recognize or dismiss[16].

Respondent showed remorse and has admitted his errors However, Respondent has not shown any efforts to seek professional help or therapy. Respondent needs to be involved in therapy with a Board Certified psychiatrist of his own choosing, acceptable to OPMC to address his past conduct and to better understand his lapses.

Taking all of the facts, details, circumstances and particulars in this matter into consideration, the Hearing Committee determines that the above is the appropriate sanction under the circumstances. The Hearing Committee concludes that the sanction imposed strikes the appropriate balance between the need to punish Respondent, deter future misconduct, and protect the public.

All other issues raised by both parties have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

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[16] The Hearing Committee is referring specifically to the testimony of Ms. Corriel and Respondent's treatment of several members of the same family separately and socializing with the parents of his patients.

ORDER

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

1. The SECOND, THIRD, FOURTH, FIFTH, and EIGHTH SPECIFICATIONS contained in the Amended Statement of Charges (Department's Exhibit # 1-A) are **SUSTAINED**; and

2. The FIRST SPECIFICATION contained in the Amended Statement of Charges (Department's Exhibit # 1-A) is a duplication of the SECOND SPECIFICATION; and

3. The SIXTH, SEVENTH and NINTH SPECIFICATIONS contained in the Amended Statement of Charges (Department's Exhibit # 1-A) are **NOT SUSTAINED**; and

4. Respondent's license to practice medicine in the State of New York is hereby **SUSPENDED FOR 5 YEARS WITH ACTUAL SUSPENSION OF THE FIRST 6 MONTHS AND THE STAYED SUSPENSION OF THE NEXT 54 MONTHS**; and

5. Respondent is placed on **PROBATION DURING THE 54 MONTHS** of stayed suspension with the standard terms of probation plus the requirement that Respondent obtain psychiatric treatment from a Board Certified psychiatrist acceptable to the Office of Professional Medical Conduct ("**OPMC**"); enroll in a psychiatric ethics course, acceptable to the OPMC; and a medical (psychiatric) record keeping course, acceptable to the OPMC (see attached Appendix III - which Terms and Conditions are incorporated herein); and

6. Respondent shall not be allowed to resume practice until he has successfully completed a course in ethics in the practice of psychiatry or an equivalent program, approved, in writing, by the OPMC; and

7. Respondent shall not be allowed to resume practice until he has successfully completed a course in medical record keeping in the practice of psychiatry/medicine or an equivalent program, approved, in writing, by the OPMC; and

8. Respondent shall not be allowed to resume practice until he has presented written proof of being engaged in treatment with a Board Certified psychiatrist, approved, in writing, by the OPMC; and

9. This Order shall be effective on personal service on the Respondent or 7 days after the date of mailing of a copy to Respondent by certified mail or as provided by P.H.L. §230(10)(h).

DATED: **New York**
December 13, **2000**

DAVID T. LYON, M.D., (Chair)
PATRICK F. CARONE, M.D.
DIANE C. BONANNO

To:

Stephen Coleman, M.D.,
23 Woodland Drive
Sands Point, NY 11050

Lippman, Krasnow & Kelton
Michael S. Kelton, Esq.,
Attorney for Respondent
711 Third Avenue
New York, NY 10017

Leslie Eisenberg, Esq.
Assistant Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, Suite 601
New York, New York 10001

APPENDIX I

DEPARTMENT'S EX. 1-A in evidence 10/10/03 cm

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

IN THE MATTER

OF

STEPHEN COLEMAN, M.D.

AMENDED STATEMENT OF CHARGES

Stephen Coleman, M.D., the Respondent, was authorized to practice medicin in New York State on or about August 14, 1968, by the issuance of license number 102022 by the New York State Education Department. Respondent is currently registered to practice medicine with the New York State Department of Education fo the period of May 2000 through April 2002.

FACTUAL ALLEGATIONS

A. Respondent, a psychiatrist, whose office is located at 200 East 33rd Street, Apartment 2F, New York, New York 10016 (hereinafter Respondent's "office") treated Patient A (whose identity is set forth in the annexed Appendix) from in or about July 1989 through in or about February 1997.

1. Throughout the treatment period, Respondent deviated from accepted medical standards in that he:

a) engaged in a personal and sexual relationship with Patient A, including but not limited to having sexual intercourse with Patient in his office, revealing his own thoughts and feelings to patient A and, giving Patient A gifts.

b) prescribed medications for Patient A including but not

limited to controlled substances and/or addictive medications, without adequately examining, evaluating and monitoring Patient A.

c) failed to maintain records that accurately reflect the evaluation and treatment provided to Patient A, including but not limited to documenting periodic reassessments, treatment plan updates, rationale for prescribing and, prescribing of medications.

2. Respondent, with intent to deceive, submitted bills and/or explanations to Patient A's health insurance, claiming that he was treating Patient A for chronic back pain, without indicating that he was treating her with psychotherapy.

SPECIFICATION OF CHARGES

First Specification

PHYSICAL CONTACT BETWEEN A PSYCHIATRIST AND PATIENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(44)(McKinney Supp. 2000, effective February 1993) formerly N.Y. Educ. Law §6509(9), NYCRR §29.1(b)(5) and §29.4(a)(5)(i) (effective October 1, 1977) by engaging in physical contact of a sexual nature, with a psychiatric patien as alleged in the facts of the following:

1. Paragraphs A, A(1) and A(1)(a).

Second Specification

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined ir N.Y. Educ. Law §6530(20)(McKinney Supp. 2000) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

2. Paragraph A and each of its subparagraphs.

Third Specification

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined b N.Y. Educ. Law §6530(2)(McKinney Supp. 2000) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

3. Paragraph A and each of its subparagraphs.

Fourth Specification

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined ir N.Y. Educ. Law §6530(3)(McKinney Supp. 2000) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two c more of the following:

4. Paragraph A and each of 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)(McKinney Supp. 2000) 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 each of its subparagraphs.

Sixth Specification

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4)(McKinney Supp. 2000) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

6. Paragraph A and each of its subparagraphs.

Seventh Specification

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6)(McKinney Supp. 2000) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

7. Paragraph A and each of its subparagraphs.

Eighth Specification

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined i N.Y. Educ. Law §6530(32)(McKinney Supp. 2000) by failing to maintain a record fo each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of the following:

8. Paragraphs A, A(1), A(1)(c) and A(2).

Ninth Specification

WILLFULLY MAKING OR FILING A FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(21)(McKinney Supp. 2000) by willfully making or filing a false report, as alleged in the facts of the following:

9. Paragraphs A and A(2).

DATED: August , 2000
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

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

RESPONDENT'S Ex in (E) A-1 MPZ

----------X

IN THE MATTER

OF

STEPHEN COLEMAN, M.D.

----------X

AMENDED ANSWER

STEPHEN COLEMAN, M.D. ("respondent"), by his attorneys, Lippman Krasnow & Kelton LLP, as and for his answer to the Statement of Charges dated June 19, 2000, states and alleges as follows:

1. Admits that respondent was authorized to practice medicine in New York State on or about August 14, 1968, by the issuance of license number 102022 by the New York State Education Department.

2. Admits that respondent is currently registered to practice medicine with the New York State Department of Education for the period of May 2000 through April 2002.

FACTUAL ALLEGATIONS

3. Admits that respondent was and is a physician practicing psychiatry and pain management with an office located at 200 East 33rd Street, Apt. 2F, New York, New York 10016, and admits that respondent treated patient A with psychotherapy and pain management from July 1989 until September 23, 1991, at which time respondent maintained patient A on appropriate and necessary medications through in or about February 1997, as alleged at paragraph A of the Factual Allegations.

4. Denies each and every allegation set forth at paragraph A(1) of the Factual Allegations.

5. Denies each and every allegation set forth at paragraph A(1)(a) of the Factual Allegations, except admits that from on or about January 3, 1991 to on or about February 9, 1991 respondent engaged in a personal and sexual relationship with patient A, had sexual intercourse with patient A in respondent's office, revealed his own thoughts and feelings to patient A and gave gifts to patient A.

6. Denies each and every allegation set forth at paragraph A(1)(b) of the Factual Allegations, except admits that respondent prescribed medications for patient A.

7. Denies each and every allegation set forth at paragraph A(1)(c) of the Factual Allegations.

8. Denies each and every allegation set forth at paragraph A(2) of the Factual Allegations.

SPECIFICATION OF CHARGES

9. Denies committing professional misconduct as set forth in the first specification alleging physical contact between a psychiatrist and a patient, inasmuch as New York Education Law §6530(44) came into effect on July 26, 1991, after the physical contacts of a sexual nature between respondent and patient A had occurred. Respondent further denies that NYCRR Section 29.4(a)(5)(1) provides for a separate specification of misconduct, inasmuch as said regulation merely defines physical contact of a sexual nature between a physician (in the practice of psychiatry) and a patient as "immoral conduct," which would therefore fall under the second specification alleging moral unfitness.

10. Denies each and every allegation set forth in the second specification alleging moral unfitness.

11. Denies each and every allegation set forth in the third specification alleging fraudulent practice.

12. Denies each and every allegation set forth in the fourth specification alleging negligence on more than one occasion.

13. Denies each and every allegation set forth in the fifth specification alleging incompetence on more than one occasion.

14. Denies each and every allegation set forth in the sixth specification alleging gross negligence.

15. Denies each and every allegation set forth in the seventh specification alleging gross incompetence.

16. Denies each and every allegation set forth in the eighth specification alleging failure to maintain records.

17. Denies each and every allegation set forth in the ninth specifications alleging wilfully making or filing a false report.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

18. The procedures followed by the New York State Department of Health, State Board for Professional Medical Conduct, are unconstitutional and violate due process of law in that respondent has not been provided meaningful pre-hearing discovery considering the serious nature of the charges alleged in the Statement of Charges.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

19. The procedures followed by the New York State Department of Health, State Board for Professional Medical Conduct, are unconstitutional and violate due process of law in that the specifications are unconstitutionally vague.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

20. Finding respondent guilty of the first specification under Education Law Section 6530(44) would constitute the imposition of an unconstitutional ex post facto law imposing a penalty upon respondent, inasmuch as the conduct committed by respondent occurred prior to the effective date of said statute.

WHEREFORE, by reason of the foregoing, respondent STEPHEN COLEMAN, M.D. demands that a final order be made dismissing the specifications in their entirety together with such other and further relief as to this tribunal may seem just and proper.

Dated: New York, New York
November 10, 2000

Yours, etc.

LIPPMAN KRASNOW & KELTON LLP
Attorneys for Respondent
STEPHEN COLEMAN, M.D.

By: _____
Michael S. Kelton, Esq.
711 Third Avenue, Suite 1806
New York, New York 10017
(212) 370-6940

TO: NEW YORK STATE DEPARTMENT OF HEALTH
OFFICE OF PROFESSIONAL MEDICAL CONDUCT
5 Penn Plaza - 6th Floor
New York, New York 10001
Attn: Leslie Eisenberg, Esq.

APPENDIX III

Terms and Conditions of Probation for STEPHEN COLEMAN, M.D.

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession. Respondent acknowledges that if he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).

2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct ("**OPMC**"), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.

3. Respondent shall fully cooperate with and respond in a timely manner to requests from the OPMC to provide written periodic verification of Respondent's compliance with the terms of the Hearing Committee's Order. Respondent shall personally meet with a person designated by the Director of the OPMC as requested by the Director.

4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law Section 32].

5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of the OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled on Respondent's return to practice in New York State.

6. Respondent's professional performance may be reviewed by the Director of the OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or the OPMC offices.

7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

8. The period of probation shall commence on completion of the 6 month actual suspension and shall continue for a period of 54 months thereafter.

9. Respondent shall take and complete a course in ethics in the practice of psychiatry or equivalent program proposed by Respondent and subject to the prior written approval of the Director of the OPMC. Respondent shall complete the course or program within one hundred eighty (180) days of the effective date of the Hearing Committee's Order, unless the Director of the OPMC approves an extension in writing.

10. Respondent shall take and complete a course in medical record keeping in the practice of psychiatry or equivalent program proposed by Respondent and subject to the prior written approval of the Director of the OPMC. Respondent shall complete the course or program within one hundred eighty (180) days of the effective date of the Hearing Committee's Order, unless the Director of the OPMC approves an extension in writing.

11. Respondent shall commence, within 60 days of the effective date of the Hearing Committee's Order, or continue in treatment, counseling or other therapy with a Board Certified psychiatrist as long as that psychiatrist determines necessary but not less than one year. The psychiatrist shall be proposed by Respondent and subject to the written approval of the Director of the OPMC. Respondent shall cause the psychiatrist to submit a proposed treatment plan and quarterly reports to the OPMC certifying whether Respondent is in compliance with the treatment plan. Respondent shall cause the psychiatrist to report to OPMC within 24 hours if Respondent leaves treatment against medical advice. Prior to the approval of any individual as psychiatrist, Respondent shall cause the proposed psychiatrist to execute and submit to the Director of the OPMC an acknowledgment of his/her agreement to undertake all of the reporting responsibilities. Said acknowledgment shall be made on a form provided by and acceptable to the Director of the OPMC. Respondent shall provide the treating psychiatrist with a copy of the Determination and Order together with all appendixes.

12. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Hearing Committee's Order and shall assume and bear all costs related to compliance. On receipt of evidence of non-compliance with, or any violation of these terms, the Director of the OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.