



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Karen Schimke
Executive Deputy Commissioner

March 24, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Irene M. Koch, Esq.
Assistant Counsel
NYS Department of Health
5 Penn Plaza-Sixth Floor
New York, New York 10001

RECEIVED
MAR 27 1995
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

Irving I. Dardik, M.D.
RD 1 Box 253
Hillcrest Drive
Great Meadows, New Jersey 07838

RE: In the Matter of Irving I. Dardik, M.D.

Dear Mr. Scheiman, Ms. Koch and Dr. Dardik:

Enclosed please find the Determination and Order (No. 95-65) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

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

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

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "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 all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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

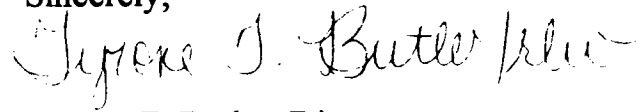
The notice of review served on the Administrative Review Board should be forwarded to:

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

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

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

Sincerely,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

-----X
IN THE MATTER : DETERMINATION
OF : AND
IRVING I. DARDIK, M.D. : ORDER
-----X

BPMC-95-65

Richard N. Pierson, Jr. M.D., Chairperson, Leo Fishel, M.D. and Morton M. Kleinman, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Sections 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230(10)(e) and 230(12) of the Public Health Law. Jane B. Levin, Esq., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this determination.

SUMMARY OF THE PROCEEDINGS

Notice of Hearing dated:	September 27, 1994
Statement of Charges dated:	September 27, 1994
Amended Statement of Charges dated:	November 9, 1994
Pre-Hearing Conference:	November 9, 1994
Hearing dates:	November 15, 1994
	November 16, 1994
	December 12, 1994
	December 21, 1994
	January 9, 1995
	January 18, 1995

January 19, 1995
January 23, 1995
January 26, 1995
February 1, 1995

Deliberation Date:

February 28, 1995

Place of Hearing:

NYS Department of Health
5 Penn Plaza
New York, N.Y.

Petitioner appeared by:

Harriet Katz, Esq.
Acting General Counsel
NYS Department of Health
By: Irene M. Koch, Esq.
Assistant Counsel

Respondent appeared by:

Baer Marks & Upham
805 Third Avenue
New York, N.Y. 10022
By: Eugene R. Scheiman, Esq.

STATEMENT OF CHARGES

The Statement of Charges essentially charges the Respondent with professional misconduct by fraudulently practicing medicine, by exercising undue influence and exploiting patients for his own financial gain, by guaranteeing a cure to patients, by revealing personally identifiable facts, data, or information obtained in a professional capacity without the prior consent of the patient, by engaging in conduct evidencing moral unfitness to practice medicine, and by failing to maintain adequate records.

The charges are more specifically set forth in the Amended Statement of Charges, a copy of which is attached hereto and made a part hereof.

FINDINGS OF FACT

Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

GENERAL FINDINGS

1. Respondent was authorized to practice medicine in the State of New York on November 4, 1963, by the issuance of license

number 091514 by the New York State Education Department (Pet.'s Ex. 3).

2. The Respondent was registered to practice medicine with the New York State Department of Education for the period January 1, 1993 through December 31, 1994 (Pet.'s Ex. 3).

3. Respondent was engaged in the research and practice of vascular surgery from 1967 to 1980 (T. 988).

4. In or about 1975, Respondent also began to be involved with the Olympics, both as a physician at the games, and as Chairman of the Sports Medicine Council (T. 970-979).

5. In or about 1980, Respondent began to develop his wavenergy theory. Respondent testified that he has discovered the universal organizing principle for all molecular biology and health while accounting for and organizing the multifactorial risk factors and biochemical markers associated with chronic disorders (T.1072-80; 1095; Resp.'s Ex. T).

6. He believes that all behaviors are a continuum of waves of energy expenditure and energy recovery (T.991-977; 1035-39).

7. Respondent proceeded from the stage of theory development to the treatment of patients largely on the basis of his application of his wavenergy program to himself, which he claims alleviated his symptoms of ankylosing spondylitis. He has had almost no success in convincing other physicians or scientists of the value of his theory, with the exception of Nicholas Hall, Ph.D., who is the Director of Psychoimmunology of the University of South Florida College of Medicine (T. 1748-69).

8. Dr. Hall termed the wavenergy program experimental, and stated that patients should have been told that at the outset of their treatment (T. 1778-79).

9. Respondent testified that he has created a treatment program that creates wave patterns of behaviors designed to optimize the body's normal healthy patterns, which involves amplifying the range of the patient's heartwave over time, and that this program can lead to the reversal of chronic disorders, such as Multiple Sclerosis (T. 1075, 1087; 1091-93; 1095-1100; 1107-29; 1175; 1455-56; 1636-38).

10. On or about March 18, 1991, *New York Magazine* published an article which described Respondent's work and treatment program, which resulted in considerable public interest. Among those who contacted the Respondent after reading the article were Patients A, C, D, E (T. 27-28; 31-32; 401; 739-40; 906-07; 673-74; Resp.'s Ex. N).

11. The State's expert witness testified that there is no known cure for Multiple Sclerosis (T. 817-18).

FINDINGS OF FACT AS TO PATIENT A

1. Between on or about May, 1991, and on or about September, 1992, Respondent consulted and treated Patient A for her chronic Multiple Sclerosis ("MS") at her family's homes in New York City and Long Island, at his office located at R.D. 1, Box 253, Hillcrest Drive, Great Meadows, New Jersey 07838, and at her home

in Florida, both in person and over the telephone (T. 36; 42 Resp.'s Ex. 4).

2. In or about May, 1991, in his first telephone conversation with Patient A, Respondent told her that he had the answer to her MS, that he could cure her, and that he could have her walking in a year (T. 33-34; 37-39; 43; 46-47).

3. In or about May or June, 1991, in another telephone conversation, Respondent told Patient A words to the effect that her myelin was not destroyed, but rather only thinned out, and that she could get it all back, and that he was not talking about a remission, but rather that his treatment would result in a cure (T. 34-35; 196-98).

4. Patient A first met Respondent in person on or about June 12, 1991 at her sister JB's apartment, in New York City (T. 36; 42). In attendance at this meeting were Patient A, Respondent, and Michelle Morelli Weiss ("Michelle"), one of Respondent's therapists (T. 37). For portions of this meeting, JB was able to overhear the conversation, although she was not present in the room (T. 339). At this meeting, Respondent again told Patient A that he would have her walking normally again within a year, and that his wavenergy program was not only curing MS, but also cancer and ALS (T. 39; 339; 380; Resp.'s Ex. D). He also told Patient A that her condition would never again be as bad as when she started treatment with Respondent and that she would be better than ever (T. 38; 206-07; 209-10).

5. At this meeting, Respondent explained his wavenergy

program, and described how it would work to activate the Respondent's immune system through cycles of various exercises and periods of relaxation, which would change the flat linear waves of ill patients into healthy oscillating waves (T. 37; 39; 109-10).

6. He also described how he would administer the program and monitor Patient A's progress through recording and analyzing changes in her heart rate, which would be captured through a special Polar brand watch and communicated daily to the Respondent via computer (T. 59-61; 91-92; Resp. Ex. D at 131).

7. At this meeting with Patient A, Respondent did not physically examine her, nor did he take a baseline reading of her heart rate. Respondent only asked Patient A to walk so that he could observe her (T. 39; 46; 252-53; 257-60; 1330-31).

8. At this meeting, Respondent did not take a history of Patient A (T. 253; 257-58). Prior to this time, Patient A sent Respondent some of her medical records on her own initiative, but Respondent did not contact her other treating physicians (T. 35-36; 253; 258; 332).

9. At the June 12, 1991 meeting, Respondent told Patient A that the fee for the program would be \$100,000 for one year's treatment, and that this fee was more expensive than usual, because she was the equivalent of three patients, and needed "hands-on" attention, constant care and supervision (T. 43-44; 191-93, 340-41; Resp. Ex. D at p. 132).

10. Respondent also told Patient A that he would personally pay constant attention to her, that she would also be treated by

his therapist Michelle and that he would not be able to take on new patients because he would be treating her so intensively (T. 43-44; 49; 99-100; 192). Respondent further told Patient A that she was a priority case, and that she would get sick of seeing him and his therapist (T. 39; 45; 340; 370).

11. On or about June, 1991, Patient's A expectation was that Respondent would be personally treating her (T. 45; 74).

12. On June 12, 1991, Patient A told Respondent that she used marijuana at night to reduce spasticity and temperature (T. 42-43), and that her family was aware of this (T. 29; 216).

13. On or about June 14, 1991, Patient A bought a Polar watch from Respondent and commenced treatment with the wavenergy program (T. 59-62; 220-21). She also bought a variety of other equipment on Respondent's instructions, including a computer to transmit data and answer a questionnaire on a daily basis (T. 48; 90-92; 255-56; Pet.'s Ex. 29; 30; Resp.'s Ex. D at p. 132-33).

14. On or about June 14, 1991, Respondent told Patient A that he would put the MS Society out of business, and that he believed he would win the Nobel Prize (T. 63-64; 66; 233).

15. In a telephone conversation with JB in or about June 1991, Respondent told her he would cure Patient A (T. 63; 344-45); that his fee was so high because she was the equivalent of three patients; and that he would have to be "hands-on" with her five days a week (T. 343; 375).

16. In or about June, 1991 at Respondent's instruction, JB called Respondent's wife and business manager, Allison Dardik, to

discuss the fee (T. 345-48). A payment schedule was later worked out, with the \$100,000 paid over a seven month period (T. 286-88; Pet.'s Exs. 6, 7, 19).

17. No written contract concerning the wavenergy program was ever agreed to or signed by Patient A or her representatives (T. 315-16). In July, 1991, Respondent sent a draft contract to Patient A and/or Patient A's representatives which contained terms contradicting what he had previously told Patient A about the nature and efficacy of his treatment, in particular, that no cure was guaranteed and that the therapy was termed experimental (T. 167; 170-74; 289; 308-09; 334-35; Resp.'s Exs. B, F).

18. On or about June 24, 1991, Respondent met with and told Patient A's mother that Patient A would never be worse, and that he would have Patient A walking by March, 1992 (T. 283; 300; 302; 318-19; 328; 332-33).

19. Between June, 1991, and September 1992, Patient A fully participated in the wavenergy program (T. 55-58; 79-80; 89; 95; 117-18; 154; 360-61; 390).

20. Although there were other components, such as nutritional guidance and the taking of cold showers and sleeping at prescribed times, the bulk of Patient A's treatment consisted of her being given daily target heart rate numbers by Respondent's therapists, over the telephone and in person, with Patient A achieving these target heart rate numbers through cycles of exercise and relaxation and transmitting the data recorded by the Polar heart rate watch via computer to Respondent's office (T.49; 55-58; 66-67; 71; 75;

80; 90-97; 117-18).

21. From on or about mid-June 1991, through on or about August, 1991, Patient A resided at JB's home in New York City (T. 70). Respondent visited Patient A no more than 5 times during this time period, and spent an average of one hour on these visits (T. 71-73). During this time period, Respondent spoke on the phone with her approximately daily until the first payment of \$50,000 was made, and twice weekly thereafter (T. 81-83). During this time period, Respondent's therapist visited Patient A approximately 3-5 times per week for 2-3 hours per visit, and spoke with her nightly on the telephone (T. 71; 351).

22. From on or about September, 1991 through on or about October, 1991, Patient A resided in Lawrence, Long Island (T.70; 83). This move was discussed and approved by Respondent (T. 83; 219-20). Respondent visited Patient A no more than 4 times during this time period, usually at the insistence of Patient A, and for an average of four hours per visit (T. 84-86; 88-89; 98-101; 227-28).

23. During this time period Respondent spoke on the phone with Patient A occasionally, usually when there was perceived good news, but not when things were going badly (T. 82; 86; 100-01). During this time period, Respondent's therapist visited Patient A approximately 3-4 times per week, and spoke with her often (T. 86-87).

24. In or about October 1991, Respondent communicated in a letter to Patient A's mother words to the effect that he was curing

Patient A's Multiple Sclerosis (T. 293; Pet.'s Ex. 9). In this letter, Respondent also said he would visit Patient A periodically when she moved to Florida (Pet.'s Ex. 9, Resp.'s Ex. D at p. 141).

25. From on or about November, 1991, through on or about April, 1992, Patient A resided in Orlando, Florida (T.83; 110; 116). Patient A discussed this move with Respondent and received his approval prior to moving (T. 110; 231). During this time period, Respondent visited Patient A one time, a two day period during which he worked with Patient A for a total of a few hours (T. 111-14). While Patient A was in Florida, Respondent spoke on the phone with her occasionally (T. 129-30).

26. In or around November-January, 1991-2, Patient A was able to walk unassisted for the first time since 1989. This fact was publicized in the local newspapers (T. 127; Resp.'s Ex. E).

27. In or about December, 1991, Patient A sent Respondent a letter stating she was confident he would cure her (T. 118-19; Pet.'s Ex. 10). Respondent did not answer the letter and did not try to dissuade her of her belief ((T. 125).

28. In or about January, 1991, Respondent told Patient A he would send Michelle to see her every other week (T.128). Subsequent to January 1991, Patient A was seen a total of at most 4 times for approximately 3 days each time, and was telephoned nightly by the therapist (T. 114; 117).

29. In or about February or March, 1991, Patient A placed several telephone calls to Respondent, to complain of fatigue and lack of strength (T. 130; 154). Respondent did not return the

calls (T. 130, 601).

30. Patient A moved back to Long Island in or about April, 1992, and resided there until the end of her treatment in or about August, 1992 (T. 131-32). During this time period Respondent did not visit Patient A in Long Island, and spoke with her only occasionally on the telephone (T. 131-32). During this time period, various therapists visited Patient A several times a week and spoke with her by telephone (T. 132-33). By this time, Respondent had taken on several new patients (T. 87; 98-99; 190-92).

31. Patient A last saw Respondent in August, 1992, when she went to his home in New Jersey and stayed at a cottage there for what was supposed to be a period of intensive treatment with him (T. 134-35; 137; 240). While Patient A was there for five days, Respondent spent less than five hours with her (T. 137-41).

32. Since the early spring of 1992, Patient A's physical condition has deteriorated (T. 153-54; 199-201).

33. Respondent admitted that he did not keep medical records or take any notes about Patient A, or any of the patients herein. Rather, he testified, for all patients he only kept records concerning the wavenergy program, which records consist of graphs, patient questionnaires, and target heart rate numbers (T. 1841).

CONCLUSIONS AS TO PATIENT A

1. Respondent held himself out to Patient A as a physician, with a record of achievements in vascular surgery and the Olympics Sports Medicine program. Respondent's reputation was an important factor relied on by Patient A in choosing to participate in the wavenergy program.

2. Respondent told Patient A that he would cure her Multiple Sclerosis through his wavenergy program, for which he charged her \$100,000. He told her this fee was based on the fact that he personally would be treating Patient A intensively and would limit taking on other patients. He intentionally misrepresented to Patient A the extent he would be personally involved in her care, and did not devote the amount of time to her that Patient A expected, based on the statements he had made to her.

3. Patient A was not cured of her multiple sclerosis.

4. Respondent did not take an adequate medical history, nor conduct a proper physical examination of Patient A, and did not maintain adequate medical records for Patient A. This failure represented a departure from competent medical practice.

5. Respondent did not reveal personally identifiable facts, data or information obtained from Patient A to other patients, or about other patients to Patient A.

FINDINGS OF FACT AS TO PATIENT B

1. Between on or about May 1993 and on or about July 1993, Respondent consulted Patient B for her chronic Multiple Sclerosis at his office in New Jersey, and over the telephone to her New York and Vermont homes (T. 579; 653-54).

2. Patient B, a private investigator, who has Multiple Sclerosis, was hired by Patient A's family (T. 540). Patient B lives and works in New York (T. 653-54). During the course of his conversations and consultations with Patient B, Respondent was not aware that Patient B was a private investigator, and consulted and treated her as though she were a patient (T. 1548-49; 1555).

3. In or about late May or early June, 1993, during his first telephone conversation with Patient B, Respondent told Patient B that he had success curing MS patients around the country, and that he was interested in cure, not remission (T. 547-48; 557-58).

4. In that same conversation, Respondent told Patient B she probably could not afford the fee for his wavenergy program, which would be \$40,000 to \$50,000 (T. 546-47).

5. In or about June, 1993, in a telephone conversation taped by Patient B, Respondent told her that he had had incredible success with autoimmune diseases in the long run; that he was not interested in making her merely feel better or look better, but "interested only in one hundred percent" (T. 554-55; Pet.'s. Exs. 12A and 13B).

6. On or about July 5, 1993, in a telephone conversation taped by Patient B, Respondent told her that his wavenergy program was curing not only MS but cancer (T.556-67; 570-71; Pet.'s Exs. 12B, 13G). He told Patient B to come to Barbados to be treated by him, even though he had never examined her or seen her medical records (T. 548; 556-57; 563-64; 575; Pet.'s Exs. 12B, 13H).

7. On or about July 7, 1993, in a telephone conversation taped by Patient B, after she told Respondent that she used to ski years ago, Respondent replied that she would be able to do that again someday. Respondent told Patient B that the fee for her treatment would be \$100,000 for personal treatment by him, and that the "\$50,000 to \$60,000" fee that had been previously quoted was for treatment by therapists (T. 555-57; 563-64; 566-67; 576-77; Pet.'s Ex. 12B).

8. On or about July 24, 1993, Patient B met Respondent for the first time at his office in New Jersey. Also in attendance were two persons introduced as relatives of Patient B, and, for at least a portion of the time, Allison Dardik. The meeting lasted approximately four hours, during which time Respondent explained his wavenergy program and that it would cure her disease (T. 579-83).

9. At that meeting, Respondent took a very brief history of Patient B regarding the onset of her MS, but did not cover her history of a heart condition. He did not examine Patient B except for looking at one leg, nor did he take a baseline reading of her heart rate. Respondent did not record his findings or maintain any

medical records for Patient B (T. 588-89; 633; 1555-64).

10. Prior to that meeting, Patient B had provided her physician's name to Respondent on her own initiative. Respondent did not contact or request medical records from Patient B's physician (T. 622-23; 652-653).

11. On or about July 26, 1993, Respondent billed Patient B \$1500 for the July 24th consultation, without having previously discussed with her this fee. Patient B did not pay this bill, nor for the two Polar watches that had been sent to her unsolicited (T. 592-94; 597; Pet.'s Ex. 22).

12. On or about July 27, 1993 Patient B received a draft contract from Respondent containing terms contradicting what he had orally stated, in particular that no cure was guaranteed (T. 594-96; Pet.'s Ex. 14).

13. Patient B never underwent the wavenergy program (T. 596).

CONCLUSIONS AS TO PATIENT B

1. Respondent held himself out to Patient B as a physician, with a record of achievements in vascular surgery and the Olympics Sports Medicine program.

2. Respondent told Patient B that he would cure her Multiple Sclerosis through his wavenergy program, for which he would charge her \$100,000. He told her this fee was based on the fact that he personally would be treating Patient B intensively. He intentionally misrepresented to Patient B the extent he would be

personally involved in her care.

3. Respondent did not take an adequate medical history, nor conduct a proper physical examination of Patient B, and did not maintain any medical records for Patient A. These failures represent a departure from competent medical practice.

4. Respondent did not reveal personally identifiable facts, data or information obtained from Patient B to other patients, or about other patients to Patient B.

FINDINGS OF FACT AS TO PATIENT C

1. Between on or about February, 1992 and or about July 1993, Respondent consulted with and treated Patient C for her chronic Multiple Sclerosis at his office in New Jersey, in her Pennsylvania home and her family's New Jersey home, and over the telephone by his therapist located in New York (T. 401; 403; 421; 426-27; 450-51).

2. On or about March 20, 1992, Patient C met Respondent for the first time (T. 403-04). Also in attendance were Patient C's husband and sister, as well as Respondent's associate, Linda Podhurst. The meeting lasted approximately 2.5 hours (T. 404; 498; 853).

3. At the meeting, Respondent described his wavenergy program, how he would administer the program and monitor Patient C's progress through the data stored in the Polar heart rate watch, which could be communicated to him daily (T. 405-06; 503).

4. At that meeting, Respondent told Patient C that he knew what caused MS and other chronic illnesses and could cure them, and after treatment with his wavenergy program, she would never feel worse than she did at that time, and that she would be healthy and able to have children (T. 407-09; 442-43; 457-58; 471-72; 498-500; 511; 515-18; 855-56; 875; 877-78; 881).

5. At that meeting, Respondent told Patient C that the only person who had not improved from the wavenergy program was one man who had not committed himself to it (T.407-08; 456; 493; 499).

6. Respondent did not take a history from Patient C (T.477). Prior to this first meeting, Patient C had sent medical records from her neurologist to Respondent at her own initiative (T.404; 461; 476). Respondent did not contact this physician or review the report (T. 1426).

7. Respondent did not physically examine Patient C, although he did observe how she walked (T.409; 460-62; 465; 468-70; 508; 519; 526; 857; 1417). Respondent did not take a baseline reading of Patient C's heart rate (T. 1417).

8. At the meeting, Patient C was told that the fee for the program would be \$30,000 (T. 411-12). Thereafter, a payment schedule was devised and the fee was paid in installments between April 1992 and April 1993 (T. 413-16; Pet.'s Ex. 20; 21).

9. On or about March 20, 1992, Patient C was billed \$1000.00 for the initial consultation, which she paid (T. 416; Pet.'s Ex. 20; 21).

10. No written contract regarding treatment was ever

discussed, or sent to Patient C or her representatives (T. 417; 1419-20).

11. Patient C commenced treatment with the wavenergy program on or about April 20, 1992 (T. 419). She purchased two Polar watches and other equipment recommended by Respondent (T. 462; 1418; 1421).

12. During the course of her treatment, Patient C remained committed to the wavenergy program (T. 421; 430; 495; 505; 507; 533).

13. The bulk of her treatment consisted of her being given daily target heart rate numbers by Respondent's therapists over the telephone, with Patient C achieving these targets through cycles of exercise and relaxation. Her heart rate was monitored during these periods by the Polar watch, and the data transmitted via computer to Respondent's office daily (T. 421-22; 430-31; 435-36).

14. During the course of her treatment, Patient C was visited a total of no more than 15 times by Respondent's therapists (T. 420-23; 426-27; 433-37; 450-51; 453). Her total contact with Respondent was at the initial meeting, two telephone conversations, and one visit to his New Jersey office (T. 424; 435).

15. In or about the summer of 1992, and again that winter, Respondent told Patient C that he could not turn her around overnight, that her progress would resemble three steps forward and one step back (T. 425-26; 442; 452).

16. In or about December 1992, Respondent told Patient C he would personally treat her (T. 426-28).

17. From in or about January to March, 1993, Respondent did not return Patient C's multiple telephone calls (T. 429-31).

18. Patient C's condition was not improved after her treatment with the wavenergy program (T. 433; 437; 441; 478-79; 507-08).

19. Respondent did not maintain medical records for Patient C (T. 1841).

CONCLUSIONS AS TO PATIENT C

1. Respondent held himself out to Patient C as a physician, with a record of achievements in vascular surgery and the Olympics Sports Medicine program. Respondent's reputation was an important factor relied on by Patient C in choosing to participate in the wavenergy program.

2. Respondent told Patient C that he would cure her Multiple Sclerosis through his wavenergy program, for which he charged her \$30,000. He told her this fee was based on the fact that he personally would be overseeing and/or treating Patient C. He intentionally misrepresented to Patient C the extent of his personal involvement in her care, and did not devote the amount of time to her that Patient C expected, based on the statements he had made to her.

3. Patient C was not cured of her multiple sclerosis.

4. Respondent did not take an adequate medical history, nor conduct a proper physical examination of Patient C, and did not

maintain adequate medical records for Patient C. These failures represent a departure from competent medical practice.

5. Respondent did not reveal personally identifiable facts, data or information obtained from Patient C to other patients, or about other patients to Patient C.

FINDINGS OF FACT AS TO PATIENT D

1. Between on or about March 1991 and October 1991, Respondent consulted and treated Patient D for her chronic Multiple Sclerosis at her husband's office and at their home in New York (T. 739; 744).

2. In or about March or April 1991, Respondent met Patient D and her husband for the first time, at a meeting in her husband's office. Allison Dardik also attended the meeting. At that meeting, Respondent explained his wavenergy program, and how it would be administered (T. 740-43; 907; 927; 1306). He told Patient D that he would personally pay constant attention to her (T. 747; 771-72; 788-89; 916-17; 925-28; 952-53).

3. At that meeting Respondent told Patient D that she would be walking by December, 1991; that he would totally eradicate her MS, as he could do with cancer and ALS; and that he would cure her MS (T. 741-44; 787-88; 908-10; 929; 933-38).

4. At that meeting, Respondent did not take a history of Patient D (T. 1287; 1309). He did not ask for her medical records or contact her other physicians (T. 767; 1311).

5. Respondent did not physically examine Patient D at that meeting, did not ask her to walk or stand, although he may have seen her do so, and did not take a baseline heart rate reading (T. 744-45; 791; 911-12; 940-41; 1286-87; 1308).

6. At the first meeting, either Respondent or Allison Dardik told Patient D and/or her husband that the treatment would cost \$50,000 for a year's program (T. 746; 912). Thereafter, a payment schedule was worked out with Patient D's financial advisor, and \$37,000 of the fee was paid between April 1991 and October 1991 (T. 913; Pet.'s Exs. 15; 24).

7. No written contract regarding her treatment was ever discussed with or provided to Patient D or her representatives (T. 933-35; 946-47; 1318-19; 1692).

8. Patient D commenced treatment in or about April 1991, purchasing the recommended Polar watch and other equipment (T. 750-51). She did not purchase a computer, but communicated her heart rate numbers over the telephone daily or in person (T. 789-90).

9. Patient D remained committed to the wavenergy program over the course of her treatment. The bulk of her treatment consisted of her being given daily target heart rate numbers by Respondent's therapists over the telephone, and in person, with Patient D achieving these targets through cycles of exercise and relaxation. Her heart rate was monitored during these periods by the Polar watch, and the data orally transmitted by telephone to Respondent's office (T. 752-57; 760-62; 789-91; 920-21).

10. During the course of her treatment, Respondent visited

Patient D no more than 13 times for an average of one hour per visit, and did not visit her once after her last payment (T. 752; 765; 918; 920-21). She was visited by Respondent's therapists periodically (T. 756-60). During the first few months of her treatment, Respondent spoke to Patient D on the telephone regularly, but after December 1991, he did not return her calls (T. 762-65; 771-72; 922).

11. Patient D's condition was not improved after her treatment with the wavenergy program (T. 739; 765; 775; 923).

12. Respondent did not maintain an appropriate medical record for Patient D (T. 792; 941; 1286-87; 1310; 1827-35; 1959-61; Resp.'s Ex. R).

CONCLUSIONS AS TO PATIENT D

1. Respondent held himself out to Patient D as a physician, with a record of achievements in vascular surgery and the Olympics Sports Medicine program. Respondent's reputation was an important factor relied on by Patient D in choosing to participate in the wavenergy program.

2. Respondent told Patient D that he would cure her Multiple Sclerosis through his wavenergy program, for which he would charge her \$50,000. He told her this fee was based on the fact that he personally would be treating Patient D intensively. He intentionally misrepresented to Patient D the extent he would be personally involved in her care, and did not devote the amount of

time to her that Patient D expected, based on the statements he had made to her.

3. Patient D was not cured of her multiple sclerosis.

4. Respondent did not take an adequate medical history, nor conduct a proper physical examination of Patient D, and did not maintain adequate medical records for Patient D. These failures represent a departure from competent medical practice.

5. Respondent did not reveal personally identifiable facts, data or information obtained from Patient D to other patients, or about other patients to Patient D.

FINDINGS OF FACT AS TO PATIENT E

1. Between on or about April, 1992, and on or about April, 1993 Respondent consulted and treated Patient E, who lives in Chicago, for her chronic Multiple Sclerosis in New York City and over the telephone (T.673; 736).

2. On or about April 24, 1992, Patient E first met Respondent in a New York City hotel room. His associate, Linda Podhurst, also attended the meeting, which lasted approximately one half hour (T. 675; 854). At the meeting, Respondent explained his wavenergy program (T. 679-80).

3. At that meeting, Respondent told Patient E that his treatment would make everything better; that he had success treating a variety of diseases; that he would permanently improve her MS; that she would be walking better; that her thinning hair

would improve; and that the only two people who had not improved from his program had not committed to it (T. 676-77; 716; 718; 720-21; 725; 731; 859).

4. Respondent took only a cursory history of Patient E, and did not perform a physical examination or take a baseline heart rate. He did ask her to walk so he could observe her. He did not look at the medical records Patient E had brought (T. 677; 706; 713; 723-725; 869; 1477; 1491-93).

5. At the meeting, Respondent told Patient E that the fee for treatment would be \$30,000 for one year. Thereafter a payment schedule was devised, and the entire fee was paid by August, 1992 (T. 628; 677-78; 681-84; 719; Pet.'s Ex. 17).

6. No written contract regarding her treatment was ever discussed with or provided to Patient E (T. 679; 716-17).

7. Patient E commenced treatment in or about June 1992, purchasing the recommended Polar watch, computer, and other equipment (T. 683-84; 716; Pet.'s Ex. 23).

8. Patient E remained committed to the wavenergy program over the course of her treatment. The bulk of her treatment consisted of her being given daily target heart rate numbers by Respondent's therapists over the telephone, with Patient E achieving these targets through cycles of exercise and relaxation. Her heart rate was monitored during these periods by the Polar watch, and the data transmitted to Respondent's office daily by computer (T. 684-95; 698; 700; 702; 716; 727).

9. During the course of her treatment, the totality of

patient E's contact with Respondent was the initial meeting and a few telephone conversations. She was visited by his therapists no more than 5 times, but spoke to them on the telephone often (T. 680-81; 689; 691-92; 695; 697; 701; 1472).

10. In or about February, 1993, Respondent told Patient E over the telephone not to be discouraged by her recent exacerbation and hospitalization, because even though her year's treatment was nearing its end, she would be walking better than ever after her bad spell, and that he would personally take charge of treating her (T. 697).

11. In or about April, 1993, Respondent stopped returning Patient E's telephone calls (T. 700-01).

12. Patient E's medical condition was not improved after her treatment with the wavenergy program (T. 703).

13. Respondent failed to maintain an appropriate medical record for Patient E (T. 860; 1478; 1490; 1493-94; 1519-20; 1853-55; 1861; 1884-85).

CONCLUSIONS AS TO PATIENT E

1. Respondent held himself out to Patient E as a physician, with a record of achievements in vascular surgery and the Olympics Sports Medicine program. Respondent's reputation was an important factor relied on by Patient E in choosing to participate in the wavenergy program.

2. Respondent told Patient E that he would cure her Multiple

Sclerosis through his wavenergy program, for which he would charge her \$30,000. He told her this fee was based on the fact that he personally would be overseeing her treatment. He intentionally misrepresented to Patient E the extent he would be personally involved in her care, and did not devote the amount of time to her that Patient E expected, based on the statements he had made to her.

3. Patient E was not cured of her multiple sclerosis.

4. Respondent did not take an adequate medical history, nor conduct a proper physical examination of Patient E, and did not maintain adequate medical records for Patient E. These failures represent a departure from competent medical practice.

VOTE OF THE HEARING COMMITTEE

(All votes were unanimous, unless noted.)

FIRST THROUGH FIFTH SPECIFICATIONS:

(Practicing Fraudulently)

SUSTAINED as to Paragraphs A, A.1, A.1.a, A.1.b, A.1.d, A.1.e, A.1.f, A.1.g, A.1.h, A.1.i, A.3; B, B.1, B.1.a, B.1.b, B.1.c, B.1.d, B.1.e, B.1.f, B.1.g; C, C.1, C.1.a, C.1.b, C.1.c, C.1.d, C.1.e, C.1.f, C.3; D, D.1, D.1.a, D.1.b, D.1.c, D.3; E, E.1, E.1.a, E.1.b, E.1.c, E.1.d, E.1.e, E.3.

NOT SUSTAINED as to Paragraphs A.1.c and A.2, B.2, C.2, D.2, E.2.

SIXTH THROUGH TENTH SPECIFICATIONS:

(Exerting Undue Influence and Exploiting Patients)

SUSTAINED as to Paragraphs A, A.1, A.1.a, A.1.b, A.1.d, A.1.e, A.1.f, A.1.g, A.1.h, A.1.i, A.3; B, B.1, B.1.a, B.1.b, B.1.c, B.1.d, B.1.e, B.1.f, B.1.g; C, C.1, C.1.a, C.1.b, C.1.c, C.1.d, C.1.e, C.1.f, C.3, C.5; D, D.1, D.1.a, D.1.b, D.1.c, D.3, D.5; E,

E.1, E.1.a, E.1.b, E.1.c, E.1.d, E.1.e, E.3.

NOT SUSTAINED as to Paragraphs A.1.c and A.2, A.5; B.2, B.3; C.2, D.2, E.2.

ELEVENTH THROUGH FIFTEENTH SPECIFICATIONS:
(Guaranteeing a Cure)

SUSTAINED as to Paragraphs A, A.1, A.1.a, A.1.b, A.1.d, A.1.e, A.1.f, A.1.g, A.1.h, A.1.i, A.3; B, B.1, B.1.a, B.1.b, B.1.c, B.1.d, B.1.e, B.1.f, B.1.g; C, C.1, C.1.a, C.1.b, C.1.c, C.1.d, C.1.e, C.1.f, C.3; D, D.1, D.1.a, D.1.b, D.1.c, D.3; E, E.1, E.1.a, E.1.b, E.1.c, E.1.d, E.1.e, E.3.

NOT SUSTAINED as to Paragraphs A.1.c and A.2, A.5; B.2, B.3; C.2, D.2, E.2.

SIXTEENTH THROUGH NINETEENTH SPECIFICATIONS:
(Breaching Patient Confidentiality)

SUSTAINED as to Paragraphs A, B, C, D.

NOT SUSTAINED as to Paragraphs A.5; B.3; C.5; D.5.

TWENTIETH THROUGH TWENTY-FOURTH SPECIFICATIONS:
(Moral Unfitness)

(The Committee voted 2-1 not to sustain this charge)

SUSTAINED as to Paragraphs A, A.1, A.1.a, A.1.b, A.1.d, A.1.e, A.1.f, A.1.g, A.1.h, A.1.i, A.3; B, B.1, B.1.a, B.1.b, B.1.c, B.1.d, B.1.e, B.1.f, B.1.g; C, C.1, C.1.a, C.1.b, C.1.c, C.1.d, C.1.e, C.1.f, C.3; D, D.1, D.1.a, D.1.b, D.1.c, D.3; E, E.1, E.1.a, E.1.b, E.1.c, E.1.d, E.1.e, E.3.

NOT SUSTAINED as to Paragraphs A.1.c and A.2, A.5; B.2, B.3; C.2; C.5; D.2, D.5; E.2.

TWENTY-FIFTH THROUGH TWENTY-NINTH SPECIFICATIONS:
(Failing to maintain records)

SUSTAINED as to Paragraphs A, A.4; B, B.4, C, C.4, D and D.4, E and E.4.

DETERMINATION OF THE HEARING COMMITTEE AS TO PENALTY

The Hearing Committee notes that prior to his involvement with his wavenergy program, the Respondent had achieved some measure of success as a vascular surgeon and medical researcher. He was familiar with the funding, validation, and promotion of new scientific theories through peer review methods. Approaches to potential colleagues and supporters through these channels did not however, result in acceptance of his theory.

The Respondent cooperated in the publication of an article in *New York Magazine* in 1991 which resulted in considerable public interest, and attracted, among others, the four MS patients which testified in these proceedings. Although Respondent testified at the hearing that he still considers his program to be "in evolution," five highly credible witnesses presented by the State testified that the Respondent promised to cure their MS. Dr. Dardik's enthusiasm for his program, and his history as a physician with achievements in medicine and in the Olympics Sports Medicine Committee led these patients to believe, that although his fees were high, his intensive involvement in their care, and their adherence to his wavenergy program would successfully treat a disease they had previously believed to be incurable.

The Respondent testified at great length about his theory, and presented supporting documents which included an article published in a journal called *Cycles*, which journal was not previously known to the members of the Committee. He also presented extensive

papers from the literature of physics and the natural sciences to explain his work.

The path taken by Respondent in trying to gain acceptance for his theory, as well as his deviations from proper patient care, led this Hearing Committee to wonder about Respondent's mental health. Yet despite extensive use of made-up words, such as wavenergy, superlooping, matterspacetime, and frequent loose associations and expansive digressions in response to questions, the Respondent could always return to the subject when prompted, and he retained the capacity to understand the questioner (usually a member of the panel) in an objective manner. Although his presentation at times became "manic" in its intensity, he was able to retain relevancy in his responses, occasionally with humor, and he was never out of control. His physical appearance was consistently well groomed, and his affect and interactions were always appropriate to the instant events of the proceeding.

It is not the task of the Hearing Committee to make judgments or evaluate the merits of Respondent's theory, but rather to evaluate whether, as a physician, he followed the standards of patient care he was well familiar with from his practice of vascular surgery.

In this respect, the Respondent was severely deficient. He did not take medical histories, perform physical examinations, or keep medical records for these patients in a form which could be useful to them, or to another physician in case the need arose. He had no back-up physician, and testimony supported in great detail

his failure to respond to his patients' telephone calls, and their repeated requests for the personal intervention in their care that he had promised them.

This Committee does not conclude that there was sufficient evidence presented to find that Dr. Dardik is morally unfit to practice medicine. Nonetheless, it is especially troubling to the Committee that Dr. Dardik uses many of the traditional tools of the physician patient relationship to enhance the acquisition of patients to his program, and to increase his credibility to patients. He made no effort to distance himself from his status as a physician, maintaining the M.D. title on correspondence, assisting patients' attempts to obtain insurance reimbursement, and even occasionally prescribing medication for a patient. Although he testified that the program is still in development, and the written contracts sent to two patients, which were submitted in evidence, supported that status, there is a striking discrepancy between his testimony and contracts and the highly credible patient witnesses who stated unequivocally that he promised to "cure" their disease.

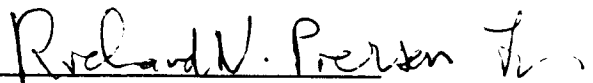
Therefore, based on the above, the Committee unanimously votes that this conduct warrants revocation of Respondent's license to practice medicine in the State of New York.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT

1. Respondent's license to practice medicine in the State of New York is hereby revoked.

Dated: New York, New York
March 12, 1995


RICHARD N. PIERSON, M.D.
Chairperson

LEO FISHEL, M. D.
MORTON M. KLEINMAN

APPENDIX I

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

-----X AMENDED

IN THE MATTER : STATEMENT
OF : OF
IRVING I. DARDIK, M.D. : CHARGES

CASE	<i>BPMC</i>
<i>Petitioner</i>	<i>EX</i>
DATE	<i>11-9-96</i>
ACCU-SCRIBE REPORTING, INC. MSB	

X 2 Subord

IRVING I. DARDIK, M.D., the Respondent, was authorized to practice medicine in New York State on November 4, 1963 by the issuance of license number 091514 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 at R.D. 1, Box 253, Hillcrest Drive, Great Meadows, New Jersey 07838.

FACTUAL ALLEGATIONS

- A. Between on or about May, 1991 and on or about September, 1992, Respondent consulted and treated Patient A (whose name together with the other patient's name is contained in the attached Appendix) for her chronic Multiple Sclerosis at his office located at R.D. 1, Box 253, Hillcrest Drive, Great Meadows, New Jersey 07838, and at her home at her family's homes, and over the telephone.

1. In the course of his consultation with and treatment of Patient A, Respondent made statements to the effect that his wavenergy program, consisting of exercise and periods of relaxation, (hereinafter, "wavenergy program") and for which she would be required to pay \$100,000.00 for one year's treatment, plus various expenses, would cure her disease. Respondent's statements included, but were not limited to, the following:
 - a. In or about May and/or June, 1991, Respondent told Patient A words to the effect that ne had the answer to her MS.
 - b. In or about May and/or June, 1991, Respondent told Patient A words to the effect that her myelin was not destroyed, but rather that it was only thinned out and that she could get it all back.
 - c. In or about June, 1991, Respondent told Patient A words to the effect that he would have her walking again within a year, and that running would follow.

- d. In or about June, 1991, Respondent told Patient A words to the effect that he was not interested in remission, but rather that he would cure her M.S.
- e. In or about June, 1991, Respondent told Patient A words to the effect that his wavenergy program was curing not only M.S., but also cancer and A.L.S.
- f. In or about June, 1991, Respondent told Patient A words to the effect that her condition would never again be as bad as when she started treatment with Respondent and that she would be better than ever.
- g. In or about June, 1991, Respondent told Patient A's mother words to the effect that Patient A would never be worse, and that he would have Patient A walking by March, 1992.
- h. In or about June, 1991, Respondent told Patient A's sister words to the effect that he would cure Patient A.

- i. In or about October, 1991, Respondent communicated to Patient A's mother words to the effect that he was curing Patient A's M.S.
2. Respondent's statements regarding the efficacy of his wavenergy program, including, but not limited to, those described in paragraph A.1, were false and Respondent knew they were false.
3. Respondent falsely stated words to the effect that he would personally pay constant attention to Patient A, when he knew he would not, and in fact he did not, and/or eventually refused to even return her telephone calls.
4. Respondent failed to maintain an appropriate record for Patient A.
5. In the course of his consultation with and treatment of Patient A, Respondent revealed the identities of, and facts about, other patient(s).

B. Between on or about May, 1993, and on or about July, 1993, Respondent consulted Patient B for her chronic Multiple Sclerosis at his office located at R.D. 1, Box 253, Hillcrest Drive, Great Meadows, New Jersey 07838, and over the telephone.

1. In the course of his consultation with Patient B, Respondent made statements to the effect that his wavenergy program, consisting of exercise and periods of relaxation, and for which she would be required to pay \$100,000.00 for one year's treatment, plus various expenses, would cure her disease. Respondent's statements included, but were not limited to, the following:

a. In or about May and/or June, 1993, Respondent told Patient B words to the effect that he had success curing M.S. patients around the country.

b. In or about May and/or June, 1993, Respondent told Patient B words to the effect that he was not interested in remission, but rather that he could cure her M.S.

- c. In or about June, 1993, Respondent told Patient B he was not interested in making Patient B merely feel better or look better and handle her disorder, but rather that he was "interested in only one hundred percent."
- d. In or about July, 1993, Respondent told Patient B his wavenergy program was curing not only multiple sclerosis but cancer.
- e. In or about July, 1993, Respondent told Patient B he would help her "get rid of this thing."
- f. In or about July, 1993, after Patient B told Respondent that she used to ski years ago, Respondent told Patient B words to the effect that she would be able to do that again someday.
- g. In or about July, 1993, Respondent told Patient B his wavenergy program would cure her disease.

2. Respondent's statements regarding the efficacy of his wavenergy program, including, but not limited to, those described in paragraphs B.1 were false and Respondent knew they were false.

3. In the course of his consultation with Patient B, Respondent revealed the identities of, and facts about, other patients, including, but not limited to, Patient A.

4. Respondent failed to maintain an appropriate record for Patient B.

C. Between on or about February, 1992, and on or about July, 1993, Respondent consulted and treated Patient C for her chronic Multiple Sclerosis at his office located at R.D. 1, Box 253, Hillcrest Drive, Great Meadows, New Jersey 07838, and at her home, at her family's home, and over the telephone.

1. In the course of his consultation with and treatment of Patient C, Respondent made statements to the effect that his wavenergy program, consisting of exercise and periods of relaxation, and for which she would be required to pay \$30,000.00 for one year's treatment,

plus various expenses, would cure her disease. Respondent's statements included, but were not limited to, the following:

- a. In or about March, 1992, Respondent told Patient C words to the effect that he knows what causes chronic illness and he can cure it.
- b. In or about March, 1992, Respondent told Patient C, words to the effect that she would never feel worse than she did at that time.
- c. In or about March, 1992, Respondent told Patient C words to the effect that she would be healthy and able to have children after being treated with his wavenergy program.
- d. In or about the spring and/or the summer of 1992, Respondent told Patient C words to the effect that the only person who had not improved from the wavenergy program was one man who had not committed himself to it.

e. In or about the summer and/or the winter of 1992, Respondent told Patient C words to the effect that he could not turn her around overnight, but rather, since it took ten years for her to arrive at her present condition, it would take some time to turn her M.S. around.

f. In or about the spring and/or summer and/or the winter of 1992, Respondent told Patient C words to the effect that her progress would resemble three steps forward and one step back.

2. Respondent's statements to Patient C regarding the efficacy of his wavenenergy program, including, but not limited to, those described in paragraph C.1, were false and Respondent knew they were false.
3. In or about December, 1992, Respondent falsely communicated to Patient C words to the effect that he would personally and intensively treat her, when he knew he would not, and in fact he did not, and/or soon thereafter refused to even return her telephone calls.

4. Respondent failed to maintain an appropriate record for Patient C.
5. In the course of his consultation with and treatment of Patient C, Respondent revealed the identities of, and facts about, other patient(s), including, but not limited to Patient A.

D. Between on or about March, 1991, and on or about October, 1991, Respondent consulted and treated Patient D for her chronic Multiple Sclerosis at her husband's office, and at her homes, and over the telephone.

1. In the course of his consultation with and treatment of Patient D, Respondent made statements to the effect that his wavenergy program, consisting of exercise and periods of relaxation, and for which she would be required to pay \$50,000.00 for one year's treatment, plus various expenses, would cure her disease. Respondent's statements included, but were not limited to, the following:

- a. In or about March, 1991, Respondent told Patient D words to the effect that she would be walking normally by December.
 - b. Respondent told Patient D words to the effect that he would totally eradicate her M.S., as he could do with cancer and A.L.S.
 - c. Respondent told Patient D words to the effect that her financial adviser would "eat his hat" when he saw Patient D cured.
2. Respondent's statements regarding the efficacy of his wavenergy program, including but not limited to, those described in paragraph D.1, were false and Respondent knew they were false.
 3. Respondent falsely stated words to the effect that he would personally pay constant attention to Patient D, when he knew he would not, and in fact he did not and/or periodically refused to even return her telephone calls.
 4. Respondent failed to maintain an appropriate record for Patient D.

5. In the course of his consultation with and treatment of Patient D, Respondent revealed the identities of, and facts about, other patient(s), including, but not limited to Patient A.

E. Between on or about April, 1992, and on or about April, 1993, Respondent consulted and treated Patient E for her chronic Multiple Sclerosis in New York City and over the telephone.

1. In the course of his consultation with and treatment of Patient E, Respondent made statements to the effect that his wavenergy program, consisting of exercise and periods of relaxation, and for which she would be required to pay \$30,000.00 for one year's treatment, plus various expenses, would cure her disease. Respondent's statements included, but were not limited to, the following:

a. In or about April, 1992, Respondent told Patient E words to the effect that his treatment would make everything better.

- b. In or about April, 1992, Respondent told Patient E words to the effect that the only two people who had ever not improved from his wavenergy program were two people who were not committed to it.
 - c. In or about April, 1992, Respondent told Patient E words to the effect that she would be walking better after treatment with the wavenergy program.
 - d. In or about April 1992, Respondent told Patient E words to the effect that even her thinning hair would be thicker after treatment with the wavenergy program.
 - e. In or about February, 1993, Respondent told Patient E words to the effect that she should not be discouraged by her recent hospitalization, because even though her year's treatment was nearing an end, she would be walking better than ever after her bad spell.
2. Respondent's statements regarding the efficacy of his wavenergy program, including, but not

limited to, those described in paragraph E.1, were false and Respondent knew they were false.

3. In or about February, 1993, Respondent falsely stated words to the effect that he would personally take charge of treating Patient E, when he knew he would not, and in fact he did not, and/or soon thereafter refused to even return her telephone calls.
4. Respondent failed to maintain an adequate record for Patient E.

SPECIFICATION OF CHARGES
FIRST THROUGH FIFTH SPECIFICATIONS
PRACTICING FRAUDULENTLY

Respondent is charged with unprofessional conduct under N.Y. Educ. Law Section 6530(2) (McKinney Supp. 1994), in that he practiced the profession fraudulently, in that Petitioner charges:

1. The facts in paragraph A, A.1, A.1.a, A.1.b, A.1.c, A.1.d, A.1.e, A.1.f, A.1.g, A.1.h, A.1.i, A.2, and/or A.3.
2. The facts in paragraph B, B.1, B.1.a, B.1.b, B.1.c, B.1.d, B.1.e, B.1.f, B.1.g, and/or B.2.
3. The facts in paragraph C, C.1, C.1.a, C.1.b, C.1.c, C.1.d, C.1.e, C.1.f, C.2, and/or C.3.
4. The facts in paragraph D, D.1, D.1.a, D.1.b, D.1.c, D.2, and/or D.3.

5. The facts in paragraph E, E.1, E.1.a, E.1.b, E.1.c, E.1.d, E.1.e, E.2, and/or E.3.

SIXTH THROUGH TENTH SPECIFICATIONS

EXERCISING UNDUE INFLUENCE AND EXPLOITING THE
PATIENT FOR THE FINANCIAL GAIN OF THE LICENSEE

Respondent is charged with unprofessional conduct under N.Y. Educ. Law Section 6530(17) (McKinney Supp. 1994), in that he exercised undue influence, including the promotion of the sale of services, goods, and appliances in such a manner as to exploit the patient for the financial gain of the licensee or of a third party, in that Petitioner charges:

6. The facts in paragraph A, A.1, A.1.a, A.1.b, A.1.c, A.1.d, A.1.e, A.1.f, A.1.g, A.1.h, A.1.i, A.2, A.3, and/or A.5.

7. The facts in paragraph B, B.1, B.1.a, B.1.b, B.1.c, B.1.d, B.1.e, B.1.f, B.1.g, B.2 and/or B.3.

8. The facts in paragraph C, C.1, C.1.a, C.1.b, C.1.c, C.1.d, C.1.e, C.1.f, C.2, C.3, and/or C.5.
9. The facts in paragraph D, D.1, D.1.a, D.1.b, D.1.c, D.2, D.3, and/or D.5.
10. The facts in paragraph E, E.1, E.1.a, E.1.b, E.1.c, E.1.d, E.1.e, E.2, and/or E.3.

ELEVENTH THROUGH FIFTEENTH SPECIFICATIONS

GUARANTEEING A CURE

Respondent is charged with unprofessional conduct under N.Y. Educ. Law Section 6530(34) (McKinney Supp. 1994), in that he guaranteed that satisfaction or cure would result from the performance of professional services, in that Petitioner charges:

11. The facts in paragraph A, A.1, A.1.a, A.1.b, A.1.c, A.1.d, A.1.e, A.1.f, A.1.g, A.1.h, A.1.i, A.2, A.3, and/or A.5.

12. The facts in paragraph B, B.1, B.1.a,
B.1.b, B.1.c, B.1.d, B.1.e, B.1.f,
B.1.g, B.2 and/or B.5.

13. The facts in paragraph C, C.1, C.1.a,
C.1.b, C.1.c, C.1.d, C.1.e, C.1.f, C.2,
C.3, and/or C.5.

14. The facts in paragraph D, D.1, D.1.a,
D.1.b, D.1.c, D.2, D.3, and/or D.5.

15. The facts in paragraph E, E.1, E.1.a,
E.1.b, E.1.c, E.1.d, E.1.e, E.2, and/or
E.3.

SIXTEENTH THROUGH NINETEENTH SPECIFICATION

REVEALING PERSONALLY IDENTIFIABLE FACTS, DATA,
OR INFORMATION OBTAINED IN A PROFESSIONAL
CAPACITY WITHOUT THE PRIOR CONSENT OF THE PATIENT

Respondent is charged with unprofessional conduct under
N.Y. Educ. Law Section 6530(23) (McKinney Supp. 1994), in that he
revealed personally identifiable facts, data, or information
obtained in a professional capacity without the prior consent of
the patient, in that Petitioner charges:

16. The facts in paragraph A and A.5.

17. The facts in paragraph B and B.3.

18. The facts in paragraph C and C.5.

19. The facts in paragraph D and D.5.

TWENTIETH THROUGH TWENTY-FOURTH SPECIFICATIONS

ENGAGING IN CONDUCT EVIDENCING MORAL

UNFITNESS TO PRACTICE MEDICINE

Respondent is charged with unprofessional conduct under N.Y. Educ. Law Section 6509(20) (McKinney Supp. 1994), in that he engaged in conduct which evidences moral unfitness to practice medicine, in that Petitioner charges:

20. The facts in paragraph A, A.1, A.1.a, A.1.b, A.1.c, A.1.d, A.1.e, A.1.f, A.1.g, A.1.h, A.1.i, A.2, A.3, and/or A.5.

21. The facts in paragraph B, B.1., B.1.a, B.1.b, B.1.c, B.1.d, B.1.e, B.1.f, B.1.g, B.2, and/or B.3.

22. The facts in paragraph C, C.1, C.1.a, C.1.b, C.1.c, C.1.d, C.1.e, C.1.f, C.2, C.3, and/or C.5.

23. The facts in paragraph D, D.1, D.1.a, D.1.b, D.1.c, D.2, D.3, and/or D.5.

24. The facts in paragraph E, E.1, E.1.a, E.1.b, E.1.c, E.1.d, E.1.e, E.2, and/or E.3.

TWENTY-FIFTH THROUGH TWENTY NINTH SPECIFICATIONS

FAILING TO MAINTAIN RECORDS

Respondent is charged with unprofessional conduct under N.Y. Educ. law Section 6530)(32) (McKinney Supp. 1994), in that he failed to maintain a record for each patient which accurately reflects his evaluation and treatment of the patient, in that Petitioner charges:

25. The facts in paragraph A and A.4.

26. The facts in paragraph B and B.4.

27. The facts in paragraph C and C.4.

28. The facts in paragraph D and D.4.

29. The facts in paragraph E and E.4.

DATED: New York, New York

November 9, 1994

A handwritten signature in black ink, appearing to read "Chris Stern Hyman", is written over a horizontal line.

CHRIS STERN HYMAN
Counsel

Bureau of Professional Medical
Conduct