



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

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

Paula Wilson
Executive Deputy Commissioner

September 7, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Charles Grover Gabelman, III, M.D.
86 Genesee Street
New Hartford, New York 13413-2326

Joan Teuchert Shkane, Esq.
258 Genesee Street
Utica, New York 10502

Marta Sachey, Esq.
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237

Effective Date: 9/14/94

RE: In the Matter of Charles Grover Gableman, III, M.D.

Dear Dr. Gabelman, Ms. Shkane and Ms. Sachey :

Enclosed please find the Determination and Order (No. 94-86) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon 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.

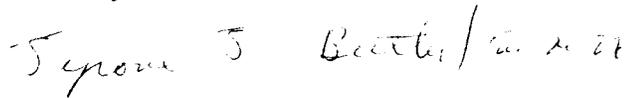
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Office of Professional Medical Conduct
New York State Department of Health
Empire State Plaza
Corning Tower, Room 438
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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

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

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

**IN THE MATTER
OF
CHARLES GROVER GABELMAN, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB 94-86**

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.**¹ held deliberations on August 12, 1994 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) June 20, 1994 Determination finding Dr. Charles Grover Gabelman (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on June 30, 1994. The Respondent did not submit a brief to the Review Board. E. Marta Sachey, Esq. submitted a brief on behalf of the Office of Professional Medical Conduct (Petitioner).

SCOPE OF REVIEW

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL §230-a.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the

¹ Sumner Shapiro did not participate in the review of this case.

Hearing Committee for further consideration.

Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

HEARING COMMITTEE DETERMINATION

The Petitioner charged the Respondent with moral unfitness in the practice of medicine, practicing the profession fraudulently, willful physical abuse, and committing an act constituting a crime under New York law. The Petitioner began the proceeding through the service of a Summary Order by the Commissioner of Health suspending the Respondent from practice immediately on the grounds that the Respondent constituted a danger to the public health. In an interim report on May 26, 1994 the Hearing Committee continued the Summary Order in effect until a final decision by the Committee or the Administrative Review Board. The Petitioner charges against the Respondent had originally included specifications concerning the Respondent's actions toward three patients, A through C. During the hearing, the Petitioner withdrew the charges concerning Patient B.

The Hearing Committee found that the Respondent had engaged in physical contact of a sexual nature with Patients A and C, in which the Respondent fondled the patients' breasts, and pinched the patients' nipples. In addition, in the case of Patient A, the Committee found that the Respondent had bitten Patient A twice on the nipple, and, in the case of Patient C, the Committee found that the Respondent had forcibly placed the Patient's hand on the Respondent's clothed penis. The Committee also found that the Respondent had been arrested for driving while intoxicated, with a blood alcohol level of .19, and had then used his position at a hospital at which he had privileges to create false documentation of his blood alcohol level. The Committee found further that the Respondent was convicted following a guilty plea of two counts of sexual abuse in the third degree. The two counts involved Patients A and B. The Committee also found that the Respondent had falsified Patient A's medical record.

The Committee found that the respondent was guilty of moral unfitness in the practice of medicine for his physical conduct towards Patients A and C, his falsification of Patient A's record

and his attempt to create a false documentation of his blood level, The Committee found the Respondent guilty of practicing the profession fraudulently for his falsification of Patient A's medical records and his attempt to create false documentation of his blood alcohol level. The Committee found the Respondent guilty of wilfully abusing a patient for his physical contact with Patients A and C, the Committee found the Respondent guilty of maintaining inaccurate records for Patient A and the Committee found the Respondent guilty of professional misconduct for being convicted of a crime under New York State law. The Committee voted to revoke the Respondent's license to practice medicine in New York State. The Committee concluded that the Respondent was a danger to his patients, that he was totally unrepentant for his egregious behavior and that he had totally disregarded the duty owed to his patients.

REQUESTS FOR REVIEW

Although the Respondent requested a review in this case, the Respondent has submitted no brief to the Review Board. The Review Board, therefore, reviewed whether the Hearing Committee's Determination and penalty were consistent with the Committee's findings of fact and conclusions and whether the penalty was appropriate.

The Petitioner has asked that the Review Board uphold the Hearing Committee's Determination revoking Dr. Gabelman's license to practice medicine in New York State.

REVIEW BOARD DETERMINATION

The Review Board has considered the record below and the briefs which counsel have submitted.

The Review Board votes 4-0 to sustain the Hearing Committee's Determination finding the Respondent guilty of misconduct based upon a criminal conviction under New York Law, guilty of fraud in the practice of medicine, guilty of moral unfitness in the practice of medicine, guilty of wilfully abusing two patients and guilty of failing to maintain accurate records. The Determination of guilt on all the charges is consistent with the Committee's findings concerning the Respondent's criminal convictions, his inappropriate physical contact of a sexual nature with Patients A and C, his

falsification of Patient A's record and his attempt to falsely document his blood alcohol level following his arrest for driving under the influence of alcohol.

The Review Board votes to sustain the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State. The revocation was consistent with the Committee findings and conclusions concerning the Respondent's wilful abuse of patients, his acts of fraud and his conviction for sexual abuse. The Penalty is appropriate because the evidence from the hearing and the findings and conclusions by the Hearing Committee demonstrate that the Respondent constitutes a danger to his patients.

ORDER

NOW, based upon this Determination, the Review Board issues the following **ORDER**:

1. The Review Board **sustains** the Hearing Committee on Professional Medical Conduct's June 15, 1994 Determination finding Charles Grover Gabelman III, M.D. guilty of professional misconduct.

2. The Review Board **sustains** the Hearing Committee's Determination to **revoke** Dr. Gabelman's license to practice medicine in New York State.

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

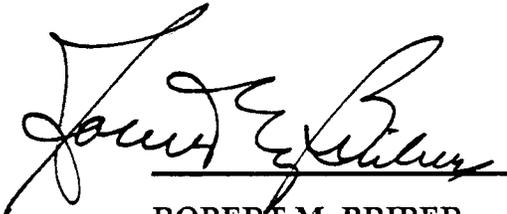
WILLIAM B. STEWART, M.D.

IN THE MATTER OF CHARLES GROVER GABELMAN III, M.D.

ROBERT M. BRIBER, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Gabelman:

DATED: Albany, New York

Aug 19, 1994



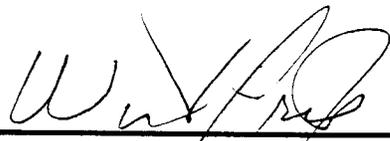
ROBERT M. BRIBER

IN THE MATTER OF CHARLES GROVER GABELMAN III, M.D.

WINSTON S. PRICE, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Gabelman.

DATED: Brooklyn, New York

_____, 1994



WINSTON S. PRICE, M.D.

IN THE MATTER OF CHARLES GROVER GABELMAN III, M.D.

EDWARD C. SINNOTT, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Gabelman.

DATED: Roslyn, New York

August 17, 1994

A handwritten signature in black ink, appearing to read "Ed C. Sinnott", written over a horizontal line. There are some scribbles and a small mark to the right of the signature.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF CHARLES GROVER GABELMAN III, M.D.

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Gabelman.

DATED: Syracuse, New York

17 Aug, 1994

William A. Stewart M.D.

WILLIAM A. STEWART, M.D.



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

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

June 15, 1994

Paula Wilson
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Charles Grover Gabelman, III, M.D.
86 Genesee Street
New Hartford, New York 13413-2326

Marta Sachey, Esq.
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237

Joan Teuchert Shkane, Esq.
258 Genesee Street
Utica, New York 10502

RE: In the Matter of Charles Grover Gableman III, M.D.

Dear Dr. Gabelman, Ms. Shkane and Ms. Sachey :

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

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

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in cursive script that reads "Tyrone T. Butler / June 21".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

-----X
IN THE MATTER : DETERMINATION
OF : AND
CHARLES GROVER GABELMAN III, M.D. : ORDER

-----X NO. BPMC-94-86

THERESE G. LYNCH, M.D., Chairperson, **JOSEPH K. MYERS, Jr., M.D.**
and **IRVING CAPLAN** 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 Section
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. **MICHAEL P. MCDERMOTT,**
ESQ., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee issues this
DETERMINATION AND ORDER.

SUMMARY OF PROCEEDINGS

| | |
|--|---|
| Commissioner's Order and Notice of Hearing and Statement of Charges: | October 1, 1992 |
| Amendments to Statement of Charges: | February 16, 1994 |
| Pre-hearing Conference: | February 17, 1994 |
| Hearing Dates: | March 17, 1994 March 24, 1994 April 8, 1994 |
| Place of Hearings: | The Radisson Hotel 200 Genesee Street Utica, New York 13502 |
| Date of Deliberations: | May 26, 1994 |
| Petitioner Appeared By: | Peter J. Millock, Esq. General Counsel NYS Department of Health |

By: Marta Sachey, Esq.
Associate Counsel

Respondent Appeared By:

Joan Teuchert Shkane, Esq.
258 Genesee Street
Utica, New York 10502

WITNESSES

For the Petitioner:

Patient A

Patient C

Employee D

William Cornwell

For the Respondent:

Margaret Kowalski, M.D.

Rev. Samuel Macri

Michael Kowalski, M.D.

Leora La Breque

Gregory Thomas Cortes

William Hartnagel, M.D.

Steven Kussin, M.D.

Sister Rose Vincent

Mark Wolber, Esq.

John DeTraglia, M.D.

Charles Grover Gabelman, III, M.D., the Respondent

SUMMARY ORDER

A Commissioner's Order and Notice of Hearing, dated October 1, 1992, advises that a determination had been made that the continued practice of medicine in the State of New York by the Respondent constitutes an imminent danger to the health of the people of the State and ORDERED that effective immediately the Respondent shall not practice medicine in the

State of New York and that the ORDER shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to New York Public Health Law Section 230(12) as amended by Chs. 37 and 735 of the Laws of 1992.

The Respondent was granted an adjournment from the original hearing dates, October 15 and 16, 1992, and by his then attorney, John R. Parrinello, Esq., Redmond & Parrinello, Suite 400, Executive Office Building, Rochester, New York 14614, the Respondent stipulated: "That the ninety (90) day statutory period will begin to run on the 1st day the adjourned hearing actually begins."

New York State Supreme Court Order

By Order, dated January 26, 1994, the Honorable John L. Murad, Supreme Court Justice, County of Oneida, "ORDERED that the New York State Department of Health shall commence a hearing in this case no later than forty-five (45) days from the date this Order is served upon the New York State Department of Health in Albany"***.

INTERIM REPORT OF THE HEARING COMMITTEE

On May 26, 1994, the Hearing Committee considered the summary suspension of the Respondent by the Commissioner of Health.

The Hearing Committee unanimously determined that the Respondent's practice of medicine constituted an imminent danger to the health of the people of the State of New York and recommended that the Commissioner's Summary Order continue in effect until a final decision has been rendered by the Committee or, if a review is sought, by the Administrative Review Board.

STATEMENT OF CHARGES

Essentially, the Statement of Charges charges the Respondent with conduct evidencing moral unfitness, with practicing the profession fraudulently, with willful physical abuse, with failing to maintain accurate records and with committing an act constituting a crime under New York State law.

At the hearing on April 8, 1994, the Petitioner withdrew all charges relating to Patient B (Statement of Charges, p. 5, paragraph C(1)(a)).

The Charges are more specifically set forth in the 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. All Hearing Committee findings were unanimous unless otherwise specified.

GENERAL FINDING

1. The Respondent is a physician duly licensed to practice medicine in the State of New York under license number 157522 issued by the State Education Department on March 5, 1984 (Pet's. Ex. 1).

FINDINGS AS TO PATIENT A

2. Patient A is a married woman in her early forties. She is the mother of two adult children from a prior marriage. She is a high school graduate and has worked as a secretary and waitress (Tr. 29-31).

3. On November 24, 1991, Patient A was involved in an automobile accident and was admitted to St. Luke's Hospital, Utica, N.Y., where she remained for several days (Pet's. Ex. 4; Tr. 31-32).

4. Patient A did not know the Respondent prior to her hospital admission. He treated her during her hospital stay and continued treating her thereafter at his offices at Genesee St., Utica, N.Y. and Pearl St., New Hartford, N.Y. (Pet's Ex. 4; Tr. 31-33).

5. Patient A's last appointment with the Respondent was at approximately 9:00 p.m. on Wednesday, April 22, 1992 at the Respondent's Pearl Street office. The appointment

was arranged by the Respondent.

That day, the patient began experiencing tightness in her chest and difficulty breathing, and the condition became worse. She called the Respondent at approximately 7:45 p.m. and left a message with his answering service. Five to ten minutes later the Respondent returned Patient A's call and advised her that he was at St. Elizabeth's Hospital and that the emergency room was backed up approximately two to two and one-half hours. He told Patient A that he would be leaving the hospital around nine o'clock and then going to his office to do paperwork. He offered to see Patient A in his office and explained that this way she would not have to wait at the hospital. He told Patient A that the downstairs door to his office building would be open with a piece of wood and that when she arrived she should come up to his office, which was located on the second floor (Tr. 35-36, 66, 536).

6. Patient A drove to the Respondent's office and parked her car close to the office building door. She entered the building. The lights were on in the building's main corridors and she went to the second floor to the Respondent's office. She entered the office reception area but the light was not on in that area. She called to the Respondent; she could see light coming from what she later learned was the Respondent's private office. The Respondent called for Patient A to "come on in" and he came to meet her (Tr. 36-38, 538).

7. The Respondent directed Patient A to go into the examining room and undress from the waist up. He told her that he would get her an examining gown. Patient A took off her jacket. The Respondent then told her that there was no gown available because "They forgot to put a gown in the room." The Respondent left the examining room and Patient A removed her blouse and bra and sat at the end of the examining table (Tr. 36-39).

8. The Respondent entered the examining room after asking Patient A if she was ready. With Patient A sitting at the end of the examining table and the Respondent standing in front of her, he began examining Patient A with a stethoscope. He then pushed Patient A's ribs on the left side. This elicited a painful response from Patient A, who had been injured in that area in the automobile accident (Tr. 39-40, 594-595).

9. The Respondent then began "examining" Patient A's left breast. Using both

hands, the Respondent pushed his hand down across the left side of the left breast. He then squeezed the left nipple very hard causing her pain. Patient A asked the Respondent why he squeezed her nipple and he responded that "you may have an embolism...fluid might come out of there." The Respondent then repeated this contact with Patient A's left breast and again pinched the left nipple. However, this time the Respondent's hand moved over the whole breast and not just the left side. The Respondent had similar contact with Patient A's right breast but did not pinch the right nipple. The patient's impression was that the Respondent's "examination" was not like a normal breast examination, but was more like sexual contact (Tr. 40-42, 167, 169).

10. The Respondent then directed Patient A to lie down on the examining table. With Patient A supine, the Respondent listened with a stethoscope and again had the same contact with her breasts and again pinched the left nipple. The Respondent then told Patient A he wanted to listen to her lungs while she was standing (Tr. 43, 169).

11. Patient A stood facing the Respondent who was seated on a small chair. The Respondent first examined Patient A with a stethoscope. He then touched Patient A's breasts in the same way he had done previously, again pinching the left nipple. On this occasion, the Respondent again concentrated on the left breast. Patient A observed that Respondent was sweating profusely and that his voice became "shaky" or "crackly" (Tr. 43-45, 169).

12. The Respondent then told Patient A to get dressed and meet him in his office. He gave Patient A boxes of "Cipro" and told her that it was an antibiotic that she should take. He also told her that he wanted her to have an x-ray. Patient A thanked him and turned to leave the office (Tr. 45).

13. As Patient A began to leave, the Respondent asked her to wait. He told her that he wanted to listen to her right lung one more time because he didn't like the sound of it. Patient A agreed to be examined again, but told Respondent that she was not going to undress again but that she would unbutton her blouse. She was concerned about her own health because her mother had recently been diagnosed as having tuberculosis (Tr. 45-46).

14. The Respondent was sitting in a chair at the side of his desk and Patient A stood in front of him. Patient A had unbuttoned her blouse and pulled her bra up on her chest at

the Respondent's direction.

The Respondent examined Patient A with a stethoscope, listening in the front. He then turned Patient A partially so that her left side was facing him and he listened to her back. He then told her to turn and she did so. The Respondent then started to listen again with the stethoscope. As he did so, Patient A felt a pain. She looked down and saw the Respondent's mouth moving from the left breast nipple area. She threw herself back but the Respondent pulled her forward into him and again bit her left breast nipple (Tr. 46-48, 50, 159).

15. Patient A pushed the Respondent away and repeatedly cried "What did you do to me." He kept repeating that he was sorry (Tr. 48-51). Patient A started to turn and walk out the private office but the Respondent turned the lights off in the room. She told the Respondent to turn the lights back on and heard him say to her "turn toward the light." She did so and saw the light from the main corridor of the building (Tr. 51).

16. Patient A left the private office and reached the top of the stairway. As she went to step down, the Respondent positioned himself in front of her and took hold of her left arm. He prevented her from going down the stairs and he kept repeating, "I'm sorry. I'm sorry." Patient A told the Respondent to let her go.

To divert the Respondent's attention in order to get an opportunity to leave, Patient A asked the Respondent where her medical file was and what he had put in it. The Respondent told Patient A he would write whatever she wanted in her records (Tr. 51-55, 169).

17. Patient A and the Respondent then went downstairs and exited the building. When they reached the parking lot, the Respondent told Patient A that he would waive his \$1,500.00 fee for testifying at the trial regarding her automobile accident.

When they reached Patient A's car, the Respondent positioned himself between Patient A and the car, leaning against the driver's side door. The Respondent prevented Patient A from entering the car. He took both of her arms and pulled her into his chest. He told her that she should not talk to anyone about what had happened and Patient A told him that she would not speak to anyone (Tr. 51-56, 169).

18. The Respondent then let Patient A go and she drove home. She was so

frightened and upset that she got lost going home.

When she arrived home, no one else was there. She called her best friend and told her what had happened. Her friend told her to call the State Police and she did so. She refused the police's offer of sending a car for her and she drove herself to the New Hartford Trooper Barracks where she gave a statement to the police (Tr. 57-59, 165).

19. Patient A saw a physician at the Richfield Springs Clinic for treatment for bronchitis approximately five days after the April 22 incident. She was placed on antibiotics.

Patient A also saw a social worker approximately four times to help her deal with what had happened at Respondent's office (Tr. 61-62, 165).

20. The State Police asked Patient A if she would be willing to meet with the Respondent again so that the police could tape the conversation between them, and Patient A agreed to do so. Patient A then arranged to meet with the Respondent. The telephone call arranging the meeting was taped by the police. In that call Patient A told the Respondent she wanted to talk to him about the incident at his office the previous night. The Respondent agreed to meet with Patient A. (Pet's. Ex. 5; Tr. 69-71).

21. At approximately 4:00 p.m. on April 23, 1992, Patient A met with the Respondent in her car in the parking lot outside the Respondent's office. This meeting was taped by the police who had also briefed Patient A on what to ask Respondent.

During the meeting the Respondent made numerous admissions regarding his conduct toward Patient A the previous evening. For example, early in the conversation Patient A asked the Respondent direct questions: "Why did you fondle me that way? Why did you squeeze my breast that way? Why did you do this to me?" The Respondent answered: "...I don't know what happened. I got just...something happened...it was wrong..." Patient A asked "Is it normal...try and bite someone's...breast's like that." The Respondent answered: "I said I was sorry." Later in the conversation, Patient A asks: "What triggered you...to handle my breasts in that fashion...." The Respondent answers, "I said I'm sorry." Patient A asks "and to actually try...and and bite...." The Respondent answers, "I know. I mean I'm sorry. Pat I don't know what triggered it. I don't know why it happened. I'm embarrassed and it would never ever

happen again and it will never happen again. I'm a disgrace to my profession. I'm asking you to forgive me O.K. There's nothing else more I can say. I don't know what happened" (Pet's. Ex. 7; Tr. 73-75, 160).

22. The Respondent was arrested on May 14, 1992. Shortly after his arrest, he dictated from memory an entry for Patient A's medical chart indicating that on April 22, 1992, Patient A had complained of breast pain. In fact, Patient A did not have breast pain, nor did she complain of breast pain at that time (Pet's. Ex. 4, p.31, Tr. 65, 664-666).

23. The Respondent gave the dictated entry to his Employee D and instructed her to transcribe it on a separate sheet of paper, date it April 22, 1992, and put it in Patient A's medical chart (Pet's. Ex. 4, p.31; Tr. 272-273).

24. The Respondent further instructed Employee D to pull some other patient charts, remove some entries and retype them on separate sheets of paper. He told her to tell anyone who might ask that he would sometimes see a patient and not dictate an entry for the patient's charts until a week or two later (Tr. 273-274).

25. In fact the Respondent's usual practice was to dictate entries for patient's medical charts on the day of the patient's visit; but on rare occasions he would dictate an entry on the day following the patient's visit (Tr. 277-278, 299).

26. Patient A has a lawsuit for two million dollars against the Respondent and St. Elizabeth's Hospital, the hospital where she first met and was treated by the Respondent (Tr. 67).

CONCLUSIONS AS TO PATIENT A

The Hearing Committee concludes that Patient A was a very credible witness on the basis of her responses to questions, her forthrightness and consistency during rigorous cross examination, and her reactions during and after the incident with the Respondent.

Patient A carefully defined what Respondent did and did not do. For example, he never pinched her right breast; he was not in the examination room while she undressed.

Patient A's emotional reactions after the incident, her initial disbelief that such a thing could happen, her calling her friend and reporting the incident to the police all are understandable responses and lend credence to her account of the Respondent's conduct. She

had no apparent motive to lie about the Respondent whom she considered to be a very good physician.

The Hearing Committee concludes that the Respondent engaged in physical contact of a sexual nature with Patient A by fondling her bare breasts, pinching the nipple of her left breast and twice biting the nipple of her left breast. Further, the Respondent intimidated Patient A by physically preventing her from descending the stairs as she tried to exit the office building and by pulling her head against his chest as he physically prevented her from entering her automobile. The Respondent's physical contacts with Patient A in his office and immediately thereafter constitute conduct in the practice of medicine which evidences moral unfitness to practice medicine and the willful abuse and physical intimidation of a patient.

The Hearing Committee has carefully reviewed the Respondent's explanations regarding the incident. In view of the circumstances of Patient A's last appointment with the Respondent and the police tapes of the Respondent's subsequent conversation with Patient A, the Respondent's explanations are not credible.

The tone and implications of the Respondent's statements on the tape strongly support the impression that the incidents described by Patient A actually took place.

The Hearing Committee rejects the Respondent's contention that his taped statements resulted from his carrying on a parallel conversation with Patient A and were not responses to Patient A's questions (Tr. 577); that his taped promises to get help referred to his office policies and not his sexual abuse of Patient A (Tr. 579). In fact, what the taped conversation does demonstrate is that the Respondent was saying whatever he could think of to mollify Patient A and persuade her to keep silent. Notably, when the Respondent was interviewed by the Office of Professional Medical Conduct on September 21, 1992 with regard to Patient A, he did not tell the interviewing investigator that Patient A had made a sexual overture to him or that she became angry when he rejected her advance (Tr. 702-703, 706-707). Such information could be considered exculpatory and it would have been in Respondent's interests to reveal it. Even the Respondent described Patient A as a patient whom he felt comfortable seeing alone at his office. She was a patient who comported herself as a patient

would be expected to during her previous appointments with the Respondent.

Based on the testimony of Patient A and the testimony of the Respondent's former Employee "D", the Hearing Committee further concludes that the Respondent falsely recorded in patient A's medical records that the patient had complained of breast pain at the time of the April 22, 1992 visit, and that the Respondent intended to create the impression that the said office entry was prepared in his usual and normal course of practice when it was not.

**THE CHARGES AGAINST THE RESPONDENT
RELATING TO PATIENT B WERE WITHDRAWN**

FINDINGS AS TO PATIENT C

27. During the period from approximately 1983 through approximately the autumn of 1986, the Respondent provided medical care to Patient C at St. Elizabeth's Hospital, Utica, N.Y. and at his Genesee Street, Utica, N.Y. office (Pet's. Ex. 10; Tr. 203-204).

28. Patient C was thirty one years old at the time of these hearings. She has been a licensed practical nurse since 1984. She is the mother of three children and is also raising her second husband's daughter.

At the time of the hearings, Patient C was on disability due to a work related injury. Prior to that she worked for New York State as a Licensed Practical Nurse for five years and as a therapy aide for three years. She has also worked part-time in nursing homes (Tr. 200-201, 240, 258).

29. Patient C first came under the Respondent's care in 1983. When she was a child, she had a resection of the ileum performed by a Dr. Millet. She had called to see Dr. Millet because she had been experiencing pain; had been diagnosed with Crohn's disease, and had been to emergency rooms without relief. The Respondent was with Dr. Millet's practice at that time and, by happenstance, Patient C was seen by him (Tr. 201-203).

30. During the course of his care of Patient C, the Respondent had the patient thoroughly tested and referred her to several specialists to rule out other problems. In the summer of 1985, he performed exploratory surgery on Patient C and removed adhesions and her

gallbladder. Although she has had occasional painful episodes thereafter, they were nowhere near the pain she had experienced before the Respondent's care. Patient C considered the Respondent to be an excellent physician (Pet's. Ex. 10, p. 19; Tr.. 203-204, 253-254).

31. Patient C's last appointment with the Respondent took place at his Genesee Street office. As best as Patient C could recall, the visit was approximately around October 1986 or March 1987. She knew that the appointment was before she had gone to Conifer Park, a drug rehabilitation facility. In fact, according to documents provided by Respondent, the visit would have occurred in approximately September 1986 before the Respondent had changed his offices (Pet's. Ex. F; Tr. 205-207, 237-238, 246, 626-628, 646).

32. At the time of Patient C's last appointment with the Respondent. She was working full time at the Rome Development Center. She was separated or divorced from her first husband and was raising her children as a single parent. She was using cocaine recreationally several nights a week after work with friends. She had not used drugs or alcohol at the time of her last appointment with the Respondent as she was very sick with an upper respiratory infection and was having problems breathing (Tr. 205, 259-260, 265-266).

33. At the time of her last appointment, Patient C had never heard anything negative regarding the Respondent and his relationship with his patients.

On a Friday, the day before her last appointment, Patient C called the Respondent's office. She spoke with the Respondent and told him she had not been feeling well, that she had missed work and thought she had an upper respiratory infection. The Respondent advised Patient C that he did not have time to see her that day but that he could see her the following morning at nine o'clock at his office.

The Respondent recalled that the patient did call him on a Friday, that she had been out of work, and that she was having difficulty breathing. He also recalled that he was too busy to see her the day she called, but would see her the next day in the morning at his office (Tr. 208, 223, 632, 638-639).

34. Patient C went to the Respondent's office on the next day, a Saturday, as had been arranged. Before doing so she brought her children to her mother's home. The Respondent

also remembers that he saw Patient C on a Saturday morning at his office (Tr. 208, 629, 631).

35. Patient C parked her car in the parking lot off Genesee Street directly in front of the office building's side door. She tried to enter the building but it was locked. She returned to her car and waited for the Respondent to arrive.

The Respondent arrived and apologized for being late. He said that he was rushed trying to make it on time. Patient C mentioned to the Respondent that he was not wearing socks and he replied that he was in such a hurry he forgot to put them on.

The Respondent unlocked the door and he and Patient C went to Respondent's second floor office. As they did, Patient C told the Respondent that she felt very sick, had a horrible cough and was coughing up thick green phlegm. The Respondent recalled that Patient C complained of coughing up yellow sputum and phlegm and of having trouble breathing (Tr. 210-212, 640).

36. Upon entering the Respondent's office, the Respondent stopped by the examination room and got a gown. He told Patient C to put the gown on and said that he would be right with her. Patient C went into the dressing room, which was off the examining room, and removed her sweatshirt and bra and put on the short paper gown. The gown opened in the back. The Respondent also recalled that he thought the gown opened in the back. Patient C did not remove her jeans and sneakers. She then went into the examining room and sat at the edge of the examination table (Tr. 211-212, 260, 641-642).

37. The Respondent came into the room, sat on a stool and positioned himself near the patient's left side. He took an instrument from a drawer and began playing with one of the patient's sneakers. The sneakers were white "Autrys." The tops were woven leather and some of the strips had come out and the Respondent was pushing the strips back in place. Patient C did not say anything about his playing with her sneaker. She again brought up the fact that she had a really bad cough (Tr. 212-214, 260).

38. The Respondent then stood up and told Patient C that he was going to examine her. While she was sitting, he asked her to take deep breaths and he listened to her back and then to her chest with a stethoscope. Suddenly, the Respondent reached under the

examining gown and grabbed both of Patient C's breasts. He cupped and squeezed the breasts. The contact was not like any professional breast examination that Patient C had experienced before. The Respondent pinched Patient C's nipples, especially the left nipple, causing pain (Tr. 214, 216, 258).

39. Patient C asked the Respondent "What the hell are you doing?" He then let go of both of Patient C's breasts and took her right wrist and pulled her hand onto his clothed penis. Patient C discerned that the Respondent had an erection (Tr. 214-216).

40. Patient C pulled her hand away and Respondent's grip on her wrist was released. He backed up a few steps and Patient C said words to the effect "you're my doctor."

The Respondent left the examining room and Patient C got dressed. She then went to the Respondent's office. She had the examining gown in her hand. The Respondent was at his desk writing. He told Patient C that she had bronchitis and that he was going to give her a prescription and a note for work. Patient C threw the examining gown in a waste basket near the Respondent's desk. The Respondent handed her a prescription and a note for work and she took them. The Respondent took the examining gown Patient C had thrown in the waste basket and stuffed it in his pocket (Tr. 218-219).

The Respondent recalled that Patient C had bronchitis or an upper respiratory infection which required antibiotics. He recalled that he gave the patient a prescription for antibiotics and a note for work. He did not make a record of the Saturday morning appointment with Patient C. His last record entry for Patient C is dated April 21, 1986 (Pet's. Ex. 10, p. 4; Tr. 631, 642, 647-648)

41. Patient C left the Respondent's office and drove to her mother's house to pick up her children. When she got to her mother's house she told her mother about what had occurred at the Respondent's office.

In 1989, when Patient C worked at Rome Developmental Center, she told her supervisor, an RN named Kim Gorman, about the incident with the Respondent. Patient C had wanted to go to St. Elizabeth's Nursing School which Ms. Gorman had attended. Patient C spoke to Ms. Gorman about the school and had even spoken to the school about a work schedule.

However, Patient C felt she could not attend the St. Elizabeth's nursing program because the Respondent worked there and she wanted to avoid him. Patient C explained this to Ms. Gorman in 1989 (Tr. 219, 221-223).

42. Patient C reported the incident with the Respondent to the State Police in 1992 after hearing on the radio that the Respondent had been arrested for sexually assaulting a patient (Tr. 220-221).

CONCLUSIONS AS TO PATIENT C

The Hearing Committee concludes that Patient C was a very credible witness based on her general demeanor, her forthrightness in answering questions, and her honesty regarding herself and her background. Patient C had no apparent motive to fabricate, and the fact that she reported the incident to the police six years later, after hearing on the radio of the Respondent's arrest in 1992 with regard to another patient, was understandable and commendable.

The Hearing Committee concludes that the Respondent had physical contact of a sexual nature with Patient C by reaching under her examining gown and fondling her bare breasts and squeezing her nipples and by forcibly placing her hand on his clothed penis. The Respondent's conduct constituted conduct in the practice of medicine which evidences moral unfitness to practice medicine and the willful physical abuse of a patient.

The Respondent's testimony regarding the incident with Patient C was not believable. He did not prepare a record of Patient C's last appointment which occurred in 1986, yet he was able to recall very specific details concerning the appointment (e.g., patient's complaints, patient's Friday afternoon call, patient's examining gown opened in the back). It stretches reason to believe that the Respondent would recall a 1986 the appointment if it were merely a routine visit without incident.

The Respondent learned of Patient C's drug treatment at this hearing. His records are silent with regard to any problems Patient C may have had with drugs. However, in what can be reasonably viewed as an attempt to discredit the patient, the Respondent testified that Patient

C had told him that she smoked marijuana, and that she had sought pain medications, which had a potential for abuse, every time she saw him. Not only are the Respondent's records silent with regard to such significant patient information but the Respondent did not disclose this information to the Office of Professional Medical Conduct investigator during the Respondent's interview.

The Respondent testified that he "was somewhat adamant" that he not examine Patient C until his wife arrived at the office, but that the patient "insisted." This assertion also strains credibility. On the contrary, the Respondent's conduct in taking the paper gown Patient C had worn and putting it in his pocket suggests that he was trying to hide from his wife the fact that there had been a patient appointment (Tr. 636-638, 641, 702-703, 706).

FINDINGS AS TO THE RESPONDENT'S BLOOD ALCOHOL LEVEL TESTS

43. On the evening of August 25, 1990, the Respondent was arrested for driving while intoxicated and underwent a breathalyzer test which showed a blood alcohol level of 1.9. Thereafter, the Respondent went to Faxton-Children's Hospital, where he had privileges, and requested that an IV solution be administered and a blood alcohol analysis be performed. (Pet's. Ex. 11, p. 3; Ex. 12; Ex. 17; Tr. 462).

44. The Respondent insisted that the laboratory technician draw blood from the arm which had the IV line in place and above that line, which was infusing. The Respondent knew that this blood sample would be diluted, that any resulting alcohol level analysis of that sample would be falsely depressed and/or that the technique the Respondent insisted upon was improper (Pet's. Ex. 11; Tr. 184, 465).

45. On August 26, 1990, the Respondent went to the Faxton-Children's Hospital's laboratory and requested the laboratory slip from his visit the previous night for the purpose of xeroxing it. Prior to xeroxing the slip, he deleted the notation "Pt. drawn above IV Blood very diluted".

The Respondent's "explanation" for his behavior was that he "panicked"; he wanted a copy for his records, and I quite honestly didn't want a laboratory slip that said that on

it -- in my files" (Pet's. Exs. 11 and 13; Tr. 184, 466-467, 496, 510-511).

**CONCLUSIONS AS TO THE RESPONDENT'S
BLOOD ALCOHOL LEVEL TESTS**

The Hearing Committee concludes that the Respondent's conduct relative to his blood alcohol level test was intended to create a false and/or inaccurate documentation of his blood alcohol level.

The Respondent's conduct in insisting that the laboratory technician draw an improper blood sample, and his deleting from the resulting laboratory slip the notation regarding how the sample was taken with the intention of creating false documentation of his alcohol level, constitutes conduct evidencing moral unfitness and fraud.

**FINDINGS OF FACT AS TO THE
RESPONDENT'S CRIMINAL CONVICTIONS**

46. On approximately May 25, 1993, in the case of The People of the State of New York v. Charles G. Gabelman (Oneida County Court: Indictments Nos. 92-210 and 92-376), the Respondent, pursuant to his guilty pleas, was convicted of two counts of sexual abuse in the third degree, in violation of Penal Law §130.55 , a misdemeanor. Indictment number 92-210 concerns Patient A and number 92-376 concerns Patient B (Pet's. Exs. 14 and 15; Tr. 450).

47. The Respondent's plea to sexual abuse of patient A and Patient B was an Alford plea. Under such a plea, as explained to him by the court, the Respondent was not required to give any factual statement as to what happened but he was pleading guilty to two crimes (Ex. 15, p. 12 [plea minutes]). He was promised that his sentence would not include jail (Ex. 15, p. 6 [plea minutes]). The court pointed out to the Respondent and the Respondent agreed that "because of the possibility, if there's a trial, there could be a conviction, and more serious dispositions if there was [sic] other convictions, is that right?" (Ex. 15, p. 7 [plea minutes]).

**CONCLUSIONS AS TO THE RESPONDENT'S
CRIMINAL CONVICTIONS**

The Hearing Committee concludes that the Respondent has been convicted of committing acts constituting a crime under New York State law. Conviction of a crime, without more, under New York State law is professional misconduct. Moreover, the Respondent's convictions were for the sexual abuse of two patients.

VOTE OF THE HEARING COMMITTEE

(All votes were unanimous unless otherwise specified.)

FIRST THROUGH FIFTH SPECIFICATIONS (Conduct Evidencing Moral Unfitness):

SUSTAINED as to the charges specified in paragraphs A.1(a), A.1(b), A.1(c), A.2, A.3, A.4, A.5, A.6, B.1, B.2, B.3, D.1(a), D.1(b), E.1(a) and E.2 of the Statement of Charges.

The charges specified in paragraphs C and C.1(a) of the Statement of Charges were withdrawn by the Petitioner.

SIXTH THROUGH EIGHTH SPECIFICATIONS (Practicing the Profession Fraudulently):

SUSTAINED as to the charges specified in paragraphs A.6, B.1, B.2, B.3, B.4, E.1(a) and E.2 w/E.3 of the Statement of Charges.

The Hearing Committee votes with regard to the charges specified in paragraphs E.1(a) and E.2 w/E.3 were 2-1. One Committee member was of the opinion that while the acts alleged constituted fraud, they did not constitute fraud in the practice of medicine.

NINTH THROUGH ELEVENTH SPECIFICATIONS (Wilful Physical Abuse):

SUSTAINED as to those charges specified in paragraphs A.1(a), A.1(b), A.1(c), A.2, A.4, D.1(a) and D.1(b) of the Statement of Charges.

The charges specified in paragraphs C and C.1(a) of the Statement of Charges were withdrawn by the Petitioner.

TWELFTH SPECIFICATION (Inaccurate Records):

SUSTAINED as to the charges specified in paragraph A.6 of the Statement of Charges.

THIRTEENTH SPECIFICATION (Professional Misconduct - Being Convicted of a Crime Under New York State Law):

SUSTAINED as to the charges specified in paragraph F of the Statement of Charges.

DETERMINATION OF THE HEARING COMMITTEE

The Hearing Committee has voted to **SUSTAIN** 15 counts of Evidencing Moral Unfitness; 7 counts of Practicing the Profession Fraudulently; 7 counts of Wilful Physical Abuse of Patients; 1 count of Inaccurate Records and 1 count of Professional Misconduct, having been convicted of a crime, against the Respondent.

In the context of providing medical care, the Respondent sexually abused Patients A and C. His conduct evidenced a total disregard of the duty owed by a physician to his patients. The Respondent has also been convicted of sexually abusing Patients A and B.

The Respondent falsified Patient A's medical record by recording a physical complaint which the patient had not made. He also attempted, through instructions to his employee, to create the impression that the record was prepared in his usual course of practice when it was not.

After being arrested for driving while intoxicated, the Respondent used his position as a physician to try to create a false documentation of his blood alcohol level.

The Respondent's complete denial of any wrongdoing relative to his conduct toward patients A and C, in the face of overwhelming evidence to the contrary, demonstrates his total unrepentance for his egregious behavior. He is a danger to his patients.

The Hearing Committee determines unanimously (3-0) that the Respondent's license to practice medicine in the State of New York should be **REVOKED**.

ORDER

IT IS HEREBY ORDERED that:

1. The Respondent's license to practice medicine in New York State is
REVOKED.

2. This **ORDER** shall be effective upon services on the Respondent or the Respondent's attorney by personal services or by certified or registered mail.

DATED: *June 13/94* New York

Therese G Lynch M.D.

THERESE G. LYNCH, M.D.
Chairperson

JOSEPH K. MYERS, Jr., M.D.
IRVING CAPLAN

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

-----:
IN THE MATTER : COMMISSIONER'S
OF : ORDER AND
CHARLES GROVER GABELMAN, III, M.D. : NOTICE OF HEARING
-----:

TO: CHARLES GROVER GABELMAN, III, M.D.
86 Genesee Street
New Hartford, New York 13413-2326

The undersigned, MARK R. CHASSIN, M.D., the Commissioner of Health of the State of New York, after an investigation and upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, has determined that the continued practice of medicine in the State of New York by CHARLES GROVER GABELMAN, III, M.D., the Respondent, constitutes an imminent danger to the health of the people of this state.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law Section 230(12) (McKinney Supp. 1992), as amended by Chs. 37 and 735 of the Laws of 1992, that effective immediately CHARLES GROVER GABELMAN, III, M.D., Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Pub.



Health Law Section 230(12) (McKinney Supp. 1992), as amended by chs. 37 and 735 of the Laws of 1992.

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990 and Supp. 1992), as amended by chs. 37 and 735 of the Laws of 1992, and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1992). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 15th and 16th days of October, 1992 at 10:00 a.m. in the forenoon at the Radisson Hotel, 200 Genesee Street, Utica, New York 13502 and at such other adjourned dates, times and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and examine evidence

produced against him. A summary of the Department of Health Hearing Rules is enclosed. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Empire State Plaza, Corning Tower Building, 25th Floor, Albany, New York 12237-0026 and by telephone (518-473-1385), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

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

may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW SECTION 230-a (McKinney Supp. 1992). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
Oct. 1, 1992



MARK R. CHASSIN, M.D.
Commissioner of Health

Inquiries should be directed to:
E. MARTA SACHEY
Associate Counsel
N.Y.S. Department of Health
Division of Legal Affairs
Bureau of Professional
Medical Conduct
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 474-8266

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

-----X
IN THE MATTER : STATEMENT
OF : OF
CHARLES GROVER GABELMAN, III, M.D. : CHARGES
-----X

CHARLES GROVER GABELMAN, III, M.D., the Respondent, was authorized to practice medicine in New York State on March 5, 1984, by the issuance of license number 157522 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1991 through December 31, 1992 from 86 Genesee Street, New Hartford, New York 13413-2326.

FACTUAL ALLEGATIONS

A. Respondent, at various times from November, 1991 through April 22, 1992, provided medical care to Patient A [Patients and employees are identified in the Appendix] at St. Luke's Memorial Hospital Center, Utica, New York and at his offices at 86 Genesee Street, New Hartford, New York [hereafter "Genesee Street office"] and at the Paris Road Professional Building, Pearl and Paris Streets, New Hartford, New York [hereafter "Pearl Street office"].

1. Respondent, on April 22, 1992, in the course of examining Patient A during her approximately 9:00 p.m. appointment at Respondent's Pearl Street office, engaged in physical contact of a sexual nature with Patient A, which included the following:
 - a. Respondent fondled Patient A's bare breasts.
 - b. Respondent pinched the nipple of Patient A's left breast.
 - c. Respondent bit the nipple of Patient A's left breast two times.
2. Respondent, after engaging in the aforesaid conduct, followed Patient A to the stairway as Patient A was attempting to leave the building in which Respondent's office was located. Respondent positioned himself between Patient A and the stairway, tightly held Patient A's arm, and prevented her from continuing to exit.
3. Respondent, while he held Patient A as described above, begged Patient A to forgive him and told

Patient A "you tell me what you want. I'll write whatever you want in your records. I'll testify for you at the trial regarding your car accident and waive my \$1500 fee" or words to such effect.

4. Respondent followed Patient A to the parking lot and continued to hold Patient A's arm, as Patient A exited the building. Respondent positioned himself between Patient A and her automobile, preventing her from entering it. Respondent grabbed Patient A and pulled Patient A's head against his chest.
5. Respondent, while he held Patient A as described above, begged Patient A to forgive him and told Patient A "You're not going to talk to anyone... You forget this happened" or words to such effect.
6. Respondent had recorded in his medical records for Patient A that Patient A complained to Respondent on April 22, 1992 that she had "breast pain" when, in fact, Patient A had made no such complaint to Respondent and Respondent knew such fact.

B. Respondent, after Patient A's April 22, 1992 appointment at his Pearl Street office and after Respondent's

May 14, 1992 arrest with regard to that appointment, instructed Employee D to do the following:

1. Respondent instructed Employee D to transcribe a dictation Respondent had made, at the earliest in the middle of May, 1992, for Patient A's medical records on a separate sheet of paper and date it April 22, 1992.
2. Respondent stated to Employee D "This isn't going to look too good" or words to such effect, referring to the aforesaid transcription Respondent had instructed Employee D to prepare. Respondent then instructed Employee D to choose several other patients' records at random, remove entries from those records, and type those entries on separate pages and place those retyped entries in the patients' records.
3. Respondent instructed Employee D to tell anyone who might ask that Respondent would occasionally dictate an entry for a patient's record a few weeks after the patient's visit, which would result in an entry on a separate page, if Respondent had forgotten to do so at the time of the patient's visit when, in fact, Respondent did not engage in this practice.

4. Respondent instructed Employee D, as aforesaid, with the intent to create the impression that Respondent's office record of Patient A's April 22, 1992 appointment was prepared in the usual and normal course of Respondent's practice when, in fact, it was not.

C. Respondent, at various times from April 18, 1990 through approximately the spring of 1990, provided medical care to Patient B at his Genesee Street office.

1. Respondent, in approximately the spring of 1990, in the course of examining Patient B during her Sunday afternoon appointment at Respondent's Genesee Street office, engaged in physical contact of a sexual nature with Patient B, which included the following:

a. Respondent reached from behind Patient B, placed his hands under Patient B's examining gown and grabbed Patient B's bare breasts and fondled Patient B's breasts and squeezed the nipples.

WITHDRAWN
by PENNAC
4/8/94

D. Respondent, at various times from approximately 1983 through approximately the autumn of 1986 provided medical care to Patient C at St. Elizabeth Hospital, Utica, New York and at Respondent's offices at Genesee Street, Utica, New York [hereafter "Utica office"].

OR APPROXIMATELY MARCH 1987

1. Respondent, in approximately the autumn of 1986, ^Yin the course of examining Patient C during her Saturday morning appointment at Respondent's Utica office, engaged in physical contact of a sexual nature with Patient C, which included the following:
 - a. Respondent reached under Patient C's examining gown, fondled Patient C's bare breasts and squeezed the nipples.
 - b. Respondent grabbed Patient C's wrist and forcibly placed Patient C's hand on his penis over his clothing.

E. Respondent, after having been arrested on the evening of August 25, 1990 for driving while intoxicated, engaged in the following conduct:

1. Respondent, on August 25, 1990, went to Faxton-Children's Hospital, Utica, New York, where Respondent had privileges, and requested that an IV solution be administered and a blood alcohol analysis be performed.
 - a. Respondent insisted that the laboratory technician draw blood from the arm which had the IV line in place and above that line, which was infusing, although Respondent knew that the blood sample would be diluted, that any resulting blood alcohol level analysis of that sample would be falsely depressed and/or that such technique was improper.

2. Respondent, on August 26, 1990, went to the Faxton-Children's Hospital's laboratory and requested the laboratory slip from his visit the previous night for the purpose of xeroxing it. Respondent, prior to xeroxing the slip and/or prior to returning it to the laboratory, deleted from the slip the notation "Pt. drawn above IV Blood very diluted."

3. Respondent engaged in the aforesaid conduct with the intent to create false and/or inaccurate documentation of Respondent's blood alcohol level.

SPECIFICATION OF CHARGES

FIRST THROUGH FIFTH SPECIFICATIONS

CONDUCT EVIDENCING MORAL UNFITNESS

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(20) (McKinney Supp. 1992) by reason of his conduct in the practice of medicine which evidences moral unfitness to practice medicine, in that Petitioner charges:

1. The facts in Paragraphs A and A.1(a), A and A.1(b), A and A.1(c), A and A.2, A and A.3, A and A.4, A and A.5 and/or A and A.6.
2. The facts in Paragraphs B and B.1, B and B.2 and/or B and B.3.
3. The facts in Paragraphs C and C.1(a).

4. The facts in Paragraphs D and D.1(a) and/or D and D.1(b).
5. The facts in Paragraphs E and E.1(a) and/or E and E.2.

SIXTH THROUGH EIGHTH SPECIFICATIONS

PRACTICING THE PROFESSION FRAUDULENTLY

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(2) (McKinney Supp. 1992) by reason of his practicing the profession of medicine fraudulently, in that Petitioner charges:

6. The facts in Paragraphs A and A.6.
7. The facts in Paragraphs B and B.1, B and B.2 and/or B and B.3, in conjunction with B.4.
8. The facts in Paragraphs E and E.1(a) and/or E and E.2, in conjunction with E.3.

NINTH THROUGH ELEVENTH SPECIFICATIONS

WILLEFUL PHYSICAL ABUSE

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(31) (McKinney Supp. 1992) by reason of his willfully harassing, abusing, or intimidating a patient physically, in that Petitioner charges:

9. The facts in Paragraphs A and A.1(a), A and A.1(b), A and A.1(c), A and A.2 and/or A and A.4.

10. The facts in Paragraphs C and C.1(a).

11. The facts in Paragraphs D and D.1(a) and/or D and D.1(b).

TWELFTH SPECIFICATION

INACCURATE RECORDS

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(32) (McKinney Supp. 1992) by reason of his failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, in that Petitioner charges:

12. The facts in Paragraphs A and A.6.

DATED: Albany, New York
October 1, 1992

Peter D. Van Buren

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical
Conduct

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

-----X

IN THE MATTER : AMENDMENTS
 : TO
 : STATEMENT
 : OF
CHARLES GROVER GABELMAN, III, M.D. : CHARGES

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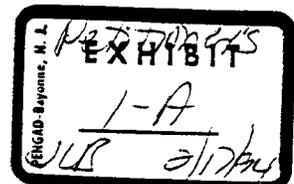
FACTUAL ALLEGATIONS

F. Respondent, in approximately May 25, 1993 in the cases of The People of the State of New York v. Charles G. Gabelman (Oneida County Court; Indictment Nos. 92-210 and 92-376) pursuant to his guilty pleas, was convicted of two counts of sexual abuse in the third degree, in violation of Penal Law §130.55, a misdemeanor. Indictment number 92-210 concerns Patient A and number 92-376 Patient B.

THIRTEENTH SPECIFICATION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(a)(i) (McKinney Supp. 1994) by reason of his having been convicted of committing an act constituting a crime under New York State law, in that Petitioner charges:

13. The facts in Paragraph F.



DATED: Albany, New York
February 16, 1994

Peter D. Van Buren

PETER D. VAN BUREN
Deputy Counsel