

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y.

EXECUTIVE DIRECTOR, OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

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FEB 28 2000

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

PUBLIC

February 24, 2000

Kenneth Gross, Physician
1205 Mariposa Avenue, Apt. 223
Coral Gables, Florida 33416

Re: Application for Restoration

Dear Dr. Gross:

Enclosed please find the Commissioner's Order regarding Case No. 00-19-60 which is in reference to Calendar No. 17170. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations

By: 
Gustave Martine
Supervisor

US Postal Service
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University of the State of New York

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|---|--------------------------|
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| Street & Number | 1205 Mariposa Avenue |
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| Postage | 43 |
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PS Form 3800 April 1995

RESTRICTED DELIVERY

-----X

IN THE MATTER

OF

KENNETH GROSS
PHYSICIAN

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK)

SS.:

Beverly Tribble, being duly sworn, deposes and says:

I am over the age of twenty-one years and am an employee of the New York State Education Department, Office of Professional Discipline, 1 Park Avenue, 6th Floor, New York, New York 10016.

On the 24th day of February, 2000, I personally delivered to the United States Post Office, located at 34th Street and Park Avenue, New York, New York 10016 the Duplicate Original Order of the Commissioner of Education Case No. 00-19-60, in reference to Calendar No. 17170 and the Vote of the Board of Regents by Certified Mail - Return Receipt Requested to the respondent herein named at 1205 Mariposa Avenue, Apt.223, Coral Gables, Florida 33416.

The Certified Mail Receipt No. P140 736 938

The effective date of the Order being the 29th day of February, 2000.

Beverly Tribble

Sworn to before me this

29th day of February, 2000

WAYNE L. KEYES
Notary Public, State of New York
No. 41-4969798
Qualified in Queens County
Commission Expires 7-23-00



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

-----X

IN THE MATTER : STATEMENT
OF : OF
KENNETH B. GROSS, M.D. : CHARGES

-----X

KENNETH B. GROSS, M.D., the Respondent, was authorized to practice medicine in New York State on August 7, 1981, by the issuance of license number 147301, 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 to December 31, 1994, at 100 Manetto Hill Road, Plainview, New York 11803, and at 107-21 Queens Boulevard, Forest Hills, New York 11375.

FACTUAL ALLEGATIONS

- A. Respondent treated Patient A, a 50 year old female, at his office, which at the time was located at 40 East Merrick Road, Suite 101, Valley Stream, New York, on or about January 17, 1994. (The identities of Patient A, the other patients, and Technician D are disclosed in the attached Appendix.) Patient A's chief complaints were pain in her neck, shoulders and lower back following a fall.

1. In the course of a purported physical examination, but not for a proper medical purpose, Respondent touched Patient A inappropriately as follows:
 - a. While Patient A was standing beside the examining table facing Respondent, he first massaged her neck and shoulders and then lowered his hands to her buttocks and massaged Patient A's buttocks; while in this position, Respondent pulled Patient A toward him and pressed his erect penis against her abdominal area.
 - b. Respondent then repeated this entire procedure. As Patient A attempted to remove Respondent's hands from her buttocks, he grabbed her hand and placed it upon his erect penis and moved her hand up and down his penis outside his pants, while keeping his other hand on her buttocks.
 - c. After instructing Patient A to lie down on the examining table,

Respondent rubbed his erect penis
against her right arm.

- d. Also while Patient A was lying on the
examining table, Respondent squeezed
her breasts.
 - e. While Patient A was still lying on the
examining table, Respondent massaged
her vaginal area until Patient A
removed his hands.
 - f. After instructing Patient A to sit up
on the examining table, Respondent
massaged her breasts and nipples while
asking her if it hurt.
 - g. After instructing Patient A to stand
up near the examining table,
Respondent again grabbed her buttocks
with both hands and pulled her toward
him against his erect penis until the
patient removed his hands.
2. Respondent engaged in inappropriate conduct as
follows:

a. While Patient A was seated on the examining table, Respondent told her to remove her tee shirt for no appropriate medical purpose.

B. Respondent treated Patient B, a 29 year old female, at his office, which at the time was located at 100 Manetto Hill Road, Plainview, New York, on or about August 12, 1992. Patient B's chief complaint was an injury to her back following a fall.

1. In the course of a purported physical examination, but not for a proper medical purpose, Respondent touched Patient B inappropriately as follows:

a. While Patient B was standing near the examining table, Respondent placed his hands on her buttocks, and pulled her against his erect penis.

b. Also while Patient B was standing near the examining table, Respondent, while massaging her back, attempted to kiss her.

c. Also while Patient B was standing near the examining table, Respondent massaged the back of her head and neck and repeatedly asked whether it felt good.

d. While Patient B was lying on the examining table, Respondent rubbed sticks up and down Patient B's legs and pushed her dress up to a level just above her waist, exposing her underwear.

C. Respondent treated Patient C, a 24 year old female, at his office, which at the time was located at 100 Manetto Hill Road, Plainview, New York, on or about October 26, 1992, November 11, 1992, and March 31, 1993. Patient C's chief complaints were numbness and vertigo.

1. In the course of a purported physical examination, but not for a proper medical purpose, Respondent touched Patient C inappropriately as follows:

a. On or about October 26, 1992, while Patient C was standing near the

examining table, Respondent, after explaining that he would stand behind Patient C and pull her backwards and then catch her, stood behind her and did so approximately eight times; beginning on approximately the fourth time, and continuing on each of the remaining repetitions, he pushed his erect penis against her buttocks.

b. After instructing Patient C to sit on the examining table, Respondent leaned over her, touching his penis to her knee repeatedly.

c. On or about November 11, 1992, while Patient C was lying on the examining table, Respondent lowered her pants and underwear to just below her pubic hair line, touched her abdomen, and asked her inappropriate questions about her sexual history.

2. Respondent engaged in inappropriate conduct as follows:

a. In approximately April 1993, Respondent picked Patient C up in his car to interview her for a position in his office; he drove to a dark, deserted area and, while there, he placed his right hand on her left thigh.

D. In the course of his medical practice, Respondent visited Technician D, age 31, in the CAT Scan Suite at Good Samaritan Hospital which is located at 1000 Montauk Highway, West Islip, New York, in early 1991.

1. After asking Technician D for a CAT Scan which he had previously ordered, and after she told him that it was in another room, Respondent, while seated with his legs spread widely on a chair near the door, grabbed both of Technician D's wrists as she was attempting to exit the room, pulled her toward his hips, and held her there until she broke free.

SPECIFICATION OF CHARGES

FIRST THROUGH FOURTH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with conduct in the practice of medicine which evidences moral unfitness to practice medicine, under N.Y. Educ. Law Section 6530(20) (McKinney Supp. 1994), in that Petitioner charges:

1. The facts contained in paragraphs A., A.1., A.1.a.-g. and/or A.2. and A.2.a.
2. The facts contained in paragraphs B., B.1. and B 1.a.-d.
3. The facts contained in paragraphs C., C.1., C.1.a.-c. and/or C.2. and C.2.a.
4. The facts contained in paragraphs D. and/or D.1.

FIFTH THROUGH SEVENTH SPECIFICATIONS

PRACTICING FRAUDULENTLY

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

5. The facts contained in paragraphs A., A.1., A.1.a.-g. and/or A.2. and/or A.2.a.
6. The facts contained in paragraphs B., B.1. and B.1.a.-d.
7. The facts contained in paragraphs C., C.1., C.1.a.-c. and/or C.2. and C.2.a.

EIGHTH THROUGH TENTH SPECIFICATIONS

WILLFULLY HARASSING, ABUSING OR INTIMIDATING PATIENTS

Respondent is charged with willfully harassing, abusing or intimidating patients either physically or verbally, under N.Y. Educ. Law Section 6530(31) (McKinney Supp. 1994), in that Petitioner charges:

8. The facts contained in paragraphs A., A.1., A.1.a.-g. and/or A.2. and/or A.2.a.

9. The facts contained in paragraphs B., B.1. and B.1.a.-d.
10. The facts contained in paragraphs C., C.1., C.1.a.-c.
and/or C.2. and C.2.a.

DATED: New York, New York
MAY 17, 1994

Chris Stern Hyman, Dep. Counsel BPMC For:

CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct

APPENDIX I

DOH STATE OF NEW YORK DEPARTMENT OF HEALTH

Coming 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 14, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ann Hroncich, Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza-Sixth Floor
New York, New York 10001

Patti E. Evans, Esq.
299 Broadway-Suite 902
New York, New York 10007

Kenneth B. Gross, M.D.
100 Manetto Hill Road
Plainview, New York 11803

RECEIVED
MAR 15 1995
OFFICE OF PROFESSIONAL MEDICAL CONDUCT

RE: In the Matter of Kenneth B. Gross, M.D.

EFFECTIVE DATE 3/21/95

Dear Ms. Hroncich, Ms. Evans and Dr. Gross:

Enclosed please find the Determination and Order (No. 95-58) 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
Coming 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,

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**

**IN THE MATTER
OF
KENNETH B. GROSS, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-95-58

A Notice of Hearing and Statement of Charges, each dated May 19, 1994, was served upon the Respondent, **KENNETH B. GROSS, M.D.** **BENJAMIN WAINFELD, M.D.**, Chairperson, **LINDA LEWIS, M.D.**, and **KENNETH KOWALD**, 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) of the Public Health Law. **JEFFREY ARMON, Esq.** served as Administrative Officer for the Hearing Committee.

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

SUMMARY OF PROCEEDINGS

| | |
|--|--|
| Notice of Hearing and Statement of Charges: | May 19, 1994 |
| Prehearing Conference: | June 7, 1994 |
| Dates of Hearing: | June 14, 1994 June 15, 1994 June 20, 1994 June 21, 1994 July 19, 1994 September 12, 1994 September 14, 1994 November 14, 1994 |

**Department of Health
appeared by:**

Peter J. Millock, Esq.
General Counsel
NYS Department of Health

BY: Ann Hroncich, Esq.
Associate Counsel

Respondent Appeared By:

Patti E. Evans, Esq.
299 Broadway - Suite 902
New York, NY 10021

Leigh R. Isaacs, Esq.
325 East 79th Street
New York, NY 10021

Witnesses for Department of Health:

Patient A
Patient B
Technician D
Det. Lloyd Doppman
Mitchell J. Scher

Witnesses for the Respondent:

Patient D.M.
Mitchell J. Scher
Edward S. Orzac, M.D.
Michael Ira Weintraub, M.D.
Allison Smilowitz
Louise C. Starrantino
Neil S. Hibler, Ph.D.,
FAClinP.
Det. Lloyd Doppman
Edward Sun
Patti E. Evans, Esq.
Stuart Kleinman, M.D.
Richard Campo
Arthur Nascarella

FINDINGS OF FACT

Numbers in parenthesis refer to transcript pages or exhibits, and they denote evidence that the Hearing Committee found persuasive in determining a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the evidence cited. All Hearing Committee findings were unanimous unless otherwise specified.

NOTE: Petitioner's Exhibits are designated by Numbers.
 Respondent's Exhibits are designated by Letters.
 T. = Transcript

GENERAL FINDINGS

The Respondent was authorized to practice medicine in New York State on August 7, 1981 by the issuance of license number 147301 by the New York State Education Department. The Respondent was registered with the New York State Education Department to practice medicine through the period ending December 31, 1994. (Ex. 2)

FINDINGS RELATED TO PATIENT A

1. Respondent treated Patient A, a 50 year old female at that time, at his medical office on or about January 17, 1994. (Ex. 3, T. 22-3)
2. Patient A sought medical treatment from Respondent for complaints of head, neck and back pain caused as a result of her fall on a patch of ice on or about January 6, 1994
(T. 21-3, 935-6)
3. Respondent conducted a physical examination of Patient A in an examination room at his medical office on or about January 17, 1994. During the course of this examination, Respondent stood facing Patient A, placed both of his hands on her shoulders and began massaging her shoulders and neck. He continued to massage the patient as he lowered his hands down her back to her buttocks. While massaging her buttocks, Respondent pulled Patient A's body against him in a manner in which she could feel his erect penis pressing against the lower area of her stomach. (T. 28, 34-7, 149-51)

4. Respondent repeated this massaging procedure a second time, whereafter he then took her hand and placed it on his penis outside his trousers and moved her hand up and down in a stroking motion. During this time, Respondent's other hand was on the patient's buttocks or lower back area. (T. 38-9, 150-3, 204)
5. Respondent then requested that the patient lie on the examining table. Respondent stood on the right side of Patient A and rubbed his erect penis on her right arm by sliding his body back and forth. (T. 39-41, 155-6)
6. While Patient A lay on the examining table, Respondent fondled or massaged both of her breasts with the palms and fingers of both of his hands. (T. 41-2, 52-3)
7. Respondent then massaged Patient A's vaginal area by rubbing the palm and fingers of one or both hands on the outside of her clothing. (T. 41-2, 161-2)
8. Respondent thereafter instructed Patient A to remove her jacket and cotton tee shirt. The patient removed her jacket, but not her shirt. (T. 43-4, 164-5, 204-5)
9. Respondent then assisted Patient A in having her assume a sitting position on the examination table while he was on her right side. Respondent moved his hands from behind the patient to her front and again began to massage her breasts with his palms and fingers. (T. 43-5, 53, 165-7)
10. Respondent then instructed Patient A to stand near the examination table. He stood close to the patient, facing her and began massaging her shoulder and neck while asking her if it hurt. He repeated his earlier actions lowering his hands to massage the patient's back and buttocks and then pressed her against the lower part of his body until she could feel his erect penis. (T. 45-6)
11. Respondent recorded the results of Patient A's physical examination in a medical record in which he included findings of a heart-lung examination. (Ex. 3, p. 4)
12. Dr. Weintraub testified that the manner of an examination of a patient by a stethoscope varies by practitioner and stated that it is an acceptable practice to place a stethoscope on bare skin. (T. 719-720)

13. Patient A filed a report with the Nassau County Police Department on the day following her treatment by Respondent in which she related the details of the physical examination conducted by him on January 17, 1994. (Ex. A; T. 63)

FINDINGS RELATED TO PATIENT B

14. Respondent treated Patient B, a 29 year old female at that time, at his medical office on or about August 12, 1992. (Ex. 4; T. 316-7)
15. Patient B sought medical treatment from Respondent for complaints of back, neck, leg, abdomen and hip pain and weakness, blurred vision and dizziness caused by a fall on or about November 29, 1991. (Ex. 4; T. 316-7, 340-1)
16. Respondent conducted a physical examination of Patient B in an examination room at his medical office on or about August 12, 1992. Respondent instructed Patient B to lay down on the examination table. Patient B was wearing a knee-length dress and was told by Respondent that she would not need to put on a gown. (T. 318-9, 322)
17. Respondent rubbed a stick or sticks up and down the patient's legs while repeatedly asking if she could feel such rubbing sensations. He then pushed her dress up with his hand, thereby exposing her underwear, and rubbed the stick or sticks on the inside and outside of her thighs. (T. 322-5, 348-50, 384-5)
18. Respondent then instructed Patient B to get off the examination table. While standing directly in front of the patient, with her back against the table, Respondent put his hands behind her neck and began massaging the back of her neck. He proceeded to lower his hands along her back while continuing to massage the patient and repeatedly ask whether it felt good. The patient's arms were against her body, at her sides, while Respondent's arms were around her. (T. 325-7)
19. Patient B testified that while Respondent had his arms around her and was standing extremely close to her that she believed he was going to kiss her. (T. 328-9, 373-4)

20. Respondent continued to lower his hands behind the patient until they were on her buttocks at which point he pressed her body against his erect penis. (T. 329-30, 374-6, 391)
21. Patient B filed a report with the Nassau County Police Department on or about February 10, 1994 in which she related the details of the physical examination conducted by the Respondent on or about August 12, 1992. In such report, Patient B stated that she originally reported the incident to the Nassau County Police Department a few days after she was treated by the Respondent. (Ex. E)

FINDINGS RELATED TO PATIENT C

22. Respondent treated Patient C, a 24 year old female at the time of the initial visit, at his medical office on or about October 26, 1992, November 11, 1992 and March 31, 1993 for complaints of vertigo and numbness on the left side. (Ex. 5)
23. On or about February 23, 1994, Patient C filed a report with the Nassau County Police Department in which she alleged that Respondent treated her in an inappropriate manner while conducting physical examinations of her on October 26, 1992 and on March 31, 1993. (Ex. 6, T. 447)
24. Patient C was personally served with a subpoena to testify at this proceeding by the Department on June 14, 1994, but failed to comply with the directives of said subpoena and did not appear or testify. (Ex. 7)
25. Patient C executed a sworn affidavit, dated June 13, 1994, in which she indicated a desire to withdraw her allegations against Respondent and to not appear to give testimony against Respondent at this proceeding (Ex. J)

FINDINGS RELATED TO TECHNICIAN D

26. Technician D, a female aged 31 at the time, was employed as a CAT Scan technician at the Good Samaritan Hospital in West Islip, New York during the period of February through May 1991. (Ex. M; T. 252-55)
27. Between 11:00 a.m. and 2:00 p.m. on a Saturday during the period of February through May, 1991, Respondent came to the CAT Scan suite where Technician D was working to inquire about a diagnostic test performed on one of his patients (T. 255-6)
28. Respondent sat in an armless chair with his legs spread open on either side of the chair while he waited for Technician D to review her records. She was seated in another chair about one and a half feet from the Respondent. (T. 259-261)
29. Technician D responded several times to Respondent's inquiry about his patient by indicating that the test results were in another room. As she stood up from her chair to exit the room by walking past the Respondent, he reached out and grabbed her left wrist. He thereafter grabbed her right wrist and pulled both wrists down to his hips while he remained seated. Technician D's pelvis was pressed against Respondent's chair with his face very close to hers while he held her wrists tightly for about two minutes until he released her wrists. (T. 263-9)
30. Patient D testified that when Respondent entered the CAT Scan suite she had been testing another patient who was lying on an examination table in a portion of the room divided by a lead wall. (T. 256-8, 275-6)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concluded that the following Factual Allegations should be sustained. The citations in parentheses refer to the Findings of Fact which support each Factual Allegation:

| | |
|--------------------------|----------|
| Paragraph A.: | (1-2); |
| Paragraph A.1.a.: | (3); |
| Paragraph A.1.b.: | (4); |
| Paragraph A.1.c.: | (5); |
| Paragraph A.1.d.: | (6); |
| Paragraph A.1.e.: | (7); |
| Paragraph A.1.f.: | (9); |
| Paragraph A.1.g.: | (10); |
| Paragraph B.: | (14-15); |
| Paragraph B.1.a.: | (20); |
| Paragraph B.1.c.: | (18); |
| Paragraph B.1.d.: | (16-17); |
| Paragraph C.: | (22); |
| Paragraph D.: | (27-28); |
| Paragraph D.1.: | (28-30). |

The Hearing Committee concluded that the following Factual Allegations should NOT be sustained:

| |
|--------------------------|
| Paragraph A.2.a.: |
| Paragraph B.1.b.: |
| Paragraph C.1.a.: |
| Paragraph C.1.b.: |

Paragraph C.1.c.:

Paragraph C.2.a.

The Hearing Committee concluded that the following Specifications of Charges should be sustained. The citation in parentheses refers to the Factual Allegations which support each Specification:

First Specification: (A., A.1.a. through and including A.1.g.);

Second Specification: (B., B.1.a., B.1.c. and B.1.d.);

Fourth Specification: (D. and D.1.);

Fifth Specification: (A., A.1.a. through and including A.1.g.);

Sixth Specification: (B., B.1.a., B.1.c. and B.1.d.);

Eighth Specification: (A., A.1.a. through and including A.1.g.);

Ninth Specification: (B., B.1.a., B.1.c. and B.1.d.).

The Hearing Committee concluded that the following Specifications of Charges should **NOT** be sustained:

Third Specification:

Seventh Specification:

Tenth Specification.

DISCUSSION

Respondent was charged with multiple Specification of Charges alleging professional misconduct within the meaning of Education Law §6530. This statute sets forth numerous forms

of actions which constitute professional misconduct, but does not provide definitions of such categories of misconduct. During the course of its deliberations on these charges, the hearing Committee consulted a memorandum prepared by Peter J. Millock, Esq., General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law", sets forth suggested definitions for certain types of professional misconduct, including practicing the profession fraudulently.

During its deliberations, the Hearing Committee utilized the following definition of the fraudulent practice of medicine:

Fraudulent practice of medicine is an intentional misrepresentation or concealment of a known fact.

The Committee utilized this definition in its consideration of the Fifth through Seventh Specifications of Charges. The rationale for its determination is set forth below.

Because no witnesses were present at the time of the four alleged separate acts of professional misconduct committed by Respondent, the Committee recognized that it was essential that it evaluate the credibility of each of the complainants. The members of the Hearing Committee closely examined the testimony and demeanor of Patients A and B and Technician D, each of whom personally appeared at this proceeding, to consider the consistency and persuasiveness of their allegations. Patient C did not personally appear and give testimony, which made the Committee's responsibilities more difficult as addressed below. The Committee noted that the Respondent did not testify on his own behalf, but found such fact to have no influence on its determinations as it found it unnecessary to make any adverse inferences based upon such failure to testify.

The Committee also reviewed the testimony presented on behalf of the Respondent by three medical experts; Dr. Michael J. Weintraub, Dr. Neil S. Hibler and Dr. Stuart Kleinman. Their collective professional abilities and expertise in their specialties were recognized by the Hearing Committee. However, their testimony was not considered to be persuasive and did not alter the conclusions of the Committee that the testimony of Patient A, Patient B and Technician D were credible and consistent.

CONCLUSIONS AS TO PATIENT A

The Hearing Committee considered the testimony of Patient A, as it related to the essential elements of the physical examination performed by the Respondent on or about January 17, 1994 to be direct, persuasive and most credible. The Committee believed that those issues not related to the physical exam did not affect the credibility of Patient A's testimony concerning Respondent's actions during such exam. It considered the details and extent of the patient's injury which led to her seeking medical treatment from Respondent to be irrelevant to the issue of Respondent's conduct during the physical exam. Therefore, the testimony of the owner of the property where Patient A fell on or about January 6, 1994, while determined to be credible, was viewed as addressing issues not considered to be relevant to Patient A's testimony about Respondent's conduct eleven days later. In fact, that witness testified that she assumed Patient A had fallen when she saw the patient sitting on the ground and further testified that Patient A told her that she (Patient A) had indeed fallen on the ice. (T. 934-6) The Committee concluded that the extent of any injury suffered as a result of such fall was irrelevant in its assessment of the credibility of Patient A. Factual Allegations A. 1. a., b., c., d., e., f. and g. were each sustained based upon the unanimous view of the Hearing Committee that Patient A's testimony remained consistent, reasonable and believable throughout this proceeding as it related to the detailed description of Respondent's conduct during the physical exam.

The Committee believed that the testimony of Patient A was also consistent with the statement she made to the Nassau County Police Department on the day following Respondent's physical examination. (Ex. A) Both that statement and her testimony set out details of Respondent's initial massaging of her back and shoulders and subsequent massage of her buttocks, his press against her until she felt his erect penis, his placing of her hand on his erect penis and his fondling of her breasts. The prompt filing of a complaint with the police was considered to add to the credibility of the witness.

Patient D.M. testified for the Respondent as to what he observed while waiting in Respondent's office during the time in which Patient A was being examined. The Committee felt that

his testimony, based on what he observed Patient A's demeanor to be at the conclusion of Respondent's exam, was subjective and not dispositive of issues of her credibility. The Committee observed Patient A's presence at this hearing and believed it quite possible for her to exhibit no outward signs of emotion following the abusive conduct of Respondent in the examination room. The Committee did not conclude that Patient A's credibility was diminished by the testimony of Patient D.M. that Patient A did not appear to be upset at the time she left Respondent's office.

(T. 417-8)

Factual Allegation A.2.a. was not sustained because the Committee believed that there could have been an appropriate medical purpose for Respondent to request that the patient remove her shirt. Patient A did not testify as to whether Respondent did, in fact, use a stethoscope in examining her. However, a medical record was created in which Respondent noted findings of an examination of her heart and lungs. Dr. Weintraub testified that it is an acceptable practice to place a stethoscope on bare skin. The Committee reasoned that Respondent may have had an appropriate motive for his request and concluded that the Department did not prove this charge by a preponderance of the evidence.

CONCLUSIONS AS TO PATIENT B

The Committee considered Patient B to be a very credible witness and her testimony to be consistent and persuasive. It noted that she promptly filed a complaint with the Nassau County Police Department within a few days of the August, 1992 physical examination conducted by Respondent. The fact that there was no immediate action taken by the police to arrest the Respondent based upon Patient B's 1992 complaint was considered to be completely irrelevant in the evaluation of her credibility. The Committee rejected, as being unproven speculation, those contentions by Respondent that the police failed to act because it considered the complaint to be false. The Committee concluded that Patient B was truthful in her description of Respondent's

conduct and considered its responsibility to make such determination to be independent and unrelated to any action or inaction by the police.

Patient B's testimony was consistent with the police report prepared on February 10, 1994. (Ex. E) In both cases, the patient described being pinned against the examination table with Respondent's hands initially on her neck and upper back and than lowering to her buttocks. The patient credibly testified that he massaged her buttocks and then pressed her body against his until she could feel his erect penis. The Committee believed her testimony remained uncontradicted in all essential and relevant details throughout extensive cross-examination. It concluded that the description of Respondent's massaging of her head and neck while repeatedly asking if it felt good was inappropriate. The Committee reasoned that if the purpose of the massage was to determine the extent of her feeling in the neck area, asking whether or not it felt good was not appropriate. It also noted that the patient testified that she answered the Respondent by telling him that it did not "feel good" but that he continued to lower his hands behind her back and pull her closer to him while massaging her. (T. 327) Patient B described their position as being a close embrace with Respondent's arms around her while her arms were against her body. The Hearing Committee determined Respondent's actions were not for a proper medical purpose and sustained Factual Allegations B.1.a and B.1.c.

The Committee considered Respondent's use of sticks on Patient B's legs during the course of the physical examination to be appropriate in evaluating the extent of the feeling in her legs. However, the patient credibly testified that he pushed her dress up to a level which exposed her underwear while she was lying on the examination table. The Committee believed Respondent's failure to offer the patient a covering gown under such circumstances to be clearly improper, particularly in light of the fact that she testified that she asked whether she should put a gown on and was told "no" by the Respondent. (T. 319) Factual Allegation B.1.d. was sustained.

The Committee determined to not sustain Factual Allegation B.1.b. because there was no evidence in the record to show that Respondent did, in fact, attempt to kiss Patient B. The patient testified that she "thought he was going to kiss me." (T. 328) She did not testify that he actually

attempted to do so. The Factual Allegation was solely based on the patient's perception and was not supported by the evidence in the record.

CONCLUSIONS AS TO PATIENT C

Patient C filed a complaint with the police on February 23, 1994 in which she alleged Respondent treated her inappropriately during his physical examinations of her on or about October 26, 1992 and March 31, 1993. The patient executed a sworn affidavit which recanted such allegations and failed to appear to testify at this proceeding. The Department went forward with the allegations of misconduct against Respondent in relation to his treatment of Patient C by calling as witnesses a police detective and a Senior Medical Conduct Investigator, each of whom had interviewed the complainant. The Committee concluded that absent her personal testimony, and in light of the actual recantation of the complaint, it could not sustain the Factual Allegations related to Patient C, notwithstanding the testimony of the two witnesses who had interviewed her. The charges were such that it was considered essential that Patient C testify to enable the Committee to evaluate her appearance and demeanor and establish a level of credibility. Her failure to testify made it impossible for the Hearing Committee to undertake such an evaluation. The fact that Patient C submitted a sworn affidavit withdrawing her charges made it impossible for the Committee to conclude that the Department had proven its charges by a preponderance of the credible evidence. All Factual Allegations related to Patient C were not sustained.

CONCLUSIONS AS TO TECHNICIAN D

Respondent raised two legal issues in alleging that the charges related to Technician D did not constitute professional misconduct. The first contention was that the alleged misconduct occurred prior to the enactment of Section 6530(20) of the New York Education Law, effective July, 1991, and that the Respondent could not be charged with violating such statute when the alleged

misconduct occurred sometime during the period of February through May, 1991. However, the enactment of Section 6530 served to consolidate definitions of professional misconduct previously set forth in Education Law Section 6509 and Title 8 of the New York Code of Rules and Regulations (NYCRR). Prior to enactment of Section 6530(20), 8 NYCRR 29.1(b)(5) included as a definition of professional misconduct "conduct in the practice of a profession which evidences moral unfitness to practice the profession." This regulation, adapted by the Board of Regents or by the Commissioner of Education with approval by the Board of Regents, was made effective in 1977 and continued in effect thereafter. As accurately set forth in the Department's proposed conclusions of law, Respondent was on notice at the time the incident with Technician D took place that conduct evidencing moral unfitness could constitute professional misconduct. Any failure by the Department to refer to Section 6509 of the Education Law and 8 NYCRR 29.1 in its charges was of a technical nature and was not a fatal defect to the Fourth Specification of Charges.

Respondent also contended that the incident with Technician D did not constitute conduct in the practice of medicine and that he therefore could not be found to have committed unprofessional misconduct within the meaning of Section 6530(20), even if the events occurred in the manner to which she testified.

The incident occurred in a hospital in which both Technician D and Respondent were engaged in their regular course of business as a CAT Scan Technician and physician, respectively. Respondent sought out Technician D in relation to the treatment of his patient and then abused his position as a physician to engage in conduct for his sexual gratification. The Hearing Committee considered Respondent's actions to represent a violation of professional trust. It concluded that his actions toward Technician D evidenced moral unfitness to practice medicine and constituted professional misconduct within the meaning of the statute.

The Committee determined that Technician D was a very credible witness based upon her clear and concise testimony in recalling Respondent's actions in the CAT Scan suite of Good Samaritan Hospital. It considered any failure to intervene by a patient being tested in the adjoining room of the CAT Scan suite to be irrelevant in its' evaluation of Technician D's testimony. She was

viewed as having an excellent recollection of the incident which remained consistent during her cross-examination. The Committee determined to sustain Factual Allegation D.1.

MORAL UNFITNESS TO PRACTICE MEDICINE

The Committee concluded that Respondent's actions regarding the physical examinations of Patients A and B and the incident with Technician D clearly constituted conduct in the practice of medicine which evidenced the moral unfitness to practice. These actions included the massaging of the buttocks of Patients A and B, pressing the bodies of both patients against his erect penis, moving Patient A's hand up and down his penis outside his pants, rubbing Patient A's vaginal area outside her clothing, exposing Patient B's underwear and grabbing Technician D's wrists and pulling her toward him. The Hearing Committee determined these actions of Respondent to be outside the scope of the practice of medicine and performed expressly for his sexual gratification. Specification of Charges One, Two and Four were sustained.

PRACTICING THE PROFESSION FRAUDULENTLY

As set out above, the Committee utilized the definition of the fraudulent practice of medicine as being an intentional misrepresentation or concealment of a known fact. Applying this definition, it reasoned that the Respondent could be found as having practiced fraudulently if his actions in treating Patients A and/or B were determined to be not for any proper medical purpose related to their diagnosis and treatment. The Committee concluded that his conduct when examining Patient A in the inappropriate manner as set forth in Allegations A.1.a. through and including A.1.g., each of which was sustained, was not undertaken for any proper medical purpose. It also determined that certain conduct exhibited by Respondent during his examination of Patient B, including the massaging of her buttocks and pressing of her body against his erect penis, the massaging of her head and neck while repeatedly asking if it felt good and the pushing of her dress to a level which

exposed her underwear was also undertaken for no proper medical purpose. The Committee determined Respondent to have intentionally misrepresented his actions and therefore to have practiced the profession fraudulently in his treatment of both patients. It sustained the Fifth Specification of Charges, as it was based on facts sustained in Factual Allegations A.1.a. through A.1.g. and the Sixth Specification, based on those facts sustained in Factual Allegations B.1.a., B.1.c. and B.1.d.

WILLEFULLY HARASSING, ABUSING OR INTIMIDATING PATIENTS

The Hearing Committee determined that the Department established by a preponderance of the credible evidence that Respondent's conduct in his treatment of Patient A and Patient B constituted the willful abuse of both patients. As detailed above, his actions were considered to be clearly not for any proper medical purpose and could only be considered as physical and sexual abuse of both women for Respondent's own gratification. Specification of Charges Eight and Nine were sustained, based upon those Factual Allegations which were also sustained.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Committee was emphatic in its determination that revocation was the only appropriate penalty in this matter. It strongly felt that Respondent constituted a serious threat to the public by his actions and believed that there was no possibility of rehabilitation which could mitigate the imposition of the most stringent penalty available. The Committee also noted that Respondent's

defense, based upon witnesses presented and the cross-examination of the three complainants, comprised a denial of any misconduct and absence of any remorse. His actions were viewed as a serious breach of the professional trust and ethics placed in a physician and no penalty other than license revocation was considered to be appropriate for his breach of such trust and ethics.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT :

1. The following Specifications of Charges, as set forth in the Statement of Charges (Ex. 1) are **SUSTAINED:**
 - a. First Specification, as it relates to the facts in paragraphs A. and A.1.a. through and including A.1.g.;
 - b. Second Specification, as it relates to the facts in paragraphs B. and B.1.a., B.1.c. and B.1.d.;
 - c. Fourth Specification;
 - d. Fifth Specification, as it relates to the facts in paragraphs A. and A.1.a. through and including A.1.g.;
 - e. Sixth Specification, as it relates to the facts in paragraphs B. and B.1.a., B.1.c. and B.1.d.

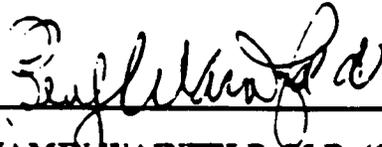
f. Eighth Specification, as it relates to the facts in paragraphs A. and A.1 a. through and including A.1.g.;

g. Ninth Specification, as it relates to the facts in paragraphs B. and B.1 a., B.1.c. and B.1.d.

2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED.**

DATED: Albany, New York

3/13 1995



BENJAMIN WAINFELD, M.D. (CHAIRPERSON)

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Case Number 00-19-60
December 7, 1999

THE UNIVERSITY OF THE STATE OF NEW YORK
The State Education Department

Report of the Committee on the Professions
Application for Restoration of Physician License

Re: **Kenneth Gross**

Attorney: Anthony Scher

Kenneth Gross, Apt. 223, 1205 Mariposa Avenue, Coral Gables, Florida 33416, petitioned for restoration of his physician license. The chronology of events is as follows:

- | | |
|----------|--|
| 08/07/81 | Issued license number 147301 to practice medicine in New York State. |
| 05/19/94 | Charged with professional misconduct by Department of Health. |
| 03/13/95 | Hearing Committee of State Board for Professional Medical Conduct voted revocation. |
| 03/21/95 | Commissioner's Order effective. |
| 10/03/96 | Submitted application for restoration of physician license. |
| 12/18/98 | Peer Committee restoration review. |
| 09/24/99 | Report and recommendation of Peer Committee. (See "Report of the Peer Committee.") |
| 12/07/99 | Report and recommendation of the Committee on the Professions. (See "Report of the Committee on the Professions.") |

Disciplinary History. (See attached Statement of Charges and Determination and Order [BPMC-95-58].) On May 19, 1994, the Department of Health charged Dr. Gross with 10 specifications of professional misconduct involving three female patients (A-C) and one female technician (D). A Hearing Committee of the State Board for Professional Medical Conduct sustained all or part of seven of those specifications and determined that he was guilty of moral unfitness to practice medicine, practicing the profession fraudulently, and willfully harassing, abusing or intimidating patients. The Committee determined that Dr. Gross' "actions regarding the physical examinations of Patients A and B and the incident with Technician D clearly constituted conduct in the

practice of medicine which evidenced the moral unfitness to practice. These actions included the massaging of the buttocks of Patients A and B, pressing the bodies of both patients against his erect penis, moving Patient A's hand up and down his penis outside his pants, rubbing Patient A's vaginal area outside her clothing, exposing Patient B's underwear and grabbing Technician D's wrists and pulling her toward him. The Hearing Committee determined these actions of Respondent to be outside the scope of the practice of medicine and performed expressly for his sexual gratification." The Committee also determined that Dr. Gross' actions in treating Patients A and B were undertaken for no proper medical purpose and concluded that he had practiced the profession fraudulently by having intentionally misrepresented his actions. Lastly, the Committee determined that he was guilty of willfully harassing, abusing or intimidating patients in that the Committee considered his actions during the treatment of Patients A and B "to be clearly not for any proper medical purpose and could only be considered as physical and sexual abuse of both women for Respondent's own gratification." In its report, the Hearing Committee noted that it felt Dr. Gross "constituted a serious threat to the public by his actions and believed that there was no possibility of rehabilitation, which could mitigate the imposition of the most stringent penalty available." The Committee voted to revoke Dr. Gross' physician license and the Order was effective March 21, 1995.

Dr. Gross filed an Article 78 appeal with the Supreme Court, Appellate Division, Third Department, requesting a review of the determination of the Hearing Committee. On January 4, 1996, the Supreme Court confirmed the Hearing Committee's determination and Dr. Gross' petition was dismissed. He submitted an application for restoration of his license on October 3, 1996.

Recommendation of Peer Committee. (See attached Report of the Peer Committee.) The Peer Committee (Harris, Roman, Jordan) convened on December 18, 1998. In its report dated September 24, 1999, the Committee recommended unanimously that Dr. Gross' application for restoration of his physician license be denied.

Recommendation of the Committee on the Professions. On December 7, 1999, the Committee on the Professions (Duncan-Poitier, Ahearn, Muñoz) met with Dr. Gross to consider his application for restoration. Anthony Z. Scher, his attorney, accompanied him. Dr. Gross presented the Committee with:

- An annotated listing of his continuing education activities from 1995 to the present.
- Examples of curricula he developed for allied health professionals.
- Letter, dated September 19, 1995, from Myron M. Teitelbaum, M.D., regarding his treatment of Dr. Gross since January 19, 1995.

The Committee asked Dr. Gross to describe what happened that resulted in the loss of his license. He responded that there were two episodes, one in 1992 and the

other in 1994, where he crossed the boundary with two female patients while conducting neurological examinations. He said, "I made an error in each. I allowed thoughts that led to inappropriate touching to occur. I'm extremely sorry for that." He said that his behavior had an impact not only on himself but also on the patients. Regarding the two patients who filed charges against him, Dr. Gross indicated that he had interviewed them and then conducted neurological examinations to assess any injuries resulting from falls they had taken. He told the Committee, "I let sexual thoughts, unfortunately, occur." He reported that there was "inappropriate arousal on my part." He explained that he saw the patients to help them but made mistakes – in terms of the involuntary erections he had. Dr. Gross said, "I'm sorry they were embarrassed and made uncomfortable."

Dr. Gross concurred with the Committee's summary of his explanation thus far that he had sexual thoughts, got an erection, and then had contact with the patients, but stated, "It was not of a nature where I was attempting to harm them. I apologize for that. I have paid a tremendous price. I lost the medical career that I dedicated my life to." Dr. Gross indicated that he had practiced for 20 years and those two examinations did not represent the type of work he had done with others. The Committee asked Dr. Gross if he felt the only impact on the patients was that they were embarrassed or uncomfortable, especially if there was to be trust between a patient and a doctor. He responded, "Of course, it had an impact on them." He said, "They were obviously upset and yet, I'm sure, became cognizant in some way that the doctor was no longer practicing." The Committee asked Dr. Gross what he felt the Committee should say to the two patients if it decided to restore his license. He replied that the response should indicate that he was a physician who dedicated his life to medicine and helped many, many people. Continuing, he said the Committee should say that the physician was very remorseful in terms of any negative impact this breach of trust may have had on the patients, that he lost his life savings and had tremendous problems dealing with his family but still maintained ties to medical education. In concluding, he suggested the Committee say that the physician should be given a second chance, as deep down he is a good person.

Regarding the extent of his interactions with the two patients as reported on page seven of the Report of the Peer Committee and his admission that inappropriate touching occurred, the Committee on the Professions inquired if he had changed his perspective of what occurred. He replied that while he was palpating these two women, he became sexually aroused involuntarily, and brushed up against them with an erection. He said, "I truly, truly did not fondle them or had any intentions to abuse them." Mr. Scher explained that on the advice of counsel, Dr. Gross did not testify at the OPMC hearing because the criminal case was still pending. He reported that Dr. Gross did testify at the criminal trial and the jury found him not guilty of sexual assault. Mr. Scher said that Dr. Gross always admitted that some things did occur, but not necessarily in the way the patients described them. For example, Dr. Gross does not concede that he moved Patient A's hand against his penis, or rubbed her vaginal area. The Committee noted that the OPMC Hearing Committee determined that the patients were credible and concluded that Dr. Gross had engaged in assertive conduct. Further, the

Committee on the Professions noted that while such conduct might not sustain a criminal charge of sexual assault for any number of reasons, it could sustain a charge of professional misconduct.

The Committee asked Dr. Gross what motives the patients would have had to lie if they did not truly believe that his actions were sexually inappropriate. Regarding Patient A, he responded, "I can't get into that individual's mind. I can certainly speculate. There was the possibility of achieving some secondary gain." Dr. Gross reported that the patient brought a civil lawsuit against him which was settled after the OPMC determination. He had no explanation for Patient B.

The Committee noted that the record indicated Dr. Gross had received sporadic psychotherapy with Dr. Teitelbaum – two months initially, a hiatus of eight months, and then from January 1995 to June 1996 with a break of approximately 4 months – and asked what occurred in his therapy to resolve the underlying issues of his misconduct. He replied that it brought to his awareness, his consciousness, that "fleeting" sexual thoughts can enter every man's mind. He indicated that he has learned that if those involuntary thoughts enter your mind during an examination, you must step away and must hold off an evaluation until you're in control and can move on. He said that he was very upset about what happened and "wanted to raise it into my consciousness so that it would not happen again." Dr. Gross said that he has reassessed his examination style and his approach to situations "when patients may have an agenda." He reported that he has also received spiritual counseling from his Rabbi. The Committee asked whether the Rabbi was a licensed psychologist or certified social worker or had other credentials which would complement the spiritual counseling he provided. Dr. Gross indicated he would find out and send them to the Committee. (The Committee received a letter dated December 15, 1999 from Rabbi Mallach describing his counseling background, which did not include any professional licensing in psychotherapy. This information was considered by the Committee in its deliberations.) The Committee asked Dr. Gross if he had looked at impulse control or any behavioral models of correction and questioned how he knew he could control his behavior. Dr. Gross responded that since his inappropriate action, he has "had in the trenches many male-female interactions without further incident." He reported that as an allied health professional instructor in 1998-99, he came in contact with many young women in small groups as well as with women colleagues. He indicated that in those situations as well as in other employment settings he "had zero types of boundary violations occur." The Committee asked Dr. Gross what he thought sparked sexual desire issues since he hadn't recently been in the actual trenches of seeing patients alone again. He replied that he discussed this with Dr. Teitelbaum and now has "red flags going off." He gave as examples, if a woman is making any kind of jocular sexual comment or if doctors and nurses are engaged in banter that is always occurring. The Committee questioned whether this was a problem of a more long-standing duration or isolated incidents. Dr. Gross replied, "Absolutely nothing of this nature happened to me before 1992, or between 1994, or after." The Committee inquired if the involuntary erections were a new occurrence in 1992. He answered, "As with any man, I have had fleeting sexual thoughts." Dr. Gross told the Committee that those were only two aberrational occurrences. He stated, "I can't

explain precisely why it happened at those two times." He explained that during examinations he would ask patients, "Does this feel good?" and suggested that the question might be misinterpreted. He said, "I cannot let it happen again. I must break the conscious bond."

The Committee asked whether he received psychotherapy focused upon sexual behavior. Dr. Gross replied, "It was Teitelbaum's decision not to institute that therapy. He didn't want to create a disorder that he did not feel existed." He reported that they concentrated on his upbringing and life story and it was effective. Dr. Gross said that he felt he was fit to practice as a physician and that the record supports his belief. He referred to the three instances where Dr. Teitelbaum supported him as a qualified physician. He told the Committee that "if the Board wants to require counseling, I have no objection." Mr. Scher summarized his reasons why Dr. Gross should have his license restored and referred to the handout materials as proof of his ample continuing education, explained why he felt the Peer Committee erred in concluding that Dr. Gross was not remorseful, and suggested conditions that could be imposed to assure the safety of the public were Dr. Gross to resume practice.

The overarching concern in all restoration cases is the protection of the public. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that licensure should be granted in the face of misconduct that resulted in the loss of licensure. There must be a clear preponderance of evidence that the misconduct will not recur and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. The Committee on the Professions (COP) believes it is not its role to merely accept as valid whatever is presented to it by the petitioner but to weigh and evaluate all of the evidence submitted and to render a determination based upon the entire record.

The Committee on the Professions (COP) concurs with the Peer Committee that Dr. Gross has not made a compelling case for the restoration of his license. As the Peer Committee noted, Dr. Gross has not continued in psychotherapy even though Dr. Teitelbaum's letter of April 7, 1997 states, "Although I feel that Dr. Gross is fully able to return to the practice of medicine, I feel that he would continue to benefit from regular ongoing psychotherapy on a once or twice a week basis. This would enable him to continue to resolve the issues created in childhood and not act upon them in adulthood."(emphasis supplied) Dr. Gross continues to emphasize Dr. Teitelbaum's statements related to his ability to resume the practice of medicine but fails to comprehend the importance of on-going psychotherapy for his rehabilitation or the conditional bases for those statements. Dr. Gross told the COP that he would be willing to resume therapy if that was make a condition for getting his license back. However, the COP questions why his therapy has been sporadic and why he has not continued therapy on his own initiative. Based on the record, Dr. Gross only began therapy initially because he could not sleep – not to help understand the underlying causes of his misconduct. Dr. Gross admitted in his meeting with the COP that he did not know what triggered the two incidents which formed the basis of the charges of misconduct. Rather, he stated that they were "involuntary" thoughts and acts. If this characterization

is correct, COP questions how Dr. Gross can truly "control" "involuntary" thoughts and actions which, by definition, are not subject to volition or choice. The COP further finds that Dr. Gross did not present a clear understanding of certain issues critical to his fitness to practice: What triggers the inappropriate sexual thoughts toward patients? What triggers his involuntary erections? Why does Dr. Gross act on his inappropriate sexual impulses? Without clear insight into what causes his behavior, the COP does not believe it can be assured that Dr. Gross has resolved his problems. Moreover, his failure to continue with psychotherapy on a consistent basis in the face of his inability to answer these questions puts his patients at risk of harm. While we do believe that Dr. Gross is remorseful for his actions, remorse without true rehabilitation does not make a compelling reason for restoration. This belief is supported by the Director of the Office of Professional Medical Conduct who wrote to the State Education Department, "At this time I see no reason to conclude that Dr. Gross's aberrant behavior will not recur. The only means available to protect a vulnerable patient population is to continue the revocation of Dr. Gross's license to practice medicine."

Therefore, after a complete review of the record and its meeting with him, the Committee on the Professions voted unanimously to concur with the recommendation of the Peer Committee that Dr. Gross' application for restoration of his license to practice as a physician in the State of New York be denied at this time.

Johanna Duncan-Poitier, Chair

Kathy A. Ahearn

Frank Muñoz



The University of the State of New York

NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF PROFESSIONAL RESPONSIBILITY
STATE BOARD FOR MEDICINE

-----X

In the Matter of the Application of

KENNETH GROSS

**REPORT OF
THE PEER
COMMITTEE
CAL. NO. 17170**

for the restoration of his license to
practice as a physician in the State of
New York.

-----X

Applicant, **KENNETH GROSS**, was authorized to practice as a
physician in the State of New York by the New York State Education
Department.

PRIOR DISCIPLINE

An order, effective 3/21/95, revoked applicant's license to
practice medicine. The Health Department issued findings of fact
and conclusions detailing the misconduct of applicant. In
essence, applicant was found guilty of moral unfitness, practicing
fraudulently and willful abuse of patients. These actions related
to two patients who testified that in the course of applicant's
neurological examination he engaged in inappropriate conduct by
inappropriately touching them and pressing his body and erect
penis against their bodies (all parties were clothed during these
incidents). A technician also testified at the hearing that

KENNETH GROSS (17170)

applicant had grabbed her wrists and pulled her toward him. Both patients had made a report to the police and these same allegations formed the basis of a criminal proceeding in Nassau County.

Briefly, in the discipline matter it was found that applicant massaged patient A's buttocks and pulled her against him so that she could feel his erect penis against her stomach through their clothing. Applicant also placed patient A's hand on his erect penis and moved her hand up and down. He also rubbed his erect penis on patient A's arm and massaged her breasts and vaginal area.

It was found that applicant massaged patient B's buttocks while pressing her body against his erect penis.

It was also found that applicant grabbed technician D's wrists and pulled her toward him with his face very close to hers for about two minutes.

THE APPLICATION

On October 3, 1996 applicant petitioned the New York State Education Department for the restoration of his license to practice as a physician in the State of New York.

The application points out that since a criminal matter was pending, applicant, on advise of counsel, did not testify at the professional discipline hearing. Once the criminal matter was resolved in applicant's favor he requested to testify in the discipline case since a discipline report had not yet been issued. This request was denied. Applicant states that therefore the

discipline matter was decided without his side being told.

Accordingly, we feel we should quote exactly from applicant's petition what he has said (for the first time in this matter) regarding the patients in question. The petition reads as follows:

14. "I also never touched Patient A's breast or vaginal area as she stated to the hearing committee but neglected to "remember" when she first went to the police.
15. Unfortunately, I did fall victim to a human failing during the examinations of Patients A and B. I had fleeting sexual thoughts that led to inappropriately phrased queries such as "Does this feel good?" and involuntary erections during the evaluations of Patients A and B. Obviously, Patients A and B were aware that I had become aroused.
16. Part of the professionalism required of a physician is keeping transient sexual thoughts in check such that a random thought or a sense of sexual arousal does not become transferred into action such that the proper boundaries between physician and patient are breached.
17. At the time of the misconduct hearing and the criminal trial, I believed that I had done nothing wrong and that the entire process was unfair. I knew that I had had fleeting sexual thoughts toward these two patients as noted above and I knew that I had become aroused but I believed that I had, nevertheless, conducted a proper, clinical examination of each patient and that I had not committed professional

misconduct.

18. I knew that Patient A had been a career litigant having sued numerous entities over the years and I believed that I was simply next on her list.
19. I believed that Patient B had accidentally brushed against my erect penis, had become understandably upset and angry and then misinterpreted the balance of an otherwise proper neurological examination.
20. With the benefit of insight oriented counseling and instruction and much soul searching, however, I now realize that I did breach acceptable boundaries with respect to Patients A and B.
21. I had become aroused but nevertheless continued with the examinations. I improperly permitted my thoughts to become evident to the patients. My arousal was apparent to the patients and my examinations were perceived (correctly) as not being completely clinical in nature. Since I did have sexual thoughts, my examinations were not as clinical and professional as they should have been. I did not maintain a strict clinical demeanor as I should have. I may have stared at the patients inappropriately, lingered unnecessarily in certain areas and spoken inappropriately.
22. I am deeply sorry for the undeniable anxiety and uncomfortableness that Patients A and B undoubtedly felt during the examinations in question.
23. I did, however, want to help Patients A and B despite my

lapses.

24. I can appreciate how the hearing committee came to its conclusion. The hearing committee heard absolutely nothing from me which was due to the pending criminal proceeding at the time of my hearing. Thus, the hearing committee had little reason to doubt any portion of the claims made by Patients A and B. As noted above, there was some truth to these claims, but I was not free to contest the exaggerations that were made."

The application goes on to tell the effect the revocation of his license has had on his life and his family.

Applicant then states how he has undergone treatment by Dr. Myron Tetelbaum which has given him far greater insight into the forces and stresses that led to his breaches of the doctor/patient boundaries and that such will never recur. However he understands that safeguards may be necessary if his license is restored.

Applicant then goes on to give a history of his education, his practice up to the revocation of his license and what he has done since said revocation.

THE MEETING

On December 18, 1998 this Peer Panel met to consider the application in this matter. Applicant appeared and was represented by Anthony Scher, Esq. Dennis Spillane, Esq. represented the Division of Prosecutions of the Office of Professional Discipline.

Applicant offered five additional documents at the meeting

which were accepted and which are made a part of the material herein.

After a brief opening statement by Mr. Scher applicant spoke to the committee and repeated much of what was stated in his application. He also stated that he is not currently undergoing any psychotherapy. Applicant stated he reads all the major journals in neurology and the New England Journal of Medicine. He has attended neurology conferences in the last couple of years.

Applicant has received spiritual counseling from a rabbi for over a year. He assured the panel that nothing unprofessional would happen again.

Mr. Spillane and the Panel questioned applicant regarding his treatment by Dr. Teitelbaum and how it related to the two patients in question. Applicant said that he gained insight into himself by looking into his background. He recognizes that all men are vulnerable to sexual fantasies and he must keep this awareness in the front of his mind. When asked what he had done to continue in therapy as Dr. Teitelbaum recommended in his 4/7/97 letter, applicant said he is seeing a spiritual counselor in Florida, a rabbi. He stated that he has no problems with depression now like he did in 1994. Applicant said that if he ever gets an involuntary sexual reaction again he will step back from the patient and gather himself together. Questioned further as to why he has not continued with psychotherapy as Dr. Teitelbaum recommended, applicant said he believes he has resolved those issues without further psychotherapy. He said he has had no

further contact with Dr. Teitelbaum since the doctor wrote that letter.

The Chairperson then asked applicant directly to reconcile his version of what took place with these two patients and the findings of O.P.M.C. Applicant replied:

"I am glad you have given me the opportunity to clear this up. I did not voluntarily sexually abuse either of these two women. I did not fondle them, nor did I place my hand, their hands on my penis. I did have involuntarily erections with these two women during the course of an exam where there were issues about pain and multiple areas of muscle pain and I palpated them in the leg. I think that led to a misperception. There was likely brushing up against my erect penis through clothing during this exam and that was what happened."

After answering further questions from Mr. Spillane and the Panel, applicant called his witnesses.

Dr. Altman stated that what was meant by "raw deal" in the character reference letter was that applicant did not testify at the discipline matter because of the pending criminal case. Then applicant, after his acquittal in the criminal case, was not allowed to reopen the discipline case to testify. Dr. Altman was only aware of the general nature of the charges against applicant.

Norma LeQuerica is the mother of one of applicant's patients. She said applicant was very professional and caring and had helped her son with his self esteem.

Burt Feilica said applicant told him that he had done nothing

wrong with the patients in question. He has known applicant for all his life and believes he would be no threat to patients.

Herbert Aronson stated that he is a friend of applicant's parents and has known him all his life and if he made a mistake he should be given another chance.

Donna Bunassar met applicant after he moved to Florida and he got involved in education. She feels comfortable working with applicant and would send her teenager daughter to applicant for treatment without concern. She is generally aware of the circumstances regarding the revocation of applicant's license and came to support his application.

Upon brief re-questioning by Mr. Spillane applicant stated that while the 12/8/98 letter from Rabbi Mallach does not state it, applicant had told the Rabbi precisely what was the truth regarding his loss of licensure.

The parties then made closing statements.

RECOMMENDATION

We unanimously recommend that the application herein be denied. We base this recommendation in large part on the demeanor of applicant while testifying before us. We recognize that the denial of the restoration of a license cannot be based solely on applicant's refusal to admit that he did do the acts for which he was found guilty. However, applicant's version of what took place with the patients in question so defies creditability as to lead us to believe that applicant is in a state of denial. Had applicant testified in the O.P.M.C. matter the way he did hearin,

KENNETH GROSS (17170)

we do not believe the result there would have been any different.

Against the advice of his psychiatrist applicant has not continued in treatment. He has convinced himself that he has cured himself without the need for future treatment. We don't see how applicant can be rehabilitated if he would not follow his own chosen therapists advice.

Applicant bases his remorse on saying he should not have continued the treatment sessions with patients A and B after he had gotten "involuntary" erections, which led said patients to misinterpret applicant's actions during these treatment sessions. Based on our observation of applicant we believe he is remorseful for having been brought to account for having mistreated these patients.

Further, while it is a minor consideration compared to the foregoing, although applicant has stated that he reads journals, attends some seminars and teaches, he has not presented this panel with evidence of continuing education course work.

Accordingly, the record herein does not compel us, by any means, to recommend restoration of licensure in this matter.

Respectfully submitted,

David Harris, M.D., Chairperson
Stanford Roman, M.D.
Lois Jordan, Public Member

David Harris M.D. September 24, 1990

Chairperson

Dated

Case No. 00-19-60

It appearing that the license of KENNETH GROSS, Apt. 223, 1205 Mariposia Avenue, Coral Gables, Florida 33416, to practice medicine in the State of New York, having been revoked by action of the State Board for Professional Medical Conduct effective March 21, 1995, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Review Panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on February 8, 2000, it was

VOTED that the petition for restoration of License No. 147301, authorizing KENNETH GROSS, to practice medicine in the State of New York, be denied.

The University of the State of New York
Education Department



IN THE MATTER

of the

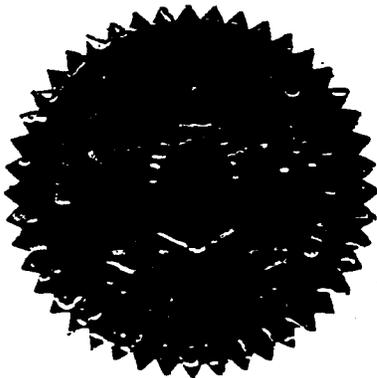
Application of KENNETH GROSS
for restoration of his license to
practice medicine in the State of
New York.

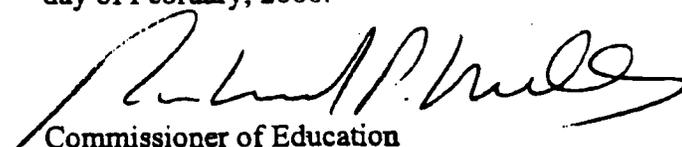
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ORDERED that the petition for restoration of License No. 147301, authorizing KENNETH GROSS, to practice medicine in the State of New York, is denied.

IN WITNESS WHEREOF, I, Richard P. Mills, Commissioner of Education of the State of New York for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this / 7 day of February, 2000.




Commissioner of Education

