NEW YORK
THE STATE OF LEARNING

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

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

Donald Briggs, Physician
170 East 79th Street
New York, N.Y. 10021

~~July 31, 1991~~
October 18, 1991

Re: License No. ~~142506~~ 076419

Dear Dr. Briggs:

Enclosed please find Commissioner's Order No. 11695. This Order goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order in your case is a revocation, surrender, or a actual suspension (suspension which is not wholly stayed) of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. Your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you may, pursuant to Rule 24.7 (b) of the Rules of the Board of Regents, a copy of which is attached, apply for restoration of your license after one year has elapsed from the effective date of the Order and the penalty; but said application is not granted automatically.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations
By: Gustave Martine

GUSTAVE MARTINE
Supervisor

DJK/GM/er

CERTIFIED MAIL - RRR

cc: Nathan L. Dembin, Esq.
26 Broadway
New York, N.Y. 10004

The University of the State of New York

IN THE MATTER

OF

DONALD BRIGGS
(Physician)

DUPLICATE ORIGINAL VOTE AND ORDER NO. 11695

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 11695, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED* (July 26, 1991): That, in the matter of DONALD BRIGGS, respondent, the decision in Poglinco v. Board of Regents, 566 N.Y.S.2d 733, was considered and found to be inapplicable to the affidavit which was not accepted by the Regents Review Committee, referenced at the top of page 3 of its report; that the language on page 3 of that Regents Review Committee report should be read within the context that there was no showing on the measure of discipline issue that the affidavit which was offered concerned respondent's subsequent conduct; that the recommendation of the Regents Review Committee be accepted as follows:

1. The findings of fact of the hearing committee, as deemed corrected, and the Commissioner of Health's recommendation as to those findings be accepted;
2. The following additional findings of fact be accepted:

   18(a). Respondent's physical conduct with Patient A was knowing, intentional and deliberate and not part of a legitimate medical examination.

*Regent J. Edward Meyer dissented as to the measure of discipline.

29. Respondent's physical contact with Patient B was knowing, intentional and deliberate and not part of a legitimate medical examination.

3. The conclusions of the hearing committee as to guilt and the recommendation of the Commissioner of Health as to those conclusions be accepted, except that the reasons as set forth in paragraph (6) on page 14 and paragraph (6) on page 17 of the conclusions in the hearing committee report not be accepted as not probative regarding the issue of credibility and with the further exception that the Commissioner's recommendation not to sustain the first and second specifications on the basis of allegations A(1), A(2) and A(3) of the statement of charges not be accepted; and

4. Respondent is guilty, by a preponderance of the evidence, of each specification of the charges to the extent indicated in the hearing committee's report;

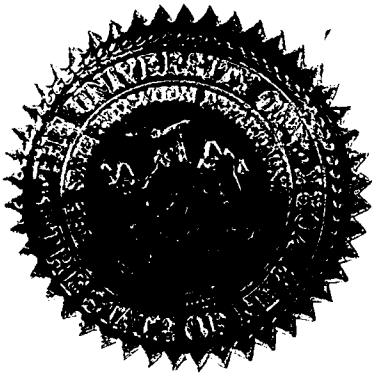
that the penalty recommendation of the Regents Review Committee be modified, that the recommendations of the hearing committee and the Commissioner of Health as to the measure of discipline be accepted, and that based on a more serious view of the misconduct and agreement with the penalty recommendation of the hearing committee and Commissioner of Health, respondent's license to practice as a physician be revoked upon each specification of the charges of which respondent was found guilty; and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote and the provisions thereof are hereby adopted and **SO ORDERED**, and it is further

DONALD BRIGGS (11695)

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or five days after mailing by certified mail.



IN WITNESS WHEREOF, I, Thomas Sobol, Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 26th day of July, 1991.

Thomas Sobol

Commissioner of Education

REPORT OF THE
REGENTS REVIEW COMMITTEE

DONALD BRIGGS

CALENDAR NO. 11695

The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

DONALD BRIGGS **No. 11695**

who is currently licensed to practice
as a physician in the State of New York.

REPORT OF THE REGENTS REVIEW COMMITTEE

DONALD BRIGGS, hereinafter referred to as respondent, was licensed to practice as a physician in the State of New York by the New York State Education Department.

This disciplinary proceeding was properly commenced and in seven sessions from October 4, 1989 through September 18, 1990, including conferences for legal determinations, a hearing was held before a hearing committee of the State Board for Professional Medical Conduct.

The hearing committee rendered a report of its findings, conclusions, and recommendation, a copy of which, including the statement of charges and excluding the appendix of patient names, is annexed hereto, made a part hereof, and marked as Exhibit "A".

The hearing committee unanimously concluded that respondent was guilty of the first, second, and third specifications of the

charges to the extent indicated in its report, and recommended that respondent's license to practice medicine be revoked.

The Commissioner of Health recommended to the Board of Regents that the findings of fact of the hearing committee be accepted in full, the conclusions of the hearing committee be modified, as set forth in the written recommendation of the Commissioner, and further recommended that the penalty recommended by the hearing committee be accepted and that respondent's license to practice be revoked. A copy of the recommendation of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "B".

On February 27, 1991 respondent appeared before us in person and was represented by his attorney, Nathan L. Dembin, Esq. who presented oral argument on behalf of respondent. Jean C. Bressler, Esq., presented oral argument on behalf of the Department of Health.

Petitioner's written recommendation as to the measure of discipline to be imposed, should respondent be found guilty, was revocation.

Respondent's written recommendation was a remand for a hearing or a reversal as a matter of law, or suspension and probation.

We have considered the record as transferred by the Commissioner of Health in this matter, as well as respondent's letter to the Regents Review Committee, petitioner's memorandum and

respondent's reply brief. Such review has also included the transcripts from conferences for legal determinations held without the presence of the hearing committee which were received in June of this year. We did not accept an affidavit offered by respondent because it should have more appropriately been offered at the hearing level and respondent did not explain why it was not offered at that time.

We note that the Commissioner of Health, who reviewed the record which reflects the existence of the transcripts of the conferences, did not, in fact, review these transcripts. We do not view the absence of review of these transcripts, to which the Commissioner of Health had access, to indicate a failure by the Commissioner of Health to fulfill his statutory duties with regard to this disciplinary matter. See, Matter of Smith, Cal. NO. 11657. Cf., DiMarsico v. Ambach, 424 N.Y.S.2d 107, reargument denied 425 N.Y.S.2d 1029, on remand 425 N.Y.S.2d 894.

In our unanimous opinion, the determination to replace the hearing committee member, Dr. Hawkins, due to his incapacity was appropriate under Public Health Law Section 230(10)(f) and the case of Laverne v. Sobol, 539 N.Y.S.2d 556 and did not deny respondent a fair hearing. In this regard, we note that the hearing committee's decision was unanimous, notwithstanding that only a simple majority vote was needed to support a conclusion of guilt. Thus, the contention that respondent may have been prejudiced in

any way by the replacement of Dr. Hawkins is speculative.

We are also not persuaded that respondent was prejudiced by the preclusion of witness testimony of satisfied patients, which testimony is not relevant to the issue of respondent's guilt. See, Moreland v. Ambach, 489 N.Y.S.2d 403, appeal denied 494 N.Y.S.2d 1029. Additionally, with regard to the penalty, the only evidence in the record is that respondent has had an unblemished career which we have considered in arriving at our recommended penalty herein.

With regard to the question of patient records from other physicians for Patients A and B, it is our unanimous opinion that petitioner did not have to obtain the medical records of those patients from other physicians and the circumstances herein did not warrant disclosure by petitioner to respondent of any such records in the possession of petitioner but not to be introduced by petitioner at the hearing. Nor did respondent attempt to subpoena such records.

With regard to the first and second specifications of the charges that respondent willfully abused Patients A and B, respectively, the appropriate standard under 8 N.Y.C.R.R. §29.2(a)(2) is that, to be willful, the conduct must be knowing, intentional or deliberate. Moreover, willfulness may be inferred from the facts of the incident. See, Stein v. Sobol, 537 N.Y.S.2d 697. In our view, the record clearly supports the conclusion that

respondent willfully abused both Patient A and Patient B under this standard, notwithstanding that the hearing committee relied on the definition of "willful", as set forth in the case of People v. Coe, 21 N.Y.2d 852.

Moreover, in our opinion, whether or not rubbing of a back and breasts could, under other circumstances, be an appropriate part of an examination for systemic mastocytosis, we believe, in agreement with the hearing committee, that the record herein establishes, by a preponderance of the evidence, that such conduct performed on Patient A was not, in fact, performed in the course of a legitimate medical examination.

In our unanimous opinion, the hearing committee's decision, viewed as a whole, appropriately addresses the charges based on the evidence in the record and the hearing committee properly evaluated the evidence under appropriate medical and legal standards.

Finally, we note that the license number for respondent, as set forth in paragraph (1) of the findings of fact of the hearing committee, is incorrect and is corrected and deemed to read "license number 076419" instead of "license number 082745", so as to reflect respondent's actual license number.

We unanimously recommend the following to the Board of Regents:

1. The findings of fact of the hearing committee, as deemed corrected, and the Commissioner of Health's

recommendation as to those findings be accepted;

2. The following additional findings of fact be accepted:

   18(a). Respondent's physical conduct with Patient A was knowing, intentional and deliberate and not part of a legitimate medical examination.

   29. Respondent's physical contact with Patient B was knowing, intentional and deliberate and not part of a legitimate medical examination.

3. The conclusions of the hearing committee as to guilt and the recommendation of the Commissioner of Health as to those conclusions be accepted, except that the reasons as set forth in paragraph (6) on page 14 and paragraph (6) on page 17 of the conclusions in the hearing committee report not be accepted as not probative regarding the issue of credibility and with the further exception that the Commissioner's recommendation not to sustain the first and second specifications on the basis of allegations A(1), A(2) and A(3) of the statement of charges not be accepted;

4. Respondent be found guilty, by a preponderance of the evidence, of each specification of the charges to the extent indicated in the hearing committee's report;

5. The recommendations of the hearing committee and the

Commissioner of Health as to the measure of discipline not be accepted; and

6. In view of respondent's forty-four years of practice with a previously unblemished record, it appearing that respondent's misconduct was an aberration, and the probation terms we are recommending herein, respondent's license to practice as a physician in the State of New York be suspended for one year upon each specification of the charges of which we recommend respondent be found guilty as aforesaid, and that such suspension be stayed at which time respondent be placed on probation for five years under the terms set forth in the exhibit annexed hereto, made a part hereof, and marked as Exhibit "C", which includes the requirement that a female attendant be present whenever respondent renders professional services to a female patient.

Respectfully submitted,

J. EDWARD MEYER

JOHN T. McKENNAN

NANCY A. RUCKER

J. Edward Meyer
Chairperson

Dated: July 8, 1991

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

IN THE MATTER	:	REPORT OF THE
OF	:	HEARING
DONALD BRIGGS, M.D.	:	COMMITTEE

TO: The Honorable David Axelrod, M.D.
Commissioner of Health, State of New York

Margaret H. McAloon, M.D., Chairperson, Matthew M. Cammen, and Jerry Waisman, M.D., 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 Section 230(10)(e) of the Public Health Law. Dr. Waisman replaced Thomas L. Hawkins, M.D. on the Hearing Committee commencing on the final hearing day due to the illness of Dr. Hawkins. Gerald H. Liepshutz, Esq., served as Administrative Officer for the Hearing Committee.

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

EXHIBIT "A"

SUMMARY OF CHARGES

The Respondent was charged with the following Specifications of professional misconduct as more fully set forth in a copy of the Statement of Charges attached hereto:

1. Committing unprofessional conduct in that he willfully abused Patients A and B by having sexual contact with them (FIRST AND SECOND SPECIFICATIONS)

2. Committing unprofessional conduct in that his conduct in the practice of his profession evidenced moral unfitness to practice the medical profession (THIRD SPECIFICATION)

RECORD OF PROCEEDINGS

Notice of Hearing and Statement of Charges dated:	August 29, 1989
Department of Health (the Petitioner) appeared by:	Jean C. Bresler, Esq. Associate Counsel
The Respondent appeared by:	Bower & Gardner 110 East 59th Street New York, New York 10022 By: Nathan L. Dembin, Esq., of Counsel Robert Deutsch, Esq., of Counsel (December 20, 1989)
Hearing dates:	October 4, 1989 October 31, 1989 November 29, 1989 December 20, 1989 January 17, 1990 September 7, 1990

Conferences on the record without the presence of the Hearing Committee for legal determinations:	October 4, 1989 November 29, 1989 January 17, 1990 September 18, 1990
Hearing Committee deliberations:	October 26, 1990
Adjournments:	1. January 10, 1990, due to illness of Dr. Hawkins 2. February 7, 1990, due to unavailability of the Respondent's expert witness 3. February 9, 1990, due to illness of Dr. Hawkins 4. May 16, 1990, due to the withdrawal of the Respondent's witness and the unavailability of the Department's witness 5. May 18, 1990, due to the unavailability of a Hearing Committee member 6. July 25, 1990, due to illness of Dr. Hawkins
Hearing Committee absences:	Dr. Hawkins withdrew as a Hearing Committee member prior to the final hearing day of September 7, 1990 due to his continuing illness. He was replaced by Dr. Waisman pursuant to Section 230 (10)(f) of the Public Health Law. Dr. Waisman affirmed that he

has read and considered evidence and transcripts of the prior proceedings (see ALJ Exhibit 1).

Significant legal determinations:

1. Denial of Respondent's motion to require disclosure not mandated in administrative hearings (pp.3-30 of transcript of conference held on October 4, 1989 without presence of Hearing Committee; pp.3-15 of transcript of conference held on November 29, 1989 without presence of Hearing Committee)

2. Determination regarding proper scope of testimony of Respondent's expert witness (pp.3-18 of transcript of conference held on January 17, 1990 without presence of Hearing Committee)

3. Granting of Department of Health's motion to amend the pleadings to conform to the proof (pp. 3-17 of transcript of conference held on September 18, 1990 without presence of Hearing Committee)

4. Determination regarding effect to be given the direct testimony of Respondent's expert witness, and the scope of Department of Health's rebuttal in light of the witness's unavailability for cross-examination: determined that Department could present rebuttal witness and that finders of fact could properly consider rebuttal testimony and those parts of direct testimony which were subject of rebuttal, while remainder of direct testimony must be disregarded (pp. 17-31 of transcript of

conference held on
September 18, 1990 without
presence of Hearing Committee)

5. Determination pursuant to
Section 230 (10)(f) of the Public
Health Law that substitution of
new Hearing Committee member
for member too ill to continue
was proper (pp. 31-39 of
transcript of conference
held on September 18, 1990
without presence of Hearing
Committee)

6. Arguments whether Respondent
could properly introduce evidence
of alleged bias and alleged prior
inconsistent statement of a witness
independent of and subsequent to the
cross-examination of that witness
(pp. 39-62 of transcript of
conference held on September 18, 1990
without presence of Hearing Committee);
subsequent ruling during telephone
conference call that pursuant to
practice in the State of New York,
proof of alleged bias could be
offered along with rebuttal (see
Exhibit K and Exhibit 6
in evidence), while
proof of alleged prior
inconsistent statement could not
properly be received independent
of cross-examination

7. Denial of Respondent's motion
to dismiss charges due to a lack
of expert testimony, or to charge
the Hearing Committee regarding
same (pp. 66-71 of transcript
of conference held on September
18, 1990 without presence of
Hearing Committee)

Witnesses for the Department of Health:	Patient B Patient A Steven Cohen, M.D. Christina Casals-Ariet, M.D.
Witnesses for the Respondent:	June Briggs, Respondent's spouse Donald Belsito, M.D. Donald Briggs, M.D., Respondent Thomas Argyros, M.D. Richard L. Anson, M.D.

FINDINGS OF FACT

The following findings of fact were made after a review of the entire record in this matter. Many of the findings were adopted by the Hearing Committee, in whole or in part, from the proposed findings submitted by the parties. Numbers in parentheses refer to transcript pages unless otherwise noted. These citations represent evidence found persuasive by the Hearing Committee while arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All findings were made by unanimous vote.

1. The Respondent, Donald Briggs, M.D., was authorized to practice medicine in New York State on May 7, 1955 by the issuance of license number 082745 by the New York State Education Department (uncontested).

2. The Respondent is currently registered with the State Education Department to practice medicine for the period January 1, 1989 through December 31, 1991 at 170 East 79th Street, New York, New York 10021 (uncontested).

FIRST AND THIRD SPECIFICATIONS: PATIENT A

3. Patient A came to the United States from Santiago, Chile in 1982 as a student in special education. She has a masters degree in special education, and she is currently a caseworker in a school for emotionally disturbed children (Tr. 224-225).

4. Patient A saw the Respondent for a consultation on January 18, 1988 (Tr. 226).

5. At the time that she saw Dr. Briggs, Patient A was also being treated by Dr. Carona, a neurologist, Dr. Cohen, a dermatologist, Dr. Snow, a neurosurgeon, Dr. Miller, an interist, and Dr. Laureson, a gynecologist (Tr. 231-232).

6. Patient A suffered from urticaria pigmentosa and possibly from systemic mastocytosis. She was being evaluated for a possible brain tumor. Patient A was six weeks pregnant, and she was to undergo a therapeutic abortion prior to receiving a Magnetic Resonance Imaging (MRI) of her head (Tr. 226,230-231,451; Resp. Exh. B).

7. Patient A had undergone frequent physical examinations for urticaria pigmentosa, and she was familiar with tests for dermatographism and Darier's Sign. She had also had previous breast examinations and gynecological examinations (Tr. 233,242-243,254,279-280; Resp. Exh.B).

8. Patient A visited Dr. Briggs on January 18, 1988 with her husband (Tr. 236).

9. During their discussion, Patient A advised Dr. Briggs of her full medical history, her physicians, her pending MRI and the need for a possible therapeutic abortion. After speaking with both of them the Respondent directed Patient A into an examining room while her husband sat in waiting room (Tr. 237-239,735).

10. The Respondent instructed Patient A to remove all her clothes. She asked to leave on her underpants and bra because she was pregnant. Dr. Briggs insisted that she remove all her clothes (Tr. 239).

11. Patient A removed all her clothes, and she put on a gown with the closures in the back (Tr. 240).

12. After looking in her eyes and mouth, the Respondent began rubbing Patient A's back with his open palm. He rubbed his open palm down her back to her buttocks in a circular motion (Tr. 240-241, 746-747).

13. The Respondent then removed Patient A's gown, so that she was sitting on the examining table naked. The Respondent then went around the table, looked at Patient A, and began stroking her breasts. He stroked both her breasts simultaneously, with both hands, with all his fingers. He then cupped his hands around her breasts and slid his fingers to her nipples (Tr. 241-242).

14. The Respondent then asked Patient A to lie down, at which point he rubbed her breasts and then fondled her nipples (Tr. 243-244).

15. The Respondent then slid his hands down Patient A's torso to her pubic hair and ran his fingers through her pubic hair (Tr. 245).

16. The Respondent instructed Patient A to put her legs in stirrups, and he rubbed her groin and the inside of both thighs (Tr. 247).

17. Without gloving, the Respondent began stroking Patient A's vulva and clitoris, and with his other hand he simultaneously inserted two fingers into her vagina (Tr. 247-248,436).

18. Patient A pulled her feet out of the stirrups after approximately two or three minutes of his touching her vagina. This caused the Respondent to remove his hand. At this

point, Patient A was crying, and she said to the Respondent that she wanted to get dressed (Tr. 248-250).

SECOND AND THIRD SPECIFICATIONS: PATIENT B

19. Patient B is an associate dean at Columbia Business School, and she has been so employed for seven years. Patient B is married to a journalist, and she is the mother of a small child (Tr. 34-35).

20. On November 10, 1987, Patient B originally consulted with Dr. Briggs because she wanted to join Healthnet, and she needed to select an internist affiliated with that HMO (Tr. 36-38).

21. On March 2, 1988, Patient B next saw Dr. Briggs for an upper respiratory infection (Tr. 40; Dept. Exh.2).

22. The Respondent put Patient B in an examining room alone and told her to undress, but there was no gown readily apparent (Tr. 43).

23. Patient B removed all her clothes except her bra and underpants. When Dr. Briggs re-entered the room he told her to remove her bra. She did so and handed it to him (Tr. 43).

24. The Respondent then asked Patient B to lie down. She lay down on her back on the examination table with her knees over the end of the table (Tr. 43-44).

25. While Patient B was lying on the examining table, the Respondent asked her to lower her underpants so he could see her stomach, at which point, without comment and without gloving, he inserted his finger into her vagina (Tr. 44-45).

26. Patient B observed the Respondent's hand before and after he inserted his finger into her vagina. At no time was he wearing examining gloves (Tr. 44-45).

27. The Respondent's medical records for Patient B do not indicate that a pelvic examination was performed (Dept. Exh. 2).

28. The Respondent asked Patient B to stand up and she did. He stood close to Patient B and faced her as he reached around her to put a stethoscope on her back. The Respondent held Patient B close enough to him that the lower portion of his body pressed against her, and she felt a bulge below his waistline (Tr. 45-46).

CONCLUSIONS

The following conclusions were reached pursuant to the findings of fact herein. All conclusions resulted from a unanimous vote of the Hearing Committee.

PATIENT A (FIRST AND THIRD SPECIFICATIONS)

The Hearing Committee reached the following conclusions regarding the factual allegations in the Statement of Charges:

Factual Allegations	Conclusions as to Factual Allegations
paragraph (A)	sustained, except the Hearing Committee was not convinced by a preponderance of the evidence that the Respondent instructed Patient A's husband to wait in the waiting room, although he did wait there (Findings of Fact 6,8-9)
paragraph (A)(1)	sustained (Findings of Fact 10-12)
paragraph (A)(2)	sustained (Finding of Fact 13)
paragraph (A)(3)	sustained (Finding of Fact 14)
paragraph (A)(4)	sustained (Finding of Fact 15)
paragraph (A)(5)	sustained (Finding of Fact 16)
paragraph (A)(6)	sustained (Finding of Fact 17)

Conclusions regarding commission of medical misconduct

THE FIRST SPECIFICATION charges the Respondent with medical misconduct by committing unprofessional conduct in that he willfully abused Patient A by having sexual contact with her. Although "willful abuse" is not specifically defined in the charged regulation (8NYCRR 29.2), the Hearing committee accepts that part of the definition of "abuse" found in Department of Health regulations at 10 NYCRR 81.1(a) which states that abuse shall mean inappropriate physical contact which harms or is

likely to harm. To be "willful" the one committing the abuse must have intentionally acted inappropriately.[1] The Hearing Committee concludes that the Respondent's acts as sustained above constituted willful abuse of Patient A. His behavior was clearly sexual in nature and not part of a legitimate physical exam. He engaged in physical contact which was intentionally inappropriate and which was, or was likely to be, emotionally harmful to Patient A.

THE THIRD SPECIFICATION charges, in part, that the Respondent's conduct with respect to Patient A evidences moral unfitness to practice the medical profession, a separate act of medical misconduct. The Hearing committee agrees. A physician taking advantage of a patient's vulnerability for his sexual purposes shows moral unfitness to practice medicine.

The Hearing Committee, in reaching its findings of fact and conclusions regarding Patient A, had to determine the credibility of the Respondent verses the credibility of the patient. Patient A's version of the incident was found to be more credible for the following reasons:

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[1] People v. Coe, 71NY2d852.

1. Patient A's recounting of her actions and her emotional response to the events that she experienced in the Respondent's office were, in the Hearing Committee's opinion, believable and appropriate, and consistent with those events.

2. Patient A's description of the events remained essentially consistent over time as evidenced by Resp. Exh. G and her testimony during the hearing.

3. Patient A reported the incident within a reasonable time given her medical condition at the time.

4. As a result of Patient A's complicated medical history, she had experienced frequent contacts with various medical specialists. This experience lends credibility to her belief that the Respondent's physical examination did not fit within the realm of an appropriate examination.

5. The Respondent's act of not having worn gloves during the genital examination of Patient A makes it more believable that the examination was not legitimate.

6. The fact that the Respondent did not provide a chaperone during the breast and genital examinations of Patient A also makes it more believable that the examinations were not legitimate.

7. Despite the Respondent's claim of doing an extensive examination of Patient A, there is no evidence that

he performed a proper Darier's Test (Tr. 452,568), which also lessens his credibility.

8. Despite the Respondent's testimony that he performed a proper examination of the patient's breasts and genitalia, there exists no documentation of said examination in the patient's record.

PATIENT B (SECOND AND THIRD SPECIFICATIONS)

The Hearing Committee reached the following conclusions regarding the factual allegations in the Statement of Charges;

Factual Allegations	Conclusions as to Factual Allegations
paragraph (B)	sustained (Findings of Fact 21-23)
paragraph (B)(1)	sustained (Findings of Fact 24-27)
paragraph (B)(2)	sustained, except the Hearing Committee was not convinced by a preponderance of the evidence that it was the Respondent's penis felt by Patient B as alleged in paragraph (B)(2) (Finding of Fact 28)

Conclusions regarding commission of medical misconduct

The SECOND SPECIFICATION charges the Respondent with medical misconduct by committing unprofessional conduct in that he willfully abused Patient B by having sexual contact with her. The Hearing Committee concludes that the Respondent's acts as

sustained above in relation to paragraphs (B)(1) and (B)(2) of the Statement of Charges constituted "willful abuse" of Patient B as that term is defined herein. Again, he engaged in conduct which was sexual in nature constituting physical contact which was intentionally inappropriate and which was, or was likely to be, emotionally harmful to Patient B.

The THIRD SPECIFICATION charges, in part, that the Respondent's conduct with respect to Patient B evidences moral unfitness to practice the medical profession. The Hearing Committee agrees. As with Patient A, the Respondent took advantage of a patient's vulnerability for his sexual purposes.

The Hearing Committee, in reaching its findings of fact and conclusions regarding Patient B, once again had to determine the credibility of the Respondent verses that of a patient. Patient B's version of the incident was found to be more credible for the following reasons:

1. Patient B had no reason to relate anything other than the truth.

2. Patient B's frequent contacts with medical specialists lends credibility to her belief that the Respondent's physical examination did not fit within the realm of an appropriate examination.

3. Patient B's recounting of her actions and her emotional response to the events that she experienced in the Respondent's office were, in the Hearing Committee's opinion, believable and appropriate, and consistent with those events.

4. The Respondent's failure to offer the patient a gown while she was sitting on the examination table nude from the waist up further diminishes his credibility.

5. The Respondent's act of not having worn gloves during the genital examination of Patient B makes it more believable that the examination was not legitimate.

6. The fact that the Respondent did not provide a chaperone during the examination of Patient B also makes it more believable that the examination was not legitimate.

7. Examining the external genitalia of a female exhibiting the symptoms of an upper respiratory infection is inappropriate.

8. The manner in which the Respondent examined Patient B's lungs by standing closely in front of her and reaching around to her back was inappropriate, and it further diminished his credibility.

RECOMMENDATIONS

Pursuant to its findings of fact and conclusions herein, the Hearing Committee unanimously recommends that the FIRST SPECIFICATION (willfully abusing Patient A), SECOND SPECIFICATION (willfully abusing Patient B), and THIRD SPECIFICATION (evidencing more unfitness to practice the medical profession regarding conduct involving Patient A and Patient B) be sustained.

The Hearing Committee further recommends that the Respondent's licence to practice medicine be revoked.

DATED: Buffalo, New York
November 27, 1990

Respectfully submitted,

Margaret H. McAloon MD

MARGARET H. McALOON, M.D., Chairperson

MATTHEW M. CAMMEN
JERRY WAISMAN, M.D.

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

IN THE MATTER	:	STATEMENT
OF	:	OF
Donald Briggs, M.D.	:	CHARGES

Donald Briggs, M.D., the Respondent, was authorized to practice medicine in New York Sate on May 7, 1955 by the issuance of license number ~~082745~~ 070419 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, 1989 through December 31, 1991, at 170 East 79th Street, New York, New York 10021.

FACTUAL ALLEGATIONS

(A) On or about January 18, 1988 Patient A (the identity of Patient A is set forth in Appendix A) saw the Respondent, who practices internal medicine and oncology, for a consultation at his 79th Street office. At that time Patient A suffered from a brain tumor and systemic mastocytosis. Patient A was also pregnant and scheduled to undergo a therapeutic abortion so that her brain tumor could be treated. Patient A's husband accompanied her to the Respondent's office.

After speaking to Patient A and her husband for a brief period of time, Respondent instructed Patient A to enter the examining room. Patient A asked that her husband accompany her

during the examination. Respondent denied her request and instructed Patient A's husband to wait in the waiting room.

In the examining room Respondent sexually abused Patient in the following manner:

(1) During the course of what Respondent purported to be a physical examination, Respondent rubbed Patient A's back in a circular motion down to her buttocks.

(2) He then took off her gown so that she was naked and while she was in a seated position stroked both her breasts simultaneously.

(3) Respondent then asked Patient A to lie down at which point he rubbed her breasts and then fondled her nipples.

(4) Respondent then slid his hands down Patient A's torso to her pubic hair and ran his fingers through her pubic hair.

(5) Respondent instructed Patient A to put her legs in stirrups and rubbed her groin and the inside of both thighs.

Granted, Motion to Amend → granted over Respondent's objection GAL 9-7-90

(6) Without gloving, he began stroking her vulva and clitoris, and with the other hand simultaneously inserted two fingers into her vagina.

(B) On or about March 2, 1988, Patient B (the identity of Patient B is set forth in Appendix B) visited Respondent complaining of a cough, sinus discomfort and runny nose.

Respondent instructed Patient B to remove all her clothing but offered her no gown and none was available in the examining room. Patient B removed all her clothing except her underpants. Respondent and Patient B were at all times alone in the examining room, no other medical personnel was present. Respondent sexually abused Patient B in the following manner:

(1) While Patient B was lying on the examining table Respondent asked her to lower her underpants so he could see her stomach, at which point, without comment and without gloving, he inserted his fingers into her vagina.

(2) Respondent then had Patient B stand up at which point he faced her. Pressing his body so close to her that she could feel his penis against her, he reached around both her shoulders and placed the stethoscope on her back.

SPECIFICATION OF CHARGES

WILLFUL PATIENT ABUSE

FIRST AND SECOND SPECIFICATION

The Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law, Section 6509(9) (McKinney Supp. 1987) in that he committed unprofessional conduct as set forth in 8 N.Y.C.R.R. 29.2 (1981) in that he willfully abused Patients A and B by having sexual contact with them, in that, Petitioner alleges:

1. The facts in Paragraphs A, 1 through 7.
2. The facts in Paragraphs B, 1 through 2.

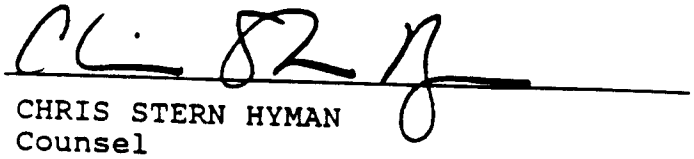
MORAL UNFITNESS TO PRACTICE THE PROFESSION

THIRD SPECIFICATION

The Respondent is charged with unprofessional conduct under N.Y. Educ. Law, Section 6509(9) (McKinney 1985) in that his conduct in the practice of his profession evidences moral unfitness to practice the medical profession within the meaning of 8 N.Y.C.R.R. 29.1(b)(5) (McKinney 1981), in that Petitioner alleges:

3. The facts in Paragraphs A through B.

DATED: New York, New York
August 29, 1989



CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct

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

----------X

IN THE MATTER :

OF : COMMISSIONER'S

DONALD BRIGGS, M.D. : RECOMMENDATION

----------X

TO: Board of Regents
New York State Education Department
State Education Building
Albany, New York

A hearing in the above-entitled proceeding was held on October 4, 1989, October 31, 1989, November 29, 1989, December 20, 1989, January 17, 1989, September 7, 1990. Respondent, Donald Briggs, M.D. appeared by Nathan L. Dembin, Esq. and Robert Deutsch, Esq. The evidence in support of the charges against the Respondent was presented by Jean C. Bresler, Esq.

NOW, on reading and filing the transcript of the hearing, the exhibits and other evidence, and the findings, conclusions and recommendation of the Committee,

I hereby make the following recommendation to the Board of Regents:

A. The Findings of Fact of the Committee should be accepted in full;

B. The Conclusions of the Committee should be modified as follows. While it is established by the record and the Committee's findings of fact that the Respondent rubbed Patient A's back and breasts, it is not clear that that was not an

EXHIBIT "B"

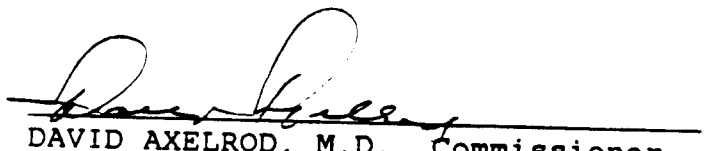
appropriate examination for systemic mastocytosis. Conceivably, comparative stroking of both lesions and normal skin would test for dermatographia and be an acceptable way to evaluate systemic mastocytosis (Tr. 578-79). There is no conceivable justification for Respondent's touching Patient A's public hair, groin, vulva and vagina. Therefore, I would sustain the First and Third Specification but only on the basis of Factual Allegations A, A(4), A(5) and A(6). I would sustain the Second and Third Specifications with respect to Patient B as recommended by the Committee;

C. The Recommendation of the Committee should be accepted; and

D. The Board of Regents should issue an order adopting and incorporating the Findings of Fact and Conclusions and further adopting as its determination the Recommendation described above.

The entire record of the within proceeding is transmitted with this Recommendation.

DATED: Albany, New York
January 31, 1990



DAVID AXELROD, M.D., Commissioner
New York State Department of Health

EXHIBIT "C"

TERMS OF PROBATION
OF THE REGENTS REVIEW COMMITTEE

DONALD BRIGGS

CALENDAR NO. 11695

1. That respondent shall make quarterly visits to an employee of and selected by the Office of Professional Medical Conduct of the New York State Department of Health, unless said employee agrees otherwise as to said visits, for the purpose of determining whether respondent is in compliance with the following:

   a. That respondent, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing respondent's profession;

   b. That respondent shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Albany, NY 12234 of any employment and/or practice, respondent's residence, telephone number, or mailing address, and of any change in respondent's employment, practice, residence, telephone number, or mailing address within or without the State of New York;

   c. That respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that respondent has paid all registration fees due and owing to the NYSED and respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation; and

   d. That respondent shall submit written proof to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1) respondent is currently registered with the NYSED, unless respondent submits written proof to the New York State Department of Health, that respondent has

advised DPLS, NYSED, that respondent is not engaging in the practice of respondent's profession in the State of New York and does not desire to register, and that 2) respondent has paid any fines which may have previously been imposed upon respondent by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation;

e. That respondent shall, at respondent's expense, during the period of probation, have a female attendant, selected by respondent and previously approved, in writing, by the New York State Department of Health, physically present with respondent at all times when respondent is rendering services to any female patient; and that the name, address, and telephone number of that attendant shall 1) be made part of the record kept for that patient and 2) be made available to the New York State Department of Health upon written request therefor;

2. If the Director of the Office of Professional Medical Conduct determines that respondent may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents.

ORDER OF THE COMMISSIONER OF
EDUCATION OF THE STATE OF NEW YORK

DONALD BRIGGS

CALENDAR NO. 11695