

March 26, 2012

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Anna R. Lewis, Esq.  
NYS Department of Health  
90 Church Street -4<sup>th</sup> Floor  
New York, New York 10007

Wilfred T. Freidman, Esq.  
60 East 42<sup>nd</sup> Street - 40<sup>th</sup> Floor  
New York, New York 10165

Mitchell Schuster, Esq.  
2 Grand Central Tower  
140 East 45<sup>th</sup> Street - 19<sup>th</sup> Floor  
New York, New York 10017

**RE: In the Matter of Lee Marcus, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 12-50) 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

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

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

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

Sincerely,

REDACTED SIGNATURE

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah

Enclosure

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

-----X  
IN THE MATTER : DETERMINATION  
: :  
OF : AND  
: :  
LEE MARCUS, M.D. : ORDER  
-----X BPMC 12-50

COPY

A Notice of Hearing and Statement of Charges, both dated June 22, 2011, were served upon the Respondent Lee Marcus, M.D. THEA GRAVES PELLMAN, Chairperson, LINDA A. BRADY, M.D. and PRADEEP CHANDRA, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. WILLIAM J. LYNCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health ("the Department") appeared by JAMES E. DERING, General Counsel, by ANNA R. LEWIS, ESQ., of Counsel. The Respondent appeared by Wilfred T. Friedman, P.C., WILFRED T. FRIEDMAN ESQ., and Meister Seelig & Fein, LLP, MITCHELL SCHUSTER, ESQ., and STACEY ASHBY, ESQ., of Counsel. Evidence was received and witnesses sworn and heard, and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

PROCEDURAL HISTORY

Pre-Hearing Conference: August 10, 2011

Hearing Dates: August 26, 2011  
November 17, 2011  
December 1, 2011

Witnesses for Petitioner: Patient A

Witnesses for Respondent: Lee Marcus, M.D.  
Stuart Katz, M.D.  
Cheryl Caster, L.P.N.  
REDACTED  
Richard Bohn Krueger, M.D.  
Meg S. Kaplan, Ph.D.  
Harry K. Richardson  
Amy Jordan  
Daniel Perkes, M.D.  
Thomas J. O'Neill, Esq.

Written Submissions: January 23, 2012

Deliberations: February 2, 2012

STATEMENT OF CASE

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

This case was brought by the New York State Department of Health, Office of Professional Medical Conduct (hereinafter "Petitioner" or "Department") pursuant to §230 of the P.H.L. Lee Marcus, M.D. ("Respondent") is charged with six specifications of

professional misconduct, as defined in §6350 of the Education Law of the State of New York ("Education Law"), relating to his medical care and conduct toward one patient. The charges include allegations of Respondent having committed professional misconduct due to a criminal court plea, patient abuse, moral unfitness and failure to maintain an adequate patient record. A copy of the Notice of Hearing and Statement of Charges is attached to this Determination and Order as Appendix I.

#### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Unless otherwise noted, all findings and conclusions set forth below are the unanimous determinations of the Hearing Committee. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. Numbers below in parentheses refer to exhibits (denoted by the prefix "Ex.") or transcript page numbers ("T."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Having heard testimony and considered documentary evidence presented by the Petitioner and Respondent, respectively, the Hearing Committee hereby makes the following findings of fact:

1. LEE MARCUS, M.D., the Respondent, was authorized to practice medicine in New York State on March 4, 1992, by the issuance of

license number 188488 by the New York State Education Department (T. 204, Ex. B).

2. Respondent graduated from New York Medical College in 1990, and completed a medical residency at Westchester Medical Center, which included an additional year as Chief Resident (Ex. B; T. 200).

3. During the next five years, Respondent participated in three separate fellowships at Columbia University and Yale University in Nuclear Cardiology, Cardiovascular Medicine, and Circulatory Physiology/Congestive Heart Failure and Cardiac Transplantation (Ex. B; T. 200-201).

4. Respondent became an employee of the Heart Center in Dutchess County, New York, in 1999. He continued as an employee and was also a shareholder of the corporation from 2003 to 2009 (Ex. B, T. 208).

5. In 2008, Respondent was accused of sexual harassment by a female employee at the Heart Center. Due to this allegation, he was referred to the Committee for Physicians' Health ("CPH") by the administrator of the practice (Ex. 6).

6. CPH required Respondent to participate in a two-day evaluation by the Elmhurst Clinic in Chicago (Ex. 6; Post-hearing Stipulation).

7. CPH also required Respondent to have a practice monitor (Ex. 6).

8. Patient A was referred to the Heart Center by her primary care physician for an evaluation of her abnormal echocardiogram (T. 146).

9. Respondent first met Patient A in an examination room at the Heart Center on April 1, 2009 (Ex. 5, T. 149).

10. Respondent reviewed the findings on Patient A's prior testing, reviewed her vital signs, checked her medications, did a physical examination, read her EKG, discussed his medical opinion, and informed her of further testing needed (Ex. 5, T. 155).

11. When Patient A told Respondent that she had no tan lines because she had a tanning bed in her home, Respondent made a comment about tanning in the nude and questioned Patient A about his using the tanning bed in her house (T. 19-20, 97).

12. At the conclusion of her meeting with Respondent, Patient A made another appointment for further cardiac testing and a follow up appointment with Respondent (Ex. 5; T. 159-160).

13. On April 24, 2009, Respondent again saw Patient A for an appointment (Ex. 5; T. 160).

14. Respondent discussed the testing results and his opinion that she had moderate aortic stenosis (Ex. 5; T. 167-168).

15. Patient A told Respondent that she had had a breast augmentation surgery (T. 169).

16. Respondent failed to record this aspect of Patient A's

surgical history in her medical record (Ex. 5).

17. Respondent told Patient A that his wife had also had breast augmentation surgery and had a scar in the same location as Patient A (T. 169).

18. During the April 24, 2009 office visit, Respondent touched Patient A's nipple for several seconds, and when he stopped, he commented to Patient A that he did not want to become aroused (T. 170).

19. When Patient A left the examination room, she went directly to the reception area where she made a third appointment with Respondent (T. 289).

20. Later that day, Respondent called Patient A because he intended to "follow up on the flirtation" (Ex. F; T. 180).

21. On April 26, 2009, Respondent sent a text message to Patient A offering to pay her for the use of her tanning bed by giving her a massage (Ex. F; T. 184).

22. Patient A spoke with her attorney that day and went to the Police Department approximately one week later. The police detectives instructed Patient A to send text messages to Respondent (T. 47-48, 59).

23. Respondent sent sexually explicit text messages to Patient A's cellphone for no legitimate medical purpose though May 11, 2009, and planned to meet her on that date (Ex. 3, 4; T. 44-49, 244-245).

24. Respondent was met at the location by the police instead (T. 192).

25. On November 15, 2010, while on the record in the Town of Poughkeepsie Court, Dutchess County, Respondent admitted to having touched Patient A's breast during the office visit on April 24, 2009. Respondent acknowledged that Patient A was legally incapable of consenting to his conduct pursuant to section 130.05 of the Penal Law, because he was providing health care and she was his patient. Respondent voluntarily entered a guilty plea to sexual abuse in the third degree. The Court further indicated on the record that this plea was being entered with the understanding that Respondent, who would be sentenced to interim probation, would be able to withdraw his plea one year later and substitute a plea of harassment in the second degree if he abided by the terms and conditions of his probation (Ex. 2).

#### CONCLUSIONS OF LAW

Respondent is charged with six specifications alleging professional misconduct within the meaning of Education Law §6530. The Hearing Committee made the following conclusions of law pursuant to the factual findings listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee first considered the credibility of the various witnesses, and thus the weight to be accorded their testimony. The Department presented testimony by Patient A. The Committee determined that Patient A's testimony relating to the fundamental charge that Respondent made sexual comments and touched her breast for no legitimate medical purpose was true; however, they determined that the additional aggravating behavioral allegations were not credible due to Patient A's financial incentive to exaggerate her claims, her prior criminal conviction which relates to her veracity, her evasive testimony, and the credible testimony of an unbiased Heart Center employee which was inconsistent with Patient A's account.

On cross examination, Patient A admitted that she had a prior criminal conviction for having forged endorsements on checks which she stole from her former employer to deposit the funds into her personal bank account. Since this prior conviction was related to Patient A's trustworthiness, the conviction was relevant to an assessment of her veracity. Patient A's financial motive to testify falsely was a civil lawsuit against the Respondent in which she admittedly was asking for "lots of money" (T. 52). Further, her testimony that she had not discussed the amount being sought in the lawsuit with her attorneys appeared evasive and lacked credibility (T. 55-56). As a result, the Hearing Committee made no factual

findings related to Patient A's further allegations of Respondent's misconduct such as his allegedly having hugged and kissed Patient A in the examination room and his alleged disregard for her medical condition.

The Respondent testified regarding his care and interactions with Patient A. Respondent clearly has a stake in the outcome of these proceedings. Viewing his testimony in that light, the Hearing Committee determined that Respondent minimized the extent of the sexual comments that he directed toward Patient A during the office visits. The Hearing Committee also felt that Respondent still lacked insight into his behavior in spite of the fact that he has been in counseling for some period of time.

Respondent offered the testimony of Cheryl Caster who was the medical assistant working with Respondent on April 24, 2009. Ms. Caster trained as a medic and psychiatric technician in the Army from 1974 through 1977. She has continued in the medical field for 37 years and worked with Respondent for four years at the Heart Center. Ms. Caster's testimony was forthright, and there was no evidence of her having any motivation for testifying falsely. Accordingly, the Hearing Committee found her testimony regarding the events of April 24, 2009 to be highly credible.

Ms. Caster testified that she specifically recalled Patient A's April 24, 2009 visit to the Heart Center because Patient A wore

stiletto heels and a red suit which had a very short tight fitting skirt and a scoop top. This testimony was at odds with the testimony of Patient A who alleged that her office has a very, very strict dress code and that she came to the April 24, 2009 appointment with Respondent dressed in office attire. In weighing the veracity of Patient A and Ms. Caster, the Committee determined that Ms. Caster was truthful and that Patient A's testimony regarding her manner of dress on April 24, 2009 was false. The Hearing Committee notes that a patient's mode of dress warrants no consideration in weighing the gravity of Respondent's misconduct; however, Patient A's false testimony on this point called into question her other testimony.

Ms. Caster also testified that Patient A came directly to the appointment desk after she left the examination room on April 24, 2009, and that Patient A did not seem upset (289-290). The Hearing Committee found Patient's A's testimony alleging that she was hysterical and ran from the examination room crying to the bathroom (T. 30) was inconsistent with the Testimony of Ms. Caster, and resolved this inconsistency by accepting the veracity of Ms. Caster's testimony over the testimony of Patient A.

Patient A testified that her blood pressure was never taken and that Respondent was "very vague" when responding to her questions regarding her heart condition and that it was "almost like he didn't know, like he didn't want to answer me." (T. 2-5). On the other

hand, Respondent's testimony related to his treatment of Patient A's heart condition was consistent with the testimony of Ms. Caster and documented in detail in the medical record which was maintained at the Heart Center. Accordingly, the Hearing Committee did believe Respondent's testimony that Patient A's heart condition was appropriately assessed and treated except the Committee noted that Respondent failed to document Patient A's prior breast surgery in his medical record. One panel member also felt that Respondent was required to document the fact that he had touched Patient A's breast in her medical record.

Respondent further presented REDACTED as a witness who testified regarding Patient A's bad reputation for veracity in the community. The Hearing Committee did not consider the testimony of REDACTED, a former friend of Patient A, to be reliable and therefore placed no weight on her testimony regarding Patient A's veracity.

The Hearing Committee also placed little weight on the testimony of Dr. Kreuger and Dr. Kaplan. These two expert witnesses alleged that it was safe for Respondent to treat patients because he did not have a sexual deviance which was associated with a likelihood of recidivism. The Hearing Committee found the testimony of these witnesses to be unreliable because they credited Respondent for his candor without verifying the accuracy of his statements, failed to

obtain any prior treatment records, spent a limited amount of time in their evaluation and administered a barrage of tests which were only minimally related to a physician initiating a sexual relationship with a patient in the examining room. The witnesses' discussion of Respondent's participation in a treatment program which involved defining boundaries and victim empathy, and their suggestion that the therapy was sufficient to ensure that Respondent would not commit a boundary violation again did not ring true to the Hearing Committee. The Hearing Committee felt that Respondent's conduct evidenced an abuse of the physician-patient relationship and displayed an enormous lack of good judgment. As such, the Committee was of the unanimous opinion that any return to the practice of medicine by Respondent would require that a chaperone be present for any female patient visits.

The Hearing Committee found the rest of the witnesses to be credible. The patients and physicians who spoke on Respondent's behalf offered evidence that Respondent is capable of providing good medical care to his patients.

The First Specification of misconduct in the Statement of Charges issued by the Department is that Respondent was guilty of misconduct as defined by Education Law section 6530(9)(c) because he "pled guilty to an act constituting a crime" under New York State Law. The Department's statement of this specification is inaccurate

for two reasons. First, the Department cites the wrong subsection of the Education Law. Section 6530(9)(c) relates to adjudicatory proceedings, so the Department appears to have intended 6530(9)(a) which relates to criminal proceedings. Second, the Department misstates the definition of misconduct. Section 6530(9)(a)(i) refers to a licensee "having been convicted of an act constituting a crime" (emphasis added). Pleading guilty or not guilty to a crime is not equivalent to having been convicted. The record here establishes that Respondent entered a plea in Criminal Court, but the Department offered no evidence that the Court then entered a conviction. To the contrary, the portion of the Criminal Court record which the Department offered into evidence indicated that Respondent would be permitted to withdraw his plea to a crime, pleading instead to a violation if he successfully completed one year of interim probation.

On February 29, 2012, the Court, in fact, permitted Respondent to amend his plea so that his current plea is to a violation, which is not classified as a crime. Based upon this information, the Department withdrew the First Specification of misconduct.

The Department did establish the Second Specification which charged Respondent with committing professional misconduct by willfully abusing Patient A. Based upon Patient A's testimony and Respondent's admissions, the Hearing Committee concluded that

Respondent touched Patient A's breast during the April 24, 2009 office visit, that he addressed inappropriate sexual comments and questions toward the patient during the examination and that he subsequently sent sexually explicit text messages to her cell phone from approximately April 26, 2009 until May 11, 2009. Therefore, the Second specification in the Statement of Charges is sustained.

The Department charged Respondent with a Third specification of patient abuse based upon his criminal court plea which relates to the same factual allegations regarding Patient A. The Third specification is dismissed because it is duplicative of the Second Specification.

The Fourth and Fifth Specifications charge Respondent with engaging in conduct which evidences moral unfitness to practice the profession. In a proceeding before the State Board for Professional Medical Conduct, the Hearing Committee is asked to decide whether a licensee's conduct is suggestive of, or would tend to prove, moral unfitness. The Committee is not expected to make an overall judgment regarding a licensee's character. In this instance, the Hearing Committee determined that Respondent's conduct toward Patient A violated the public trust bestowed upon him by virtue of his license as a physician in that he made sexual comments and touched a patient's breast in a medical examination room for no legitimate medical purpose. Accordingly, the Fourth Specification of misconduct

is sustained. The Fifth Specification charging moral unfitness, however, is dismissed as it is duplicative of the Fourth Specification.

The Sixth Specification charges Respondent with failing to maintain a record which accurately reflects the evaluation and treatment of the patient. The Hearing Committee found that Patient A made Respondent aware of her prior surgery and that Respondent failed to include that significant information in her medical record. Accordingly, the Department established the sixth specification.

#### Factual Allegations

The vote of the Hearing Committee on the factual allegations contained in the Statement of Charges is as follows:

Paragraph A - A.1	Sustained
Paragraph A - A.2	Sustained in part
Paragraph A - A.3	Sustained
Paragraph A - A.4	Sustained
Paragraph B	Sustained

#### Specifications

The First Specification charged Respondent with professional misconduct for having pled guilty to committing an act constituting a crime under New York State Law, in violation of New York Education Law §6530(9)(c). As discussed above, the First Specification is dismissed.

The Second and Third Specifications charged Respondent with willfully harassing, abusing or intimidating a patient either physically or verbally within the meaning of New York Education Law §6530(31). As discussed above, the Second Specification is sustained and the Third Specification is dismissed.

The Fourth and Fifth Specification charged Respondent with conduct which evidences moral unfitness to practice medicine, in violation of New York Education Law §6530(20). As discussed above, the Fourth Specification is sustained and the Fifth Specification is dismissed.

The Sixth Specification charged Respondent with failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, in violation of New York Education Law §6530(32). As discussed above, the record for Patient A was inadequate and the Sixth Specification is sustained.

#### DETERMINATION AS TO PENALTY

The Respondent acknowledges that his conduct toward Patient A was unethical and unprofessional. He urges the Committee to consider the contributions which he might be able to offer to his patients if he is permitted to return to the practice of medicine, and he suggests that requiring that a chaperone be present when he meets with female patients will insure against a repeat offense if

the Committee is not sufficiently convinced of his rehabilitation.

The Department recommends that Respondent's license to practice medicine be revoked because no assurance has been provided that Respondent will not reoffend if he is provided another opportunity to treat female patients. The Department further claims that the public health and safety will be harmed by a loss of confidence in the profession due to Respondent's conduct.

The penalty for sexual misconduct should be appropriate to the circumstances of the individual case, consistent with the level of egregiousness of the misconduct and designed to protect the public. The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, determined that Respondent's license to practice medicine should be permanently limited to prohibit him from meeting with any female patient unless he is accompanied by a chaperone. The Committee further determined that Respondent's license to practice medicine should be suspended for a period of three years; however, the suspension should be stayed provided that Respondent complies with the chaperone requirement and certain terms of probation.

Respondent acknowledged that he has been under psychiatric care for depression and anxiety and that he has been receiving therapy approximately three times a month (T. 254-255). The Hearing Committee determined that Respondent should be placed on probation

for a period of two years and that he must be required to obtain therapy as a condition of his probation. Further, the Committee determined that the therapy must be on a weekly in-person basis and provided by a psychiatrist, psychologist or licensed social worker proposed by Respondent and approved in writing by the Director of OPMC.

The terms of the probationary period and the chaperone requirement are set out in greater detail in Attachments A and B annexed hereto and made part of this Determination and Order. 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 decided upon this penalty to permit Respondent to continue to practice his chosen profession while ensuring the safety of his patients.

#### ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The Second, Fourth and Sixth Specifications of professional misconduct, as set forth in the Statement of Charges are SUSTAINED;

2. The First, Third, and Fifth Specifications of professional misconduct, as set forth in the Statement of Charges are DISMISSED;

3. Respondent's license to practice medicine in the State of New York is hereby **SUSPENDED FOR A PERIOD OF THREE YEARS**; HOWEVER, **THE SUSPENSION OF RESPONDENT'S LICENSE IS STAYED PROVIDED THAT HE COMPLIES WITH THE LICENSE LIMITATION AND TERMS OF PROBATION** imposed by this Determination and further delineated in Attachments A and B annexed hereto;

4. Respondent's license is **PERMANENTLY LIMITED** to require that, in the course of practicing medicine in New York State, he shall have **CONTACT WITH A FEMALE PATIENT ONLY IN THE PRESENCE OF A CHAPERONE** and in compliance with the terms set forth in Attachment A.

5. Respondent is placed on **PROBATION FOR A PERIOD OF TWO YEARS** during which period **RESPONDENT SHALL REMAIN IN THERAPY** and must comply with the terms of probation annexed hereto as Attachment B;

6. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: New York, New York  
March 21, 2012

REDACTED SIGNATURE

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THEA GRAVES FELLMAN (CHAIR)

LINDA A. BRADY, M.D.  
PRADEEP CHANDRA, M.D.

ATTACHMENT A

**Chaperone Requirements**

1. Respondent shall, in the course of practicing medicine in New York, have contact with any female patient only in the presence of a female chaperone. The chaperone shall be a licensed practical nurse, physician assistant, registered nurse or nurse practitioner proposed by the Respondent and subject to the written approval of the Director of the Office of Professional Medical Conduct ("OPMC"). The chaperone shall not be a family member, personal friend, or in a professional relationship which poses a conflict with the chaperone's responsibilities.
  
2. Prior to the approval of any individual as a chaperone, Respondent shall cause the proposed chaperone to execute and submit to the Director of OPMC an acknowledgement of her agreement to undertake all of the responsibilities of the role of chaperone. Said acknowledgement shall be made upon a form provided by and acceptable to the Director. Respondent shall provide the chaperone with a copy of this Order and all its attachments and shall, without fail, cause the approved chaperone to:
  - a. Report quarterly to OPMC regarding her chaperoning of Respondent's practice.
  - b. Report within 24 hours any failure of Respondent to comply with the Order, including but not limited to any failure by Respondent to have the chaperone present when required, any sexually suggestive or otherwise inappropriate comments by Respondent to a patient, and any actions of a sexual nature by the Respondent in the presence of a patient.
  - c. Confirm the chaperone's presence at each and every examination and treatment of a female patient by Respondent, by placing the chaperone's name, title and date in the patient record for each and every visit, and by maintaining a separate log, kept in her own possession, listing the patient name and date of visit for each and every patient visit chaperoned.
  - d. Provide copies of the log described in paragraph c, above, to OPMC at least quarterly and also immediately upon the Director's request.
  
3. Respondent shall assume and bear all costs related to compliance with these terms.

## ATTACHMENT B

### Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of his license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. During the two year probationary period, Respondent shall continue in therapy on a weekly in-person basis by a psychiatrist, psychologist or licensed social worker proposed by Respondent and approved in writing by the Director of OPMC.
  - a. Respondent will authorize the therapist to submit quarterly reports to the Director of OPMC certifying Respondent's compliance with the treatment plan.
  - b. Respondent will authorize the therapist to report any significant pattern of absences or failure to otherwise comply with the therapist's treatment plan.
4. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 1000, Troy, New York 12180-2299 with the following information, in writing, and ensure that this information is kept current: a full description of his employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
5. Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of his compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
6. The probation period shall toll when Respondent is not engaged

in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if he is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in the Determination and Order or as are necessary to protect the public health.

7. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
9. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
10. Respondent shall comply with these probationary terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.

To: Anna R. Lewis, Esq.  
Associate Counsel  
New York State Department of Health  
Office of Professional Medical Conduct  
90 Church Street  
New York, New York 10007

Wilfred T. Freidman, Esq.  
Attorney for Respondent  
60 East 42<sup>nd</sup> Street, 40<sup>th</sup> Floor  
New York, New York 10165

Mitchell Schuster, Esq.  
Attorney for Respondent  
2 Grand Central Tower  
140 East 45<sup>th</sup> Street, 19<sup>th</sup> Floor  
New York, New York 10017

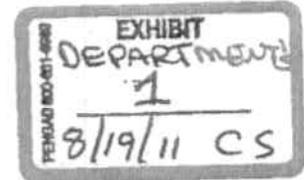
# APPENDIX I

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

IN THE MATTER  
OF  
LEE MARCUS, M.D.

NOTICE  
OF  
HEARING

TO: LEE MARCUS, M.D.  
c/o WILFRED T. FRIEDMAN, P.C.  
Attorneys and Counselors at Law  
60 East 42<sup>nd</sup> Street  
New York, New York 10165



PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on August 19, 2011, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4<sup>th</sup> Floor, New York, NY 10007, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

**YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.**

Department attorney: Initial here \_\_\_\_\_

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date.

Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be

photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

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

DATED: New York, New York  
June 22, 2011

REDACTED SIGNATURE

Roy Nemerson  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be directed to: Anna R. Lewis  
Associate Counsel  
Bureau of Professional Medical Conduct  
90 Church Street, 4<sup>th</sup> Floor  
New York, NY 10007  
(212) 417-4369

IN THE MATTER  
OF  
LEE MARCUS, M.D.

STATEMENT  
OF  
CHARGES

Lee Marcus, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 4, 1992, by the issuance of license number 188488 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Patient A came under the care and treatment of Respondent, a cardiologist, from on or about April 1, 2009 through on or about April 24, 2009, at his office (the identity of the patient is contained in the attached appendix). During this period of time, Respondent:
1. Under the guise of performing a legitimate medical examination, on or about April 1, 2009 and on or about April 24, 2009, Respondent asked sexually inappropriate questions and made sexual comments to Patient A for no legitimate medical purpose.
  2. Under the guise of performing a legitimate medical examination, on or about April 24, 2009, Respondent inappropriately touched Patient A's breasts and nipples, and hugged and kissed her for no legitimate medical purpose.
  3. On or about April 24, 2009, Respondent failed to maintain a record that accurately reflected the physical examination of Patient A.
  4. From on or about April 26, 2009 through on or about May 11, 2009, Respondent sent inappropriate and sexually explicit text messages to

Patient A for no legitimate medical purpose.

- B. On or about November 15, 2010, in the Town of Poughkeepsie Court, Dutchess County, State of New York, Respondent pled guilty to Sexual Abuse in the Third Degree, in violation of Section 130.55 of the New York State Penal Law, a class B misdemeanor, based on Respondent admitting to inappropriately touching Patient A's breasts and nipples without her consent on April 24, 2009.

ALLEGATION  
SET FORTH  
IN PARAGRAPH  
B AND FIRST  
SPECIFICATION  
WITHDRAWN BY  
DEPARTMENT  
3/8/2012 UPON  
WITHDRAWAL  
OF PLEA AND  
REDUCTION OF  
PENAL LAW  
CHARGES

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NO CRIMINAL  
CONVICTION  
EXISTS

RN,  
DEPUTY  
COUNSEL

### SPECIFICATION OF CHARGES

#### FIRST SPECIFICATION

#### CRIMINAL CONVICTION (N.Y.S.)

Respondent is charged with committing professional misconduct as defined N.Y. Educ. Law § 6530(9)c by having pled guilty to committing an act constituting a crime under New York state law as alleged in the facts of the

following:

1. Paragraph B.

#### SECOND THROUGH THIRD SPECIFICATIONS

#### PATIENT ABUSE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(31) by willfully harassing, abusing, or intimidating a patient either physically or verbally, as alleged in the facts of:

2. Paragraph A, A.1, A.2 and A.4.
3. Paragraph B.

**FOURTH THROUGH FIFTH SPECIFICATIONS**

**MORAL UNFITNESS**

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

4. Paragraph A, A.1, A.2 and A.4.
5. Paragraph B.

**SIXTH SPECIFICATION**

**FAILURE TO MAINTAIN RECORDS**

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

6. Paragraph A and A.3.

DATE: June 22, 2011  
New York, New York

REDACTED SIGNATURE

\_\_\_\_\_  
Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct