

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

Purnendu Dutta, Physician  
61 Waterford Park  
Williamsville, New York 14221

March 27, 1992

Re: License No. 113946

Dear Dr. Dutta:

Enclosed please find Commissioner's Order No. 12459. 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 or a surrender 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. In the event you are also served with this Order by personal service, the effective date of the Order is the date of personal service.**

**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  
Supervisor

DHJ/GM/er

**CERTIFIED MAIL - RRR**

cc: Joel L. Daniels, Esq.  
444 Statler Towers  
Buffalo, New York 14202



# The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

**PURNENDU DUTTA**

**No. 12459**

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

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## REPORT OF THE REGENTS REVIEW COMMITTEE

A hearing was held before a hearing committee of the State Board for Professional Medical Conduct. A copy of the statement of charges and the amendment to the statement of charges, which added the third through eighth specifications, are annexed hereto, made a part hereof, and marked as Exhibit "A". After the hearing was held on ten different sessions between March 1, 1990 and December 21, 1990, the hearing committee rendered a report of its findings, conclusions, and recommendation, a copy of which is annexed hereto, made a part hereof, and marked as Exhibit "B".

The hearing committee concluded that respondent, Purnendu Dutta, was guilty of the second specification of unprofessional conduct for willfully abusing a patient physically involving respondent engaging in physical contacts of a sexual nature with a patient as charged in allegations 4(a)(i), 4(a)(iii), 4(a)(iv),

**PURNENDU DUTTA (12459)**

4(a)(vi), and 4(a)(viii) and for willfully abusing a patient verbally involving respondent making verbal comments of a sexual nature with a patient as charged in allegations 4(a)(iv), 4(a)(v), 4(a)(vi), 4(a)(vii) and 4(a)(viii); guilty of the sixth through eighth specifications of unprofessional conduct for willfully abusing a patient physically involving respondent engaging in physical contacts of a sexual nature with a patient as charged in allegations 6(a)(i), 6(a)(ii), 6(a)(iii), 6(a)(iv), 6(a)(v), 6(a)(vi), and 6(a)(viii), all relating to the sixth specification, 6(b)(i), 6(b)(ii), 6(b)(iii), 6(b)(v), and 6(b)(vi), all relating to the seventh specification, and 6(c)(i), 6(c)(ii), 6(c)(iii), 6(c)(iv), all relating to the eighth specification, and for willfully abusing a patient verbally involving respondent making verbal comments of a sexual nature with a patient as charged in allegations 6(a)(i), 6(a)(iii), 6(a)(vi), and 6(a)(vii), all relating to the sixth specification, 6(b)(ii), 6(b)(iv), and 6(b)(vi), all relating to the seventh specification, and 6(c)(ii) and 6(c)(iv), all relating to the eighth specification, and is guilty of the first, third, fourth, and fifth specifications of unprofessional conduct for moral unfitness involving the same sexual activities for which respondent was found guilty as to the second, sixth, seventh, and eighth specifications.

The Commissioner of Health, by designee, recommended to the Board of Regents that the findings, conclusions, and recommendation of the hearing committee be accepted in full. A copy of the

**PURNENDU DUTTA (12459)**

recommendation of the Commissioner of Health is annexed hereto, made a part hereof, and marked as 'Exhibit "C"'.

On December 12, 1991, respondent appeared before us and was represented by Joel L. Daniels, Esq. who presented oral argument on behalf of respondent. E. Marta Sachey, Esq. presented oral argument on behalf of the Department of Health.

We have considered the record in this matter as transferred by the Department of Health, including the pre-hearing conference transcript, and respondent's submission to us dated November 27, 1991 and the various letters in support enclosed therewith.

Petitioner's written recommendation as to the penalty to be imposed, should respondent be found guilty, which was the same as that of the hearing committee and Commissioner of Health, by designee, was that respondent's license to practice medicine in New York State be revoked. Respondent elected not to make a written recommendation as to the penalty to be imposed. However, respondent's attorney recommended, in his November 27, 1991 submission, that the charges be dismissed on the ground that petitioner failed to sustain its burden by a preponderance of the evidence or, in the alternative, that this matter be remanded for a new hearing before a different panel.

We accept the hearing committee's findings and conclusions that respondent is guilty on various occasions regarding his committing certain improper sexual activities with respect to two patients. Our recommendation is based upon our full agreement with

**PURNENDU DUTTA (12459)**

the credibility assessments made by the hearing committee in its 32 page report which committee did not, as respondent contended, ignore material facts bearing on those credibility assessments. See also, petitioner's brief, proposed findings, conclusions and recommendation. As indicated by the hearing committee, both Patients A and B, who did not know each other or of the experiences each had with respondent, were quite candid, forthcoming, and credible. On the other hand, as also indicated by the hearing committee, respondent's testimony and denials were self-serving, inconsistent, and contradicted by testimony from both petitioner's and his witnesses and by documentary evidence. The hearing committee, which observed the credibility and demeanor of all the witnesses, also correctly assessed the credibility of the witnesses other than Patient A, Patient B, and respondent. In our unanimous opinion, petitioner has proven, by a preponderance of evidence, that respondent is guilty of unprofessional conduct for the willful physical and willful verbal abuse of the two patients and for moral unfitness, as set forth in our recommendation.

In addition to the findings of the hearing committee and Health Commissioner, the record shows that respondent, as charged in allegation 4(a)(vi), squeezed both of Patient A's thighs. Accordingly, we accept the hearing committee's finding number 21 and we make an additional finding as to respondent's squeezing of the Patient's thighs. We note that the hearing committee properly did not include any finding that respondent felt Patient A's hips,

**PURNENDU DUTTA (12459)**

as charged in allegation 4(a)(vi), and did not include any finding that respondent touched Patient A's abdomen, as charged in allegation 4(a)(viii).

Finally, we reject respondent's contention that the questions asked by the hearing committee members demonstrate that the hearing committee inappropriately prejudged this matter. The questions on pages 836 through 847 of the transcript, requested the opinion of the witness (Dr. Tatelbaum) who had testified on the basis of the acts described by Patients A and B. The issue of whether to accept either or both of the Patients' testimony and Dr. Tatelbaum's opinion had not been decided by the hearing committee at that time and, therefore, it neither prejudged this matter nor exhibited any actual impartiality or bias.

We unanimously recommend the following:

1. The findings of fact of the hearing committee and the recommendation of the Health Commissioner's designee as to those findings of fact be accepted;
2. The following additional finding of fact be accepted:  
21(a) Respondent also felt and squeezed both of  
Patient A's thighs.  
(T. 29, 190, 191 and 331).
3. The conclusions of the hearing committee and the recommendation of the Health Commissioner's designee as to those conclusions be accepted;
4. Respondent be found, by a preponderance of evidence,

guilty of the second specification of unprofessional conduct for willfully abusing a patient physically involving respondent engaging in physical contacts of a sexual nature with a patient, as charged in allegations 4(a)(i), 4(a)(iii), and 4(a)(iv), as found by the hearing committee regarding allegation 4(a)(viii), and as found by the hearing committee and this Regents Review Committee regarding allegation 4(a)(vi), and of unprofessional conduct for willfully abusing a patient verbally involving respondent making verbal comments of a sexual nature with a patient as charged in allegations 4(a)(iv), 4(a)(v), 4(a)(vi), 4(a)(vii) and 4(a)(viii); guilty of the sixth specification of unprofessional conduct for willfully abusing a patient physically involving respondent engaging in physical contacts of a sexual nature with a patient, as charged in allegations 6(a)(i), 6(a)(ii), 6(a)(iii), 6(a)(iv), 6(a)(v), 6(a)(vi), and 6(a)(viii), and of unprofessional conduct for willfully abusing a patient verbally involving respondent making verbal comments of a sexual nature with a patient, as charged in allegations 6(a)(i), 6(a)(iii), 6(a)(vi), and 6(a)(vii); guilty of the seventh specification of unprofessional conduct for willfully abusing a patient physically involving respondent engaging in physical contacts of a sexual nature with a

patient, as charged in allegations 6(b)(i), 6(b)(ii), 6(b)(iii), 6(b)(v), and 6(b)(vi), and of unprofessional conduct for willfully abusing a patient verbally involving respondent making verbal comments of a sexual nature with a patient, as charged in allegations 6(b)(ii), 6(b)(iv), and 6(b)(vi); and guilty of the eighth specification of unprofessional conduct for willfully abusing a patient physically involving respondent engaging in physical contacts of a sexual nature with a patient, as charged in allegations 6(c)(i), 6(c)(ii), 6(c)(iii), and 6(c)(iv), and of unprofessional conduct for willfully abusing a patient verbally involving respondent making verbal comments of a sexual nature with a patient, as charged in allegations 6(c)(ii) and 6(c)(iv); and is guilty of the first, third, fourth, and fifth specifications of unprofessional conduct for moral unfitness involving the same sexual activities for which we recommend that respondent be found guilty as to the second, sixth, seventh, and eighth specifications; and

5. The recommendation of the hearing committee and the recommendation of the Health Commissioner's designee as to that recommendation be accepted and respondent's license to practice as a physician in the State of New York be revoked upon each specification of which

**PURNENDU DUTTA (12459)**

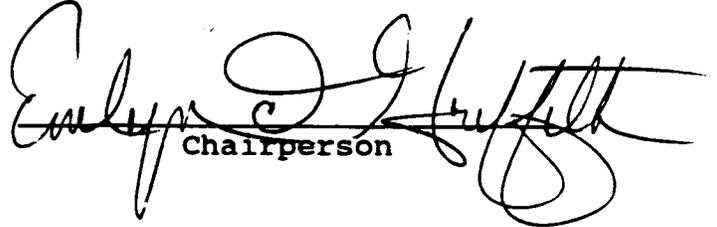
respondent has been found guilty.

· Respectfully submitted,

**EMLYN I. GRIFFITH**

**JANE M. BOLIN**

**PATRICK J. PICARIELLO**

  
Chairperson

Dated: March 9, 1992

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

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IN THE MATTER  
OF  
PURNENDU DUTTA, M.D.

STATEMENT  
OF  
CHARGES

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The State Board for Professional Medical Conduct, upon information and belief, charges and alleges as follows:

1. PURNENDU DUTTA, M.D., hereinafter referred to as the Respondent, was authorized to engage in the practice of medicine in the State of New York on August 1, 1972 by the issuance of License Number 113946 by the State Education Department.

2. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1986 through December 31, 1988 from 539 Cleveland Drive, Cheektowaga, New York 14225.

3. Respondent herein is charged with professional misconduct within the meaning of N.Y. Educ. Law §6509 (McKinney 1985) as set forth in the Specifications attached.

FIRST SPECIFICATION

4. The Respondent is charged with professional misconduct by reason of his committing unprofessional conduct within the meaning of N.Y. Educ. Law §6509(9) (McKinney 1985) by his conduct in his practice of a profession which evidences moral unfitness to practice the profession within the meaning of N.Y. Admin. Code tit. 8, §29.1(b)(5) (1984) in that, among other things and incidents:

(a) On or about June 16, 1983, Patient A (identified in Appendix A) had an appointment for medical care with Respondent at Respondent's Office at 539 Cleveland Drive, Cheektowaga, New York [hereinafter "his office"] for the removal of moles. During the course of that appointment, Respondent engaged in the following conduct:

(i) Respondent massaged Patient A's breasts on three occasions;

[(ii)] deleted

(iii) Respondent, during the performance of the pelvic examination, did not wear gloves, rhythmically moved his fingers in and out of Patient A's vagina, and made comments about and asked Patient A questions about having orgasms;

(iv) Respondent fondled Patient A's genitals and made comments to Patient A of a sexual nature concerning her genitals;

(v) Respondent commented on Patient A's physical beauty on numerous occasions;

(vi) Respondent asked Patient A to stand and thereafter squeezed her thighs, pulled her underwear partially down and felt her hips, lifted her examining gown and felt her buttocks, all while commenting on her physical beauty;

(vii) Respondent asked Patient A if her husband was the "jealous type" and told her not to "mention any of this" to her husband;

(viii) Respondent weighed Patient A and, in so doing, removed Patient A's examination gown and, thereafter, viewed Patient A's body at close-range while commenting on her physical beauty, and touched her abdomen and pelvic bone.

#### SECOND SPECIFICATION

5. The Respondent is charged with professional misconduct by reason of his committing unprofessional conduct within the meaning of N.Y. Educ. Law §6509(9) (McKinney 1985) by his willfully harassing, abusing or intimidating a patient either

physically or verbally within the meaning of N.Y. Admin. Code  
tit. 8, §29.1(a)(2) (1981) in that:

The State Board for Professional Medical Conduct  
repeats the allegations set forth in Paragraph 4(a), above.

DATED: Albany, New York  
dated/January 12, 1987

s/KATHLEEN M. TANNER

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KATHLEEN M. TANNER  
Director  
Office of Professional Medical  
Conduct

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

-----X

IN THE MATTER : AMENDMENTS TO  
OF : STATEMENT OF  
PURNENDU DUTTA, M.D. : CHARGES

-----X

EXHIBIT rec  
Dept 2  
KV 2-28-9

PURNENDU DUTTA, M.D., 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 61 Waterford Park, Williamsville, New York 14221.

THIRD THROUGH FIFTH SPECIFICATIONS

6. Respondent, at various times from approximately 1985 through August 24, 1989, provided medical care to Patient B (identified in the Appendix), a female born in 1971, at his offices at 2695 Harlem Road, Cheektowaga, New York 14221 [hereinafter "Harlem Road office"] and 1691 Maple Road, Williamsville, New York 14221. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6509(9) (McKinney 1985) and 8 NYCRR §29.1(b)(5) (1987) by his conduct in his practice of medicine which evidences moral

EXHIBIT "A"

unfitness to practice the profession in that, among other things and incidents:

(a) Respondent, on or about August 24, 1989 at his Harlem Road office during the course of an appointment with Patient B, engaged in physical contact of a sexual nature with Patient B and made verbal comments of a sexual nature to Patient B, which included the following:

- (i) Respondent put his fingers through Patient B's hair and told her "you are so pretty" or words to such effect.
- (ii) Respondent massaged Patient B's breasts simultaneously with both his hands and rolled her nipples between his fingers.
- (iii) Respondent, while he was touching Patient B's breasts and nipples, asked Patient B if it "felt good" and if her "nipples were sensitive" or words to such effect.
- (iv) Respondent smelled Patient B's vaginal area and, while he did so, Patient B could feel Respondent's nose on her vaginal area.
- (v) Respondent fondled Patient B's vaginal area.
- (vi) Respondent, while he was touching Patient B's vaginal area, said to Patient B if she had "come" and said "can I empty you out again" or words to such effect.
- (vii) Respondent said to Patient B "Can we be more than friends?" and asked "Is your boyfriend jealous?" or words to such effect.
- (viii) Respondent lifted up Patient B's examining gown, and while kneeling before her, felt her upper thighs and felt under her breasts.

(b) Respondent, in or about October or November, 1988 at his Harlem Road office during the course of an appointment with Patient B, engaged in physical contact of a sexual nature with Patient B and made verbal comments of a sexual nature to Patient B, which included the following:

- (i) Respondent massaged Patient B's breasts simultaneously with both his hands and rolled her nipples between his fingers.
- (ii) Respondent, while he was touching Patient B's breasts and nipples, asked "if it felt good" and "what parts felt best" or words to such effect.
- (iii) Respondent smelled Patient B's vaginal area and, while he did so, Patient B could feel Respondent's nose on her vaginal area.
- (iv) Respondent, referring to Patient B's vaginal area, said to Patient B that "you can tell a lot by the smell", that Patient B "smelled clean", and that Patient B was "one of the cleanest he'd smelled" or words to such effect.
- (v) Respondent fondled Patient B's vaginal area.
- (vi) Respondent, while he was touching Patient B's vaginal area, asked Patient B if "it felt good", "what is the most sensitive part of your vagina", and if she could "have a climax" or words to such effect.

(c) Respondent, on several occasions other than and prior to those set forth in Paragraphs 6(a) and 6(b), above, on or about July, 1988 through November, 1988, at his Harlem Road office during the course of appointments with Patient B, engaged in physical contact of a sexual nature with Patient B and made

verbal comments of a sexual nature to Patient B, which included the following:

- (i) Respondent massaged Patient B's breasts simultaneously with both his hands and rolled her nipples between his fingers.
- (ii) Respondent, while he was touching Patient B's breasts and nipples, asked "if it felt good" and "what parts felt best" or words to such effect.
- (iii) Respondent fondled Patient B's vaginal area.
- (iv) Respondent, while he was touching Patient B's vaginal area, asked Patient B "if it felt good" and "what is the most sensitive part of your vagina" or words to such effect.

#### SIXTH THROUGH EIGHTH SPECIFICATIONS

7. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6509(9) (McKinney 1985) and 8 NYCRR §29.2(a)(2) (1987) by his willfully abusing a patient physically and/or verbally, in that:

- (a) Petitioner repeats the allegations set forth in Paragraphs 6(a)(i), 6(a)(ii), 6(a)(iii), 6(a)(iv), 6(a)(v), 6(a)(vi), 6(a)(vii) and/or 6(a)(viii).
- (b) Petitioner repeats the allegations set forth in Paragraphs 6(b)(i), 6(b)(ii), 6(b)(iii), 6(b)(iv), 6(b)(v), and/or 6(b)(vi).
- (c) Petitioner repeats the allegations set forth in Paragraphs 6(c)(i), 6(c)(ii), 6(c)(iii), and/or 6(c)(iv).

DATED: Albany, New York  
*February 5, 1990*

*Peter D. Van Buren*  
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PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical  
Conduct

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

-----X  
IN THE MATTER : REPORT OF  
OF : THE HEARING  
PURNENDU DUTTA, M.D. : COMMITTEE  
-----X

TO: The Honorable Lorna McBarnette  
Executive Deputy Commissioner of Health  
State of New York

ALBERT L. BARTOLETTI, M.D. (Chair), ANN SHAMBERGER,  
and S. MOUCHLY SMALL, 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. LARRY G. STORCH,  
Administrative Law Judge, served as the Administrative  
Officer.

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

SUMMARY OF PROCEEDINGS

|   |  |
|---|--|
| Date of Service of Notice<br>of Hearing and Statement of<br>Charges against Respondent: | February 26, 1987  |
| Date of Amended Statement of<br>Charges:  | February 5, 1990   |
| Answer to Statement of Charges:   | None   |
| Pre-Hearing Conference:   | February 28, 1990  |
| Dates of Hearings:  | March 1, 1990<br>April 6, 1990<br>May 30, 1990<br>May 31, 1990 |

EXHIBIT "B"

August 24, 1990  
August 30, 1990  
August 31, 1990  
October 26, 1990  
December 14, 1990  
December 21, 1990

**Adjournments:**

August 7, 1990  
(Petitioner's  
Counsel and  
Administrative  
Officer Unavail-  
able)

August 23, 1990  
(Witness Unavail-  
able)

November 16, 1990  
(Respondent Unavail-  
able)

November 20, 1990  
(Committee Member  
Unavailable)

Received Petitioner's Proposed  
Findings of Fact and Conclusions  
of Law:

February 8, 1991

Received Respondent's Proposed  
Findings of Fact and Conclusions  
of Law:

February 8, 1991

Department of Health  
appeared by:

E. Marta Sachey, Esq.  
Associate Counsel

Respondent appeared by:

Joel L. Daniels, Esq.  
444 Statler Towers  
Buffalo, NY 14202

Witnesses for Department  
of Health:

Patient A  
Patient B  
Patient B's Mother  
Robert C.  
Tatelbaum, M.D.

**Witnesses for Respondent:**

Purnendu Dutta, M.D.  
Susanne Ang, R.N.  
Patient C.L.  
John Border, M.D.  
Patient J.H.  
Andrew Gage, M.D.  
Patient B.M.  
Patient D.D.  
Patient B.M.  
Barbara Sibley  
Mueller  
Joginder  
Bhayana, M.D.  
Maria Strzelczyk  
Sr. Mary Noella  
Walas  
John Naughton, M.D.

**Rebuttal Witnesses  
for Department of Health:**

Patient A's Son  
Patient A's Husband  
John Budzinski, M.D.  
Patient B's Mother

**Deliberation Dates:**

April 23, 1991  
May 14, 1991  
May 28, 1991

**STATEMENT OF CASE**

Respondent has been charged, by a Notice of Hearing and Statement of Charges dated January 12, 1987, with moral unfitness to practice the profession of medicine and with willfully harassing, abusing or intimidating a patient either physically or verbally. A hearing was held on these charges. By an Order of the Commissioner of Education (#8217) dated September 28, 1988, this matter was remanded for a new hearing. Subsequently, an amended Statement of

Charges, dated February 5, 1990, was served upon Respondent. These amended Charges allege additional specifications of moral unfitness and willful harassment, abuse or intimidation of a second patient. These amended Charges were admitted into the record without objection by Respondent. Respondent denies all charges raised against him.

#### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Purnendu Dutta, M.D., hereinafter referred to as Respondent, was authorized to engage in the practice of medicine in the State of New York on August 1, 1972 by the issuance of License Number 114946 by the New York State Education Department. (Dep't. Ex. #3).

2. Respondent was registered with the New York State Education Department to practice medicine for the period January 1, 1986 through December 31, 1988 from 539 Cleveland Drive, Cheektowaga, New York 14225. (Dep't. Ex. #3).

Patient A

3. Patient A first visited Respondent's office on Cleveland Drive in Cheektowaga on April 7, 1983. During that visit she accompanied her son who had plantar's warts cryosurgically removed from the bottom of his foot by Respondent. (14-15).

4. Patient A stated that she was favorably impressed with Respondent at the time of her son's first visit. (15).

5. She returned with her son two weeks later, on April 26, 1983. The purpose of this visit was to have her son's foot re-examined as a follow-up to the cryosurgery. (Dep't. Ex.#4).

6. Patient A returned on May 16, 1983 for a third visit, to have her son's foot re-checked and to have some warts removed from his fingers. (16).

7. During the May 16, 1983 visit, Respondent noticed a mole on Patient A's neck and offered to remove it. (17).

8. Patient A testified that following completion of the third visit to Respondent's office, she was impressed with Respondent because he took time to explain things. (18 19).

9. Patient A returned to Respondent's office for the fourth time on June 16, 1983 at or about 6:00 P.M. (19).

10. Patient A asked Respondent to be her family's physician because she was so impressed with him. (21).

11. Respondent handed Patient A a hospital gown at

the completion of her son's examination and left the room. (22).

12. Patient A had mentioned during her May 16, 1983 visit with Respondent that she had two moles on her leg that she wanted removed. (22).

13. Patient A asked her son to leave the room. (22).

14. Respondent re-entered the room after Patient A had gowned, sat on a stool in front of her and placed both of his hands on her breasts. He told her that she had very cystic breasts. He then stopped massaging her breasts and began to squeeze her nipples. (25-26).

15. Patient A was impressed that Respondent knew right away that she had cystic breasts. (25).

16. Respondent massaged her breasts a second time for approximately five minutes to drain her breasts. (26).

17. Patient A did not ask Respondent to examine her breasts. She assumed he was doing it because she had asked him to be her family physician. (27).

18. During the course of this second massage, Respondent was called out of the room for a telephone call. When he returned, he began to massage the patient's breasts again. (26-28).

19. While Respondent was massaging Patient A's breasts, he kept telling her how beautiful she was. (28).

20. Patient A asked Respondent about diet pills during the course of the examination. (28).

21. Following Patient A's breast examination, Respondent asked Patient A to stand up. He pulled her underwear down to just above the hairline. He then felt her abdomen and buttocks. Respondent told Patient A that her thighs were nice and firm and that she was beautiful. (29).

22. Respondent then had Patient A lie on the examining table and removed her underwear while placing her legs in stirrups. (29).

23. After Respondent removed Patient A's underwear he put them up to his face and smelled them. He told Patient A that her underwear was nice and clean. (29).

24. Respondent slid his hand down to Patient A's pelvic area and started to fondle her clitoris. (31).

25. Respondent told Patient A to relax and become more moist so that he could insert his finger in her. Respondent then rhythmically moved his finger in and out of Patient A's vagina. (31-32).

26. Respondent told Patient A to have a spasm. Patient A testified that she thought Respondent meant her to have an orgasm. (32).

27. Respondent asked Patient A whether she had a spasm today, yesterday or the day before. (32).

28. Respondent told Patient A that her private parts were beautiful. Respondent told Patient to sit up. He wanted her to watch as he fondled her vagina. (33-34).

29. Respondent told Patient A that he had never

seen a patient who was so immaculate. He took his hand, put it up to his face and sniffed it. Respondent was not wearing gloves. (34-35).

30. Patient A testified that Respondent's pelvic examination differed from prior examinations which she had received in the way Respondent massaged her and spoke to her. She further testified that she believed that Respondent was trying to sexually stimulate her. (340-341).

31. Respondent told Patient A to bring her husband in and that he would teach him how to "play". He also asked if Patient A's husband was the jealous type. He then told her not to mention anything to her husband. (36).

32. Patient A was not draped during this pelvic examination. Respondent did not perform a rectal examination, did not use a speculum and did not perform a Pap test. (32, 330, 332).

33. Following the pelvic examination, Respondent prepared to cryosurgically remove Patient A's moles. The receptionist, Barbara Sibley Mueller, walked in while Respondent was preparing the liquid nitrogen to remove the patient's moles and asked if she could leave before 8:00 P.M. because she had a graduation to attend. (36).

34. Respondent then removed moles from Patient A's knee, left leg, and underarm. He also removed a red mark from her breast. (37).

35. Respondent asked Patient A to stand on the scale

and removed her paper gown. He weighed her and looked at her body from various angles. He touched her pelvic bone and told her that she was perfectly shaped. (38).

36. Respondent told Patient A that her pelvic bones stuck out and that is what men liked to see. (38).

37. Following the events which occurred in the examination room, Respondent made follow-up appointments for Patient A and for her husband. (40).

38. Respondent claimed at the hearing that he removed six nevi (moles) from Patient A on May 16, 1983 and six nevi on June 16, 1983 for a total of twelve nevi, at a cost of \$384.00. (1078).

39. Patient A testified that only one nevus was removed (from her neck) on May 16, 1983. (17).

40. Patient A further testified that her husband never went to Respondent's office. (40).

41. Patient A's husband testified that he never went to Respondent's office. (1528).

42. Respondent testified that Patient A's husband was in the waiting room on June 16, 1983. (1085).

43. Robert C. Tatelbaum, M.D., a board-certified obstetrician/gynecologist, testified on behalf of the Department. Dr. Tatelbaum testified that Respondent's physical contacts and comments to Patient A, as described by the patient, served no legitimate medical purposes. He further testified that there was no indication for giving

Patient A a gynecological examination on June 16, 1983. (754-775, 763, 770-771, 796, 834, 837, 840).

Patient B

44. Patient B, a female patient, began seeing Respondent as a patient in 1985 when she was thirteen years old. Prior to that, Respondent had been Patient B's grandmother's physician. From approximately 1985 until June 30, 1988, Respondent provided Patient B medical care for routine problems such as colds, i.e., he served as her family physician. (Dept. Ex. #8; 385, 386, 623, 632, 675, 739).

45. On or about June 30, 1988 Respondent began providing gynecological care to Patient B. On that date, Patient B had an appointment with Respondent and asked for birth control pills. Respondent prescribed the pills and gave Patient B a breast examination, but postponed a pelvic examination and Pap test because the patient was menstruating. Patient B's mother did not go with her daughter to this appointment. However, she knew that her daughter was going to ask for birth control pills. (Dept. Ex. #8; Dept. Ex. #18, p. 3; Dept. Ex. #19, p. 5; Resp. Ex. N; 388, 389, 495, 642, 1683).

46. On July 7, 1988 Patient B returned to Respondent's office and received a vaginal examination and Pap test. Her mother did not accompany her to this appointment. (Dept. Ex. #8, p. 8; Dept. Ex. #19, p.7; 680,

1683, 1685-1686).

47. Patient B testified that she understands gynecological care to involve internal examinations and breast examinations. The examinations Respondent performed on Patient B were the first gynecological examinations Patient B had ever had. Although Patient B had not received gynecologic examinations before Respondent's, she expected that she would receive a breast and pelvic examination before receiving birth control pills because her mother had told her to expect it. (388, 391, 403, 500, 623, 647).

48. Patient B testified that approximately one month after starting on birth control pills, she had several physical complaints. She made an appointment with Respondent and saw him in his Harlem Road office on July 21, 1988. Patient B's mother did not accompany her to this appointment. The patient told Respondent that she was gaining weight and her sex drive was diminished. She did not complain to Respondent regarding any vaginal discharge. (Dept. Ex. #8, p. 9; Dept. Ex. #19, p. 8; Resp. Ex. N; 391, 392, 507, 511, 1687).

49. During the July 21, 1988 visit, Patient B was gowned. No chaperone was present in the examination room. While she lay on the examining table, Respondent placed one of his hands on each of her breasts and massaged them. He also rolled the nipples between his fingers. While Respondent was massaging the Patient's breasts, he asked her

which part of her breasts felt most sensitive. (392-395).

50. Respondent then examined Patient B's vagina with a speculum. Thereafter, Respondent began to rub Patient B's vagina with his finger. He rubbed her clitoris and the inner and outer lips. He did not put his fingers inside her. Respondent asked the patient if she could climax. He asked her which part of her vagina was the most sensitive. (397, 399, 401-403, 513, 515-516).

51. On approximately two or more visits to Respondent following the July 21, 1988 visit, Respondent engaged in the same conduct with Patient B as described above in paragraphs 49 and 50. (404).

52. Patient B returned to Respondent's office on November 15, 1988. (Dept. Ex. #8).

53. No chaperone was present in the examining room during this visit. No drape was used. Respondent massaged Patient B's breasts and rubbed her nipples as he had done on the previous occasions. He asked her which parts of her breasts were the most sensitive. He rubbed the patient's vaginal area with his finger and asked the patient if she could climax. (406-407).

54. Respondent then smelled Patient B's vagina. Patient B could see Respondent's head between her legs and could feel his nose on her. Respondent told the patient that you could tell a lot by how a vagina smells and that hers smelled good. Respondent told Patient B that her

vagina was very clean. (407-408).

55. Following this examination, Patient B got dressed and went into Respondent's consulting room. Respondent asked the patient if she was interested in working for him. (409).

56. Patient B testified that she thought it odd that Respondent would smell her vaginal area. Other appointments were made for Patient B after this November 15, 1988. Patient B did not keep them. (410-411).

57. Patient B's mother testified that sometime in late 1988 her daughter had told her that Respondent had smell her vaginal area and told her that he had never seen anyone as clean. Patient B's mother further testified that she thought that this was strange but that her daughter may have misunderstood. (682-683).

58. Patient B next saw Respondent on July 26, 1989, in the emergency room at St. Joseph's Hospital. Patient B had injured her foot, and her mother called Respondent. Respondent met them in the emergency room and treated her foot. (Dept. Ex. #9; 687, 691).

59. Following the emergency room visit, Patient B had a follow-up at appointment Respondent's office on August 3, 1989. At that appointment, Respondent only examined her foot. An appointment for a check-up was made for Patient B by Respondent for August 12, 1989. (Dept. Ex. #8; 414).

60. Patient B's mother accompanied her to the August

12, 1989 appointment. At that time, Patient B had complaints of being tired and Respondent thought that she might be anemic. Respondent made a follow-up appointment for one week later for blood work. (Dept. Ex. #8, p. 11; 414-415, 635, 693, 706).

61. During the August 12, 1989 appointment, Respondent discussed the possibility of Patient B working for him. He told Patient B and her mother that he wanted to start a weight loss program and he needed a young, attractive person for it. He told them that he had a computer program that he would teach Patient B how to use. (387, 415-416, 625, 633-634, 636-637).

62. Patient B did not keep the August 17, 1989 follow-up appointment. She did not want to go. It was re-scheduled for August 24, 1989. (Dept. Ex. #8, p. 12; 545).

63. Patient B went to Respondent's office on August 24, 1989. She waited until Respondent called her and then she went into one of the examining rooms. Respondent gave her a paper gown and left, saying he would be right back. Respondent returned to the examining room. He grabbed Patient B's head with his hands and put his fingers through her hair. He told her that she was pretty. (418-419).

64. There was no chaperone present. Respondent took a blood sample. Then, with Patient B on the examining table, Respondent massaged her breasts and rubbed her nipples. He asked her which was the most sensitive part.

He then performed an examination with a speculum and a cervical cautery. Respondent asked Patient B if she needed a lubricant and she said "no". Respondent proceeded to rub Patient B's vagina with his finger. He was not wearing a glove. Respondent asked Patient B if she could climax. Patient B said "no", but Respondent continued to rub her vagina. Patient B had a climax. Respondent asked if he "could empty her out again". Respondent also smelled Patient B's vagina. She felt his nose on her vaginal area. (419-422, 565, 569, 571-572, 600-601).

65. Patient B got off the examining table. Respondent lifted her gown up and put his hands under her breasts and told her that she should wear an underwire bra. Then Respondent knelt down in front of Patient B and put his hands on her thighs. (422, 580).

66. During the course of this August 24, 1989 visit, Respondent asked Patient B if her boyfriend was the "jealous type". He also asked her if he and she could be "more than friends". (422, 629).

67. Dr. Tatelbaum testified that Respondent's physical contacts and comments to Patient B during the August 24, 1989 visit, as well as on the prior visits, as described by the patient, served no legitimate medical purpose and were inappropriate. (849-853).

## 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 unless noted otherwise. Numbers in parentheses refer to the specific Findings of Fact which support each conclusion.

The Hearing Committee concluded that the following Specifications should be sustained in full:

### First Specification:

Paragraph 4(a)(i): (9-18);

Paragraph 4(a)(iv): (22-25; 28-29);

Paragraph 4(a)(v): (19, 21, 28-29, 35-36);

Paragraph 4(a)(vi): (21);

Paragraph 4(a)(vii) (31);

Paragraph 4(a)(viii) (35-36);

### Third Specification:

Paragraph 6(a)(i): (63);

Paragraph 6(a)(ii): (64);

Paragraph 6(a)(iii): (64);

Paragraph 6(a)(iv): (64);

Paragraph 6(a)(v): (64);

Paragraph 6(a)(vi): (64);

Paragraph 6(a)(vii): (66);

Paragraph 6(a)(viii): (65);

### Fourth Specification:

Paragraph 6(b)(i): (52-53);

Paragraph 6(b)(ii): (53);

Paragraph 6(b)(iii): (54);

Paragraph 6(b)(iv): (54);

Paragraph 6(b)(v): (53);

Paragraph 6(b)(vi): (53);

Fifth Specification:

Paragraph 6(c)(i): (45-46, 48-51);

Paragraph 6(c)(ii): (49, 51);

Paragraph 6(c)(iii): (50-51);

Paragraph 6(c)(iv): (50-51);

Sixth Specification:

Paragraph 7(a): (63-66);

Seventh Specification:

Paragraph 7(b): (52-54), and

Eighth Specification:

Paragraph 7(c): (45-46, 48-51).

The Hearing Committee further concluded that the following Specifications should be sustained in part and not sustained in part:

First Specification:

Paragraph 4(a)(iii) should be sustained with the exception of the allegation "...and made comments about and asked Patient A questions about having orgasms;": (25-31);

Second Specification:

Paragraph 5, which repeats the allegations set forth

regarding the First Specification, should be sustained to the same extent as Paragraph 4. Therefore, the Second Specification should be sustained with the exception of the allegation "...and made comments about and asked Patient A questions about having orgasms;": (25-31).

#### DISCUSSION

Respondent is charged with four violations of Section 6509(9) of the Education Law and 8 NYCRR 29.2(a)(2). More specifically, he is charged with "willfully harassing, abusing or intimidating a patient either physically or verbally...." (Second, Sixth, Seventh and Eight Specifications). Neither the statute, nor the regulations define the terms "willful" and "abuse". Therefore, the Hearing Committee looked to other sources for guidance.

The Committee consulted Black's Law Dictionary (5th Ed.). Black's (at page 1434) defines "willful", in pertinent part, as:

"....Proceeding from a conscious motion of the will; voluntary. Intending the result which actually comes to pass; designed; intentional; not accidental or involuntary....A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently...."

Black's Law Dictionary also defines the term "abuse", at page 10:

"....Everything which is contrary to good order established by usage. Departure from reasonable use; immoderate or improper use. Physical or mental maltreatment...."

Utilizing these definitions as a framework for its deliberations, the Hearing Committee concluded, by a preponderance of the evidence, that the Second, Sixth, Seventh and Eighth Specifications should be sustained.

The Hearing Committee recognized that its deliberations in this matter would rely heavily upon its assessment of the credibility of the various witnesses presented by the parties. There was no direct physical evidence of sexual misconduct. Each patient's case will be discussed separately, below.

#### Patient A

Patient A's testimony was candid and consistent. She did not vary from her version of the events which took place in Respondent's examination room on June 16, 1983. In addition, no motive for fabrication on her part was ever demonstrated by Respondent. In contrast, Respondent's testimony was self-serving and inconsistent. His testimony was contradicted by that of his own witnesses, as well as by the documentary evidence.

Patient A's testimony can be summarized as follows: Patient A was initially referred to Respondent by another physician for the removal of several moles which her son had. After Respondent treated her son, Patient A agreed to have Respondent remove a mole from her neck. Patient A was so impressed with the way that Respondent treated her son and herself that she asked him to be their primary physician

(at the June 16, 1983 visit). Respondent then handed her a paper gown and left the examination room. Patient A then asked her son to leave the room, and changed into the gown. Respondent re-entered the room and began to massage the patient's breasts. He told her that she had cystic breasts, and also elicited secretions from her breasts. Patient A had not asked Respondent to perform a breast examination. Respondent repeatedly complemented the patient on her physical beauty. He then directed the patient to stand, and then he felt her abdomen and buttocks. Respondent then directed the patient to lie on the examination table. He removed her underwear and placed her legs in the stirrups. He smelled her underwear and told her that it was nice and clean. He began to fondle Patient A's clitoris and told her to become more moist so that he could insert his finger in her. Respondent then told the patient to have a "spasm". Respondent was not wearing gloves during the pelvic "examination". Respondent asked Patient A if her husband was the jealous type and told her to bring him to the office so that Respondent could teach him how to "play". Following these events, Respondent cryosurgically removed moles from Patient A's knee, left leg and underarm. He also removed a red mark from her breast.

Respondent provided a very different account of the events which took place in the examination room on June 16, 1983. According to Respondent, he observed spontaneous

secretions coming out of the patient's right nipple while he was removing moles from the breast. He then stated that Patient A told him that this was a long standing problem. He also claimed that the patient related to him a gynecological history including severe pain during menstruation, pain during intercourse and bleeding following intercourse. In addition, Patient A told him this information upon examining her breasts while her teenage son was present in the examination room. Respondent testified that he asked the son to leave the room, but that Patient A allowed the son to stay, even while her breasts were being examined. Respondent also claimed that he performed a standard pelvic examination, with speculum, and that a female assistant was present in the room at all times. He denied making any inappropriate statements to Patient A. However, Respondent's version of events cannot withstand close scrutiny.

Patient A denied telling Respondent anything about her prior gynecological history. Her denial is supported by Respondent's office medical record for Patient A (Dept. Ex. #4). The only reference to any gynecological history noted is a statement regarding the patient's fibrocystic breasts. The record contains no statements regarding any complaints of pain during menstruation, painful intercourse or bleeding following intercourse.

Patient A's medical records maintained by her former

gynecologist, Dr. Budzinski, do document a history of similar complaints by the patient. However, Dr. Budzinski testified that Patient A's problems of pain and bleeding during intercourse were resolved in or about 1973, and did not re-occur. Additionally, her complaints of painful menstruation ceased after 1979. (1642-1645). Respondent did not see Dr. Budzinski's medical records for Patient A until after the commencement of disciplinary proceedings.

Respondent also testified that his assistant, Barbara Sibley Mueller, was present during the entire examination and treatment of Patient A. Ms. Mueller testified that she was present when Respondent gave Patient A a breast examination on June 16, 1983 because she recalled that Patient A's son was in the room during the examination. (1350). She also testified that she was present during the pelvic examination. (1392, 1404). She further testified that she remembered nothing unusual about the pelvic examination. (1356-1357). She stated that she never heard Respondent tell Patient A to "have a spasm". (1396). She also stated that she remembered nothing unusual about the breast examination, and that she would remember anything out of the ordinary. (1354, 1422). However, both Patient A and Respondent acknowledge the presence of breast secretions of some sort, and both acknowledge that Respondent made a statement to Patient A regarding "spasms". In addition, Ms. Mueller had no recollection of Patient A's cystic breasts,

even though it was documented in her medical record.

The Hearing Committee gave little credence to Ms. Mueller's testimony. Respondent testified that Ms. Mueller was in the examination room with him for approximately forty-five minutes. (1031-1032). However, Ms. Mueller had numerous duties to perform during the approximately two hours and forty-five minutes which she worked on June 16, 1983. She made twenty-one entries in the billing log, filled out insurance claim forms for patients, and brought patients to the examination rooms. (Resp. Ex. J; 1381, 1406-1413, 1416-1417, 1425-1426). She admitted that she probably did not have a whole lot of time to spend with patients. (1416-1417). The Hearing Committee concluded that it was more likely than not that Ms. Mueller was not in the examination with Respondent and Patient A during the entire examination.

The Hearing Committee further concluded that Respondent's assertions regarding the presence of Patient A's son, and her statements regarding her previous gynecological history were entirely without credibility. The Committee further concluded that Respondent's description of the "examinations" which took place were without credence. Instead, the Committee gave credence to Patient A's testimony as to the nature of the physical and verbal contacts between Respondent and Patient A. The Committee also gave credence to Dr. Tatelbaum's testimony

that there was no indication for giving Patient A a gynecological examination on June 16, 1983, and that Respondent's physical contacts and comments to Patient A served no legitimate purposes.

The Committee found the testimony of Patient A regarding Respondent's comments about orgasms to be somewhat ambiguous. Although Respondent asked the patient to have a "spasm", and asked her whether she had any "spasms", the word "orgasm" was never mentioned. Thus, the Committee concluded that the portion of the Second Specification which alleges "...and made comments about and asked Patient A questions about having orgasms;..." should not be sustained.

The Hearing Committee further concluded that Respondent's conduct with regard to Patient A was both willful and abusive, as defined in Black's Law Dictionary, above. Consequently, the Committee concluded that the Second Specification should be sustained, as modified above.

#### Patient B

Patient B's testimony was also quite candid and forthcoming. She did not vary from her version of the events which took place in Respondent's examination room on multiple occasions during 1988 and 1989. In addition, her testimony was corroborated in part by the testimony of her mother. No motive for fabrication on their part was demonstrated by Respondent. They have nothing to gain from giving false testimony. Again, Respondent's testimony was

self-serving, and not consistent with the evidence. Patient B's testimony can be summarized as follows:

Patient B initially began seeing Respondent as a patient in 1985 when she was thirteen years old. Respondent provided Patient B with general medical care, serving as her family physician. On or about June 30, 1988, Respondent began providing gynecological care to Patient B. At that time, Patient B had an appointment with Respondent at which she asked for birth control pills. Patient B attended this appointment without her mother, who had given her permission to receive the pills. Respondent prescribed the pills and gave the patient a breast examination, but postponed a pelvic examination and Pap test because the patient was menstruating. He made a follow-up appointment with the patient for July 8, 1988.

Patient B returned to Respondent's office on July 8, 1988. She went alone to this appointment. Respondent performed a vaginal examination and Pap test. This was the first pelvic examination which Patient B had ever experienced.

Patient B next visited Respondent's office on July 21, 1988. Patient B made this appointment because she had complaints of weight gain and decreased sex drive. She was not accompanied by her mother. Patient B was gowned and examined by Respondent. No chaperone was present in the room. While Patient B lay on the examination table,

Respondent placed one of his hands on each of her breasts and massaged them. He also rolled the nipples between his fingers. He asked the patient which part of her breasts felt most sensitive. Respondent then examined Patient B's vagina with a speculum. He began to rub her vagina with his finger. He rubbed her clitoris and the inner and outer lips of the vagina. He asked the patient if she could climax, and also asked her which part of her vagina was the most sensitive.

This type of conduct on Respondent's part occurred during subsequent visits as well. On November 15, 1988 the patient had another appointment with Respondent. Patient B came alone to the doctor's office. No chaperone was present in the examination room. No drape was used. Respondent massaged the patient's breasts and rubbed her nipples. He asked her which parts of her breasts were most sensitive. He rubbed the patient's vaginal area and asked her if she could climax. He then smelled her vagina. Respondent told the patient that you could tell a lot by how a vagina smells and that her vagina was very clean. Following this examination, Respondent asked Patient B if she was interested in working for him.

Several appointments were made for Patient B following November 15, 1988, but the patient did not keep them. Patient B's mother testified that sometime in late 1988 her daughter had told her that Respondent smelled her

vagina, but that she thought that her daughter might have misunderstood what had happened.

Patient B next saw Respondent on July 26, 1989, in the emergency room at St. Joseph's Hospital, for the treatment of an injured foot. The patient's mother had called Respondent. Following the treatment in the emergency room, Patient B had a follow-up appointment with Respondent on August 3, 1989. This visit was for the sole purpose of checking the patient's foot. Respondent made an appointment for a check-up for Patient B for August 12, 1989.

Patient B's mother accompanied the patient to the August 12, 1989 office visit. The patient complained of being tired and the Respondent scheduled follow-up appointment for blood work, to check for anemia.

Patient B returned to Respondent's office on August 24, 1989 to have the blood drawn. Respondent called her into the examination room and gave her a paper gown. He left the room. After the patient changed into the gown, Respondent returned to the room. There was no one else present in the room. He ran his fingers through her hair and told her that she was pretty. Respondent took a blood sample. Then, with Patient B on the examining table, Respondent massaged her breasts and rubbed her nipples. He again asked her which part was the most sensitive. He then performed an examination with a speculum and a cervical cautery. Respondent then rubbed Patient B's vagina with his

finger. He was not wearing a glove. He asked the patient if she could climax. She said no, but he continued to stimulate her vagina until the patient had a climax. Respondent smelled the patient's vagina and asked if he could "empty her out again". He fondled the patient's breasts and thighs and asked her if her boyfriend was the "jealous type". He also asked her if they could be more than friends.

Respondent denied that any inappropriate conduct took place during any of Patient B's visits. He claimed that only medically appropriate and standard medical procedures were carried out. He further claimed that there was a chaperone present during each of the patient's examinations, and that the patient's mother was present at each of the gynecological examinations, except the examination which took place on August 24, 1989. The Hearing Committee rejected Respondent's testimony, as well as that of his supporting witnesses.

Respondent's assertion that the patient's mother was present during the various pelvic examinations is inconsistent with the mother's testimony as well as with the documentary evidence. The employment records submitted by the Department regarding Patient B's mother demonstrate that the mother was working during the patient's various office visits. (see, Dept. Exhibits # 18 and 19).

Respondent also presented the testimony of Maria

Strzelczyk, a former employee. Ms. Strzelczyk testified that she was present throughout the entire examination of Patient B on August 24, 1989. She also stated that except for that date, the patient was always accompanied by her mother. She further testified that she remembered the examination because it was unusual for the mother to be absent. She further testified that nothing untoward happened during the course of the examination. However, the record demonstrates that Ms. Strzelczyk was on duty for only six of Patient B's office visits, and that Patient B's mother was not present at any of those visits.

Ms. Strzelczyk also testified that her recollection of being in the examination room on August 24, 1989 was based on the fact that it was a "standard procedure" for a chaperone to be present when female patients were being examined. (1463). Ms. Strzelczyk worked for three hours and fifty-five minutes on August 24, 1989. (1489). It was a busier than average day, in that fourteen patients were seen by Respondent. Eight of the patients were female. Ms. Strzelczyk was responsible for moving patients in and out of the examination rooms, getting patients ready, and entering billing information for each patient. She also had to prepare insurance claim forms for some of the patients. (1489-1491, 1500-1502; Dept. Exhibit #16; Resp. Exhibit D). As a result, the Hearing Committee concluded that Ms. Strzelczyk's testimony was not based on an actual

recollection of the events which occurred during the examination. Therefore, the Committee did not give credence to her testimony.

The Hearing Committee also rejected the testimony of Susanne Ang, RN, another employee of Respondent. Ms. Ang testified that she was present in the examination room during several of the examinations of Patient B in which Respondent allegedly abused the patient. Ms. Ang testified that she was present in the room during the entire examinations, and that nothing untoward happened.

The Hearing Committee further concluded that the preponderance of the evidence demonstrated that Respondent's conduct with regard to Patient B was both willful and abusive, as defined in Black's Law Dictionary, above. Consequently, the Committee concluded that the Sixth, Seventh and Eighth Specifications should be sustained.

#### Moral Unfitness

Respondent is charged with engaging in unprofessional conduct within the meaning of 8 NYCRR 29.1(b)(5) by engaging in conduct in the practice of medicine which evidences moral unfitness to practice the profession. The record clearly established that Respondent repeatedly abused these patients, both physically and verbally, for his own gratification.

Conduct which evidences moral unfitness - can arise either from conduct which violates a trust related to the

practice of the profession or from activity which violates the moral standards of the professional community to which the Respondent belongs. The Committee finds that the Respondent's actions constitute a violation of professional trust. Moreover, a physician is expected to subordinate his or her needs and desires to the best interests of the patients.

Therefore, the Hearing Committee concluded, by a preponderance of the evidence, that Respondent engaged in conduct which evidences moral unfitness to practice medicine in that the facts demonstrate Respondent's violation of his professional trust and the ethical standards of the medical community. Accordingly, the Committee concluded that the First, Third, Fourth and Fifth Specifications should be sustained.

#### RECOMMENDATIONS

The Hearing Committee, pursuant to its Findings of Fact and Conclusions herein recommends that Respondent's license to practice medicine in the State of New York be revoked. This recommendation was reached after due consideration of the full spectrum of available penalties, including suspension, probation, censure and reprimand or the imposition of civil penalties of up to \$10,000 per violation.

Any individual who receives a license to practice medicine is placed into a position of public trust.

Respondent used his position of trust for his own personal gratification, to the detriment of his patients' welfare. His conduct constituted a serious breach of the public trust.

The principal issue in this case is Respondent's moral unfitness to be a physician, rather than his clinical skills. It was the opinion of the Hearing Committee (by a 2-1 vote) that a mere suspension would not instill Respondent with the degree of moral character necessary to be a physician. Thus, the circumstances warrant revocation.

Based upon the foregoing, the Hearing Committee made the following recommendations:

1. That the First through Eighth Specifications, as set forth above, be SUSTAINED, and
2. That Respondent's registration and license to practice medicine in New York State be REVOKED.

DATED: Albany, New York

16 July, 1991  
J

Respectfully submitted,

Albert L. Bartoletti M.D.  
ALBERT L. BARTOLETTI, M.D.

Ann Shamberger  
S. Mouchly Small, M.D.

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

-----X

IN THE MATTER :

OF :

PURENDU DUTTA, M.D. :

-----X

COMMISSIONER'S

RECOMMENDATION

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 March 1, 1990, April 6, 1990, May 30, 1990, May 31, 1990, August 24, 1990, August 30, 1990, August 31, 1990, October 26, 1990, December 14, 1990, December 21, 1990.

Respondent Purnendu Dutta, M.D. appeared by Joel L. Daniels, Esq. The evidence in support of the charges against the Respondent was presented by E. Marta Sachey, 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,

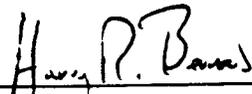
I hereby make the following recommendation to the Board of Regents:

- A. The Findings of Fact and Conclusions of the Committee should be accepted in full;
- B. The Recommendation of the Committee should be accepted; and
- C. 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.

EXHIBIT "C"

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

DATED: Albany, New York  
8/28, 1991

  
\_\_\_\_\_  
Harvey Bernard, M.D.  
New York State Department of Health

**REPORT OF THE  
REGENTS REVIEW COMMITTEE**

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**PURNENDU DUTTA**

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**CALENDAR 1957-58**

**ORDER OF THE DEPUTY COMMISSIONER FOR  
THE PROFESSIONS OF THE STATE OF NEW YORK**

**PURNENDU DUTTA**

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**CALENDAR NO. 12459**



# The University of the State of New York

IN THE MATTER

OF

**PURNENDU DUTTA**  
(Physician)

**DUPLICATE  
ORIGINAL  
VOTE AND ORDER  
NO. 12459**

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Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 12459, and in accordance with the provisions of Title VIII of the Education Law, it was

**VOTED (March 27, 1992):** That, in the matter of PURNENDU DUTTA, respondent, the recommendation of the Regents Review Committee be accepted as follows:

1. The findings of fact of the hearing committee and the recommendation of the Health Commissioner's designee as to those findings of fact be accepted;
2. The following additional finding of fact be accepted:  
21(a) Respondent also felt and squeezed both of Patient A's thighs.  
(T. 29, 190, 191 and 331).
3. The conclusions of the hearing committee and the recommendation of the Health Commissioner's designee as to those conclusions be accepted;
4. Respondent is, by a preponderance of evidence, guilty of the second specification of unprofessional conduct for willfully abusing a patient physically involving respondent engaging in physical contacts of a sexual nature with a patient, as charged in allegations 4(a)(i), 4(a)(iii), and 4(a)(iv), as found by the hearing

committee regarding allegation 4(a)(viii), and as found by the hearing committee and this Regents Review Committee regarding allegation 4(a)(vi), and of unprofessional conduct for willfully abusing a patient verbally involving respondent making verbal comments of a sexual nature with a patient as charged in allegations 4(a)(iv), 4(a)(v), 4(a)(vi), 4(a)(vii) and 4(a)(viii); guilty of the sixth specification of unprofessional conduct for willfully abusing a patient physically involving respondent engaging in physical contacts of a sexual nature with a patient, as charged in allegations 6(a)(i), 6(a)(ii), 6(a)(iii), 6(a)(iv), 6(a)(v), 6(a)(vi), and 6(a)(viii), and of unprofessional conduct for willfully abusing a patient verbally involving respondent making verbal comments of a sexual nature with a patient, as charged in allegations 6(a)(i), 6(a)(iii), 6(a)(vi), and 6(a)(vii); guilty of the seventh specification of unprofessional conduct for willfully abusing a patient physically involving respondent engaging in physical contacts of a sexual nature with a patient, as charged in allegations 6(b)(i), 6(b)(ii), 6(b)(iii), 6(b)(v), and 6(b)(vi), and of unprofessional conduct for willfully abusing a patient verbally involving respondent making verbal comments of a sexual nature with a patient, as charged in allegations 6(b)(ii), 6(b)(iv), and 6(b)(vi); and guilty of the eighth specification of unprofessional conduct for willfully abusing a patient physically involving respondent engaging in physical contacts of a sexual nature with a patient, as charged in allegations 6(c)(i), 6(c)(ii), 6(c)(iii), and 6(c)(iv), and of unprofessional conduct for willfully abusing a patient verbally involving respondent making verbal comments of

a sexual nature with a patient, as charged in allegations 6(c)(ii) and 6(c)(iv); and is guilty of the first, third, fourth, and fifth specifications of unprofessional conduct for moral unfitness involving the same sexual activities for which respondent was found guilty as to the second, sixth, seventh, and eighth specifications; and

5. The recommendation of the hearing committee and the recommendation of the Health Commissioner's designee as to that recommendation be accepted and respondent's license to practice as a physician in the State of New York be revoked upon each specification of which respondent has been found guilty;

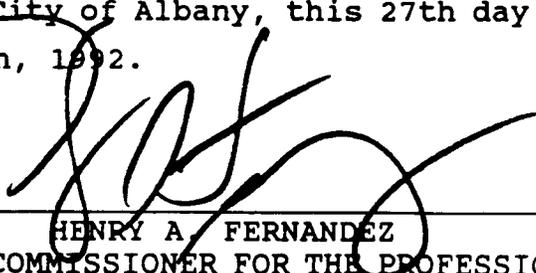
and that the Deputy Commissioner for the Professions be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

**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

**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, Henry A. Fernandez, Deputy Commissioner for the Professions 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, at the City of Albany, this 27th day of March, 1992.

  
HENRY A. FERNANDEZ  
DEPUTY COMMISSIONER FOR THE PROFESSIONS