



# STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

# PUBLIC

May 20, 2003

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Patrick Pitter, M.D.  
487-A Forbell Street  
Brooklyn, New York 11208

Julius Simpson, Esq.  
Figeroux & Associates  
26 Court Street – Suite 709  
Brooklyn, New York 11242

Jean Bresler, Esq.  
NYS Department of Health  
5 Penn Plaza – 6<sup>th</sup> Floor  
New York, New York 10001

### **RE: In the Matter of Patrick Pitter, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-129) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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

Office of Professional Medical Conduct  
New York State Department of Health  
Hedley Park Place  
433 River Street - Fourth Floor  
Troy, New York 12180

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

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

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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

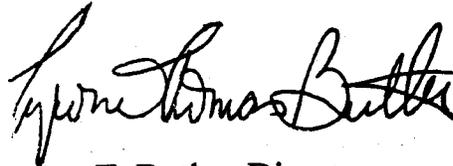
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
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,

A handwritten signature in cursive script, appearing to read "Tyrone T. Butler".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure



Hearing dates: February 7, 2003  
March 14, 2003  
March 20, 2003  
March 21, 2003

Dates of Deliberation: April 18, 2003

Petitioner appeared by: NYS Department of Health  
by: Jean Bresler, Esq. Assistant Counsel

Respondent appeared: Figeroux & Associates  
26 Court Street, Suite 709  
Brooklyn, N.Y. 11242

**WITNESSES**

For the Department: Patient A  
P.S. R.N.  
Richard Bohn Krueger M.D.  
Diane Sixsmith M.D.  
Lauretta Allen RN

For the Respondent: Solange Escobar  
Gregory Oliver  
Patrick Pitter M.D.  
E.C.  
Donald Moore M.D.  
Sherryl Oliver  
Kurtis Harris

**SIGNIFICANT LEGAL RULINGS**

The Committee has considered the entire record in the above captioned matter and hereby renders its decision with regard to the charges of medical misconduct. The Administrative Law Judge issued instructions to the Committee when asked regarding the definitions of medical misconduct as alleged in this proceeding.

With regard to the expert testimony herein, including Respondent's, the Committee was instructed that each witness should be evaluated for possible bias and assessed according to his or her training, experience, credentials, demeanor and credibility.

### FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York State on November 5, 1984, by the issuance of license number 160712 by the New York State Education Department. (Pet. Exh. 3)

2. Respondent's medical office is located at 487-A Forbell Street, Brooklyn, N.Y. 11208.

### PATIENT A

3. Pt. A came to the Respondent's office on October 2, 1999 for evaluation of a breast lump, pain in her breast and discharge from her left breast during a business trip to the U.S. (T.21 - 22)

4. On October 2, 1999, Pt. A spoke with the Respondent's receptionist, who told her that the visit would be \$100.00 and had her fill out some history forms. (T. 27)

5. Pt. A went into the Respondent office where she explained her problem with her breast. He told her to remove her shirt and bra and examined her breast in his office. (T. 28)

6. The Respondent then directed Pt. A to the examination room and told her to remove her pants and underwear, which she did. (T. 30)

7. Pt. A told Respondent she was still menstruating. She informed the Respondent that she had an abnormal Pap smear six months earlier but that it was repeated in July and it was normal. (T. 31, Dept. Ex. 11)

8. The Respondent performed a speculum examination, Pap smear and pelvic examination on Pt. A. (T. 39)

9. After the examination, Pt. A dressed and returned to Respondent's office where he told her that she had nothing wrong with her breasts. He told her that her problem with her breast came from being sexually inactive, her husband was a fool, she was beautiful, had beautiful breasts and a vagina like a virgin. (T. 33) Pt. A told the Respondent that she didn't like the way he was speaking to her and that she had many doctors, none of whom ever spoke to her in that manner. (T. 37) Respondent replied by saying that he couldn't help it because she was so beautiful. (T. 37-38)

10. The Respondent's limited examination of Pt. A on October 2, 1999 was not recorded in her record. (T. 665)

11. On October 4, 1999, the Respondent called Pt. A at 10:03 a.m. and 10:11 a.m. asking Pt. A to return to the office for another Pap smear alleging the first specimen was too bloody and not fixed. (T. 68, 91, 105; Dept. Ex. 15) The Respondent told Pt. A it was important to repeat the Pap smear because she could have cancer. (T. 43, 104-105)

12. Pt. A called Respondent's office and made an appointment for the afternoon of October 5<sup>th</sup>. (T. 44 - 45)

13. On October 5, 1999, the Respondent performed a speculum, pelvic examination and Pap smear on Pt. A. (T. 75, 83)

14. Respondent then inserted his penis into Pt. A's vagina, while she struggled to get away. (T. 50)

15. Pt. A, after dressing, went to the Respondent's office, then to the waiting room.

16. The Respondent's office called for a cab. The Respondent gave Pt. A money in an envelope and accompanied her to the car when it arrived (T. 53, 56)

17. The Respondent telephoned Pt. A on 10/5 at 5:40 p.m., 10/6 at 8:05 p.m. and 11:31 a.m., 7:03 p.m. on 10/7. (Exh. 15)

18. The October 5<sup>th</sup> entry into Pt. A's record does not reflect what occurred on that visit.

19. The Respondent called his attorney about his encounter with Pt. A.

20. On October 9, 1999 Pt. A presented herself to Brookdale Hospital with a chief complaint of sexual assault by the Respondent. An examination was performed, specimens were collected, Pt A was screened for STD, and treatment was provided for infection and pregnancy prevention. The final diagnosis was sexual assault. No unusual behaviors were noted during her examination. (Dept. Ex. 8)

21. Pt. A returned to Brookdale Hospital on October 18, 1999 for follow-up. Pt. A had another speculum and pelvic examination (Dept. Ex. 8) No unusual behavior was noted relative to the examination.

22. The Respondent's medical records of Pt. A for October 2, 5, 1999 were created post facto.

### DOCUMENTATION

28. On September 20, 2000 Respondent submitted signed documents to the Education Department in order to re-register his medical license. (Dept. Exh. p. 15) Respondent checked off "no" to the question of whether any hospital had ever restricted or terminated his training, employment or privileges.

29. On October 13, 1999, Methodist Hospital summarily suspended the Respondent's privileges. A letter dated October 13, 1999 to the Respondent stated "...effective on receipt of this letter, all of your clinical privileges are summarily suspended." (Dept. Exh. 5 p. 5)

29. The Respondent never graduated Columbia University (Dept. Exh. 3) yet in his resumes submitted to Methodist Hospital, application for a residency program at Brookdale Hospital and the Office of Professional Medical Conduct, he indicates that he received a B.S. from Columbia University in 1976. (T. 478; Dept. Exh. 5)

30. The Respondent never received an ECFMG Certificate (Dept. Exh. 4) yet in resumes submitted to Methodist Hospital and to the Office of Professional Medical Conduct, he indicates he did receive the ECFMG Certificate.

### DISCUSSION

The Panel was unanimous in its decision on all the issues presented.

In the case of Patient A, the only issue before the Panel was credibility. The Panel found Patient A to be truthful, her testimony credible and her behavior consistent with a patient assaulted during a physician-patient relationship. (T. 211) Pt. A's embarrassment and anger were justified and proportionate to her allegations. Pt. A testified the Respondent made sexually suggestive remarks to her on her first visit of October 2, 1999. (T. 33) She told him she didn't like what he said and no doctor had ever spoken to her that way. (T. 37, 38) Pt. A testified that the one reason she returned to the Respondent's office to redo the Pap smear was because he had stressed that she might have cancer. (T. 43) The Respondent offered to come to the home she was staying at to do the test. (T. 43) Pt. A's behavior during and after the assault were consistent with a person who had been sexually assaulted. (T. 145) Brookdale Hospital records indicate a diagnosis of sexual assault. (Dept. Exh. 8)

On the other hand, the Respondent's accounting is not credible. The Panel did not accept the Respondent's testimony for the following reasons:

1. Pt. A, a citizen of St. Vincent, came to the Respondent for one visit focused on the disturbing condition of her breast. The Respondent failed to address the condition or indicate a plan of treatment. (T. 212) There was no medical indication for the Respondent to do a Pap smear when Pt. A. had a normal Pap smear three months earlier. (T. 224) Although Respondent's note states that he did not perform a pelvic examination, the documentation indicates that he did. (T. 226; Dept. Exh. 7) and the Respondent records an examination of the adnexal area. (Dept Exh. 7) There was no medical basis for a pelvic examination on October 2nd. On October 5<sup>th</sup> the Respondent repeats the pelvic examination without medical justification. (T. 236; Dept. Exh 7)
2. The Respondent indicates that he examined almost every organ in Pt. A's body. (T. 649, 650) There was no need for such an examination. It is unusual and not believable. (T. 237)
3. On the visit of October 5<sup>th</sup>, the Respondent diagnoses dermatitis, vaginitis, anxiety, depression, insomnia and PID, yet he does not indicate the medical basis for these diagnoses nor a treatment plan for any of his findings. (T. 190 -193, 200, 205, 257) The Respondent lists a diagnosis of "Chafing Ext. Genitalia" however there is no treatment plan or inquiry as to the etiology. (T. 227, 228 Dept. Exh. 7 p. 4)
4. The Respondent telephoned Pt. A a total of six times (10/4/99 - 2 calls; 10/5/99 - 1 call; 10/6/99 - 1 call; 10/7/99 - 2 calls). (Dept. Exh. 15) The Respondent claims that calls on October 4<sup>th</sup> were because he first wanted to get Pt. A back to the office to repeat the Pap smear and then called her four additional times after her second visit to understand why she said "...what kind of girl do you think I am? This is not me?" (T. 574, 630 - 639) It is highly unusual for a physician to call a patient this number of times absent medical necessity. (T. 250)

5. Respondent's testimony regarding his unusual position of standing next to the patient to do a pelvic examination is unrealistic when there was room at the end of the examination table. (T. 541; Dept. Exh. 17)
6. Respondent's records for Pt. A are uncharacteristic of the records of his other patients. (Dept. Exh 7, 16.1 - 16.7) Pt. A's records are written with substantial detail, including details non-medical in nature. (Dept. Exh. 7)
7. The Respondent's note of 10/5/99 indicates that during the pelvic examination "...pt gyrated hips excessively while c/o how she hated exam...." (Dept. Exh. 7 p.5) However, in Pt. A's Hospital record during subsequent pelvic examinations there is no record of any resistant behaviors. (Dept. Exh. 8)
8. Respondent's several calendars that were admitted into evidence are incongruous. (Resp. Exh N.1, O.1, Q, R) The calendar book for the year 1999 - 2000 has the first entry of patient appointments on September 28, 1999. (Resp. Exh. R)

Ms. Escobar, Respondent's medical assistant's recollection of Patient A was incredibly specific without having reviewed her chart from three and one half years ago. (T. 331) The Panel found her testimony biased.

Respondent's additional witness were unable to provide the Panel with relevant information regarding this event.

The charges as to Nurse Practitioner P.S. were not sustained because P.S was not a patient of the Respondent and the allegations, even if true may have occurred during a social relationship and not a physician - patient relationship.

The Panel based their determination on the charges of fraudulent practice and false, inaccurate, misleading application for privileges on the Respondent's testimony and the evidence submitted.

The Panel considered all penalties. The Panel voted to revoke the Respondent's license based on the egregious assault on Pt. A and the repeated behavior of misleading and fraudulent statements over a long period of time.

### **PANEL'S DETERMINATION ON THE CHARGES**

#### **MORAL UNFITNESS**

Paragraphs A1 through A4 – SUSTAINED

Paragraphs B1, B2, - NOT SUSTAINED

#### **WILLFUL PATIENT ABUSE**

Paragraphs A 1 through A4 - SUSTAINED

#### **FRAUDULENT PRACTICE**

Paragraph A1 through A4 - SUSTAINED

Paragraph C - SUSTAINED

Paragraph D – SUSTAINED

Paragraph E - SUSTAINED

Paragraph F - SUSTAINED

Paragraph G - SUSTAINED

**FALSE, INACCURATE OR MISLEADING APPLICATION FOR PRIVILEGES**

Paragraph D - SUSTAINED

Paragraph E - SUSTAINED

Paragraph F -- SUSTAINED

**DETERMINATION OF THE HEARING COMMITTEE AS TO PENALTY**

The Hearing Committee, unanimously, after giving due consideration to all the penalties available have determined that the Respondent's license to practice medicine in the state of New York should be **REVOKED.**

**ORDER**

**IT IS HEREBY ORDERED:**

1. The Respondent's license to practice medicine in the state of New York is **REVOKED**.
2. This ORDER shall be effective upon service on the Respondent or the Respondent's attorney by personal service or registered mail.

**DATED:** Pittsford, New York  
May 13, 2003



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**ROGER OSKVIG, M.D.**  
Chairperson

**LOIS VOYTICKY**  
**A. MAJID ESHGHI M.D.**

# **APPENDIX I**

IN THE MATTER  
OF  
PATRICK A. PITTER, M.D.

AMENDED  
STATEMENT  
OF  
CHARGES

**PATRICK A. PITTER, M.D.**, the Respondent, was authorized to practice medicine in New York State on or about November 5, 1984, by the issuance of license number 160712 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about October 2, 1999, Patient A was treated by the Respondent in his private office in Brooklyn NY. Patient A complained of a lump in her breast with discharge, inflammation and pain in the chest area. On October 2, 1999, Respondent directed patient A to remove her pants and underpants so that he could perform a pap smear. Respondent inserted a speculum into Patient A's vagina and then inserted two fingers into her vagina. On October 4, 1999 Respondent telephoned Patient A and told her that he had to repeat the pap smear. Respondent offered to come to patient A's home and when she told him that he could not he told Patient A that she should take a cab to his office and that he would reimburse her. On October 5th, Respondent again telephoned Patient A regarding the pap smear. On October 5, 1999 Patient A returned to Respondent's private office. Respondent engaged in the following inappropriate conduct, for other than a proper medical purpose:

1. On October 2, 1999 Respondent told patient A that there was



nothing wrong with her breasts and that her problems came from not being sexually active. He told her that her breasts were beautiful and that her husband had to be stupid to abuse her because she had a vagina like a virgin, or words to that affect. When Patient A told Respondent that he shouldn't speak to her in that way he stated: "I couldn't help it, look at your eyes, I like you," or words to that affect.

2. On October 5, 1999, after performing a speculum examination, Respondent inserted his fingers into Patient A's vagina. He then grabbed her legs, and inserted his penis into her vagina. When Patient A struggled with the Respondent and told Respondent to let go of her he stated: "I can't this pussy is too sweet," or words to that affect.
3. Respondent failed to maintain an office record for Patient A in accordance with accepted medical standards and in a manner which accurately reflects his care and treatment of the patient.
4. Created an office record for Patient A which is false and inaccurate and does not legitimately reflect the history obtained, the physical findings and or the care and treatment rendered to the patient by Respondent.

*dropped disagree*

B. P.S., a Nurse Practitioner, worked with the Respondent on a project sponsored by Caribbean -American Health Coalition, . During the months of June July and August 1998, P.S. and the Respondent met weekly with other Board Members of the coalition. Respondent engaged in the following inappropriate conduct:

1. On one occasion , following a Board meeting, P. S. heard

Respondent calling her to come toward the bathroom. When she arrived the door to the bathroom was open and Respondent was calling her by name and pointing to his exposed penis.

2. On several occasions Respondent inappropriately touched her buttocks and breasts and made sexual gestures with his mouth.

*B-10*  
C. On or about September 20, 2000, Respondent filed documents with the New York State Education Department wherein he falsely answered "no" to a question regarding whether any hospital had ever restricted or terminated his training or employment. On or about October 13, 1999, Methodist Hospital had summarily suspended him. Respondent knew that the statement made to the New York State Education Department was false, and he intended to mislead.

*B-10*  
D. In his application for appointment to Methodist Hospital on or about July 1990 Respondent falsely asserted that he was conferred a bachelor of Science in 1976 from Columbia University. Respondent knew that this statement was false and he intended to mislead.

*B-10*  
E. On his curriculum vitae submitted to Methodist Hospital, Respondent falsely asserted that he was granted an ECFMG Certificate (Education Commission for Foreign Medical Graduates) in March 1983. No ECFMG certificate was ever issued to the Respondent. Respondent knew that this statement was false and he intended to mislead

*B-10*  
F. In his application for appointment to Brookdale Hospital dated June 27, 1985, Respondent falsely asserted that he was conferred a bachelor of science in

1976 from Columbia University. Respondent knew that this statement was false and he intended to mislead.

- OC
- G. On his curriculum vitae submitted to The Office of Professional Medical Conduct, Respondent falsely asserted that he was granted an ECFMG Certificate (Education Commission for Foreign Medical Graduates) in March 1983. No ECFMG certificate was ever issued to the Respondent. Respondent knew that this statement was false and he intended to mislead.

**SPECIFICATION OF CHARGES**  
**FIRST THROUGH SECOND SPECIFICATION**  
**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:

1. Paragraph A and its subparagraphs.
2. Paragraph B and its subparagraphs.

**THIRD SPECIFICATION**  
**WILLFUL PATIENT ABUSE**

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

3. Paragraph A and its subparagraphs.

## **FOURTH THROUGH NINTH SPECIFICATIONS**

### **FRAUDULENT PRACTICE**

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

4. Paragraph A and its subparagraphs.
5. Paragraph C.
6. Paragraph D.
7. Paragraph E.
8. Paragraph F.
9. Paragraph G.

## **TENTH THROUGH TWELFTH SPECIFICATION**

### **FALSE, INACCURATE, OR MISLEADING APPLICATION FOR PRIVILEGES**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(14) by violating of section twenty-eight hundred five-k of the Public Health Law, as alleged in the facts of:

10. Paragraph D
11. Paragraph E
12. Paragraph F

DATED: January 30, 2003  
New York, New York

Roy Nemerson by JCB

ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct