



**New York State Board for Professional Medical Conduct**

Corning Tower • Empire State Plaza • Albany, NY 12237 • (518) 474-8357

Barbara A. DeBuono, M.D., M.P.H.  
Commissioner of Health

Charles J. Vacanti, M.D.  
Chair

November 15, 1995

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Clifford Murray, M.D.  
47 Piccadilly Road  
Great Neck, New York 11203

RE: License No. 147724

Dear Dr. Murray:

Effective Date: 11/22/95

Enclosed please find Order #BPMC 95-279 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect upon receipt of this letter or seven (7) days after the date of this letter, whichever is earlier.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order.

Board for Professional Medical Conduct  
New York State Department of Health  
Empire State Plaza  
Tower Building-Room 438  
Albany, New York 12237-0756

Sincerely,

  
Charles Vacanti, M.D.  
Chair  
Board for Professional Medical Conduct

Enclosure

cc: Anthony Z. Scher, Esq.  
Wood & Scher  
The Harwood Building  
Scarsdale, New York 10583

Ann Gayle, Esq.

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

**IN THE MATTER  
OF  
CLIFFORD MURRAY, M.D.**

**CONSENT  
ORDER**  
BPMC #95-279

Upon the application of Clifford Murray, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is

ORDERED, that the application 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 Respondent, upon receipt by Respondent of this order via certified mail, or seven days after mailing of this order by certified mail, whichever is earliest.

SO ORDERED.

DATED: 10 November 1995

Charles J. Vacanti

CHARLES J. VACANTI, M.D.  
Chairperson  
State Board for Professional  
Medical Conduct

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

**IN THE MATTER  
OF  
CLIFFORD MURRAY, M.D.**

**APPLICATION  
FOR  
CONSENT ORDER**

**STATE OF NEW YORK )  
COUNTY OF NASSAU ) ss.:**

**Clifford Murray, M.D., being duly sworn, deposes and says:**

**That on or about September 25, 1981, I was licensed to practice as a physician in the State of New York, having been issued License No. 147724, by the New York State Education Department.**

**My current address is 47 Ficedilly Road, Great Neck, New York 11023, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.**

**I understand that the New York State Board for Professional Medical Conduct has charged me with fifteen specifications of professional misconduct, and, after hearing, appeal to the New York State Administrative Review Board for Professional Medical Conduct, and modification by the Supreme Court of the State of New York, Appellate Division, Third Department, six of said specifications have been sustained, as more fully set forth in Exhibits "A1" (Statement of Charges), "A2" (Hearing Committee Determination and Order), "A3", (Administrative Review Board Determination and Order No. BPMC 83-202) and "A4" (Decision of the Supreme Court, Appellate Division, Third Department), attached hereto and made a part thereof.**

To resolve this matter without further proceedings, I hereby agree to a penalty of a five year suspension of my license to practice medicine in the State of New York, the last three years of which shall be stayed. The ten month and two week period during which my license was actively revoked, pending Appellate Division decision, shall be credited to my two year actual suspension, reducing my prospective suspension to one year, one month and two weeks. I further agree to the penalty of five years probation, the terms of which are enumerated in Exhibit "B". Once the actual suspension of one year, one month and two weeks has been satisfied, the balance of the five year period of probation shall be tolled until and unless I resume my practice of medicine in New York State.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged, charged, or sustained against me. Such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding (regarding penalty); and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding (regarding penalty) and the final determination by the Board pursuant to the provisions of the Public Health Law and the decision of the Appellate Division.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same.

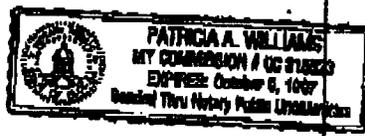
I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to

resolve this matter without the various risks and burdens of a hearing on the merits. I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially.

*Clifford Murray*  
CLIFFORD MURRAY, M.D.  
RESPONDENT

Sworn to before me this  
*6th* day of November, 1995.

*Patricia A. Williams*  
NOTARY PUBLIC



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

IN THE MATTER  
OF  
CLIFFORD MURRAY, M.D.

APPLICATION  
FOR  
CONSENT ORDER

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 11/6/95 *Clifford Murray*  
CLIFFORD MURRAY, M.D.  
Respondent

DATE: 11/6/95 *Anthony Z. Scher*  
ANTHONY Z. SCHER, ESQ.  
Attorney for Respondent

DATE: 11-6-95 *Ann Gayle*  
ANN GAYLE, ESQ.  
Associate Counsel  
Bureau of Professional  
Medical Conduct

DATE: Nov. 7, 1995

Kathleen M. Tanner

**KATHLEEN M. TANNER**  
Director  
Office of Professional Medical  
Conduct

DATE: 10 November 1995

Charles J. Vacanti

**CHARLES J. VACANTI, M.D.**  
Chairperson  
State Board for Professional  
Medical Conduct

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

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IN THE MATTER : STATEMENT  
OF : OF  
CLIFFORD MURRAY, M.D. : CHARGES

-----X

CLIFFORD MURRAY, M.D., the Respondent, was authorized to practice medicine in New York State on September 25, 1981, by the issuance of license number 147724, by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 to December 31, 1994, at 47 Piccadilly Road, Great Neck, N.Y. 11023.

FACTUAL ALLEGATIONS

- A. Respondent treated Patient A, a 21 year old female, at his office, which at the time was located at 3227 Long Beach Road, Oceanside, New York, on or about August 19, 1992. (The identities of Patient A and the other patients are disclosed in the attached Appendix.) Patient A's chief complaints were a cold, a cough, and congestion.

EXHIBIT "A1"

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

- a. While Patient A was seated on the examining table, Respondent placed both of his hands on each of her breasts, and he lifted and felt both of her breasts.
- b. Also while Patient A was seated on the examining table, Respondent instructed Patient A to place her hand around the back of his waist; while in this position, Respondent placed his hand on Patient A's breast and he felt her breast and nipple. Respondent then repeated this entire process on her other breast.
- c. Also while Patient A was seated on the examining table, Respondent stood directly in front of Patient A and pressed his body against her knees.

d. After instructing Patient A to lie down on the examining table, Respondent felt first one breast and then the other.

e. Also while Patient A was lying on the examining table, Respondent felt both of her breasts simultaneously.

f. While Patient A was still lying on the examining table, Respondent slowly rubbed his hands around and below her navel.

2. Respondent engaged in inappropriate conduct as follows:

a. While Patient A was lying on the examining table, Respondent pulled her shorts and underwear away from her body, and he looked at her pubic area.

B. Respondent treated Patient B, a 44 year old female, at his office, which at the time was located at 3227 Long Beach Road, Oceanside, New York, on approximately seven occasions from approximately November 1991 to February 1992. Respondent

was treating Patient B for upper respiratory and sinus conditions.

1. On or about November 13, 20, and 27, 1991, December 3 and 11, 1991, January 13, 1992, and February 25, 1992, in the course of a purported physical examination, but not for a proper medical purpose, Respondent touched Patient B inappropriately as follows:

a. On each of these visits, while Patient B was seated on the examining table, Respondent placed his hand(s) on each of her breasts.

C. Respondent treated Patient C, a 32 year old female, at his office, which at the time was located at 3227 Long Beach Road, Oceanside, New York, on approximately 2 occasions in approximately September 1992. Respondent was testing and treating Patient C for strep throat.

1. On or about September 4, 1992, in the course of a purported physical examination, but not for a proper medical purpose, Respondent touched Patient C inappropriately as follows:

- a. Respondent lifted each of Patient C's breasts.
  - b. While Patient C was sitting on the examining table, Respondent sat on the table directly next to her, pressing his leg against her leg. While in this position, respondent touched Patient C's breast.
  - c. Respondent patted and rubbed Patient C's knee.
2. On or about September 8, 1992, in the course of a purported physical examination, but not for a proper medical purpose, Respondent touched Patient C inappropriately as follows:
  - a. After instructing Patient C to remove her shirt and bra, Respondent touched Patient C's breast.
- D. Respondent treated Patient D, an 18 year old female, at his office, which at the time was located at 3227 Long Beach Road, Oceanside, New York, on approximately 3 occasions in approximately December 1991 and January 1992. Patient D's

chief complaints were a sore throat and that she was experiencing difficulty in breathing.

1. On or about December 2 and 7, 1991, while Patient D was sitting on the examining table with her breasts exposed, Respondent sat on the examining table next to Patient D ~~and~~ ~~reached~~ ~~across the front of her body~~ and felt her armpit. During this procedure, Respondent ~~repeatedly~~ instructed Patient D to relax her arm until her hand rested on his thigh near his crotch. He then repeated this entire procedure on her other side.

← Amended  
← at  
← hearing  
A.H.

2. On or about December 2, ~~1991~~, 1991, while Patient D was lying down on the examining table, Respondent inappropriately touched Patient D's breasts.

3. On or about December 2, 1991, while Patient D was lying down on the examining table, Respondent pulled the elastic waistband of Patient D's pants and underwear away from her body and he looked down her underwear at her pubic area.

E. Respondent treated Patient E, a 20 year old female, at his office, which at the time was located at 3227 Long Beach Road, Oceanside, New York, on or about September 30, 1992. Her chief complaint was lower back pain.

1. After standing in front of Patient E and staring at her bare breasts, and then instructing her to lie on the examining table and to pull her pants down below her hips, Respondent pulled Patient E's underwear down slightly and looked at her pubic area.

#### SPECIFICATION OF CHARGES

#### FIRST THROUGH FIFTH SPECIFICATIONS

#### MORAL UNFITNESS

Respondent is charged with conduct in the practice of medicine which evidences moral unfitness to practice medicine, under N.Y. Educ. Law Section 6530(20) (McKinney Supp. 1993), in that Petitioner charges:

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

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

**SIXTH THROUGH TENTH SPECIFICATIONS**

**PRACTICING FRAUDULENTLY**

Respondent is charged with practicing the profession fraudulently, under N.Y. Educ. Law Section 6530(2) (McKinney Supp. 1993), in that Petitioner charges:

6. The facts contained in paragraphs A., A.1., A.1.a.-f. and/or A.2. and/or A.2.a.
7. The facts contained in paragraphs B., B.1. and/or B.1.a.
8. The facts contained in paragraphs C., C.1., C.1.a.-c. and/or C.2. and/or C.2.a.
9. The facts contained in paragraphs D., D.1., 2. and/or 3.

10. The facts contained in paragraphs E. and/or E.1.

**ELEVENTH THROUGH FIFTEENTH SPECIFICATIONS**

**WILLFULLY HARASSING, ABUSING OR INTIMIDATING PATIENTS**

Respondent is charged with willfully harassing, abusing or intimidating patients either physically or verbally, under N.Y. Educ. Law Section 6530(31) (McKinney Supp. 1993), in that Petitioner charges:

11. The facts contained in paragraphs A., A.1., A.1.a.-f. and/or A.2. and/or A.2.a.
12. The facts contained in paragraphs B., B.1. and/or B.1.a.
13. The facts contained in paragraphs C., C.1., C.1.a.-c. and/or C.2. and/or C.2.a.
14. The facts contained in paragraphs D., D.1., 2. and/or 3.
15. The facts contained in paragraphs E. and/or E.1.

DATED: New York, New York

AUGUST 2, 1993

*By Name For:*

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CHRIS STERN HYMAN  
Counsel  
Bureau of Professional Medical  
Conduct

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

-----X  
IN THE MATTER : HEARING COMMITTEE

OF : DETERMINATION

CLIFFORD D. MURRAY, M.D. : AND ORDER  
-----X

Margaret H. McAloon, M.D., Chairperson, Zoraida Navarro, M.D., and Kenneth Kowald, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230(10)(e) and 230(12) of the Public Health Law. Stephen Bernas, Esq., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

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

SUMMARY OF THE PROCEEDINGS

Notice of Hearing dated:	July 16, 1993
Statement of Charges dated:	August 2, 1993
Hearing Dates:	Aug. 10, Sept. 14, Oct. 14, 18 and 25, 1993
Panel Member Absence:	Dr. Zoraida Navarro was not present at the Sept. 14, 1993 session. See her affirmation of Nov. 11, 1993, hereto attached as Appendix A.

EXHIBIT "A2"

Deliberation Dates: Oct. 25, Nov. 11, 1993

Place of Hearing: NYS Department of Health  
5 Penn Plaza  
New York, New York

Petitioner Appeared By: Peter J. Millock, Esq.  
General Counsel  
NYS Department of Health  
BY: Ann Hroncich, Esq.

Respondent Appeared By: Ronald Minkoff, Esq.

#### **STATEMENT OF CHARGES**

The Statement of Charges, as amended, has been marked as Petitioner's Exhibit 1 and hereto attached as Appendix B.

#### **CREDIBILITY OF WITNESS**

##### **Witnesses for the Petitioner**

Patient A was a credible witness, reasonably articulate in her testimony and in stating her concerns about her physical examination. She became upset during Respondent's physical examination of her and, although she did not say anything at that time to the Respondent, she immediately discussed her concerns with her husband. This placed additional credibility on her testimony.

Her possible suit against the Respondent did not detract from her credibility.

Patient B was bright, educated, mature and overall a credible witness. She has received regular medical care from a number of providers and is knowledgeable about the normal conduct of such examinations. However, she had seven separate examinations by the Respondent, none of which she initially felt were improper until she learned of allegations of other improper conduct against the Respondent. She was measured and noninflammatory in her testimony which gave her testimony credibility, but because she had not been concerned about her examinations by Respondent at the time that they occurred, her recollection of the events might not be completely reliable. The Hearing Committee accepted her testimony that she had multiple breast examinations from the Respondent, but the Committee was not sure that the exact same examination occurred on each of her visits to the Respondent. While the Hearing Committee was somewhat concerned about her pending malpractice suit against the Respondent, it accepted her testimony, especially since it corroborated the testimony of other witnesses about the Respondent's pattern of behavior.

Patient C was a credible witness who was able to testify in good detail about her examination by the Respondent. During the course of the examination she felt that something was wrong and quickly reported the incident. She has nothing to gain from her testimony.

Patient D was a credible witness who recounted her examination by the Respondent as best as she remembered it. Her emotional response to the event was appropriate and supported her testimony. Like Patient C, she received no obvious gain from testifying at this hearing.

Patient E was very credible in her testimony, honestly recounting her remembrances of the events that transpired during her visit with the Respondent. Her negative reaction to the examination was immediate and was noted and commented on by the Respondent.

#### Witnesses for the Respondent

Clifford Murray, M.D.'s testimony was characterized by selective recollection and recall of the patients, e.g., incompletely recalling Patient D, yet remembering the different sizes of her breasts (T. 766) and not remembering Patient A at all yet testifying to statements made by the patient not recorded in her chart or given in her testimony (T. 588); giving vague testimony about the dates of his various employments (T, 666-670); and giving testimony inconsistent with his interview with Mr. Albert Baldassarri (T. 563). The Hearing Committee concluded that his repeated admission of poor record keeping was a tactic used in his defense (T. 562). The Hearing Committee did not accept the Respondent's testimony that he is ignorant of and does not concern himself with the specifics of patient fees especially as they

pertain to the documentation of the extent of his examinations (T. 594-596, 645-649). He exhibited little concern for the feelings of his female patients and no remorse for the consequences of his actions on them.

Howard Kolodny, M.D., a Board Certified Internist and Endocrinologist with experience in the education and supervision of medical students and residents, is recognized as a credible expert witness. However, the Hearing Committee notes that his practice is primarily a consultative one limited to endocrinology and internal medicine and he does not have experience in urgent care or emergency medicine. Therefore, he was not considered an expert in the areas relating to the extent of physical evaluations and delivery of care in those settings.

#### FINDING OF FACT

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, has been considered and rejected in favor of cited evidence.

1. Clifford Murray, M.D., the Respondent, was authorized to practice medicine in New York State on September 25, 1981, by the issuance of license number 147724, by the New York State

Education Department. (Ex. 2)

2. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 to December 31, 1994, at 47 Piccadilly Road, Great Neck, New York 11023. (Ex. 2)

PATIENT A

3. On August 19, 1992, Patient A, a 22 year old female presented with a cold for two weeks with a cough productive of green sputum. She was 5 weeks postpartum but not breast feeding the baby. (Ex. 3, T. 30-31, 64) She had no breast discharge nor any symptoms referable to her breast. (T. 58, 87, 106)
4. The Respondent testified that he had no recollection of this patient or the examination that he performed on her. (T. 552, 586)
5. Patient A was asked to remove her shirt and bra which she did. (T. 33) She was not provided with an examination gown. (T. 33) She remained with her breasts exposed and her shirt and bra off for the remainder of her encounter with Respondent. (T. 49)

6. A gown was not provided to any patient unless she was having a gynecologic examination or a chest x-ray or she specifically asked for one. (T. 560, 580)
7. The Respondent testified that when he performed a lung, heart or breast examination, his usual procedure was to ask the patient to raise her shirt in the back and then in the front while actually examining those areas. (T. 566) Her breasts would be exposed at this time. (T. 567)
8. According to her medical record the Respondent's physical examination of Patient A included a HEENT and lung examination. (Ex. 3)
9. The patient also had her anterior chest listened to with a stethoscope and the Respondent touched her breasts repeatedly. (T. 69) These were not recorded in her medical record. (Ex. 3)
10. During the course of the examination the Respondent examined the patient with a stethoscope which he placed on her chest and under each of her breasts, (T. 33) in the process covering her whole breast on the opposite side with his hand. (T. 34, 76, 70) He also held both her breasts when he was not holding the stethoscope. (T 434-45, 71)

11. He examined her armpits, in the process asking her to place her arm around his waist, repeating the process with her other arm while touching both the side and then the entire breast in a soft massaging manner. (T. 36-40)
12. He also had placed both of his cupped hands on both of her breasts at the same time and touched them in a soft circular manner for a period of 5 to 7 seconds. (T. 41-42, 76)
13. During his examination, while the patient was sitting on the table, the Respondent stood very close to the patient with his body touching her knees while he was touching her breasts. (T. 78)
14. He then asked Patient A to lie down and again he touched both of her breasts with both of his hands in a soft circular motion. (T. 45, 107) He also squeezed each of her breasts simultaneously, using both of his hands. (T. 43-44) The Respondent also felt each of her breasts individually with his hand softly, without pressing. (T. 45-46)
15. The Respondent then touched her abdomen with both of his hands simultaneously, using a circular motion. (T. 47)

16. The Respondent then raised up Patient A's shorts and underwear and looked at her pubic area. (T. 48-49)
17. During the course of the examination the patient felt upset and "scared" but did not say anything. (T. 77) She continued to feel "horrible" after arriving home that night. (T. 108) The examination that she just had received was unlike any breast examination that she had experienced before. (T. 461)
18. Upon arriving home after her examination Patient A immediately informed her husband and her aunt of her experience with the Respondent. (T. 50)
19. The Respondent testified that a complete examination, including an examination of the breasts, was indicated for this patient because she had evidence of a possible infection, i.e., hypothermia and bradycardia (T. 588, 627) which could have been caused by an infection of the breast (mastitis) (T. 589) or uterus (endometritis). (T. 592)
20. In the absence of any symptoms it is unlikely for Patient A to have had mastitis. (T. 942)
21. The Respondent stated that he needed to inspect her suprapubic areas because of his concern over possible endometritis (T.

592); however, he did not do a gynecologic examination which would be necessary to evaluate the uterus. (Ex. 3)

22. Touching of both breasts simultaneously with the patient either sitting or lying is not part of a proper breast examination. (T. 936-937)
23. Leaving a patient with her breasts exposed during an entire physical examination is not proper medical practice. (T. 882-883)
24. The Respondent did not perform the above portions of Patient A's purported medical examination for proper medical purposes. There was no clinical evidence of any medical basis to support the manner in which the Respondent touched Patient A's abdomen and breasts.

#### PATIENT B

25. Patient B presented with loss of voice, severe congestion, sinus, head and upper respiratory complaints on November 13, 1991 (T. 228), and with similar symptoms on other occasions during the remainder of 1991. (Ex. 4, T. 228)
26. The Respondent, on the first visit on November 13, 1991, touched her breasts using his full hands and fingers and

employing pressure of varied degrees. (T. 233, 240-241)

27. Patient B expressed her discomfort to the Respondent immediately. (T. 242-244)
28. On the visit of November 20, 1991 the Respondent again touched Patient B's breast in a similar manner to that of November 13. (T. 250-253) This was done again on November 27, 1991 at which time she again told the Respondent of her discomfort during the procedure. (T. 255-256) Again on December 3, 1991 and December 11, 1991 the Respondent touched her breasts. (T. 259-261)
29. On December 11, 1991 Patient B also had a gynecologic examination. (Ex. 4, T. 261)
30. On January 13, 1992 Patient B against presented for a gynologic evaluation and again the Respondent touched her breasts in a similar manner. (T. 265-266)
31. On February 25, 1992 Patient B presented for her last visit to the Respondent with eye irritation one day following the removal of a cervical polyp and a D&C. (Ex. 4, T. 269) The Respondent wanted to examine her breasts and she questioned the Respondent about this. The Respondent became angry and told her he wanted to check her lymph glands. The same

touching of her breasts by the Respondent was again done. (T. 269-270)

32. Patient B began to be concerned about these procedures on the 4th or 5th visit. (T. 280) Her assessment of these purported breast examinations, as contrasted to those performed by her gynecologist is that the Respondent's examination "felt like it was going on forever. It just lingered and lingered." T. 287)
33. On multiple occasions the Respondent touched Patient B's breasts for non medical reasons.

#### PATIENT C

34. On September 4, 1993, Patient C, a 32 year old female, presented for a reculture of her throat following a previous strep throat. (T. 155-159, Ex. 5 p. 4)
35. During the course of that visit patient was instructed by the Respondent to remove her shirt and bra. Respondent then held Patient's C breasts in his hands for 2-3 minutes. (T. 160, 163)
36. Respondent instructed patient to return to see him and no other physician in the Ocean Medical Care Center. (T. 172)

37. On September 8, 1992 Patient C returned to the Center to pick up a prescription for her still positive strep throat. Respondent against requested to examine Patient C and after Patient C lifted her shirt and bra the Respondent touched her breasts in a similar manner. (T. 183)
38. On these two occasions the Respondent touched Patient C's breasts for non medical reasons.

PATIENT D

39. Patient D saw the Respondent on three occasions in December, 1991 and January, 1992. (Ex. 6)
40. Patient D presented with a sore throat and difficulty in breathing on December 2, 1991 and December 7, 1991. (Ex. 6)
41. On December 2, 1991 the Respondent touched Patient D's breasts using both hands at the same time while she was lying down. (T. 412)
42. On December 2, 1991 Respondent also lift up Patient D's pants and underwear and looked at her pubic area. (T. 415-416)
43. On December 2 and December 7, 1991 the Respondent touched Patient D's axillary area causing her hands to come to rest on

the Respondent's thigh near his crotch. (T. 438, 461-462, 417-424)

44. The touching of Patient D's breasts by Respondent and his looking at her pubic area were done for non medical reasons.

#### PATIENT E

45. Patient E is a 20 year old female who on September 30, 1992 was examined by Respondent after she had just passed a kidney stone. (Ex. 7)
46. During the course of the examination Patient E's breasts were exposed and the Respondent was standing in front of her looking at her breasts. (T. 116-117)
47. Patient E was instructed to lie down by the Respondent. After examining her abdomen, Respondent proceeded to lift Patient E's pants and underwear and looked at her pubic area. (T. 119-120)
48. Patient E expressed her discomfort immediately to the Respondent. The Respondent attempted to justify his procedures to Patient E and her mother. (T. 120-125)

49. The Respondent's looking at Patient E's pubic area and his prolonged staring at her breasts were done for non medical reasons.

### CONCLUSIONS

The Hearing Committee rejects the Respondent's defense that in all these cases he performed proper medical examinations that were misunderstood by the patient. Rather, we find that the Respondent repeatedly performed unjustified, inappropriate procedures on his patients for his own purposes. He used his authority as a physician to intimidate his patients into unnecessary examinations and harassed and intimidated them when they questioned him about his techniques. The consistent testimony of the patients established the Respondent's pattern of inappropriate practices. In the case of all 5 patients who testified at this hearing, very little if any of their testimony was refuted on cross examination. The Respondent's testimony, on the other hand, was inconsistent with selective recall and retrospective justification of his actions. On some occasions, he used the lack of any recording of a breast examination as evidence that he did not touch some patients' breasts. (Patient B) On other occasions, the lack of any recording of an admitted breast exam was explained as poor record-keeping. (Patients A, B, D, E) Accordingly, the Hearing Committee comes to the following conclusions:

**FIRST:** Respondent engaged in professional misconduct by reason of conduct which evidences moral unfitness to practice medicine within the meaning of N.Y. Education Law Section 6530(20) (McKinney Supp. 1993), as set forth in Findings of Fact Nos. 3, 5, 9 through 14, 16, 17, 19 through 26, 28 and 30 through 49.

**SECOND:** Respondent engaged in professional misconduct by reason of practicing medicine fraudulently within the meaning of N.Y. Education Law Section 6530(2) (McKinney Supp. 1993), as set forth in Findings of Fact Nos. 3, 5, 9 through 14, 16, 17, 19 through 26, 28, and 30 through 49.

**THIRD:** Respondent engaged in professional misconduct by reason of willfully harassing, abusing or intimidating patients, physically or verbally, within the meaning of N.Y. Education Law Section 6530 (31) (McKinney Supp. 1993), as set forth in Findings of Fact Nos. 10 through 14, 16 through 18, 22 through 26, 28, and 30 through 49.

#### **DETERMINATION AND ORDER**

The Hearing Committee determines and orders that Respondent's license to practice medicine be suspended for five years. The suspension shall be stayed during the last three years during which time he will be permitted to practice medicine under the

supervision of a physician to be approved in advance by the Office of Professional Medical Conduct, with the further stipulation that there always be a female present during Respondent's examination of any female patient. Any expenses incurred in connection with these restrictions are to be borne by Respondent.

The Hearing Committee considered revoking Respondent's license, but the Panel wanted to provide Respondent with the opportunity for rehabilitation. However, true rehabilitation in these circumstances can be difficult to achieve. Therefore, a prolonged period of supervision upon the Respondent re-entering the practice of medicine is necessary to ensure the public safety.

  
Margaret H. McAloon, M.D. 12/10/93  
Chairperson

Zoraida Novarro, M.D.  
Kenneth Kowald

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

IN THE MATTER  
OF  
CLIFFORD MURRAY, M.D.

ADMINISTRATIVE  
REVIEW BOARD  
DETERMINATION  
AND ORDER  
NO. BPMC 93-202

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, MARYCLAIRE B. SHERWIN, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART M.D.** held deliberations on March 4, 1994<sup>1</sup> and April 5, 1994<sup>2</sup> to review the Professional Medical Conduct Hearing Committee's December 14, 1993 determination finding Dr. Clifford Murray guilty of professional misconduct. Both Dr. Murray (Respondent) and the Office of Professional Medical Conduct (Petitioner) requested the review through Notices which the Review Board received on December 24, 1993 and December 30, 1993. James F. Horan served as Administrative Officer to the Review Board. Anne Hroncich, Esq. submitted a brief for the Petitioner on January 26, 1994 and a Reply Brief on February 7, 1994. Ronald C. Minkoff, Esq. submitted a brief on behalf of the Respondent on January 31, 1994 and a Reply Brief on February 2, 1994. Mr. Minkoff submitted additional argument addressing one of the issues in his brief on March 30, 1994, to which Ms. Hroncich replied by a letter dated April 1, 1994.

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<sup>1</sup> Drs. Price, Sinnott, and Stewart participated in the March 4, 1994 deliberations by telephone.

<sup>2</sup> Drs. Sinnott and Stewart participated in the April 5, 1994 deliberation by telephone.

EXHIBIT "A3"

## SCOPE OF REVIEW

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL §230-a.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall be based upon majority concurrence of the Review Board.

## HEARING COMMITTEE DETERMINATION

The Petitioner charged Dr. Murray with 1) moral unfitness in the practice of medicine, 2) practicing the profession fraudulently and 3) willfully harassing, abusing or intimidating patients. The charges alleged that the Respondent, during the course of purported medical examinations, had engaged in inappropriate conduct and had inappropriately touched five patients. This Determination will refer to the five women as Patients A through E. The Respondent contended that he had performed proper medical examinations that were misunderstood by the patients.

The Hearing Committee found the Respondent was guilty of moral unfitness in the practice of medicine arising from his purported examinations of Patients A through E, of fraud in the practice of medicine arising from his purported examinations of Patient A through E, and found the Respondent's guilty of willfully harassing, abusing or intimidating a patient as a result of his purported examinations of Patients A through E.

The Committee found that during purported medical examinations, the Respondent had touched Patient A's breast and abdomen in an improper manner, that he had touched Patient B's breast on multiple occasions for non-medical reasons, that the Respondent had touched Patient C's breasts for non-medical reasons, that the Respondent had touched Patient D's breasts and stared at her pubic area for non-medical reasons, and had stared at Patient E's breasts and pubic area for a prolonged time period for no medical reason. The Hearing Committee rejected the Respondent's defense that he performed proper medical examinations and found that the Respondent's testimony was inconsistent and marked with selective recall and retrospective justification of his actions. The Committee found that the Respondent had performed inappropriate, unjustified procedures on his patients for his own purposes.

The Committee voted to suspend the Respondent's license to practice medicine for five years, with the last three years stayed, for an actual suspension of two years. The Committee voted that for three years following the actual suspension, the Respondent would be allowed to practice under the supervision of a physician approved by the Office of Professional Medical Conduct, and the Committee voted further to require that during this period, a female must always be present during the Respondent's examination of a female patient.

The Committee noted that they had considered revoking the Respondent's license, but had instead provided the Respondent an opportunity for rehabilitation. The Committee stated,

that since the rehabilitation could be difficult to achieve in the circumstances in this case, a prolonged period of supervision was necessary to ensure the public safety.

### **REQUESTS FOR REVIEW**

The Petitioner has asked that the Review Board overturn the Hearing Committee's penalty, because a penalty of suspension and probation is not appropriate in a case in which the Respondent has been found guilty of sexually abusing five patients. The Petitioner contends that the Respondent's conduct warrants revocation as a punishment for the Respondent's misconduct and that revocation is necessary to protect the public adequately from the Respondent.

The Respondent's brief raises nine issues:

1. The panel's findings are not supported by substantial evidence.
2. The Office of Professional Medical Conduct's failure to present any expert testimony requires dismissal of the charges.
3. The Office of Professional Medical Conduct's refusal to produce to Dr. Murray the patients' original complaints to the Department of Health deprived Dr. Murray of due process.
4. Dr. Murray should have been granted a separate hearing on each patient's allegations.
5. Dr. Murray should have been permitted to call Deborah Abruzzi as a witness.
6. Dr. Murray was not given adequate notice of the charges against him.
7. NY Education Law § § 6530(11) and 6530(20) are unconstitutionally vague.
8. The office of Professional Medical Conduct improperly breached the confidentiality of the proceedings.
9. Dr. Murray was improperly denied the opportunity to be heard on the issue of penalty.

The Respondent asks that the Review Board reverse the Hearing Committee's Determination against Dr. Murray. In the alternative, the Respondent asks that the Review Board vacate the penalty and remand the case to the Hearing Committee for a new hearing on the penalty issues.

In his March 30, 1994 submission, the Respondent asked to submit additional information to the Review Board on his issue #3, concerning release of a complaint by a witness who testifies at a hearing.

#### REVIEW BOARD DETERMINATION

The Review Board has considered the entire record below and the briefs which counsel have submitted.

The Review Board finds that the Respondent's issues #3 through #8 are legal or procedural matters, which are beyond our scope of review and which should be raised in a different forum. We find further that the issue raised in the Respondent's March 30, 1994 submission to the Review Board is a legal issue which is beyond our scope of review and which should be raised in a different forum.

The Review Board votes unanimously to sustain the Hearing Committee's Determination finding Dr. Murray guilty of moral unfitness in the practice of medicine, fraud in the practice of medicine and willfully abusing, harassing, and/or intimidating patients. The Determination is consistent with the Hearing Committee's findings that the Respondent inappropriately touched or stared at five patients for non-medical reasons during purported medical examinations.

The Review Board finds that the Respondent had adequate opportunity to address the issue of penalty at the hearing. There are not separate hearings in professional medical conduct proceedings to first determine guilt and then to address penalty. The Review Board finds no reason, therefore, to remand this matter for further hearings.

The Review Board has considered the Hearing Committee's penalty in light of the misconduct which the Hearing Committee determined to have occurred. The Review Board votes unanimously to overturn the Hearing Committee's penalty of suspension, supervision and monitoring because that penalty is inconsistent with the Hearing Committee's findings concerning the Respondent's inappropriate touching and/or other conduct toward five patients and because the penalty is inappropriate. The Review Board votes unanimously to revoke the Respondent's license to practice medicine in New York State.

The Hearing Committee stated that they fashioned their penalty to offer the Respondent an opportunity at rehabilitation. The Review Board finds that this penalty is not consistent with the Hearing Committee's findings in this case. The Hearing Committee made no findings the Respondent was capable of rehabilitation or a candidate for rehabilitation. We find no evidence in the Hearing Committee's findings to indicate that the Respondent is a candidate for rehabilitation. The Respondent denied that he had done anything wrong in examining the five patients and asserted that his conduct constituted proper medical examination. Further, the Committee found that the Respondent demonstrated no remorse for his actions and demonstrated no concern for his patients' feelings.

The Hearing Committee's penalty is not appropriate to protect the public. The Respondent has exhibited a pattern of conduct that demonstrates he is morally unfit to practice medicine, yet the Hearing Committee's penalty would allow the Respondent to return to practice

automatically after the actual suspension. The Board finds further, that the penalty would be insufficient to protect the public, because the penalty would rely upon a female employee being present in the examination room to assure that Dr. Murray would not act inappropriately toward other patients. The Review Board does not believe that a female monitor, who would be paid by Dr. Murray and whose continued employment would have to depend upon Dr. Murray remaining in practice, would be a sufficient protection for the public.

The Review Board believes the revocation is the appropriate penalty in this case to protect the public and to penalize the Respondent for his misconduct towards Patients A through E.

ORDER

NOW, based upon this Determination, the Review Board issues the following  
**ORDER:**

1. The Review Board sustains the Hearing Committee's December 14, 1993 determination finding Clifford Murray, M.D. guilty of professional misconduct.
  
2. The Review Board overrules the Hearing Committee's penalty of actual and stayed suspension, supervision and monitoring for the reasons which we state in the Determination.
  
3. Dr. Clifford Murray's license to practice medicine in New York State is **revoked**.

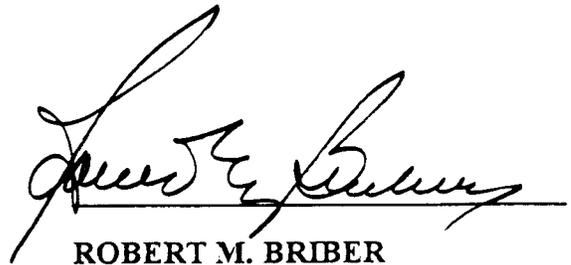
**ROBERT M. BRIBER  
MARYCLAIRE B. SHERWIN  
WINSTON S. PRICE, M.D.  
EDWARD C. SINNOTT, M.D.  
WILLIAM A. STEWART, M.D.**

IN THE MATTER OF CLIFFORD MURRAY, M.D.

ROBERT M. BRIBER, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Murray.

DATED: Albany, New York

May 16, 1994



ROBERT M. BRIBER

IN THE MATTER OF CLIFFORD MURRAY, M.D.

WINSTON S. PRICE, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Murray.

DATED: Brooklyn, New York  
\_\_\_\_\_, 1994

  
WINSTON S. PRICE

IN THE MATTER OF CLIFFORD MURRAY, M.D.

MARYCLAIRE B. SHERWIN, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Murray.

DATED: Malone, New York

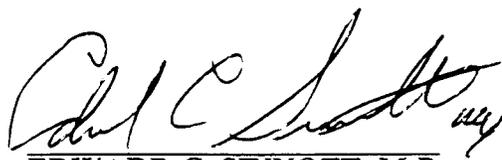
5/16, 1994

*Maryclaire B. Sherwin*  
MARYCLAIRE B. SHERWIN

IN THE MATTER OF CLIFFORD MURRAY, M.D.

EDWARD C. SINNOTT, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Murray.

DATED: Roslyn, New York  
May 13, 1994

  
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF CLIFFORD MURRAY, M.D.

WILLIAM A. STEWART, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Murray.

DATED: Syracuse, New York  
*16 May*, 1994

*William A. Stewart*  
WILLIAM A. STEWART

In the Matter of Clifford D.  
MURRAY, Petitioner,

v.

Mark CHASSIN, as Commissioner of the  
Department of Health of the State of  
New York, et al., Respondents.

Supreme Court, Appellate Division,  
Third Department.

March 16, 1995.

Physician sought review of penalty imposed by Administrative Review Board for Professional Medical Conduct. The Supreme Court, Appellate Division, Yesawich, J., held that: (1) evidence did not support finding of misconduct with respect to three female patients, but (2) evidence supported finding of inappropriate conduct by physician in examining two other female patients.

Confirmed as modified and remitted.

1. Constitutional Law ⇨287.2(5)

Physicians and Surgeons ⇨11.3(4)

Physician was not deprived of due process when administrative law judge did not order production of prior written complaints filed by patients who testified against him at hearing on charge of professional misconduct where he was able to adequately probe the credibility of the witnesses. U.S.C.A. Const. Amend. 14.

2. Physicians and Surgeons ⇨11.3(3)

Findings of misconduct of physician with respect to examination of female patient were not supported in view of testimony of physician and his expert that the examinations were medically warranted given the complaints and the symptoms, in the absence of expert testimony to the contrary.

3. Physicians and Surgeons ⇨11.2

Finding that examinations performed on female patients by physician were improper was not supported by fact that one patient became upset when physician looked at her bare breasts for three seconds while listening to her heart with a stethoscope and at her

suprapubic region for similar amount of time after she complained of abdominal pain and stated that she had recently passed a kidney stone.

4. Physicians and Surgeons ⇨11.2

Pertinent question with respect to charge of professional misconduct by physician was not whether his physical touching of female patients was inconsistent with correct examination technique but whether it was in fact done for an inappropriate reason.

5. Physicians and Surgeons ⇨11.3(3)

Finding of professional misconduct by physician in examination of patients was supported by evidence that he subjected one patient to numerous unnecessary breast examinations and that he touched second patient's breasts in manner which was without medical basis.

6. Physicians and Surgeons ⇨11.3(4)

Administrative Review Board for Professional Medical Conduct may impose more severe penalty than originally recommended by hearing committee.

7. Physicians and Surgeons ⇨11.3(4)

In fashioning appropriate penalty for physician's misconduct, Administrative Review Board for Professional Medical Conduct should take into account whether rehabilitation may be possible and should consider evidence of physician's subsequent conduct bearing on the issue.

Meyer, Suozzi, English & Klein (Joseph A. Suozzi, of counsel), Mineola and Beldock, Levine & Hoffman, New York City, for petitioner.

Dennis C. Vacco, Atty. Gen. (Barbara K. Hathaway, of counsel), New York City, for respondents.

Before MIKOLL, J.P., and CREW,  
WHITE, CASEY and YESAWICH, JJ.

YESAWICH, Justice.

Proceeding pursuant to CPLR article 78 (initiated in this court pursuant to Public Health Law § 230-c [5]) to review a determination of respondent Administrative Re-

EXHIBIT "A4"

view Board for Professional Medical Conduct which revoked petitioner's license to practice medicine in New York.

In August 1993, respondent State Board for Professional Medical Conduct (hereinafter the Board) charged petitioner with 15 specifications of professional misconduct, including charges of sexual abuse and harassment, fraudulent practice and moral unfitness; the charges stem from examinations he conducted of five patients during 1991 and 1992. A hearing was held before a Hearing Committee of the Board (hereinafter the Committee), which sustained all of the charges and ordered petitioner's license suspended for five years, with the last three years stayed, during which time petitioner would be permitted to practice under certain conditions designed to minimize the risk of further misconduct. On appeal, respondent Administrative Review Board for Professional Medical Conduct (hereinafter the ARB) upheld the Committee's determination but, at the urging of the Office of Professional Medical Conduct (hereinafter the OPMC), overruled the penalty imposed by the Committee and revoked petitioner's license. Petitioner then commenced this CPLR article 78 proceeding seeking annulment of the ARB's determination.

[1] To be confronted at the outset is whether the Administrative Law Judge's refusal to order production of the testifying patients' prior written complaints to the OPMC deprived petitioner of a fair hearing (see, *Matter of McBarnette v. Sobol*, 83 N.Y.2d 333, 610 N.Y.S.2d 460, 632 N.E.2d 866). In addition to arguing that the Court of Appeals' holding in *Matter of McBarnette v. Sobol* (*supra*) should be retroactively applied (a proposition that we have previously considered, and rejected [see, *Matter of Finelli v. Chassin*, 206 A.D.2d 717, 718, 614 N.Y.S.2d 634, 636]), petitioner also claims that under the law in effect at the time of his hearing, as articulated in our decision in *Matter of McBarnette v. Sobol* (190 A.D.2d 229, 597 N.Y.S.2d 840, *affd.* 83 N.Y.2d 333, 610 N.Y.S.2d 460, 632 N.E.2d 866), disclosure

of the complaints was mandated. Unlike the Court of Appeals, which interpreted the relevant statute (see, Public Health Law § 230[11][a]) in such a manner as to render it inapplicable to disclosure of the prior statements of witnesses who have testified in a disciplinary hearing (an interpretation that would appear to require disclosure in the present case, if it were to be retroactively applied), this court held only that under the particular circumstances presented by the underlying disciplinary proceeding in *McBarnette*, the accused physician's right to due process outweighed the need for confidentiality (*Matter of McBarnette v. Sobol*, 190 A.D.2d 229, 232, 597 N.Y.S.2d 840, *supra*). Such is not the case here, for petitioner was able to adequately probe the credibility of the testifying witnesses without resort to the complaints at issue, and consequently it cannot be said that he was deprived of due process (see, *Matter of Finelli v. Chassin*, *supra*).

[2] We do, however, find merit in petitioner's contention that the Committee's findings of misconduct with respect to patients C, D and E have no rational basis in the record and, accordingly, that the ARB's affirmance of those findings was arbitrary and capricious (see, *Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 231, 356 N.Y.S.2d 833, 313 N.E.2d 321; *Matter of Rudell v. Commissioner of Health of State of N.Y.*, 194 A.D.2d 48, 50, 604 N.Y.S.2d 646, *lv. denied* 83 N.Y.2d 754, 612 N.Y.S.2d 108, 634 N.E.2d 604). The testimony of petitioner and his expert witness—no expert testimony was proffered by the OPMC—established that the examinations performed on patients C, D and E were medically warranted, given their complaints and presenting symptoms; nothing in the record contradicts, or sheds any doubt on, this evidence. Notably, petitioner did not perform any breast examination on patient E, and the examinations performed on patients C and D, on their respective first visits, were fully justified by patient C's pain and fibrocystic condition and patient D's markedly asymmetric breasts. These patients' breasts were not examined at the time of follow-up visits, and again, the examinations that they were given (auscultation of heart and lungs with stethoscope, palpation of lymph nodes in the axilla) were medically indicated.

Nor does the record substantiate patients' representation that the examinations performed on these patients were in fact proper. While respondents object in noting that the pertinent question is whether the physical touching was done with a correct examination technique rather than whether it was in fact done for an appropriate reason, there is nevertheless no evidence in the record from which it can reasonably be inferred that petitioner acted—or looked at—any of these three patients for his own sexual gratification. Even if the patients' testimony is accepted in its entirety, it simply does not support an inference of lascivious intent, for while a patient's intent can be inferred from his or her actions (see, *Matter of Sung Ho Kim v. Board of Regents of Univ. of State of N.Y.*, 62 A.D.2d 880, 881–882, 567 N.Y.S.2d 949, 101 A.D.2d 78, 79 N.Y.2d 856, 574 N.Y.S.2d 938, 45 A.D.2d 410), it may not be inferred from another person's response to an examination otherwise would be considered reasonable conduct. Thus, the mere fact that patient E became upset when petitioner looked at her bare breasts for three seconds while listening to her heart with a stethoscope, and while touching her suprapubic region for a similar amount of time (significantly, on presenting herself to petitioner she had complained of abdominal pain and stated that she had recently passed a kidney stone), does not provide justification for inferring that these observations were undertaken for other than medical purposes.

5] The same, however, cannot be said of the findings of misconduct with regard to patients A and B, for when their accounts are accepted, as they obviously were by the Committee, it is apparent that petitioner overstepped the bounds of appropriate physical examination, by subjecting patient B to numerous unnecessary breast examinations and by touching patient A's breasts in a manner that was without medical basis. From the nature of these actions, it may be inferred that petitioner engaged in them for his own sexual gratification; hence, the Committee's findings respecting these two patients are warranted.

[6, 7] Finally, while the ARB may impose a more severe penalty than that originally

ordered by the Committee (see, *Matter of Wapnick v. New York State Bd. for Professional Med. Conduct*, 203 A.D.2d 728, 611 N.Y.S.2d 41), here, inasmuch as the penalty determination was based, in part, on findings of misconduct that in our view are meritless, the matter must be remitted for reconsideration of the appropriate sanction (see, *Matter of Hachamovitch v. State Bd. for Professional Med. Conduct*, 206 A.D.2d 637, 638–39, 614 N.Y.S.2d 608, 610; compare, *Matter of Sharma v. Sobol*, 188 A.D.2d 833, 836, 591 N.Y.S.2d 572). On reconsideration, the ARB, when fashioning an appropriate penalty, should take into account whether rehabilitation may be possible, as was implicitly found by the Committee, and in doing so should consider any evidence of petitioner's subsequent conduct bearing on this issue (see, *Matter of Poglinco v. Board of Regents of Univ. of State of N.Y.*, 170 A.D.2d 903, 904, 566 N.Y.S.2d 733).

ADJUDGED that the determination is modified, without costs, by annulling so much thereof as sustained the findings of misconduct as to patients C, D and E and imposed a penalty; matter remitted to respondent Administrative Review Board for Professional Misconduct for further proceedings not inconsistent with this court's decision; and, as so modified, confirmed.



**EXHIBIT "B"**  
**TERMS OF PROBATION**

1. **CLIFFORD MURRAY, M.D., during the period of probation, shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his/her profession. Respondent shall not practice medicine in New York State unless and until he has provided the Director of the Office of Professional Medical Conduct with prior written notice of the location of any and all such practice. Respondent shall notify said Director with prior written notice of any change in such status;**
2. **Respondent shall submit written notification to the New York State Department of Health (NYSDOH), addressed to the Director, Office of Professional Medical Conduct, New York State Department of Health, Corning Tower Building, 4th Floor, Empire State Plaza, Albany, New York 12237 of any employment and practice, of Respondent's residence and telephone number, and of any change in Respondent's employment, practice, residence, or telephone number within or without the State of New York;**
3. **Respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that Respondent has paid all registration fees due and owing to the NYSED and Respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by Respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, within the first three months of the period of probation;**
4. **Respondent shall submit written proof to the NYSDOH, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1) Respondent is currently registered with the NYSED, unless Respondent submits written proof that Respondent has advised DPLS, NYSED, that Respondent is not engaging in the practice of Respondent's profession in the State of New York and does not desire to register, and that 2) Respondent has paid any fines which may have previously been imposed upon Respondent by the Board or by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation;**
5. **Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the order of the Board and shall assume and bear all costs related to compliance with the Terms of Probation;**
6. **Respondent shall, during the period of probation, be bound by the following:**
  - a. **Respondent shall practice medicine, in New York State, only under the supervision of a physician to be approved in advance by the Director of the Office of Professional Medical Conduct ("OPMC"), and shall not practice medicine in New**

York State until such supervising physician is approved by the Director of OPMC and in place. Respondent shall cause said supervising physician to report quarterly to the Director of OPMC that he/she has observed Respondent's practice of medicine and that Respondent is in compliance with these terms of probation, and to report immediately to the Director of OPMC if Respondent is not. Respondent shall cause said supervising physician to visit Respondent's medical practices at each and every location, on a random basis and shall examine a random selection of records maintained by Respondent, including patient histories, prescribing information, and billing records. Respondent will make available to the supervising physician any and all records and/or access to the practice requested by the supervising physician, including on-site observation. The reviews and on-site observations will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care, and in accordance with the terms of probation as set forth herein, including, but not limited to, the "chaperon" requirements as more fully set forth in paragraph 6.b. herein. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the supervising physician or the terms of probation shall immediately be reported to the Director of OPMC by the supervising physician. The supervising physician shall determine the frequency with which he/she examines a random selection of records maintained by Respondent and makes on-site observation of Respondent's medical practice in order to timely and accurately report to the Director of OPMC whether Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care, and in accordance with the terms of probation as set forth herein, however, such frequency shall be no less than one time per month. The supervising physician need not, but may, at his/her discretion, be physically present while Respondent is practicing medicine. Any change in supervising physician must be approved, in advance, by the Director of OPMC. Respondent shall cause the supervising physician to submit reports in a timely manner. A failure of the supervising physician to submit required reports on a timely basis shall be a violation of the terms of probation.

- b. Respondent shall, in the course of practicing medicine in New York State, examine any female patient only in the presence of a female chaperon. Respondent shall cause her to agree, in writing, to be a chaperon for Respondent during his examination of any female patient, and to report regarding such activity, to the Director of OPMC. Respondent shall identify such prospective female chaperon, and Respondent shall obtain the approval of the choice of said female chaperon from the Director of OPMC prior to his resuming his medical practice in New York State. Respondent shall cause said female chaperon to provide the Director of OPMC with quarterly reports that Respondent is conducting himself appropriately and professionally with female patients and immediate reports if he is not, or if he fails to comply with the

chaperoning requirement. Respondent shall notify OPMC prior to changing female chaperons, and any replacement chaperon must also be approved by the Director of OPMC. Respondent shall cause said female chaperon to include a notation in the medical record for each patient's office visit in which said female chaperon was present during Respondent's examination of said female patient. Respondent shall cause said female chaperon to maintain a list which shall include the dates and names of each female patient for which she accompanied Respondent during his examination of said patients, and to provide said list to the Director of OPMC together with her quarterly report to said Director;

- c. Respondent shall, upon the direction of the Director of OPMC, submit once annually during each of the five years of the probationary period, to evaluation by an individual whose specialty and expertise includes issues relating to the proper setting of boundaries between physicians and patients, to be selected or approved by the Director of OPMC, who shall, within thirty days of his/her meeting with and evaluating Respondent, report to the Director of OPMC his/her findings and/or recommendations with regard to Respondent;
- d. During the five year period of probation, Respondent shall receive therapy by an individual who is a licensed health care provider in New York State, and who is aware of the nature of the disciplinary action against Respondent. Respondent shall cause said therapist to provide the Director of OPMC with quarterly reports that Respondent is complying with therapy and immediate reports if he is not. During the five year period of probation, Respondent shall notify OPMC prior to or immediately after he changes therapists, and that individual must also be a New York State licensed health care provider. During the five year period of probation, Respondent's treating therapist must notify OPMC if/when he/she determines that therapy is no longer necessary/advisable for Respondent;
- e. OPMC may, at any time(s) make unannounced visits to Respondent's office to ascertain that Respondent is in compliance with any or all conditions of probation, and Respondent must permit and cooperate with such visits, without reservation;
- f. Once Respondent resumes his practice of medicine in New York State, Respondent shall, for the duration of the period of probation, meet quarterly with an individual selected by the Director of OPMC, for the purpose of case and practice evaluation and review, and shall provide said individual with whatever records, documents, and/or other information said individual deems necessary for said evaluation and review, including but not limited to any records/documents pertaining to examinations of female patients performed by Respondent;
- g. Any and all of the aforesaid required approvals by the Director of OPMC shall be obtained by Respondent in writing from said Director.

- 7. Any expenses incurred in connection with any or all of these restrictions shall be borne by Respondent
- 8. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32);
- 9. So long as there is full compliance with every term herein set forth, Respondent may continue to practice his or her aforementioned profession in accordance with the terms of probation; provided, however, that upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of the Office of Professional Medical Conduct and/or the Board may initiate a violation of probation proceeding and/or such other proceeding against Respondent as may be authorized pursuant to the Public Health Law.