



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

January 25, 1995

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

RECEIVED  
JAN 25 1995  
OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

Irene Koch, Esq.  
NYS Department of Health  
Metropolitan Regional Office  
5 Penn Plaza-Sixth Floor  
New York, New York 10001

Michael Kelton, Esq.  
Lippman, Krasnow & Kelton  
711 3rd Ave., Suite 1806  
New York, New York 10017

Stephen J. Lombardo, M.D.  
1324 Victory Boulevard  
Staten Island, New York 10301

**RE: In the Matter of Stephen J. Lombardo, M.D.**

Dear Ms. Koch, Dr. Lombardo and Mr. Kelton:

Enclosed please find the Determination and Order (No. 95-19) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
Corning Tower - Fourth Floor (Room 438)  
Empire State Plaza  
Albany, New York 12237

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), "(t)he 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 all action 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  
Empire State Plaza  
Corning Tower, Room 2503  
Albany, New York 12237-0030

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 that reads "Tyrone T. Butler /rlw".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm

Enclosure

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

---

**IN THE MATTER : DETERMINATION  
OF : AND  
STEPHEN J. LOMBARDO, M.D. : ORDER  
: BPMC-95-19  
: .  
-----X**

**BENJAMIN WAINFELD, M.D.**, Chairperson, **STEVEN M. LAPIDUS, M.D.** and **MR. MORTON KLEINMAN** 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) of the Public Health Law. **Michael P. McDermott, 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 and  
Statement of Charges:

August 2, 1994

Pre-Hearing Conference:

August 9, 1994

Hearing Dates: September 13, 1994  
September 20, 1994  
October 12, 1994  
December 6, 1994

Place of Hearing: New York State Department of Health  
5 Penn Plaza  
New York, New York 10001

Date of Deliberations: January 3, 1995

Petitioner appeared by: Peter J. Millock, Esq.  
General Counsel  
NYS Department of Health  
By: Irene Koch, Esq.  
Assistant Attorney

Respondent appeared by: Lippman, Krasnow & Kelton  
711 3rd Ave., Suite 1806  
New York, New York 10017  
By: Michael Kelton, Esq.

**WITNESSES**

For the Petitioner:

Patient A  
Patient B  
Patient C  
Michael Cetta  
Judy Waldman, Asst. D.A. Richmond County

For the Respondent:

Stephen J. Lombardo, M.D., The Respondent  
Patient D

Patient E

Patient F

Vincent Albanese

John Schwinning, M.D.

Therese Persichetty, R.N.

Patient G

Patient H

Patient I

### **STATEMENT OF CHARGES**

The Statement of Charges essentially charges the Respondent with Moral Unfitness; Practicing Fraudulently; Wilfully Harassing, Abusing or Intimidating Patients; Failing To Maintain Accurate Records and Performing Professional Services Not Duly Authorized.

The charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto and made a part of this Determination and Order.

### **FINDINGS OF FACT**

Numbers in parenthesis 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. All Hearing Committee findings were unanimous unless otherwise specified.

## GENERAL FINDINGS

1. STEPHEN J. LOMBARDO, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1978 by the issuance of license number 134749 by the New York State Education Department (Pet's. Ex. 2).
2. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993, through December 31, 1994, with a registration address of 1324 Victory Boulevard, Staten Island, New York 10301 (Pet's. Ex.2).

## FINDINGS AS TO PATIENT A

3. On July 14, 1993 the Respondent treated Patient A, a 27 year old female, at his office located at 1324 Victory Boulevard, Staten Island, New York (Pet's. Ex. 3; Tr.25).
4. Patient A visited the Respondent's office for a school physical and to receive a tuberculosis test and Hepatitis B vaccination (Pet's. Ex.3; Tr. 25-26).
5. As the Respondent was listening to Patient A's lungs, he asked Patient A when her last menstrual period was. Patient A responded that she goes to the gynecologist every six months and that her gynecologist would fill out those portions of the school physical examination form (Tr. 26-27, 40, 45, 54).
6. In the course of performing a physical examination, but not for proper medical purposes, and while Patient A was seated on the examining table, the Respondent abruptly unclipped Patient A's strapless bra from the back causing it to fall down on her lap. The Respondent then raised the front of Patient A's shirt above her breasts without providing an examination gown and without previously announcing his intention to unclip her bra or to raise her shirt (Tr. 26-28, 43-48, 50-53, 58-62, 178, 184-186-191).

7. When the Respondent was unclipping Patient A's bra and raising her shirt, he again asked Patient A when her last menstrual period was, to which Patient A again responded that her gynecologist would take care of it (Tr. 27, 40, 45, 54, 56-59).

8. While Patient A was still seated on the examining table, she attempted to answer the Respondent's question regarding her last menstrual period, fumbling for an answer and stating a series of different dates (Tr. 27-28).

9. The Respondent did not ask for Patient A's consent for him to perform a breast examination, nor did he announce his intention to commence a breast examination (Tr. 26-29, 35-40, 42-60).

10. Patient A did not consent to a breast examination (Tr. 26-29, 35-40, 42-62).

11. The Respondent thereupon examined both of Patient A's breasts despite the fact that Patient A told the Respondent that her gynecologist would perform the breast examination (Tr. 26-29, 35, 40, 42-43, 45-49, 54).

12. Patient A told her husband and her friends about this incident shortly after it occurred (Tr. 30-32).

#### **FINDINGS AS TO PATIENT B**

13. On April 30, 1987, the Respondent treated Patient B, a 28 year old female, at Staten Island University Hospital, Employee Health Service, located at Staten Island University Hospital, 475 Seaview Avenue, Staten Island, New York (Pet's. Ex. 4; Tr. 66).

14. Patient B, who at that time was a registered nurse at Staten Island University Hospital, went to Employee Health Services for a physical examination (Pet's. Ex. 4; Tr. 66, 78).

15. The Respondent performed part of a physical examination on Patient B, and then announced he would perform a breast examination and asked Patient B to remove her bra (Pet's. Ex. 4; Tr. 67, 81).

16. The Respondent then watched Patient B remove her gown and take off her bra , and then helped her to move her gown to expose her breasts (Tr. 69, 81-82, 91-93).

17. In the course of performing a physical examination, but not for a proper medical purpose, while Patient B was sitting and lying on the examining table in various positions, the Respondent repeatedly placed his hands on each of Patient B's breasts for a total of approximately ten to fifteen minutes, during which time he constantly looked into her eyes (Tr. 67-75, 82-87, 89-90).

18. The Respondent did not speak during the entire purported breast examination (Tr. 68, 72-73, 86).

19. Patient B discussed this incident with her sister soon thereafter (Tr. 75, 90-91, 95-96).

#### **FINDINGS AS TO PATIENT C**

20. The Respondent treated Patient C, a 14 year old female, at his office located at 1324 Victory Boulevard, Staten Island, New York, on three (3) occasions, November 23, 1988, November 30, 1988 and December 8, 1988. Patient C's mother accompanied her on her November 23, 1988 visit, but Patient C was alone when she went to the Respondent's office on November 30, 1988 and December 8, 1988 (Pet's. Ex. 5; Tr. 103, 106-107, 142, 146).

21. The Respondent was purportedly treating Patient A for a pectoral skin rash (Pet's. Ex. 5; Tr. 103-105, 133-137, 240-241).

22. On November 23, 1988, in the course of performing a physical examination, but not for a proper medical purpose, the Respondent applied medicated cream on a blemish on the left side of Patient C's left breast, and on a blemish on her other breast. The Respondent did not wear gloves to do so (Tr. 103-105, 138-142, 158, 160, 421).

23. The Respondent instructed Patient C to return in a week (Tr. 105, 141)

24. The Respondent failed to record in Patient C's medical record that on November 23, 1988 he rubbed medicated cream onto Patient C's breasts (Pet's. Ex. 5).

25. On November 30, 1988, in the course of performing a physical examination, but not for a proper medical purpose, the Respondent rubbed medicated cream onto Patient C's breasts and nipples for a period of two to three minutes using his palm as well as his fingertips. The Respondent did not wear gloves to do so (Tr. 104-106, 108, 141, 145, 158, 160-162).

26. The Respondent instructed Patient C to return in a week (Tr. 106-107, 145-146).

27. The Respondent failed to record in Patient C's medical record that on November 30, 1988 he rubbed medicated cream onto Patient C's breasts and nipples (Pet's. Ex. 5).

28. On December 8, 1988, the Respondent rubbed medicated cream onto Patient C's breasts and nipples for a period of two to three minutes using his palm as well as his fingertips. The Respondent did not wear gloves to do so (Tr. 106-108, 110, 146-150, 158-162).

29. On December 8, 1988, in the course of performing an abdominal examination, which was not indicated by the medical record, the Respondent touched Patient C's abdomen and moved her underwear, exposing her pubic hair (Tr. 107-108, 150-153, 159, 162-163).

30. On December 8, 1988, after completing the physical examination, the Respondent kissed Patient C on the lips with his mouth open (Tr. 108-109, 153-154, 164-165).

31. The skin condition for which the Respondent was treating Patient C, was subsequently successfully treated by a dermatologist with medication. The Respondent incorrectly noted on December 8, 1988, that the condition had resolved (Pet's. Ex. 6; Tr. 113, 141-142, 149, 157-158, 166).

32. The Respondent failed to record in Patient C's medical record that on December 8, 1988 he rubbed medicated cream onto Patient C's breasts and nipples, and he also failed to record the abdominal examination (Pet's. Ex. 5; Tr. 244).

33. On November 23, 1988, November 30, 1988 and December 8, 1988, the Respondent made inappropriate suggestive comments to Patient C (Tr. 110-111, 129-130, 154-155).

34. Patient C told her friend and her school guidance counsellor about her incident with the Respondent and then reported the matter to the police (Resp. Exs.E and F; Tr. 111-112, 114-116, 165-166, 485-486, 520-521).

### **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee found Patients A, B and C to be very credible witnesses. None of the Patients knew each other; they had no apparent reason to conspire against the Respondent and they registered three independent complaints against him. Their testimony was consistent and remained so during extensive direct and cross examination. On the other hand, the Hearing Committee found the Respondent's testimony to be evasive, self-serving and just not credible.

PATIENT A: Patient A advised the Respondent that she was seeing her gynecologist every six months and that her gynecologist would take care of the gynecological portion of the physical examination. This followed the procedure of the preceding school physical examination (Pet's. Ex. 3, P. 8, dated 6/29/92) of which the Respondent had knowledge.

The fact that Patient A did not say "No" or "Stop" during the breast examination can be attributed to an intimidating situation. "I think it's just a power thing. I was always raised, the doctor's always right. The man is always in the right, and that is the way I thought , and I was just so nervous, I just didn't know what to do" (Tr. 57).

PATIENT B: It was grossly inappropriate for the Respondent to watch while Patient B removed her gown and took off her bra. He should have left the room or at least turned away.

The Respondent did not speak to Patient B during the breast examination, but constantly looked into her eyes. The examination became harsher and more lengthy in duration and intimidating to the Patient (Tr. 68).

The Respondent's examination of Patient B's breasts, as described by Patient B, was inappropriate and unnecessarily prolonged.

PATIENT C: Patient C's testimony was strongly supported by the testimony of Michael Cetta, her school guidance counsellor and Assistant District Attorney, Judy Waldman.

The Respondent's extensive application of the cream to areas of both breasts and nipples beyond the clinical lesions was grossly inappropriate, particularly on the last two visits. It was also grossly inappropriate for the Respondent to have made suggestive comments to Patient C and to kiss her on the lips with his mouth open.

The Respondent's abdominal examination of Patient C was not indicated by the medical records and the Respondent's touching of Patients C's abdomen and moving her underwear and exposing her pubic hair was also grossly inappropriate.

It should be noted that Patient C was only 14 years old at the time of her encounter with the Respondent. The Hearing Committee is convinced that the Respondent took more liberties with this Patient because she was so young.

RESPONDENT: At the time of the incidents complained of by Patients A, B and C, and even during his testimony before the Hearing Committee, the Respondent displayed a gross insensitivity toward the Patients and made light of the charges against him. He attempted to rationalize his behavior as being for appropriate medical purposes. The incompleteness of the Respondent's medical records also lends support to the Hearing Committee's conclusion that the Respondent was not credible.

The Hearing Committee concludes that the Respondent's actions towards Patients A, B and C were a violation of professional trust and constituted the wilful harassing, abusing and intimidating of a patient. Further, his actions towards Patients B and C also evidence moral unfitness and fraudulent practice.

**VOTE OF THE HEARING COMMITTEE**

(All votes were unanimous unless otherwise specified).

**FIRST THROUGH SECOND SPECIFICATIONS:** (Moral Unfitness)

**SUSTAINED** As to those charges specified in Paragraphs B,(1)(a), C(2), C(3)(a)(b)(c), C(4) of the Statement of Charges.

**NOT SUSTAINED** As to the charge specified in Paragraph C(1) of the Statement of Charges.

**THIRD THROUGH FOURTH SPECIFICATIONS:** (Practicing Fraudulently)

**SUSTAINED** As to those charges specified in Paragraphs B(1)(a), C(2), C(3)(a)(b)(c) of the Statement of Charges.

**NOT SUSTAINED** As to those charges specified in Paragraphs C(1) and C(4) of the Statement of Charges.

**FIFTH THROUGH SEVENTH SPECIFICATION:**

(Willfully Harassing, Abusing or Intimidating Patients)

**SUSTAINED** As to those charges specified in Paragraphs A(1)(a), A(1)(b), B(1)(a), C(2), C(3)(a)(b)(c) and C(4) of the Statement of Charges.

**EIGHTH SPECIFICATION:** (Failing to Maintain Accurate Records)

**SUSTAINED** As to the charge specified in Paragraph C(5) of the Statement of Charges.

**NINTH SPECIFICATION:** (Performing Professional Services Not Duly Authorized)

**SUSTAINED** As to those charges specified in Paragraphs A(1)(a) and A(1)(b) of the Statement of Charges.

**DETERMINATION**

The Hearing Committee has determined that the Respondent's actions towards Patients A, B and C were a violation of professional trust and constituted the wilfull harassing, abusing and intimidating of a patient. Further, his actions towards Patients B and C also evidence moral unfitness and fraudulent practice.

The Respondent's license to practice medicine in the State of New York should be **REVOKED.**

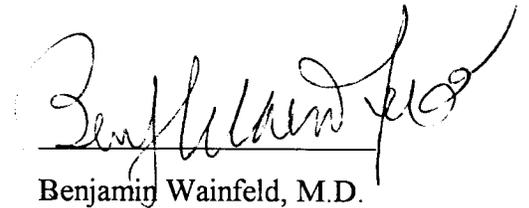
**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in the State of New York is hereby **REVOKED.**
2. The Hearing Committee further **ORDERS** that should the Respondent apply for the reinstatement of his license, his application must be accompanied by a complete psychiatric evaluation.
3. This **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: New York, New York

1/19 1995



Benjamin Wainfeld, M.D.

Steven M. Lapidus, M.D.  
Morton Kleinman

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

-----X

IN THE MATTER : STATEMENT  
OF : OF  
STEPHEN J. LOMBARDO, M.D. : CHARGES

-----X

STEPHEN J. LOMBARDO, M.D., the Respondent, was authorized to practice medicine in New York State on August 11, 1992 by the issuance of license number 134749 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 through December 31, 1994 at 1324 Victory Boulevard, Staten Island, New York 10301.

**FACTUAL ALLEGATIONS**

- A. Respondent treated Patient A, a 27 year old female, at his office located at 1324 Victory Boulevard, Staten Island, New York, on or about July 14, 1993. (The identities of Patient A and the other patients are disclosed in the attached Appendix). Patient A visited Respondent's office for a school physical and to receive a tuberculosis test and Hepatitis B vaccination.

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 abruptly unclipped her strapless bra from the back causing it to fall down on her lap, and then raised the front of her shirt above her breasts without providing an examination gown and without previously announcing his intention to unclip her bra or to raise her shirt.

b. Also while Patient A was seated on the examining table, Respondent examined both her breasts despite the fact that Patient A told Respondent her gynecologist would perform the breast examination.

B. Respondent treated Patient B, a 28 year old female, at Staten Island Hospital Employee Health Service, located at Staten Island University Hospital, 475 Seaview Avenue, Staten Island, New York, on or about April 30, 1987. Patient B, who at that time was a registered nurse at Staten Island

University Hospital, went to Employee Health for a physical examination, which Respondent performed.

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

- a. Respondent repeatedly, and while Patient B was in various positions, placed his hands on each of Patient B's breasts for a total of approximately ten to fifteen minutes, during which time he repeatedly looked into her eyes.

- C. Respondent treated Patient C, a 14 year old female, at his office, located at 1324 Victory Boulevard, Staten Island, New York, on approximately three (3) occasions from approximately November 23, 1988 to December 8, 1988. Respondent was treating Patient C for a pectoral skin rash.

1. On or about November 23, 1988, in the course of a purported physical examination, but not for a proper medical purpose, Respondent touched Patient C inappropriately, in that Respondent rubbed medicated cream onto Patient C's breasts.

2. On or about November 30, 1988, in the course of a purported physical examination, but not for a proper medical purpose, Respondent touched Patient C inappropriately in that Respondent rubbed medicated cream onto Patient C's breasts and nipples for a period of several minutes.
  
3. On or about December 8, 1988, in the course of a physical examination, but not for a proper medical purpose:
  - a. Respondent touched Patient C inappropriately in that Respondent rubbed medicated cream on Patient C's breasts and nipples for a period of several minutes.
  
  - b. Respondent touched Patient C inappropriately in that, while Patient C was lying down on the examining table, Respondent touched Patient C's abdomen and moved her underwear, exposing her pubic hair.
  
  - c. Respondent touched Patient C inappropriately in that Respondent kissed her on the lips with his mouth open.

4. Respondent made inappropriate sexually suggestive comments to Patient C on or about November 23, 1988, and/or November 30, 1988, and/or December 8, 1988.
  
5. Respondent ~~failed~~ failed to record in Patient C's medical record that on November 23, 1988, and November 30, 1988, and December 8, 1988, he rubbed cream onto her breasts and/or touched her abdomen.

**SPECIFICATION OF CHARGES**

**FIRST THROUGH SECOND 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. 1994), in that Petitioner charges:

1. The facts contained in paragraph B, ~~B.1~~, and/or B.1.a.
  
2. The facts contained in paragraph C, C.1, C.2, C.3, C.3.a, C.3.b, C.3.c and/or C.4.

THIRD THROUGH FOURTH SPECIFICATIONS

PRACTICING FRAUDULENTLY

Respondent is charged with practicing the profession fraudulently, under N.Y. Educ. Law Section 6530(2) (McKinney Supp. 1994), in that Petitioner charges:

3. The facts contained in paragraph B,  
~~B.1.~~ and/or B.1.a.

4. The facts contained in paragraph C,  
C.1, C.2, C.3, C.3.a, C.3.b, C.3.c  
and/or C.4.

FIFTH THROUGH SEVENTH 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. 1994), in that Petitioner charges:

5. The facts contained in paragraph A,  
A.1, A.1.a, and ~~A.1.b.~~ A.1.b.

6. The facts contained in paragraph B,  
~~B.1.a~~ and/or B.1.a.

7. The facts contained in paragraph C,  
~~C.1~~, C.2, C.3, C.3.a, C.3.b, C.3.c,  
and/or C.4.

**EIGHTH SPECIFICATION**

**FAILING TO MAINTAIN ACCURATE RECORDS**

Respondent is charged with failing to maintain accurate records, under N.Y. Educ. Law Section 6530(32) (McKinney Supp. 1994), in that Petitioner charges:

8. The facts contained in paragraph C and  
C.5.

**NINTH SPECIFICATION**

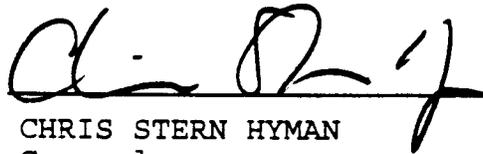
**PERFORMING PROFESSIONAL SERVICES NOT DULY AUTHORIZED**

Respondent is charged with performing professional services which have not been authorized by the patient or his or

her legal representative, under N.Y. Educ. Law Section 6530(26)  
(McKinney Supp. 1994), in that Petitioner charges:

9. The facts in paragraph A, A.1, A.1.a,  
and/or A.1.b.

DATED: New York, New York  
*August 2, 1994*



CHRIS STERN HYMAN  
Counsel  
Bureau of Professional  
Medical Conduct