or filing a false report, fraudulent practice of medicine, patient abuse, moral unfitness and failure to maintain records. A copy of the Notice of Hearing and Statement of Charges is attached to this Determination and Order as Appendix I. The Respondent filed a timely Answer and denies the factual allegations and specifications of misconduct contained in the Statement of Charges.

FINDINGS OF FACT

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

1. Respondent was authorized to practice medicine in New York State on January 6, 2003, by the issuance of license number

227266 by the New York State Education Department. (Dept.'s Ex. 2). Respondent is board certified in psychiatry and he practices Child and Adolescent psychiatry. Respondent's address is 1551 Kellum Place, Mineola, New York. (Dept.'s Ex. 4, p. 36)

2. Respondent did not testify at the hearing.(T. 261, lines 17-19, T. 262, lines 21-23)

3. The Pederson-Krag Center ("PKC") is an outpatient mental health facility located in Huntington, New York. (T. 175, lines 14-20)

4. Respondent was employed at PKC as a psychiatrist from February 4, 2008 to August 28, 2008. (Dept.'s Ex. 4, pp.5,8, 10 and 88)

Patient A

5. Patient A sought treatment at PKC for a gambling problem. (T.16, lines 19-25, T. 17, lines 2-11)

6. Patient A came under the care of Respondent, on July 17, 2008 and again on August 7, 2008, at Respondent's office located at PKC in Huntington, New York. (Dept.'s Ex. 3)

7. On July 17, 2008, while performing psychiatric and medication management evaluations, sometime in the course of the evaluation, Respondent asked Patient A inappropriate questions of a sexual nature and made inappropriate comments of a sexual

nature to Patient A for other than a legitimate medical purpose.(Dept.'s Ex. 3, T. 19, lines 13-25, T. 20, lines 2-15)

8. On July 17, 2008, Respondent asked Patient A about the Paxil she was taking for an unrelated medical condition. Respondent asked Patient A if she had any problems with the medication to which she responded to in the negative. (T. 19, lines 15-19) During this initial meeting on July 17, 2008, Respondent continued to talk "about men that take this and how they have a problem with it [Paxil]." (T. 19, lines 19-20) Patient A repeatedly told Respondent that she did not have any problems with her sex life. Respondent continued to ask Patient A questions including how long it took her to have an orgasm. (T. 19-25)

9. Patient A was very upset, and didn't know why Respondent was asking her these questions. (T. 19, lines 23-25) Respondent kept asking her these types of questions even though Patient A reiterated that ". . . . [E]verything is fine with my sex life." (T. 20, lines 5-6) Patient A did not realize Respondent's questions were inappropriate on that day because she had never been treated by a psychiatrist prior to July 17, 2008. (T. 20, lines 18-22)

10. On August 7, 2008, while performing psychiatric and medication management evaluations, Respondent asked Patient A

inappropriate questions of a sexual nature and made inappropriate comments of a sexual nature to Patient A for other than a legitimate medical purpose. (Dept. Ex.3, T. 21-22)

11. On August 7, 2008 Respondent asked Patient A the same type of questions about the medication that he had asked her on July 17, 2008. (T. 21) He asked her: "How did it work? Is your husband happy? Did it put a smile on his face? Did it make everything easier? How is your sex life?" (T. 21, line 25, T. 22, lines 2-4) Patient A felt that these questions were ". . . . so inappropriate, a little intimidating, just very uncomfortable", and she felt overwhelmed. (T. 22, lines 17-24)

Employee REDACTED

12. On August 15, 2008, REDACTED a female co-employee of Respondent, informed her colleagues that she was pregnant. (T. 71) Respondent told REDACTED that he knew she was pregnant because they "have grown", referring to her breasts. REDACTED asked Respondent why he was looking at her breasts, and he responded "They're hard to miss." (T. 72, lines 2-5)

13. On August 21, 2008, in the staff office at PKC, Respondent Respondent asked REDACTED . . if her breasts were getting larger", and if she ". . . . needed to purchase new bras", and stated that his own "wife was pregnant and she was growing as well." (T. 72, lines 22-25, T. 73, line 2) REDACTED and

another co-employee, Craig Kaplan told Respondent that he was asking inappropriate questions. (T. 73, lines 3-6) At one point, Respondent referred to REDACTED's breasts as "tits".(T. 73, lines 5-6) REDACTED told Respondent to stop his questioning of her. Mr. Kaplan left the office and REDACTED the co-employee, testified that she was alone with Respondent. (T.73) Respondent continued to ask REDACTED similar questions, and she once again asked him to stop. Respondent's questions made her feel "uncomfortable" and "overwhelmed". (T. 74, lines 14-17) After apologizing, Respondent still asked REDACTED another question "Does your husband like them?" (T. 74, lines 20-22)

14. On August 15, 2008 and on August 21, 2008, in the staff office located at the PKC, in Huntington, New York, Respondent made inappropriate comments of a sexual nature, and asked inappropriate questions of a sexual nature to REDACTED, a female co-employee. As a result of these incidents, Respondent was told on August 28, 2008 by Dr. Roger Kallhovd, Medical Director, PKC, that he was terminated from his employment at PKC. (Dept.'s Ex. 4, pp. 5, 10)

15. Craig Kaplan testified on Respondent's behalf at the hearing. Mr. Kaplan was the therapist who was present during part of the August 21, 2008 interaction between Respondent and REDACTED., the female co-employee. (T. 217-218) Mr. Kaplan

testified that it was commonplace for conversations of a sexual nature to take place in the office in the presence of REDACTED (T. 181-182, 214-215)However, in this instance, when asked to view the conversation from REDACTED s perspective, Mr. Kaplan stated "The only reason why I would think it's inappropriate is because and as far as I know, what sexual harassment is all about, it isn't about what you say, it's about if someone expresses to you that they're not comfortable with what you're saying, and you continue to say the same things and do the same thing, then you've crossed the line." (T. 247-248)

16. Mr. Kaplan left the room and did not hear the end of the conversation between REDACTED and Respondent.(T. 217) Mr. Kaplan did report this incident to Dr. Roger Kallhovd, Medical Director at PKC. (Dept.'s Ex. 4, p. 5) Mr. Kaplan testified at the hearing that he would not have reported the incident if he knew Respondent was going to be terminated or possibly lose his medical license.(T. 249-250)

17. Mr. Kaplan conceded he could not remember today exactly what happened on August 21, 2008 between Respondent and REDACTED the female co-employee. T. 227-228) Mr. Kaplan further testified that REDACTED the co-employee, may have asked Respondent why he was looking at her breasts. (T. 226, lines 7-9), and that Respondent may have referred to her breasts as

"tits" or "boobs", which was consistent with REDACTED s testimony. (T. 227, line 25, T. 228, line 2-3)

Queens Hospital Application

18. Respondent was also employed at the North Shore Child & Family Guidance Center. Respondent was terminated from his North Shore employment on August 1, 2008. He was sent a letter of termination on August 6, 2008. (Dept.'s Ex. 6, p. 2)

19. On July 20, 2009, Respondent applied to Queens Hospital Center (Dept.'s Ex. 5, p. 3, question #1(f)], for privileges as a staff physician. Respondent knowingly and with the intent to mislead answered a question in the negative, concerning whether he had ever been terminated from any institutional affiliation, when in fact he knew he had been terminated on August 28, 2008 by his employer PKC (Dept.'s Ex. 4, p. 5), as well as on August 1, 2008 by his employer North Shore Child & Family Guidance Center. (Dept.'s Ex. 6, p. 2)

CONCLUSIONS OF LAW

Respondent is charged with eight specifications alleging professional misconduct within the meaning of Education Law §6530. Education Law §6530 sets forth a number and variety of forms or types of conduct which constitute professional

misconduct, However, Education Law §6530 does not provide definitions or explanations of some of the misconduct charged in this matter. During the course of their deliberations on these charges, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document entitled: Definitions of Professional Misconduct under the New York Education Law sets forth suggested definitions for gross negligence, negligence, gross incompetence, incompetence and the fraudulent practice of medicine.

Fraudulent Practice

Fraudulent practice is the intentional misrepresentation or concealment of a known fact, made in some connection with the practice of medicine. The Hearing Committee must find that (1) a false representation was made by the licensee, whether by words, conduct or concealment of that which should have been disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation. The licensee's knowledge and intent may properly be inferred from facts found by the Hearing Committee, but the Committee must specifically state the inferences it is drawing regarding knowledge and intent.

Using the above-referenced definition as a framework

for its deliberations, the Hearing Committee concluded by a preponderance of the evidence that six of the eight specifications of professional misconduct should be sustained. The rationale for the Committee's conclusions regarding each specification of misconduct is set forth below.

At the outset of the deliberations, the Hearing Committee made a determination as to the credibility of all witnesses presented by the parties. The Committee must determine the credibility of the witnesses in weighing each witness's testimony, First, the Hearing Committee must consider whether the testimony is supported or contradicted by other independent objective evidence. When the evidence is conflicting and presents a clear-cut issue as to the veracity of the opposing witnesses, it is for the Hearing Committee to pass on the credibility of the witnesses and base its inference on what it accepts as the truth. Where a witness's credibility is at issue, the Committee may properly credit one portion of the witness's testimony and, at the same time reject another. The Hearing Committee also understood that they had the option of completely rejecting the testimony of a witness where they found that the witness testified falsely on a material issue.

With regard to the testimony presented, the Hearing Committee evaluated all witnesses for possible bias or motive.

The witnesses were also assessed according to their training, experience, credential and demeanor.

The Department offered the testimony of Patient A. The Hearing Committee found Patient A's testimony to be credible. A majority of the Hearing Committee believes that Respondent's initial questions regarding the side effects of Paxil may have started legitimately because Patient A's record shows that she had discussed concerns regarding intimacy with her husband with her social worker, Cheryl Hecht.(Dept.Ex.3,pp.46,47,51) However, once Patient A told Respondent that she had no problems with Paxil, all Hearing Committee members believe Patient A that Respondent persisted with extended inappropriate comments about the "miracle drug" Wellbutrin and how it would put a smile on her husband's face.(T. 20) The Hearing Committee also finds no motivation for Patient A to fabricate the complaint. They further note that Patient A promptly reported her complaint and that this is acknowledged by her social worker in the medical record. (Dept. Ex. 3, p. 46) As a result, the Hearing Committee gave Patient A's testimony great weight.

The Department also offered the testimony of REDACTED a co-employee of Respondent at PKC. The Hearing Committee found REDACTED's testimony to be credible. They note that a good portion of her testimony was corroborated by Respondent's witness, Craig

Kaplan. The Hearing Committee also finds that REDACTED had no motivation to fabricate the complaint against Respondent. The Hearing Committee gave REDACTED 's testimony great weight.

The Department also offered the testimony of Professional Medical Conduct investigator, Sondra Stoss. The Hearing Committee is concerned about the validity of the data she provided to Respondent during his interview. She also did not identify the discrepancies over the description of Patient A that Respondent provided when he was answering her questions. It became evident to the Hearing Committee that the patient that Respondent discussed at his interview was not the same woman who appeared as Patient A in this proceeding. The Hearing Committee finds that in this instance, Ms. Stoss' testimony was not credible.

Respondent offered the testimony of Craig Kaplan, a therapist formerly employed at PKC, as a witness to the conversation between REDACTED and Respondent. The Hearing Committee finds that Mr. Kaplan's testimony was credible because it corroborated the testimony of REDACTED for the time that he was in the room with her and Respondent. Mr. Kaplan also acknowledged to the Hearing Committee that based on REDACTED 's reaction to Respondent's comments, he believed that the remarks were inappropriate at that time. The Hearing Committee is not

persuaded by Mr. Kaplan's retrospective reinterpretation and they find his change of opinion to be irrelevant to the facts.

Respondent elected not to take the stand in his own defense, despite being advised that a negative inference may be drawn by the Hearing Committee.(T.261-263) The Hearing Committee's right to draw an adverse inference is well established in law. Steiner v. DeBuono 239 A.D.2d 708,657 N.Y.S. 2d 485(1997); Matter of Youssef v. State Bd. For Professional Med. Conduct, 6 A.D. 3d 824,775 N.Y.S. 2d 395(2004); Kleinplatz v. Novello, 14 A.D. 3d 946,788 N.Y.S. 2d 505(2005)

In this instance, the Hearing Committee has drawn an adverse inference from Respondent's failure to testify because he offered no explanation for his actions. The testimony of Craig Kaplan was reviewed with respect to the charges regarding REDACTED but for reasons explained above, it did not exonerate the Respondent. The Hearing Committee notes that even without drawing an adverse inference, a preponderance of the evidence proves the factual allegations and professional misconduct that they sustained.

Factual Allegations

Based on the Findings of Fact and Conclusions set forth above, the Hearing Committee makes the following unanimous determinations regarding the factual allegations contained in

the Statement of Charges:

Paragraph A and A.1	Sustained
Paragraph A.2	Not Sustained
Paragraph B	Sustained
Paragraph C and C.1	Sustained
Paragraph C and C.2	Sustained

Charge A.1

A majority of the Hearing Committee believes that it was medically justified for Respondent to ask Patient A if she had any side effects from taking Paxil that may have impacted her sex life. However, once Patient A answered that she has no such side effects the discussion should have ended. The Hearing Committee finds that there is no medical justification to subject Patient A to comments that her husband will be smiling after she takes Wellbutrin. Patient A was required by PKC to see Respondent a second time for a follow up visit. On the second visit, Patient A, who was there for a gambling problem, was again subjected to comments and questions about her sex life. Patient A told the Hearing Committee that she became upset and intimidated by Respondent's questioning.

The Hearing Committee unanimously finds that Patient A was subjected to verbal abuse by Respondent and they sustain the Fourth Specification. A majority of the Hearing Committee does not find that Respondent's misconduct regarding Patient A, rises

to the level of moral unfitness as there is no proof that physical advances were made against the patient. Therefore, the Fifth Specification is not sustained.

Charge A.2

Patient A testified at the hearing that she had no history of drug abuse or kidney damage. She only sought help for a gambling problem. There is no evidence in the record to support Charge A.2. The Hearing Committee believes that the Department should have withdrawn this charge instead of using this misinformation to "trap" the Respondent during his interview. The Eighth Specification is not sustained.

Charge B

The Hearing Committee finds that regardless of the historical character of the office banter and conversations that took place at PKC, the factual testimony of REDACTED as corroborated by Craig Kaplan, persuades the Hearing Committee that Respondent's remarks were offensive. REDACTED told Respondent to stop his comments, but he persisted after Mr. Kaplan left the room. The Hearing Committee finds that the language used by Respondent was graphic and debasing and rises to the level of moral unfitness. As a result, the Hearing Committee sustains the Sixth Specification.

Charge C.1 and C.2

The Hearing Committee notes that Respondent elected not to testify and offered no explanation for why he failed to disclose two employment terminations when applying for privileges at Queens Hospital in 2009. The Hearing Committee draws the negative inference against Respondent and concludes that Respondent knowingly intended to conceal the fact that he had been terminated by two employers in 2008. In addition to the negative inference, the Hearing Committee notes that the record clearly supports that Respondent lied on his application about both terminations. The Hearing Committee finds that Respondent's actions not only constitute fraudulent practice, filing a false report and violating PHL §2805-K, but that this also rises to the level of moral unfitness. As a result, the First, Second, Third and Seventh Specifications are sustained by the Hearing Committee.

DETERMINATION AS TO PENALTY

After a full and complete review of all of the evidence presented and pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above, the Hearing Committee, by unanimous vote, determined that Respondent's license to practice medicine in New York State shall be

suspended for a period of three (3) years following the effective date of this Determination and Order. The suspension shall be stayed in its entirety and Respondent shall be placed on probation with a practice monitor. Respondent shall also enroll in and complete a continuing education program for patient boundary violations within the first 6 months of his probationary period. Respondent shall also enroll in and complete a continuing education program in ethics relating to the falsification of the Queens Hospital application. Both continuing education programs shall be subject to the prior written approval of the Director of OPMC and be completed within the period of probation or as otherwise specified in this Order. The complete terms of probation are attached to and made a part of this Determination and Order as Appendix II.

The Hearing Committee is concerned about Respondent's interaction with patients and staff members, particularly as he appears to be a solo practitioner. They note that verbal abuse can be traumatic for a vulnerable psychiatric patient and can impede recovery. The Hearing Committee is equally concerned when Respondent crossed a professional boundary with a female co-worker even after she asked him to stop his derogatory comments. The Hearing Committee is further troubled that Respondent lied on his hospital application. This demonstrates

Respondent's total disregard of the significance of his termination by two employers within the same year.

The Hearing Committee believes that a practice monitor will subject the Respondent's practice to closer scrutiny without violating the confidentiality of his psychiatric patients. The Hearing Committee also believes that education on boundary issues will assist Respondent to improve his sensitivity to patient and office staff communications. They find that Respondent's misconduct does not warrant revocation because the charges are based on two complaints of boundary violations and one incidence of falsification of a document. There was no evidence of physical contact with patients or re-occurring pattern of misconduct. By not testifying, the Hearing Committee was unable to consider any mitigation for the benefit of Respondent.

This determination was reached after due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interest of justice.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED THAT**:

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

2. The Fifth and Eighth Specifications are **NOT SUSTAINED**;

3. Respondent's license to practice medicine in New York State is **SUSPENDED** for a period of **THREE (3) YEARS**, said suspension to be **STAYED in its entirety**; and

4. Respondent's license shall be placed on **PROBATION with a PRACTICE MONITOR** during the suspension period, and he shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order;

5. Respondent shall enroll and complete a continuing medical education course covering the topic of boundary violations which shall be completed within 6 months from the effective date of this

Determination and Order. Respondent shall also enroll and complete a continuing medical education course in ethics for licensure maintenance. The exact requirements shall be determined and approved by the Director of OPMC;

6. This Determination and Order shall be effective on personal service on Respondent or seven (7)days after the date of mailing of a copy to Respondent by certified mail or as provided by P.H.L. Section 230(10)(h).

DATED: New York, New York
FEBRUARY 22 2013

[redacted]

GREGORY FRIED, M.D. (CHAIR)

MICHAEL REICHGOTT, M.D., Ph.D
RUTH HOROWITZ, Ph.D

TO: Anna R. Lewis, Esq.
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
90 Church Street- 4th Floor
New York, New York 10007

Joseph Bargellini, M.D.
1551 Kellum Place
Mineola, New York 11501

Timothy Kilgannon, Esq.
Frank X. Kilgannon, Esq.
1551 Kellum Place
Mineola, New York 11501

APPENDIX I

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

IN THE MATTER OF JOSEPH BARGELLINI, M.D.	NOTICE OF HEARING

TO: Joseph Bargellini
1551 Kellum Place
Mineola, New York 11501

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on October 25, 2012, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, NY 10007, and at such other adjourned dates, times and places as the committee may direct.

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

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

Department attorney: Initial here REDACTED

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the

terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

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

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

DATE September 14 2012
New York, NY

[redacted]
Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be directed to:
Anna R. Lewis
Associate Counsel
Bureau of Professional Medical Conduct

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

IN THE MATTER OF JOSEPH BARGELLINI, M.D.	STATEMENT OF CHARGES

Joseph Bargellini, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 6, 2003, by the issuance of license number 227266 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Patient A came under the care and treatment of Respondent, a psychiatrist, on or about July 17, 2008 and on or about August 7, 2008, at his office located at the Pederson-Krag Center ("PKC") in Huntington, New York (the identity of the patients is contained in the attached Appendix). Respondent's care and treatment of Patient A failed to meet acceptable standards of medical practice, in that:

1. Under the guise of performing psychiatric and medication management evaluations, on or about July 17, 2008 and on or about August 7, 2008, Respondent asked inappropriate questions of a sexual nature and made inappropriate comments of a sexual nature to Patient A for other than a legitimate medical purpose.

2. Respondent failed to adequately obtain and note a history of patient A's drug abuse and resulting kidney damage.

B. On or about 8/15/2008 and on or about 8/21/2008, in the staff offices located at the PKC in Huntington, New York, Respondent made inappropriate comments of a sexual nature and asked inappropriate questions of a sexual nature to a female co-employee at PKC (the identity of the co-employee is contained in the attached Appendix).

C. On or about July 20, 2009, in his application to Queens Hospital Center for privileges as a staff physician, Respondent answered a question in the negative, concerning whether he had ever been terminated from any institutional affiliation, when in fact he had been terminated on or about August 28, 2008 by his employer PKC, as well as on or about August 1, 2008 by his employer North Shore Child & Family Guidance Center.

1. Respondent did so knowingly.
2. Respondent did so with intent to mislead.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

VIOLATION OF § TWENTY-EIGHT HUNDRED FIVE-K OF THE PUBLIC HEALTH LAW

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

1. Paragraph C.

SECOND SPECIFICATION

FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

2. Paragraph C. and C.1.

THIRD SPECIFICATION

FRAUDULENT PRACTICE

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

3. Paragraph C. and C.1. and C.2.

FOURTH SPECIFICATION

PATIENT ABUSE

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

4. Paragraph A. and A.1.

FIFTH AND [redacted]H SPECIFICATIONS

MORAL UNFITNESS

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

5. Paragraph A. and A.1.
6. Paragraph B. and [redacted].
7. Paragraph C and C.1 and C. 2

EIGHTH [redacted] SPECIFICATION

FAILURE TO MAINTAIN RECORDS

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

8. Paragraph A. and A.2.

DATE: September 7, 2012
New York, New York

[redacted]

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX II

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession. Respondent acknowledges that if he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).

2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway ,Suite 355, Albany, New York 12204-2719; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.

3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.

6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

7. Respondent shall practice only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to written approval of the Director of OPMC. An approved practice monitor shall be in place within thirty (30) days of the effective date of this Order.

a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no less than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
d. Respondent shall maintain medical malpractice insurance coverage with limits no less than $2 million per occurrence and $6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.

8. Respondent shall enroll and complete a continuing medical education course covering the topic of **boundary violations** which shall be completed within the **first six (6) months** of the probationary period. Said continuing education program shall be subject to the prior written approval of the Director of OPMC.

9. Respondent shall enroll and complete a continuing medical education course covering the topic of **ethics** relating to licensure maintenance. Said continuing education program shall be subject to the prior written approval of the Director of OPMC and be completed within the period of probation.

10. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

APPENDIX B

FACTS

I. Respondent is currently subject to BPMC Determination and Order #13-211, which was issued by the State Board for Professional Medical Conduct, effective July 22, 2013. (This Determination and Order is attached as Appendix "A".)

____ Admit _____Deny _____Licensee's initials

II. The Hearing Committee ordered Respondent's license to be suspended for three years, stayed, and to be placed on probation with a practice monitor during this period of time. (Determination and Order, page 20)

____ Admit _____Deny _____Licensee's initials

III. Probation term #7 imposed pursuant to disciplinary BPMC Determination and Order #13-45 required that "Respondent shall practice only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to written approval of the Director of OPMC. An approved practice monitor shall be in place within thirty (30) days of the effective date of this Order."

____ Admit _____Deny _____Licensee's initials

A. Respondent violated this term of probation when he knowingly practiced medicine from on or about August 15, 2013 to on or about December 13, 2013, without an appropriate practice monitor in place.

____ Admit_____Deny _____Licensee's initials

IV. Probation term #7d., imposed pursuant to disciplinary BPMC Determination and Order # 13-45 required that "Respondent shall maintain medical malpractice insurance coverage with limits no less than $2 million per occurrence and $6 million per policy year, in accordance with Section 230(18(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order."

____ Admit _____Deny _____Licensee's initials

A. Respondent violated Probation term #7d. when he knowingly and intentionally engaged in the practice of medicine from on or about August 15, 2013 to on or about August 21, 2014, without having the required malpractice insurance coverage.

____ Admit _____Deny _____Licensee's initials

V. Probation term #8, imposed pursuant to disciplinary BPMC Determination and Order # 13-45 required that "Respondent shall enroll and complete a continuing medical education course covering the topic of boundary violations which shall be completed within the first six (6) months of the probationary period. Said continuing education program shall be subject to the prior written approval of the Director of OPMC."

____ Admit _____Deny _____Licensee's initials

A. Respondent violated Probation term #8 when he knowingly failed to complete a continuing medical education course covering the topic of boundary violations by January 23, 2014 or within the first six months of his probationary period.

____ Admit _____Deny _____Licensee's initials