THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N Y 12234

OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

May 8, 1991

Tati Okereke, Physician
50 High Street
Suite 1408
Buffalo, N.Y. 14203

Re: License No. 111470

Dear Dr. Okereke:

Enclosed please find Commissioner's Order No. 11593. This Order goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. Your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you may, pursuant to Rule 24.7 (b) of the Rules of the Board of Regents, a copy of which is attached, apply for restoration of your license after one year has elapsed from the effective date of the Order and the penalty; but said application is not granted automatically.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations
By: Gustave Martine

GUSTAVE MARTINE
Supervisor

DJK/GM/er

CERTIFIED MAIL - RRR

cc: Robert Murphy, Esq.
405 Brisbane Bldg.
Buffalo, N.Y. 14203

Jeffrey Lazroe, Esq.
112 Franklin Street
Buffalo, N.Y. 14202

ORDER OF THE COMMISSIONER OF
EDUCATION OF THE STATE OF NEW YORK

TATI I. OKEREKE

CALENDAR NO. 11593

The University of the State of New York

IN THE MATTER

OF

TATI I. OKEREKE
(Physician)

DUPLICATE ORIGINAL VOTE AND ORDER NO. 11593

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 11593, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (April 26, 1991): That, in the matter of TATI I. OKEREKE, respondent, as a matter of clarification, the first two lines of the first full paragraph of page 5 of the report of the Regents Review Committee be deemed to read as follows: "Rather than prohibiting an adjudication herein based upon the revocation imposed in the violation of probation proceeding, Education"; that the word "conviction" on the third line of the first full paragraph of page 13 of the report of the Regents Review Committee be modified and deemed to read "condition"; that the recommendation of the Regents Review Committee be modified so that the revocation of respondent's medical license become effective as of the date of the personal service of the Order of the Commissioner of Education or as of five days after mailing said Order by certified mail, and that the recommendation of the Regents Review Committee be otherwise accepted as follows:

1. The findings of fact of the hearing committee and the recommendation of the Commissioner of Health as to those findings of fact be accepted, except findings A.6, B.1

through B.11, C.1 through C.15, D.1 through D.9, F.1 through F.4, G.1 through G.7, and H.1 through H.12, all relating to the charges which duplicate the charges determined in the violation of probation proceeding, not be accepted;

2. The conclusions of the hearing committee and Commissioner of Health be modified;

3. Respondent is guilty, by a preponderance of the evidence, of the third through ninth, fifteenth, twentieth, twenty-first, twenty-eighth, thirty-third through thirty-sixth, thirty-ninth through forty-first, forty-fifth through forty-seventh, fifty-second through fifty-fifth, and fifty-eighth specifications, guilty to the extent the second specification relates to respondent's administering of prescription drugs to Patient D against her will and without medical justification at a party, the nineteenth specification is based on allegation I.4 insofar as it relates to respondent's administering of prescription drugs to Patient D against her will and without medical justification at a party, the twenty-third specification is based on allegation P.2, and the forty-ninth and fiftieth specifications are based upon allegations I.2, I.4., L.1, L.2, L.3, O, P.1, and Q, and not guilty of the remaining allegations and specifications; and

4. The measure of discipline recommended by the hearing committee and Commissioner of Health be accepted and respondent's license to practice as a physician in the State of New York be revoked upon each specification of the charges of which respondent was found guilty, and that said revocation of respondent's medical license become effective as of the date of the personal service

of the Order of the Commissioner of Education or as of five days after mailing said Order by certified mail; and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote and the provisions thereof are hereby adopted and **SO ORDERED**, and it is further

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Thomas Sobol, Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 30th day of April, 1991.

Thomas Sobol

Commissioner of Education

REPORT OF THE
REGENTS REVIEW COMMITTEE

TATI I. OKEREKE

CALENDAR NO. 11593

The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

TATI I. OKEREKE **No. 11593**

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

REPORT OF THE REGENTS REVIEW COMMITTEE

TATI I. OKEREKE, hereinafter referred to as respondent, was licensed to practice as a physician in the State of New York by the New York State Education Department.

The instant disciplinary proceeding was properly commenced. A copy of the March 20, 1989 statement of charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

Between June 14, 1989 and April 24, 1990 a hearing was held in nineteen sessions before a hearing committee of the State Board for Professional Medical Conduct. The hearing committee rendered a report of its findings, conclusions, and recommendation, a copy of which is annexed hereto, made a part hereof, and marked as Exhibit "B". On October 18, 1990, the hearing committee found and concluded, except for allegations I.2 and I.4 of the forty-ninth and fiftieth specifications, that respondent was guilty of the

second through ninth, twelfth through fifteenth, eighteenth through twenty-ninth, thirty-first, thirty-third through forty-first, forty-third through forty-seventh, fifty-first through fifty-fifth, and fifty-eighth through sixtieth specifications, was guilty of the forty-ninth and fiftieth specifications to the extent of allegations L.1, L.2, L.3, O, P.1, Q, and R, and not guilty of the remaining specifications and allegations, and recommended that respondent's license to practice in the State of New York be revoked.

On November 30, 1990 the Commissioner of Health recommended to the Board of Regents that the findings, conclusions, and recommendation of the hearing committee be accepted in full. A copy of the recommendation of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "C".

Respondent was granted an adjournment of the Regents Review Committee meeting on February 27, 1991 due to his sudden inability to be present while his son was taken to a hospital emergency room.

On March 14, 1991, respondent appeared before us and was not represented by an attorney. Daniel J. Persing, Esq., presented oral argument of behalf of the Department of Health.

We have considered the record in this matter as transferred by the Commissioner of Health, including respondent's February 19, 1991 letter and petitioner's brief.

Petitioner's written recommendation as to the measure of

discipline to be imposed, should respondent be found guilty, was revocation.

Respondent's written recommendation was dismissal on account of no legal basis for prosecuting this matter.

The statement of charges contains sixty specifications alleging respondent committed professional misconduct. As referred to in allegation A of the statement of charges, the Board of Regents voted, on September 26, 1986 in a prior matter against respondent under Calendar No. 5929, to suspend respondent's license for three years, that execution of the last two years and nine months of said suspension be stayed at which time respondent was placed on probation for three years, and to fine respondent $15,000. In Calendar No. 5929, the Board of Regents accepted the findings and conclusions of the hearing committee and Commissioner of Health.

The fifty-ninth specification of the statement of charges in this matter shows the heading "VIOLATION OF PROBATION". In a separate violation of probation proceeding, under Calendar No. 10761, notice of nine alleged violations of probation was served on respondent. In Calendar No. 10761, the Board of Regents, by vote dated July 27, 1990, accepted the findings, conclusions of law, and recommendation of the hearing officer, sustained each of the nine violations therein, and thereupon, revoked respondent's license to practice as a physician in the State of New York. That

revocation occurred after this professional discipline proceeding had already been commenced.

The threshold issue for our resolution is whether this professional discipline proceeding is, as respondent contended, necessarily and automatically barred from being adjudicated by the Board of Regents due to the revocation of respondent's license in a separate violation of probation proceeding determined after the commencement of this professional discipline proceeding. We answer this legal question in the negative. In our unanimous opinion, under the circumstances, this professional discipline proceeding should not be dismissed in its entirety on the basis of the revocation imposed under Calendar No. 10761.

THIS PROCEEDING MAY BE MAINTAINED

The Board of Regents is authorized to supervise the practice of the professions. Education Law §§6504 and 6506. At the time respondent committed the alleged conduct while practicing the profession of medicine, he was a licensed physician in the State of New York. This proceeding was thereafter commenced when respondent was still a licensed physician. Respondent may not utilize his own conduct, which was in violation of the terms of probation imposed on him, to bar the Board of Regents from adjudicating allegations of professional misconduct.

In professional discipline matters involving the medical profession, the Board of Regents "shall decide whether the licensee

is guilty or not guilty on each charge" and "shall decide what penalties, if any, to impose as prescribed in section sixty five hundred eleven". Education Law 6510-a. If the Board of Regents were barred by respondent from adjudicating this proceeding, the truth of the allegations made would not be determined, complaints would not be addressed and the people of this State would not have an opportunity to be vindicated in regard to these allegations, and the public's need for protection would not be considered or assured. Such a result is neither compelled by law nor justified by respondent.

Rather than prohibiting an adjudication based upon a revocation imposed after the adjudication was commenced, Education Law §6511 permits the Board of Regents to impose a penalty on "a present or former licensee found guilty of professional misconduct". Respondent was a present licensee at the times in issue herein. Even if he has become a former licensee, the Regents are not divested of its jurisdiction to adjudicate this matter.

A licensee may not unilaterally act to frustrate the legislative directive that the Board of Regents supervise the practice of the professions and decide matters of professional misconduct. See, Senise v. Corcoran, 146 Misc.2d 598 (Sup. Court, N.Y. County (1989)). In Matter of Sloan, 135 A.D.2d 140 (1st Dept. 1988), an attorney was disbarred ever though he had already been disbarred. The Appellate Division in Sloan referred to the

attorney's future eligibility to apply for reinstatement as a reason for deciding the serious misconduct allegations in issue. Similarly, respondent will be eligible in the future to apply for reinstatement and this determination may be considered at such time.

The Board of Regents has disciplined another respondent whose license had been surrendered on the day the discipline was imposed. Matter of Brian M. Sherwood, Cal. Nos. 5758 and 7382. Based on all of the forgoing, we conclude that this matter should not be dismissed in its entirety.

MERGER AND DUPLICATION

Respondent further contended that, with exceptions, the allegations in this proceeding are "repeats and retreads" of the allegations in the violation of probation proceeding. Accordingly, respondent seeks the dismissal of all charges on the ground that there is no legal basis for prosecuting events already prosecuted and determined. On the other hand, petitioner contended that the same allegations determined in the violation of probation proceeding may be adjudicated again and that these allegations support disciplinary action in this proceeding.

Respondent implicitly concedes, as shown above, that there are allegations raised herein which were not brought or determined in the violation of probation proceeding. Therefore, as to these unenumerated exceptions, respondent has not demonstrated a basis

for dismissing the entire statement of charges in this disciplinary proceeding (see, Arnold v. New York State Department of Education, 128 A.D.2d 985 (3rd Dept. 1987).

The six allegations in this proceeding which petitioner has conceded were already determined in the violation of probation proceeding are: B, C, D, F, G, and H as charged in specifications 12, 13, 14, 16, 17, 18, 25, 26, 27, 29, 30, 31, 37, and 43. Also, part of allegation A, involving the prior fine, was charged in this proceeding in specifications 11, 24, 51, 59, and 60.

In Calendar No. 10761, the Board of Regents stated it was premature at that time to consider any concern respondent may have with regard to any active subsequent disciplinary matter commenced against him by the Office of Professional Medical Conduct in a separate proceeding. That violation of probation proceeding was determined without prejudice to respondent raising the issue of his being exposed anew to charges of professional misconduct whether or not differently stated, based upon the same underlying acts that were the subject of the earlier proceeding.

In both Calendar No. 10761 and this matter, the Office of Professional Medical Conduct sought a conclusion that respondent's conduct demonstrates that he is morally unfit to practice his profession. Petitioner prevailed in Calendar No. 10761 in obtaining such a conclusion on the basis of findings that respondent committed the alleged underlying acts. Similarly, a

conclusion was there rendered that respondent failed to pay the $15,000 fine imposed upon him. Having prevailed in establishing that respondent is guilty of committing conduct prohibited by New York law governing physicians, petitioner may not again adjudicate before the Board of Regents this same conduct merged in the prior final determination under Cal. No. 10761.

Education Law §6511-a provides that if the Board of Regents determines a term or condition of probation, it may impose any additional penalty pursuant to Education Law §6511. In fact, under Calendar No. 10761, the Board of Regents imposed a revocation pursuant to Education Law §6511(3). In this matter, petitioner seeks tne imposition on respondent of another penalty pursuant to Education Law §6511(3) for the same conduct. While the Board of Regents is not prohibited from revoking the license of a professional whose license was previously revoked due to different conduct, the Board of Regents should not, as petitioner seeks, repeatedly duplicate penalizing a respondent for the same conduct. It is "improper" to impose a penalty on each finding of guilt where each allegation arises out of a single incident. Osher v. University of the State of New York, ___ A.D.2d ___, 557 N.Y.S.2d 750 (3rd Dept. 1990); Kleiner v. Sobol, ____ A.D.2d ____, 557 N.Y.S.2d 558 (3rd Dept. 1990); and Memorial Hospital v. Axelrod, 118 A.D.2d 938 (3rd Dept. 1986) affd 68 N.Y.2d 958. This principle relating to multiple violations in one proceeding is a fortiori

applicable where multiple proceedings have been brought.

We recognize that there is a different procedure for conducting a violation of probation proceeding and a professional discipline proceeding.* While petitioner correctly asserts that the ultimate issue in a violation of probation proceeding (of whether the terms of probation have been violated) is different from the ultimate issue in a professional discipline proceeding (of whether the Education Law definitions of professional misconduct have been violated), these are not completely exclusive proceedings. Violating a term of probation also constitutes professional misconduct pursuant to Education Law §6509(9) and 8 N.Y.C.R.R. §29.1(b)(14) (these sections of law were cited in the fifty-ninth specification in this proceeding) which could be adjudicated in a professional discipline proceeding without prejudicing respondent. Freymann v. Board of Regents of the University of the State of New York, 102 A.D.2d 912 (3rd Dept. 1984).

Petitioner was not prohibited from commencing these two separate proceedings or from conducting them concurrently.

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*This different procedure as well as the existence of different allegations justifies the denial of respondent's request to consolidate the two proceedings at the hearing level. There was no abuse of discretion for maintaining two concurrent separate proceedings against respondent.

However, inasmuch as petitioner proceeded in the violation of probation proceeding to obtaining a final determination, petitioner may not seek multiple determinations by the Board of Regents imposing separate penalties as to the same conduct.

The cases cited in petitioner's brief do not support a different result. The case cited by petitioner, which is closest to the facts herein, Matter of Sloan, 135 A.D.2d 140 (1st Dept. 1988), expressly stated that the conduct at issue in that attorney discipline proceeding was alleged in separate charges relating to matters different from the conduct on which the prior disbarment was based. Also, in another case cited by petitioner, People Ex Rel. Dowdy v. Smith, 48 N.Y.2d 485 (1979), the Court of Appeals reversed the revocation of relator's parole after applying the rule of collateral estoppel that a prior determination of a question necessarily involved in a subsequent proceeding may be conclusive, even though the second proceeding seeks some objective which is other than punitive. In Smith, the fact that the objectives of the two matters -- a criminal prosecution and parole revocation hearing -- were different was "irrelevant" to an application of collateral estoppel or res judicata principles.

The other cases cited by petitioner are distinguishable from the facts herein. In Dutchess County Department of Social Services v. James F., 141 Misc.2d 309 (Family Ct., Dutchess County 1988), the resentencing in the different forum of County Court, for a

violation of a term of probation imposed by the County Court for respondent's violation of the Penal Law, did not bar the Family Court from punishing respondent for violating the Family Court Order under the Family Court Act for an offense which was an "entirely different issue" in regard to a different victim. In People v. Pollak, 130 A.D.2d 509 (3rd Dept. 1987), respondent was resentenced on his earlier attempted assault conviction and then sentenced, as a second felony offender, on his controlled substance sale conviction. Unlike in this matter, the defendant in Pollak was only sentenced once for committing the conduct in issue** and was not convicted of a crime for his having violated probation.

The penalty imposed on respondent under Calendar No. 5929 was not affected by the additional penalty imposed on respondent for his probation violations under Calendar No. 10761. The separate penalty already imposed on respondent for his violation of probation was not confined to the penalty appropriate to the guilt found under Calendar No. 5929. Petitioner now seeks a second penalty on top of the prior penalty for the same underlying conduct determined in the violation of probation proceeding. In our unanimous opinion, the determination under Calendar No. 10761

**Procedurally, the determination in the probation violation matter was not by the same standard of proof as is required in the criminal proceeding and was not necessarily rendered by the same arbiter. See Criminal Procedure Law §410.70.

should be considered as final regarding matters adjudicated therein and no further adjudication is permissible to the extent of such prior final adjudication.

Based on the forgoing, respondent is in our unanimous opinion, not guilty of the duplicative allegations identified on page seven of this report. In addition, the specifications referring to allegation A involve both the non-payment of the fine determined in the violation of probation proceeding and the issuance of the prescription for Patient C not previously determined by the Board of Regents.

As to Patient C, who was not at issue in the violation of probation proceeding, respondent is not guilty of the specifications referring to allegation A for various reasons. First, the fifty-first specification regarding record-keeping is insufficient because allegation A does not refer to respondent's records or to the inaccuracy of same.

Second, the eleventh, twenty-fourth, fifty-first, fifty-ninth, and sixtieth specifications as to Patient C are based on respondent's conduct on March 3, 1988. Inasmuch as the hearing committee found and concluded that the three month actual suspension imposed by the Board of Regents under Calendar No. 5929 took effect in July 1987 (see hearing committee report pages 17 and 19), respondent was not shown by the hearing committee and Commissioner of Health to be practicing while suspended on March

3, 1988. The three month period for the actual suspension should not be confused with the six month period, still in effect on March 3, 1988, for the payment of the fine.

Third, the fifty-ninth specification and the findings regarding that specification do not indicate the penalty was a conviction or limitation imposed by the Board of Regents as required by 8 N.Y.C.R.R. §29.1(b)(14).

PATIENTS E AND F

With respect to new allegations first raised in this proceeding, we agree with the hearing committee and Commissioner of Health that respondent is guilty of: the third through ninth specifications regarding unprofessional conduct for willfully physically abusing Patients E and F; and the twentieth and twenty-first specifications regarding unprofessional conduct evidencing moral unfitness to practice the profession. The third through ninth specifications relate to two occasions in 1982 when respondent, without medical justification, committed various acts of sexual contact with Patients E and F separately. The twentieth and twenty-first specifications relate to both the sexual acts referred to in the third through ninth specifications and to respondent, subsequent to these sexual acts, seeking to obtain from these Patients their changed testimony in return for monetary payments to them.

The thirty-third and thirty-fourth specifications, regarding

practicing the professional fraudulently, also relate to Patients E and F. We agree with the hearing committee and Commissioner of Health that respondent is guilty of that portion of the thirty-third and thirty-fourth specifications based upon his intentional misrepresentations to these vulnerable patients concerning a medical examination or procedure for the purpose of his own sexual or personal gratification. With respect to that portion of the thirty-third and thirty-fourth specifications based upon the subsequent monetary payments to Patients E and F due to his sexual acts (see allegations J.5 and K.4), the hearing committee and Commissioner of Health correctly concluded that respondent was guilty of the thirty-fourth specification regarding the payment to Patient F for the purpose of deceiving others. However, although the hearing committee and Commissioner of Health failed to address their conclusions as to the thirty-third specification regarding the payment to Patient E for the purpose of deceiving others, respondent should, in our unanimous opinion, also be found guilty of the thirty-third specification as to allegation J.5.

We note, in regard to respondent's contention that his acquittal of criminal sex abuse charges is dispositive here, the Board of Regents may determine that a licensee is guilty of professional misconduct after criminal charges were not sustained beyond a reasonable doubt, Genova v. Board of Regents of University of New York, 272 A.D.2d 1085 (3rd Dept. 1947), or after a no bill

was returned by a grand jury. Goomar v. Ambach, 136 A.D.2d 774 (3rd Dept. 1988).

PATIENTS D AND H

The charges regarding Patients D and H involve both the administration, providing, or injection of drugs on one hand and a sexual purpose for respondent's conduct on the other hand. With regard to the drugs, we agree with the hearing committee and Commissioner of Health that respondent is: guilty of the fifty-fifth specification for providing Patient D, between January 24, 1986 and November 14, 1988, with intramuscular injections of Nubain and Versed, which treatment was excessive and not warranted by the condition of the patient; and not guilty of the fifty-sixth specification because respondent's acts "cannot be described as a treatment" to Patient D at the party on December 23-24, 1988. (Hearing Committee report page 65).

The forty-ninth and fiftieth specifications relate to allegations I.2, I.4, and others to be discussed. The hearing committee and Commissioner of Health did not make a conclusion regarding these specifications as to Patient D. (See hearing committee report pages 64-65). Instead, they refer to these allegations as being "moot" and to further consideration being shown on page 93 regarding allegation L. However, on page 93 of the hearing committee report, there is no reference to allegation L or to any conclusions. In our unanimous opinion, respondent

should be found guilty of the forty-ninth and fiftieth specifications to the extent of allegation I.2 and other allegations to be discussed, and not guilty to the extent of allegation I.4.

The thirty-eighth and forty-fourth specifications and allegation I.4 only relate to respondent's conduct at the December 23-24, 1988 party where respondent was found by the hearing committee and Commissioner of Health not to be treating Patient D. (Hearing committee report page 65). Thus, there is no basis to find respondent guilty of being grossly negligent and grossly incompetent for that treatment. Moreover, the hearing committee concluded the respondent's "illicit purposes" show gross negligence has been established under charge I.4. Respondent's purposes, which were only based on suspicion rather than any finding that there was any such purpose at the party (compare hearing committee report page 62 and 64), does not establish the existence of any treatment when respondent acted against the Patient's will.

With respect to respondent's alleged purposes as to Patients D and H, we agree with the hearing committee and Commissioner of Health that respondent is not guilty of the first and tenth specifications regarding willfully physically abusing these Patients by committing sexual acts. However, having correctly concluded that respondent is not guilty of the tenth specification, as a matter of law, because the alleged definition of

unprofessional conduct did not exist at the time the acts were committed, it was erroneous and incongruous for the hearing committee and Commissioner of Health to sustain the twenty-second specification regarding a definition of unprofessional conduct which also did not exist at the time of the same conduct in 1974. In our unanimous opinion, respondent is not guilty, as a matter of law, of the twenty-second specification. Gould v. Board of Regents of the University, 103 A.D.2d 897 (3rd Dept. 1984).

In regard to Patient D, the hearing committee and Commissioner of Health sustained the second specification of willfully physically abusing the Patient and the nineteenth specification of moral unfitness. However, they considered the separate portion of allegation I.4 based on respondent's sexual purpose to be "irrelevant" to their conclusion. Therefore, while we disagree that a portion of an allegation is irrelevant, respondent is, in our unanimous opinion, guilty of the second specification to the extent it relates to respondent's administering of prescription drugs against Patient D's will, is guilty of the nineteenth specification to the extent of allegation I.4 insofar as it relates to said administering against Patient D's will, and is not guilty of the second and nineteenth specifications to the extent of the allegation regarding his sexual purpose.

We agree with the hearing committee and Commissioner of Health that respondent is guilty, regarding Patient H, of the thirty-fifth

specification for practicing fraudulently and, regarding Patient D, of the fifty-second specification for failing to maintain a record on twenty-four occasions which accurately reflects evaluation and treatment; and is not guilty of the thirty-second specification regarding practicing the profession fraudulently as to Patient D.

PATIENTS G AND J

We agree with the hearing committee and Commissioner of Health that respondent, in regard to Patient G, is guilty of the thirty-ninth, fortieth, and forty-first specifications based on his gross negligence, forty-fifth, forty-sixth, and forty-seventh specifications based on his gross incompetence, the forty-ninth specification based on negligence, the fiftieth specification based on incompetence, and the fifty-third specification based on record-keeping; and is not guilty of the fifty-seventh specification.

We agree with the hearing committee and Commissioner of Health that respondent, in regard to Patient J, is guilty of the thirty-sixth specification based on practicing fraudulently, the forty-ninth specification based on negligence, the fiftieth specification based on incompetence, the fifty-fourth specification based on record-keeping, and the fifty-eighth specification based on excessive treatment. Regarding, the twenty-third specification sustained by the hearing committee and Commissioner of Health, respondent is guilty to the extent of allegation P.2. However, as

to allegation P.1, in view of respondent's incompetence in not knowing of Patient J's drug dependency and of the proper amounts to prescribe such a patient and in view of the absence of a finding that respondent knowingly prescribed an excessive quantity of Adipex to Patient J, the twenty-third specification based on moral unfitness should, in our unanimous opinion, not be sustained to the extent of allegation P.1.

REMAINING ALLEGATIONS

We agree with the hearing committee and Commissioner of Health that respondent, in regard to his application for appointment to the medical staff of Prince George's Hospital Center, is guilty of the fifteenth specification based on moral unfitness and of the twenty-eighth specification based on practicing fraudulently, and, in regard to a pathology laboratory examining products of conception, is not guilty of the forty-second specification based on gross negligence and of the forty-eighth specification based on gross incompetence.

We agree with the hearing committee and Commissioner of Health that respondent is guilty of the forty-ninth specification based on negligence as to allegations O and Q regarding inadequately prescribing medication and is not guilty of both specifications as to allegation N. Respondent is not guilty, however, regarding the forty-ninth and fiftieth specifications sustained by the hearing committee and Commissioner of Health as to allegation R. In view

of the fraud established by respondent's deceptive prescribing for Patient J in the name of Patient K and in view of the absence of any finding that respondent was treating Patient K, negligence and incompetence as to Patient K is, in our unanimous opinion, not established on this record.

In our unanimous opinion, respondent is not guilty of the eighteenth, thirty-first, thirty-seventh, and forty-third specifications. We note that these specifications are not based upon unprofessional conduct for record-keeping violations (8 N.Y.C.R.R. §29.2(a)(3)) or for the failure to comply with substantial provisions of state laws or regulations 8 N.Y.C.R.R. §29.1(b)(1).

We unanimously recommend the following to the Board of Regents:

1. The findings of fact of the hearing committee and the recommendation of the Commissioner of Health as to those findings of fact be accepted, except findings A.6, B.1 through B.11, C.1 through C.15, D.1 through D.9, F.1 through F.4, G.1 through G.7, and H.1 through H.12, all relating to the charges which duplicate the charges determined in the violation of probation proceeding, not be accepted;
2. The conclusions of the hearing committee and Commissioner of Health be modified;
3. Respondent is guilty, by a preponderance of the evidence, of the third through ninth, fifteenth, twentieth, twenty-first, twenty-eighth, thirty-third through thirty-sixth,

thirty-ninth through forty-first, forty-fifth through forty-seventh, fifty-second through fifty-fifth, and fifty-eighth specifications, guilty to the extent the second specification relates to respondent's administering of prescription drugs to Patient D against her will and without medical justification at a party, the nineteenth specification is based on allegation I.4 insofar as it relates to respondent's administering of prescription drugs to Patient D against her will and without medical justification at a party, the twenty-third specification is based on allegation P.2, and the forty-ninth and fiftieth specifications are based upon allegations I.2, I.4 , L.1, L.2, L.3, O, P.1, and Q, and not guilty of the remaining allegations and specifications; and

4. The measure of discipline recommended by the hearing committee and Commissioner of Health be accepted and respondent's license to practice as a physician in the State of New York be revoked upon each specification of the charges of which we recommend respondent be found guilty, as aforesaid, said revocation to run concurrently and to become effective the day after the expiration of the one year period governing an application for restoration of respondent's license revoked under Calendar No. 10761, thereby requiring the expiration of one year after the effective date of the revocation

imposed herein before respondent may apply for restoration of his medical license.

Respectfully submitted,

J. EDWARD MEYER

JOHN T. McKENNAN

NANCY A. RUCKER

Chairperson

Dated: April 11, 1991

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

IN THE MATTER : STATEMENT

OF : OF

TATI I. OKEREKE, M.D. : CHARGES

TATI I. OKEREKE, M.D., hereinafter referred to as the Respondent, was authorized to engage in the practice of medicine in the State of New York on January 25, 1972 by the issuance of License Number 111470 by the State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1989 through December 31, 1991 at 50 High Street, Buffalo, New York 14203.

FACTUAL ALLEGATIONS

A. By order of the New York State Commissioner of Education issued October 15, 1986, the Respondent's medical license was suspended for three years; the execution of the last two years and nine months of this suspension was stayed. The active suspension of the Respondent's medical license commenced on March 1, 1988 and terminated on May 31, 1988. During this period of active suspension, the Respondent examined Patient A

at his office located at 50 High Street, Buffalo, New York on March 1, 1988. The Respondent issued a prescription to Patient A on March 1, 1988 which he backdated with the date of February 23, 1988. On March 18, 1988, a prescription for birth control pills for Patient B was filled by a pharmacy pursuant to oral authorization from the Respondent's office. On March 3, 1988, an oral prescription for an antibiotic was issued by the Respondent's office for Patient C. In addition, the Respondent has failed to pay the $15,000 fine which was imposed upon him by the Commissioner of Education's order.

B. On October 19, 1987, the Respondent made false statements on his application for reappointment to the medical staff of The Children's Hospital, 219 Bryant Street, Buffalo, New York.

C. On November 19, 1987 and again on June 23, 1988, the Respondent made false statements of his application for reappointment to the medical staff of The Buffalo General Hospital, 100 High Street, Buffalo, New York.

D. On December 2, 1988, the Respondent made false statements on an application for medical licensure which he submitted to the Maryland Department of Health and Mental Hygiene, Board of Physician Quality Assurance.

E. In or about November or December, 1988, the Respondent made false statements on an application for appointment to the

medical staff which he submitted to Prince George's Hospital Center, 300 Hospital Drive, Cheverly, Maryland.

F. The Respondent has falsely held himself out as practicing medicine as a professional corporation, i.e., "Tati Okereke, M.D., P.C." on a continuing basis through at least March 6, 1989.

G. The Respondent has done business on a continuing basis through at least March 6, 1989, under the assumed name, "High Street Medical", without complying with the relevant provisions of the General Business Law.

H. The Respondent has purchased substantial quantities of various controlled substances over the last five years from Henry Schein, Inc., a wholesaler of pharmaceutical products located in Port Washington, New York without maintaining a record which accurately accounts for how these drugs were administered, dispensed or otherwise utilized.

I. The Respondent has treated Patient D at his office and Buffalo General Hospital from approximately 1976 through 1988.

1. The Respondent has been sexually active with Patient D from approximately 1980 through 1988.

2. The Respondent provided controlled substances and other prescription drugs to Patient D without medical justification.

3. The Respondent forced Patient D to have sexual intercourse in his office against her will in approximately October, 1988.

4. The Respondent administered prescription drugs to Patient D against her will and without medical justification at a party at the Hyatt Regency Hotel in Buffalo, New York on December 23 - 24, 1988 for the

purpose of causing Patient D to become stuporous so that the Respondent could engage in sexual activity with Patient D.

5. After the December 23-24, 1988 party, the Respondent attempted to get Patient D to sign a false statement about the events and activities at the party.

6. The Respondent failed to maintain a record which accurately reflected his care and treatment of Patient D.

J. The Respondent treated Patient E at his office on June 8, 1982.

1. The Respondent, without medical justification, rhythmically moved his hand into and out of Patient E's vagina.

2. The Respondent, without medical justification, fondled Patient E's breasts and nipples.

3. After removing his fingers from Patient E's vagina, the Respondent, without medical justification, licked the tips of his fingers.

4. The Respondent, without medical justification, slightly penetrated Patient E's vagina with his penis and thereafter ejaculated.

5. Subsequent to Patient E's office examination, the Respondent directed Mary Jo Garvin to pay Patient E approximately $2,000 so that Patient E would withdraw her complaint to the Erie County Medical Society and change her testimony by feigning a loss of memory.

K. The Respondent treated Patient F at his office on September 7, 1982.

1. The Respondent, without medical justification, fondled Patient F's breasts.

2. The Respondent, without medical justification, stimulated Patient F's vagina.

3. The Respondent, without medical justification, penetrated Patient F's vagina with his penis and thereafter ejaculated.

4. Subsequent to Patient F's office examination, the Respondent paid Patient F $5,000 in an attempt to get Patient F to change her testimony and feign a loss of memory.

L. The Respondent admitted Patient G to the Children's Hospital in Buffalo at approximately 7:45 a.m. on February 19, 1985 for purposes of inducing labor.

1. The Respondent failed to discontinue pitocin augmentation at approximately 3:50 p.m. on February 19, 1985.

2. The Respondent delayed in examining and evaluating Patient G until approximately 5:50 p.m. on February 19, 1985.

3. The Respondent delayed in performing a c-section on Patient G until approximately 9:40 p.m. on February 19, 1985.

4. The Respondent failed to prepare any progress notes or other record of his examination or evaluation of Patient G prior to her surgery on February 19, 1985.

M. The Respondent treated Patient H at the Erie Medical Center on April 13, 1973 for an elective termination of pregnancy. Thereafter, the Respondent continued to treat Patient H at his office until approximately 1974. In the course of an office visit in approximately 1974, the Respondent told Patient H that he was going to draw blood from her for a blood test. Instead of drawing blood, the Respondent, without medical justification, injected a drug into Patient H's arm which caused

Patient H to become stuporous. After administering this drug, the Respondent attempted to have sexual intercourse with Patient H.

N. The Respondent performed approximately 264 abortions at his office in 1988. The Respondent failed to routinely have the products of conception examined by a pathology laboratory following these abortion procedures.

O. The Respondent treated Patient I at his office from April, 1982 through November, 1988. The Respondent inappropriately prescribed Adipex and Valium for Patient I. JMB 12/15/89

P. The Respondent treated Patient J at his office from September through December, 1988.

1. The Respondent prescribed an excessive quantity of Adipex for a patient who was known to have a drug dependency problem.

2. The Respondent provided Patient J with a vial of Ionamine capsules and a vial of Tylenol with Codeine #3 which the Respondent had obtained from the Pritchard Pharmacy, 50 High Street, Buffalo by writing a prescription in a name other than that of Patient J.

3. The Respondent failed to maintain an accurate patient record for Patient J.

Q. The Respondent inappropriately prescribed the controlled substances Valium, Lomotil and Ionamine in his own name in 1986.

R. The Respondent inappropriately prescribed the controlled substances Ionamine, Adipex and Tylenol with Codeine for Patient K, a family member, in 1987 and 1988.

SPECIFICATION OF CHARGES

FIRST THROUGH TENTH SPECIFICATIONS

PHYSICAL ABUSE

The Respondent is charged with committing unprofessional conduct under N.Y. Educ. Law §6509(9) (McKinney 1985) by willfully physically abusing a patient in violation of 8 NYCRR §29.2(a)(2) (1981) in that the Petitioner charges:

1. The facts of paragraphs I and I.3.
2. The facts of paragraphs I and I.4.
3. The facts of paragraphs J and J.1.
4. The facts of paragraphs J and J.2.
5. The facts of paragraphs J and J.3.
6. The facts of paragraphs J and J.4.
7. The facts of paragraphs K and K.1.
8. The facts of paragraphs K and K.2.
9. The facts of paragraphs K and K.3.
10. The facts of paragraph M.

ELEVENTH THROUGH TWENTY-THIRD SPECIFICATIONS

MORAL UNFITNESS TO PRACTICE

The Respondent is charged with unprofessional conduct under N.Y. Educ. Law §6509(9) (McKinney 1985) by conduct in the practice of the profession of medicine which evidences moral unfitness to practice in violation of 8 NYCRR §29.1(b)(5) (1984) in that the Petitioner charges:

11. The facts of paragraph A.

12. The facts of paragraph B.

13. The facts of paragraph C.

14. The facts of paragraph D.

15. The facts of paragraph E.

16. The facts of paragraph F.

17. The facts of paragraph G.

18. The facts of paragraph H.

19. The facts of paragraphs I and I.1, I.2, I.3, I.4 and/or I.5.

20. The facts of paragraphs J and J.1, J.2, J.3, J.4 and/or J.5.

21. The facts of paragraphs K and K.1, K.2, K.3 and/or K.4.

22. The facts of paragraph M.

23. The facts of paragraph P and P.1, and/or P.2,

TWENTY-FOURTH THROUGH THIRTY-SIXTH SPECIFICATIONS

PRACTICING MEDICINE FRAUDULENTLY

The Respondent is charged with practicing the profession of medicine fraudulently under N.Y. Educ. Law §6509(2) (McKinney 1985) in that the Petitioner charges:

24. The facts of paragraph A.

25. The facts of paragraph B.

26. The facts of paragraph C.

27. The facts of paragraph D.

28. The facts of paragraph E.

29. The facts of paragraph F.

30. The facts of paragraph G.

31. The facts of paragraph H.

32. The facts of paragraphs I and I.2, I.4 and/or I.5.

33. The facts of paragraphs J and J.1, J.2, J.3, J.4 and/or J.5.

34. The facts of paragraphs K and K.1, K.2, K.3 and/or K.4.

35. The facts of paragraph M.

36. The facts of paragraphs P and P.2.

THIRTY-SEVENTH THROUGH FORTY-SECOND SPECIFICATIONS

PRACTICING WITH GROSS NEGLIGENCE

The Respondent is charged with practicing the profession of medicine with gross negligence under N.Y. Educ. Law §6509(2) (McKinney 1985) in that the Petitioner charges:

37. The facts of paragraph H.

38. The facts of paragraphs I and I.4.

39. The facts of paragraphs L and L.1.

40. The facts of paragraphs L and L.2.

41. The facts of paragraphs L and L.3.

42. The facts of paragraph N.

FORTY-THIRD THROUGH FORTY-EIGHTH SPECIFICATIONS

PRACTICING WITH GROSS INCOMPETENCE

The Respondent is charged with practicing the profession of medicine with gross incompetence under N.Y. Educ. Law §6509(2) (McKinney 1985) in that the Petitioner charges:

43. The facts of paragraph H.

44. The facts of paragraphs I and I.4.

45. The facts of paragraphs L and L.1.

46. The facts of paragraphs L and L.2.

47. The facts of paragraphs L and L.3.

48. The facts of paragraph N.

FORTY-NINTH SPECIFICATION

PRACTICING WITH NEGLIGENCE ON MORE THAN ONE OCCASION

The Respondent is charged with practicing the profession of medicine with negligence on more than one occasion under N.Y. Educ. Law §6509(2) (McKinney 1985) in that the Petitioner charges that the Respondent committed two or more of the following:

49. The facts of paragraphs I.2, I.4, L.1, L.2, L.3, N, O, P.1, Q and/or R.

FIFTIETH SPECIFICATION

PRACTICING WITH INCOMPETENCE ON MORE THAN ONE OCCASION

The Respondent is charged with practicing the profession of medicine with incompetence on more than one occasion under N.Y. Educ. Law §6509(2) (McKinney 1985) in that the Petitioner charges that the Respondent committed two or more of the following:

50. The facts of paragraphs I.2, I.4, L.1, L.2, L.3, N, O, P.1, Q and/or R.

FIFTY-FIRST THROUGH
FIFTY-FOURTH SPECIFICATIONS

INADEQUATE MEDICAL RECORDS

The Respondent is charged with committing unprofessional conduct under N.Y. Educ. Law §6509(9) (McKinney 1985) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient in violation of 8 NYCRR §29.2(a)(3) (1981) in that the Petitioner charges:

51. The facts of paragraph A.
52. The facts of paragraph I.6.
53. The facts of paragraph L.4.
54. The facts of paragraph P.3.

FIFTY-FIFTH THROUGH
FIFTY-EIGHTH SPECIFICATIONS

EXCESSIVE TREATMENT

The Respondent is charged with committing unprofessional conduct under N.Y. Educ. Law §6509(9) (McKinney 1985) by ordering excessive treatment not warranted by the condition of a patient in violation of 8 NYCRR §29.2(a)(8) (1981) in that the Petitioner charges:

55. The facts of paragraph I.2.
56. The facts of paragraph I.4.
57. The facts of paragraph L.1.
58. The facts of paragraph P.1.

FIFTY-NINTH SPECIFICATION

VIOLATION OF PROBATION

The Respondent is charged with committing unprofessional conduct under N.Y. Educ. Law §6509(9) (McKinney 1985) by violating the terms of the disciplinary penalty imposed by the Board of Regents in violation of 8 NYCRR §29.1(b)(14) (1981) in that the Petitioner charges:

59. The facts of paragraph A.

SIXTIETH SPECIFICATION

PRACTICING WHILE LICENSE SUSPENDED

The Respondent is charged with practicing the profession of medicine while his license was suspended in violation of N.Y. Educ. Law §6509(8) (McKinney 1985) in that the Petitioner charges:

60. The facts of paragraph A.

DATED: Albany, New York
March 6, 1987

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical
Conduct