

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 10016-8802

April 18, 1990

Joseph Henry Kennedy, Physician
2904 Fox Run Court
Mobile, Alabama 36619

Re: License No. 170926

Dear Mr. Kennedy:

Enclosed please find Commissioner's Order No. 9988. This Order and any penalty contained therein goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order is a surrender, revocation or suspension of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. In such a case 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.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations
By:

MOIRA A. DORAN
Supervisor

DJK/MAD/mn
Enclosures

CERTIFIED MAIL - RRR

cc: Lionel R. Barrett, Jr., Esq.
222 Second Avenue, No. - Suite 417
Nashville, Tennessee 37210

RECEIVED

APR 19 1990

Office of Professional
Medical Conduct

REPORT OF THE
REGENTS REVIEW COMMITTEE

JOSEPH HENRY KENNEDY

CALENDAR NO. 9988



The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

JOSEPH HENRY KENNEDY

No. 9988

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

REPORT OF THE REGENTS REVIEW COMMITTEE

JOSEPH HENRY KENNEDY, 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 and on February 16, 1989, a hearing was held before a hearing committee of the State Board for Professional Medical Conduct. A copy of the statement of charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

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".

The hearing committee concluded that respondent was guilty of all the charges, and recommended that respondent's license to practice as a physician in the State of New York be revoked.

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

On September 7, 1989 respondent did not appear before us in person and no attorney appeared before us to represent respondent. Dianne Abeloff, Esq., presented oral argument on behalf of the Department of Health. We rule to deny respondent's October 18, 1989 request, made through counsel, to reopen this proceeding.

Petitioner's recommendation, which is the same as the Commissioner of Health's recommendation, as to the measure of discipline to be imposed, should respondent be found guilty, was that respondent's license to practice as a physician in the State of New York be revoked.

We have considered the record as transferred to us by the Commissioner of Health in this matter.

The administrative officer below instructed respondent that the hearing committee could draw the strongest inferences against respondent the opposing evidence would permit as a result of respondent's failure to testify.

We disagree with that instruction. The Board of Regents has not permitted any adverse inference to be drawn from a respondent's failure to testify. In our opinion, to allow that any adverse inference may be drawn against respondent merely because he failed

JOSEPH HENRY KENNEDY (9988)

to testify in this matter is prejudicial to respondent in this disciplinary proceeding, the nature of which could result in the imposition of penalties including a \$10,000 fine upon each specification of which respondent may be found guilty as well as the revocation of respondent's professional license. Therefore, it is our unanimous opinion that this case must be remanded as hereafter indicated. See Matter of KIM (Cal. No. 8826), Matter of MEGGETT (Cal. No. 9705); see also New York Civil Practice Law and Rules §4501.

We unanimously recommend the following to the Board of Regents:

1. The hearing committee's findings of fact, conclusions as to the question of guilt of respondent, and recommendation as to the measure of discipline not be accepted, and the Commissioner of Health's recommendation as to the hearing committee's findings of fact, conclusions, and recommendation as to the measure of discipline not be accepted;
2. This matter be remanded to a new hearing committee, consisting of different members and a different administrative officer, for a hearing de novo.
3. Upon the conclusion of the new hearing, the hearing committee shall issue a new report of its findings, conclusions, and recommendation; and

JOSEPH HENRY KENNEDY (9988)

4. The Commissioner of Health shall thereafter render his recommendation and this matter shall be reviewed by the Regents Review Committee, consisting of the same or different members, in whole or in part.

Respectfully submitted,

GERALD J. LUSTIG, M.D.

SIMON J. LIEBOWITZ

PATRICK J. PICARIELLO


Chairperson

Dated: October 25, 1989

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

-----X
IN THE MATTER : STATEMENT
OF : OF
JOSEPH HENRY KENNEDY, M.D. : CHARGES
-----X

JOSEPH HENRY KENNEDY, M.D., the Respondent, was authorized to practice medicine in New York State on June 10, 1987 by the issuance of license number 170926 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, 1986 through December 31, 1988 at Lincoln Medical and Mental Health Center, 234 East 149th Street, Bronx, New York 10451.

FACTUAL ALLEGATIONS

A. On or about November 23, 1987 Patient A (whose name and all other patient names appear in the attached Appendix) presented at Lincoln Medical and Mental Health Center with lower abdominal pain and vaginal bleeding and was admitted by Respondent, a resident in obstetrics and gynecology.

1. On or about November 25, 1987 between the hours of approximately 1:00 a.m. to 4 a.m., Respondent came to the room of Patient A at Lincoln Medical and Mental Health Center when she was sleeping, woke her, said he wanted to examine her, lifted her nightgown, felt her

stomach, put her head on his shoulder and kissed her lips.

2. There is no note in Patient A's hospital record for this visit and Respondent was not on duty at this time.

B. On or about November 23, 1987 at 6:23 p.m. Patient B who was then approximately twelve to fourteen weeks pregnant, admitted to Lincoln Medical and Mental Health Center with vomiting and diagnosis of hyperemesis.

1. On or about November 24, 1987 at approximately 3 a.m., Respondent came to the room of Patient B at Lincoln Medical and Mental Health Center and kissed her.

2. On or about November 25, 1987 between the hours of approximately 1:00 a.m. and 4 a.m., Respondent came to the room of Patient B at Lincoln Medical and Mental Health Center and grabbed her feet and hands and attempted to touch other parts of her body.

3. There is no note in Patient B's hospital record for this visit and Respondent was not on duty at the time.

C. On or about November 23, 1987, Patient C was admitted Lincoln Medical and Mental Health Center with acute pelvic inflammatory disease and asthma.

1. On or about November 25, 1987 between the hours of approximately 1:00 a.m. and 4:00, Respondent came to the room of Patient C on several occasions, put his hands under her nightgown and undergarments, made circular motions in her vaginal area, kissed her on the mouth, played with her toes, asked her about her sex life and how to make love, asked her for her address and phone number and said he wanted to see her outside of the hospital.

2. There is no note in Patient C's hospital record for this visit and Respondent was not on duty at this time.

D. On or about April 8, 1987, Respondent was relieved of his duties as an emergency room contract physician at the Headquarters United States Army Aeromedical Center, Fort Rucker, Alabama and terminated as an ER contract physician on April 8, 1988. On May 8, 1987 at a USAAMC Credentials Committee meeting the circumstances leading to the termination of Respondent were reviewed and the Committee decided to have a special credential committee meeting to proceed with formal decredentialing action based on professional conduct. A special credential committee meeting was held on June 9, 1987 and the Committee recommended revocation of privileges. The Minutes were approved by the hospital commander on July 2, 1987. On July 13, 1987, Respondent signed an application for appointment to the medical staff of Lincoln Hospital. In the application, in response to Question "Have your membership and/or clinical privileges ever been rescinded, suspended, revoked, not renewed, or otherwise been affected at any other hospital or institution," Respondent answered no.

SPECIFICATION OF CHARGES

MORAL UNFITNESS TO PRACTICE THE PROFESSION

FIRST, SECOND AND THIRD SPECIFICATION

Respondent is charged with committing unprofessional conduct under N.Y. Education Law Section 6509(9) (McKinney 1985) and his

conduct in the practice of his profession evidenced moral
unfitness to practice the profession within the meaning of 3
N.Y.C.R.R. 29.1(b)(5)(1981) and 29.4(a)(5)(i), in that,
Petitioner alleges:

1. The facts in Paragraph A.
2. The facts in Paragraph B.
3. The facts in Paragraph C.

WILLFULLY HARASSING, ABUSING AND INTIMIDATING A PATIENT
FOURTH, FIFTH AND SIXTH SPECIFICATION

Respondent is charged with committing unprofessional con-
duct under N.Y. Education Law Section 6509(9) (McKinney 1985) and
conduct in the practice of his profession willfully harassed,
abused and intimidated his patients physically and and/or
verbally within the meaning of 8 N.Y.C.R.R. 29.2(a)(2), in that
Petitioner alleges:

4. The facts in Paragraph A.
5. The facts in Paragraph B.
6. The facts in Paragraph C.

PRACTICING THE PROFESSION FRAUDULENTLY
SEVENTH, EIGHTH, NINTH AND TENTH SPECIFICATION

Respondent is charged with practicing the profession
fraudulently under N.Y. Law Section 6509(2) (McKinney 1985), in
that Petitioner alleges:

7. The facts in Paragraph A.
8. The facts in Paragraph B.
9. The facts in Paragraph C.
10. The facts in Paragraph D.


FAILING TO MAINTAIN MEDICAL RECORDS

ELEVENTH, TWELTH AND THIRTEENTH SPECIFICATION

Respondent is charged with committing unprofessional conduct under N.Y. Educ. Law 36509(a) (McKinney 1985) in that he failed to maintain a record for each patient which accurately reflected the evaluation and treatment of the patient within the meaning of N.Y.C.R.R. 29.2(a)(3) (1981), in that, Petitioner alleges:

11. The facts in Paragraph A.
12. The facts in Paragraph B.
13. The facts in Paragraph C.

DATED: New York, New York
February 1, 1988



SHELLEY J. SHERMAN
Deputy Counsel
Bureau of Professional Medical
Conduct

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

IN THE MATTER :
OF : REPORT OF
JOSEPH HENRY KENNEDY, M.D. : THE HEARING
: COMMITTEE

TO: The Honorable David Axelrod, M.D.
Commissioner of Health, State of New York

Albert L. Bartoletti, M.D., Chairperson, Mrs. Maryclair B. Sherwin and David C. Mendelson, M.D., designated members of 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 Section 230(10)(e) of the Public Health Law. Tyrone T. Butler, Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this Report.

SUMMARY OF PROCEEDINGS

Service of Notice of Hearing and Statement of Charges:	December 30, 1988
Hearing Date:	February 16, 1989
Place of Hearing:	8 East 40th Street New York, New York

Department of Health
appeared by:

Peter J. Millock, Esq.,
General Counsel by
Judith Stein, Esq.,
Office of Professional
Medical Conduct

Respondent appeared by:

Lionel R. Barrett, Jr., Esq.
Suite 417, 222 Second
Avenue, North
Nashville, TN 37210

Proceedings not in presence
of Committee:
(Transcript is part of
the Record herein)

February 1, 1989

Petitioner (Department)
filed Proposed Findings
of Fact, Conclusions of
Law on:

March 24, 1989

Respondent filed Proposed
Findings of Fact,
Conclusions of Law on:

None filed

Deliberations were held on:

April 6, 1989

SUMMARY OF CHARGES

The Specifications allege four charges; namely that the
Respondent:

1. Exhibited moral unfitness to practice the profession (three specifications, 1-3).
2. Willfully harassed, abused and intimidated patients A, B and C (three specifications, 4-6).

3. Practiced the profession fraudulently (four specifications 7-10).
4. Failed to maintain medical records (three specifications, 11-13).

The Statement of Charges are set forth at length and included as Department's Exhibit 2 in the Record herein.

WITNESSES

Patient A Referred to in Statement of Charges, Page 1.

Patient B Referred to in Statement of Charges, Page 2.

Patient C Referred to in Statement of Charges, Page 2.

On behalf of the Respondent:

No witnesses were called in the Respondent's behalf.

The Respondent elected not to appear and was represented solely by the appearance of counsel.

LEGAL DISCUSSION

At the prehearing conference Respondent's counsel offered a motion to admit him to appear in behalf of his client pro hac vice. There being no objection from opposing counsel the motion was granted allowing Respondent's attorney, a duly licensed member

of the State of Tennessee Bar, to appear, appearance limited to this matter exclusively (Court's Exhibit 1).

Respondent's counsel noted for the record that his client has elected not to appear and/or testify at these proceedings. Counsel was then informed of the Appellate Division Decision in Social Service v. Philip De G. 59 NY2d137, that the panel may draw the strongest inference against the Respondent that the opposite evidence in the record permits (Transcript hereinafter "T" page 111).

Respondent's counsel was directed to furnish the hearing officer with affidavits attesting to his client's decision not to appear, to be represented exclusively through counsel and his knowledge as to his counsel's non-admission to the New York State Bar (Prehearing Transcript hereinafter "PT" page 13).

At the close of the Department's case Respondent's counsel stated, on the record, that he did not intend to call witnesses or offer any documentary evidence as part of his defense. He was advised that the panel had scheduled a deliberation date of April 6, 1989, and that written argument and proposed findings of fact are to be submitted no later than April 1, 1989. He agreed to these conditions and offered no objections. As of the date of deliberations no further communication was received from either the Respondent or his counsel. On April 6, 1989, the panel met to deliberate on this matter. They were informed of the failure of Respondent to submit written memoranda as requested. After a

brief discussion the panel elected to continue with deliberations as scheduled.

FINDINGS OF FACT

1. Joseph Henry Kennedy, M.D., the Respondent, was authorized to practice medicine in New York State on June 10, 1987 by the issuance of license number 170926 by the New York State Education Department (Ex. 1).
2. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1986 through December 31, 1988 at Lincoln Medical and Mental Health Center, 234 East 149th Street, Bronx, New York 10451 (Ex. 1).
3. Three Witnesses, for the Department, testified at this proceeding, Patients A, B and C and ten (10) exhibits were offered, by the Department, and received into evidence without objection. The Respondent elected not to appear or testify at this proceeding nor did he offer any witnesses or documents in his behalf (Transcript).

FINDINGS OF FACT PERTAINING TO PATIENT A

4. Patient A is a twenty year old female (Ex. 8).

5. Between November 23, 1987 and November 26, 1987, Patient A was treated by Respondent at Lincoln Hospital for acute pelvic inflammatory disease (Ex. 8, T. 48-50).
6. At approximately 1 a.m. on November 25, 1987 Respondent came to Patient A's room when she was asleep and woke her (T. 51-58, 60, 61).
7. Patient A had not called for medical assistance that night nor experienced any medical problems requiring attention (T. 51).
8. At the time of the visit by Respondent to Patient A's room on November 25, 1987 her roommate was in the TV room (T. 54, 63).
9. At the time of the November 25, 1987 visit by Respondent to Patient A's room he did not write anything in her medical chart or take her vital signs (Ex. 8, T. 22-23).
10. At the time of Respondent's visit to Patient A's room at 1 a.m. on November 25, 1987 he told her to lift her pajamas and said he wanted to examine her. He examined her stomach, grabbed her under her arms, lifted her as though he were hugging her, put his head on his shoulder and kissed her on the lips (T. 53-54, 60).
11. Patient A felt that the Respondent was making a pass at her and was disgusted when he kissed her. She pushed him away, told him it was not her thing and told the nurse what had happened (T. 53-55).
12. The nurse told Patient A she was going to call Respondent who subsequently came to her room and told Patient A not to do this to him and that he was sorry (T. 55, 61).

13. There was no note in Patient A's hospital record of the visit by Respondent to her room in the early morning hours of November 25, 1987 (Ex. 8).
14. Respondent was not on duty at Lincoln Hospital on November 25, 1987 (Ex. 7, p. 53-54).
15. Patient A reported the incident to the hospital and police authorities (T. 55, 66, Ex. 6, p. 75, 85, 86).

FINDINGS OF FACT PERTAINING TO PATIENT B

16. Patient B is a twenty four year old female (T. 13).
17. Between November 23, 1987 and November 25, 1987 Patient B was treated by Respondent at Lincoln Hospital for interuterine pregnancy (Ex. 9, T. 15-24).
18. At approximately 3 a.m. in the morning of November 24, 1987 Respondent came to Patient B's room in Lincoln Hospital while she was in bed (T. 17-18).
19. At the time Respondent visited Patient B on November 24, 1987 Patient B had not called for any medical assistance (T. 18).
20. At the time Respondent visited Patient B on November 24, 1987 her roommate was asleep (T. 17).
21. At the time Respondent visited Patient B in her room on November 24, 1987 he did not take her vital signs nor make any notation in her medical record (Ex. 9, T. 19).
22. When Respondent visited Patient B in the early morning hours on November 24, 1987 he approached her to kiss her on the cheek. He also rubbed her hands in a manner she found disturbing, as if he were making a pass at her (T. 20, 30, 31).

23. Respondent returned to Patient B's room at approximately a.m. on November 25, 1987, while she was in bed (T. 21).
24. Patient B had not called for medical assistance on November 25, 1987 and she did not have any medical problems requiring immediate attention (T. 22).
25. At the time of the 1 a.m. visit by Respondent to Patient room on November 25, 1987 her roommate was asleep (T. 22).
26. At the time of the visit to Patient B's room on November 1987 Respondent did not turn on the lights, write anything in medical chart, examine her or take her vital signs (Ex. 9, T. 22-23).
27. At the time of Respondent's visit to Patient B's room on November 25, 1987 he grabbed her hands and started rubbing them he then left the room. Respondent returned shortly thereafter grabbed Patient B's feet and started rubbing them, touching her in a manner that she had never experienced with any other doctor thus greatly disturbing her (T. 23-25, 33-35).
28. There was no mention in Patient B's hospital record of the visit by Respondent to her room on November 25, 1987 (Ex. 9).
29. Respondent was not scheduled to be on duty at Lincoln Hospital on November 24, 1987 or November 25, 1987 (Ex. 7, p. 53-54).
30. Patient B reported the incident to hospital and police authorities (T. 25, 35, Ex. 6, p. 84).

FINDINGS OF FACT PERTAINING TO PATIENT C

31. Patient C is a twenty one year old female (Ex. 10).

32. Between November 23, 1987 and November 27, 1987 Patient C treated by Respondent at Lincoln Hospital for acute pelvic inflammatory disease and asthma (Ex. 10).
33. At the time Patient C was admitted to Lincoln Hospital on November 23, 1987 she was examined by the Respondent without anyone else present. During her admission examination Respondent asked her about her sex life and whether her husband made love to her in a normal fashion. Questions which bothered her and which she refused to answer (T. 70, 72, 78-79, 95, 100).
34. At approximately 3 a.m. in the morning of November 25, 1987 Respondent came to Patient C's room in Lincoln Hospital while she was in bed sleeping (T. 73-74).
35. Patient C had not called for medical assistance nor had she been asked to see a doctor (T. 74).
36. At the time of the November 25, 1987 3 a.m. visit to Patient C's room Respondent did not write in her medical chart, examine her or take her vital signs (Ex. 10, T. 76-77).
37. At the time of Respondent's visit to Patient C's room at 3 a.m. on November 25, 1987 she awoke to find Respondent kissing her and his hand was under her underwear touching her around the opening of her vagina (T. 74, 82, 101).
38. Respondent told Patient C that he had come to put in her IV but he did not have any equipment with him (T. 75, 83).
39. Respondent left the room and returned shortly thereafter and proceeded to put in her IV. He asked her how she made love in bed

and asked her to show him how to do it right while he sat on the bed and played with her toes (T. 75, 83).

40. While Respondent was in Patient C's room he asked her to write down her name and address for him because he wanted to see her outside the hospital (T. 75-76, 83).

41. Patient C refused to write her name and address for the Respondent and called the nurse and told her that the Respondent had been fresh with her (T. 76).

42. There was no mention in Patient C's hospital record of the visit by Respondent to her room at 3 a.m. on November 25, 1987 (Ex. 7, p. 53-54).

43. Respondent was not on duty at Lincoln Hospital on November 25, 1987 (Ex. 7, p. 53-54).

44. Patient C reported the incident to hospital and police authorities (Ex. 6, p. 85, T. 76-77, 87).

FINDINGS OF FACT PERTAINING TO
ALLEGATIONS IN PARAGRAPH "D" IN
THE STATEMENT OF CHARGES

45. On April 9, 1987 it was decided by the Department of the Army Headquarters, United States Aeromedical Center, Fort Rucker, Alabama, to terminate Respondent's employment, as a contract physician, for behavioral reasons (Ex. 5, p. 13).

46. The company employing the Respondent was informed of the allegations against him and his employer spoke with him telephonically and immediately after this conversation Respondent departed the Fort Rucker facility. This was notice to the

Respondent that his employment as a contract physician was being terminated (Ex. 5, p. 27).

47. On July 13, 1987 Respondent prepared and signed an application for appointment to the medical staff of Lincoln Hospital. In that application in response to question #2, "Have your membership or clinical privileges ever been rescinded or otherwise been affected in any other hospital or institution?", Respondent answered "no" (Ex. 6, p. 1-2).

CONCLUSIONS

The panel agrees unanimously that the Respondent has exhibited moral unfitness to practice the profession. We find that the witnesses, Patients A, B and C, were credible in their demeanor and presentation of the events as they occurred. The Respondent's behavior as revealed through the testimony and documents in evidence was found to be totally inappropriate, unprofessional and unacceptable in the practice of medicine. We therefore, find that Specifications 1, 2 and 3 are sustained.

In addition to the panel's conclusions noted above, we find that the Respondent, using his position as a physician to approach patients under his professional care, in a totally self-serving manner with no regard as to the effect that this activity might have upon the patient's physical well being to be reprehensible. We find that the Respondent's behavior did, in fact, harass, abuse

and intimidate Patient's A, B and C. Therefore the panel votes unanimously to sustain Specifications 4, 5 and 6.

The panel finds that the episodes involving the Respondent and Patients A, B and C on or about November 24, 1987 and November 25, 1987, had no medical purpose. Further, the panel finds that the documentary evidence supports the Department's position that the Respondent had knowledge of his termination of employment from the Army Medical Facility at Fort Rucker, Alabama (Lyster Army Hospital, Fort Rucker, Alabama) on or about April 8, 1987. Subsequently when the Respondent applied to Lincoln Hospital on July 13, 1987, he did knowingly omit from his application any reference to his prior termination or association with Lyster Army Hospital. In addition, he answered in the negative when he filled out application questions regarding prior suspensions, revocations, rescissions, or adverse decisions, etc... affecting his medical privileges. Therefore the panel finds that Specifications 7, 8, 9 and 10 are sustained.

The panel finds that the Respondent in his care and treatment of Patients A, B and C failed to maintain accurate and true records reflecting the evaluation, visits and treatment of these patients. Therefore, the panel votes unanimously to sustain Specifications 11, 12 and 13.

RECOMMENDATION

The panel votes unanimously to recommend to the Commissioner that the Respondent's license to practice medicine be revoked.

DATED: New York, New York
1989

Respectfully submitted,

Albert L. Bartoletti, M.D. 4-7

Albert L. Bartoletti, M.D.
Chairperson
Mrs. Maryclaire B. Sherwin
David C. Mendelson, M.D.

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

IN THE MATTER :
OF :
JOSEPH HENRY KENNEDY, M.D. : COMMISSIONER'S
: RECOMMENDATION

TO: Board of Regents
New York State Education Department
State Education Building
Albany, New York

A hearing in the above-entitled proceeding was held on February 16, 1989. Respondent, Joseph Henry Kennedy, M.D., appeared by Lionel R. Barrett, Jr., Esq., of Counsel. Petitioner appeared by Peter J. Millock, Esq., General Counsel, Judith Stein, Esq., of Counsel.

NOW, on reading and filing the transcript of the hearing, the exhibits and other evidence, and the findings, conclusions and recommendation of the Committee,

I hereby make the following recommendation to the Board of Regents:


- A. The Findings of Fact and Conclusions of the Committee should be accepted in full;
- B. The Recommendation of the Committee should be accepted in full;
- C. The Board of Regents should issue an order adopting and incorporating the Findings of Fact and Conclusions and further adopting as its determination the Recommendation described above.

EXHIBIT "C"

The entire record of the within proceeding is
transmitted with this Recommendation.

Dated: Albany, New York

^{May}
June 9 . 1989


DAVID AXELROD, M.D.
Commissioner of Health
State of New York

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

JOSEPH HENRY KENNEDY

CALENDAR NO. 9988



The University of the State of New York

IN THE MATTER

OF

JOSEPH HENRY KENNEDY
(Physician)

DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 9988

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 9988, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (March 23, 1990): That, in the matter of JOSEPH HENRY KENNEDY, respondent, the recommendation of the Regents Review Committee be modified and, based upon our independent review of this matter and rejecting any adverse inference being drawn from respondent's failure to testify, that the hearing committee's 47 findings of fact, conclusions as to the question of respondent's guilt, and recommendation as to the measure of discipline, and the Commissioner of Health's recommendation as to those findings of fact, conclusions, and recommendation, be accepted; that the respondent is guilty, by a preponderance of the evidence, of the professional misconduct charged and, in agreement with the hearing committee and Commissioner of Health, that 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 is guilty; that respondent may, pursuant to Rule 24.7(b) of the Rules of the Board of Regents, apply for restoration of said license after one year has elapsed from the effective date of the service of the order of the Commissioner of Education to be issued herein, but

said application shall not be granted automatically;
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 16th day of

April 1990.

Thomas Sobol

Commissioner of Education

