



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

November 7, 1994

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OFFICE OF
MEDICAL CONDUCT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Edwin J. Grasmann, D.O.

REDACTED

Ann Hroncich, Esq.
NYS Dept. of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

William L. Wood, Jr., Esq.
Wood & Scher
14 Harwood Court
Scarsdale, New York 10583

Effective Date: 11/14/94

RE: In the Matter of Edwin J. Grasmann, D.O.

Dear Dr. Grasmann, Ms. Hroncich & Mr. Wood :

Enclosed please find the Determination and Order (No. 94-134) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Empire State Plaza
Corning Tower, Room 438
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

REDACTED

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:

Enclosure

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

IN THE MATTER
OF

EDWIN J. GRASMANN, D.O.

ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 94-134

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.**¹ held deliberations on October 11, 1994 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) August 3, 1994 Determination finding Dr. Edward J. Grasmann (Respondent) guilty of professional misconduct. The Office of Professional Medical Conduct (Petitioner) requested the Review through a Notice which the Board received on August 17, 1994. James F. Horan served as Administrative Officer to the Review Board. Ann Hroncich, Esq. filed a brief for the Petitioner, which the Review Board received on September 6, 1994. William L. Wood, Esq. filed a reply brief for the Respondent, which the Review Board received on September 13, 1994.

SCOPE OF REVIEW

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

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

¹ Sumner Shapiro did not participate in this case.

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

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

HEARING COMMITTEE DETERMINATION

The Petitioner charged the Respondent with moral unfitness in the practice of medicine, fraud in the practice of medicine and wilfully harassing, abusing or intimidating two patients. The record refers to the patients by the initials A and B to protect the patients' privacy.

The Hearing Committee found that the Respondent had, during an examination of Patient A, run his fingers along the Patient's bra strap inappropriately and had made inappropriate comments about the Patient's eyes. The Committee found further, that during an examination of Patient B, the Respondent had touched the Patient's legs for other than a medical purpose and had made inappropriate remarks about the Patient's bra. The Committee found that the Respondent's conduct constituted sexual harassment of each Patient. The Committee concluded that the Respondent's conduct did not amount to wilfully harassing, intimidating or abusing a patient and did not amount to fraud in the practice of medicine. The Committee determined that the Respondent's conduct did constitute moral unfitness in the practice of medicine.

The Committee stated that the Respondent appeared to be contrite about his interactions with the two patients and accepted the Respondent's testimony that he is undergoing psychotherapy and now has an assistant in the room while examining female patients. The Committee determined that the Respondent's conduct exceeded the bounds of proper medical practice and that the Respondent's conduct caused the Patients to feel uncomfortable and sexually harassed. The Committee determined, however, that the Respondent's conduct did not rise to the level of sexual abuse. The Committee voted to censure and reprimand the Respondent and recommended that the Respondent continue in therapy and always have an assistant in the examining room when the Respondent is with a female patient.

REQUESTS FOR REVIEW

The Petitioner has asked that the Review Board increase the Hearing Committee's Penalty. The Petitioner asserts that the Hearing Committee's Penalty is inappropriate to protect the public. The Petitioner asserts that an appropriate penalty would include a stayed suspension and a two year probation period, during which the Respondent would be required to continue therapy and file written reports with the Office of Professional Medical Conduct (OPMC).

The Petitioner asserts that the Hearing Committee's Penalty is severe enough and that the Respondent has changed his practice as a result of the misconduct proceeding.

REVIEW BOARD DETERMINATION

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

The Review Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty of moral unfitness in the practice of medicine. The Determination is consistent with the Committee's findings and conclusions concerning the Respondent's inappropriate conduct towards Patients A and B.

The Review Board votes to modify the Hearing Committee's Penalty censuring and reprimanding the Respondent, because the censure and reprimand alone will not be sufficient to assure that the Respondent has corrected his pattern of practice and that the Respondent will not be likely to repeat his inappropriate conduct toward other patients.

The Respondent's assurances that he will continue in therapy and always include an assistant in the room when he examines a female patient, which the Hearing Committee apparently relied upon when they restricted their Penalty to a censure and reprimand, are not legally binding on the Respondent. The Respondent could discontinue therapy and discontinue including an assistant in the examining room at any time, at his desire and without any notice to OPMC. The Review Board votes to place the Respondent on probation for a period of three years. During the period of probation, the Respondent shall continue to receive therapy from a health care provider selected by the Respondent, with the approval of the Office of Professional Medical Conduct. The Respondent shall

be responsible to assure that his therapist provides the OPMC Director with quarterly reports concerning the Respondent's compliance with therapy and immediate reports if the Respondent is not complying with therapy. The Respondent must notify OPMC prior to or immediately upon a change in his therapist and OPMC must approve the new therapist. The treating therapist must notify OPMC if and when the therapist determines that therapy is no longer necessary or advisable for the Respondent. In addition, the Respondent shall include a female assistant in the room with him at any time during which he examines or treats a female patient.

ORDER

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

1. The Review Board **sustains** the Hearing Committee on Professional Medical Conduct's August 3, 1994 Determination finding Dr. Edwin J. Grasmann guilty of professional misconduct.

2. The Review Board **modifies** Hearing Committee's Determination to censure and reprimand Dr. Grasmann.

3. In addition to the censure and reprimand, the Review Board **places the Respondent on probation for three years**, under the terms which we set out in this Determination.

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.


IN THE MATTER OF EDWIN J. GRASSMAN, M.D.

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

DATED: Albany, New York

11/10, 1994

REDACTED

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ROBERT M. BRIBER

IN THE MATTER OF EDWIN J. GRASSMAN, D.O.

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

DATED: Brooklyn, New York

_____, 1994

REDACTED

WINSTON S. PRICE, M.D.

IN THE MATTER OF EDWIN J. GRASSMAN, M.D.

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

DATED: Roslyn, New York

Roslyn 2, 1994

REDACTED

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF EDWIN J. GRASSMAN, M.D.

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

DATED: Syracuse, New York

2 Nov., 1994

REDACTED

WILLIAM A. STEWART, M.D.