



# 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

August 3, 1994

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Edwin J. Grasmann, D.O.

REDACTED

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

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

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

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

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

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

Office of Professional Medical Conduct  
New York State Department of Health  
Corning Tower - Fourth Floor (Room 438)  
Empire State Plaza  
Albany, New York 12237

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

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he determination of a committee on professional medical conduct may be reviewed by the

Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Empire State Plaza  
Corning Tower, Room 2503  
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

REDACTED

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:mmn

Enclosure

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

-----X  
IN THE MATTER : DETERMINATION  
OF : AND  
EDWIN J. GRASMANN, D.O. : ORDER  
-----X

NO. BPMC-94-134

Joseph Geary, M.D., Chairperson, Morton Kleinman, and C. Fred Peckham, Jr., D.O. duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Sections 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230(10)(e)<sup>1</sup> and 230(12) of the Public Health Law. Jane B. Levin, Esq., Administrative Law Judge, served as Administrative Officer<sup>2</sup> for the Hearing Committee.

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

SUMMARY OF THE PROCEEDINGS

Notice of Hearing dated:	March 25, 1994
Amended Statement of Charges dated:	May 5, 1994
Hearing dates:	May 5, 1994 May 12, 1994
Deliberation Date:	June 23, 1994
Place of Hearing:	NYS Department of Health 5 Penn Plaza New York, N.Y.
Petitioner appeared by:	Peter J. Millock, Esq. General Counsel NYS Department of Health By: Ann Hroncich, Esq. Associate Counsel

Respondent appeared by:

Wood & Scher  
14 Harwood Court  
Scarsdale, N.Y. 10583  
By: William L. Wood, Jr., Esq.

WITNESSES

For the Petitioner:

- 1) Patient A
- 2) Patient B

For the Respondent:

- 1) Alfred Ekstrom, M.D.
- 2) Michael Schwartz, M.D.
- 3) Judy Ann Veltri
- 4) Edwin J. Grassmann, D.O. (Respondent)

STATEMENT OF CHARGES

The Statement of Charges essentially charges the Respondent with professional misconduct in evidencing moral unfitness to practice medicine, practicing fraudulently, and willfully harassing, abusing or intimidating two patients during a purported physical examination.

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

### FINDINGS OF FACT

Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

### GENERAL FINDINGS

1. Respondent was authorized to practice medicine in the State of New York on August 16, 1985 by the issuance of license number 164126 by the New York State Education Department (Pet. Ex. 2).

2. The Respondent is currently registered to practice medicine with the New York State Department of Education for the period January 1, 1993 to December 31, 1994 (Pet. Ex. 2).

### FINDINGS OF FACT AS TO PATIENT A

3. Respondent treated Patient A, a 24 year old female, on or about February 25, 1993, at his office, which at the time was located at 640 Belle Terre Road, Port Jefferson, New York (T. 11-12).

4. In the course of a physical examination, while Patient A

was seated on the examining table, Respondent's hand made contact with patient's brassiere while he was examining her heart with a stethoscope (T. 141).

5. In the course of this physical examination, while Patient A was seated on the examining table, Respondent placed his finger under Patient A's bra strap on Patient A's back and he ran his finger under the strap against her skin in an attempt to straighten the twisted strap (T. 17-19, 34-35, 40, 49-50, 51-52, 140).

6. Patient A's credible, detailed description of the manner in which Respondent touched her bra strap demonstrates that Respondent was not touching Patient A for a proper medical purpose (T. 17-19, 140).

7. In the course of this physical examination, while Patient A was seated on the examining table, Respondent made inappropriate comments about Patient A's eyes (T. 14-15, 20, 35-36).

8. Patient A promptly reported Respondent's conduct to several people (T.22-24, 44-46).

#### CONCLUSIONS AS TO PATIENT A

9. Respondent did not touch Patient A's breast inappropriately during his examination of her heart.

10. Respondent did inappropriately run a finger under Patient A's bra strap and touch her shoulder, thus harassing the patient sexually.

11. Respondent made inappropriate comments about Patient A's

eyes.

FINDINGS OF FACT AS TO PATIENT B

12. Respondent treated Patient B, a 27 year old female, on two occasions, in approximately April and May of 1989, at his office, which at the time was located at 640 Belle Terre Road, Port Jefferson, New York (T. 54-55; Pet. Ex. 4).

13. In the course of a physical examination, while Patient B was sitting on the examining table, Respondent touched Patient B's leg and made inappropriate comments (T. 57, 60-62).

14. Patient B's credible, detailed description of the manner in which Respondent touched her demonstrates that Respondent was not touching Patient B's leg for a proper medical purpose (T. 57, 60-62).

15. In the course of a physical examination, while Patient B was lying on the examining table, Respondent unbuttoned her shorts and pressed down on her abdomen below her navel in order to perform a proper examination of her abdomen and inguinal lymph nodes (T. 58-59, 63-64, 171-2).

16. In the course of a physical examination, while Patient B was sitting on the examining table, Respondent made inappropriate comments about Patient B's bra (T. 58, 60-62, 68).

17. Patient B promptly reported Respondent's conduct to several people (T. 59-60; Pet. Ex. 4, p. 3).

CONCLUSIONS AS TO PATIENT A

18. Respondent did touch Patient B's leg and make inappropriate comments, thus harassing her sexually.

19. Respondent properly examined Patient B's abdomen.

20. Respondent made inappropriate comments about Patient B's bra, thus sexually harassing her.

VOTE OF THE HEARING COMMITTEE

(All votes were unanimous.)

FIRST THROUGH SECOND SPECIFICATIONS:  
(Moral unfitness to practice medicine)

SUSTAINED as to Paragraphs A; A.1.b; A.2; A.2.a; B; B.1.a, B.2., B.2.a.

NOT SUSTAINED as to Paragraphs A.1.a. and B.1.b.

THIRD THROUGH FOURTH SPECIFICATIONS:  
(Practicing fraudulently)

NOT SUSTAINED

FIFTH THROUGH SIXTH SPECIFICATION:  
(Willfully harassing, abusing or intimidating a patient)

NOT SUSTAINED as to Paragraphs A.1.a and B.1.b.

DETERMINATION OF THE HEARING COMMITTEE AS TO PENALTY

The Hearing Committee unanimously determines that the



Respondent's conduct with Patients A and B evidenced moral unfitness to practice the profession and that the Respondent sexually harassed these patients. The Committee does not sustain the charge of practicing the profession fraudulently, because it found the requisite elements of knowledge and intent lacking. The Committee has therefore determined that the Respondent should be censured and reprimanded. The Committee's decision on penalty was based upon its conviction that while Respondent is a competent and caring physician, he exceeded the bounds of proper medical conduct during his interaction with these two patients. His conduct does fall short of sexual abuse of the patients, but nonetheless did cause the patients to feel uncomfortable and sexually harassed.

Respondent did appear to be contrite about these interactions, and admitted that he is undergoing psychotherapy. He also stated that it is now his practice to have an assistant in the room while he examines female patients. The Committee strongly recommends that he continue his therapy and that he always have an assistant in the examining room when he is with a female patient.

#### ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT

1. Respondent is hereby censured and reprimanded for sexually harassing two patients.

Dated: New York, New York  
July 27, 1994

REDACTED

JOSEPH GEARY, M.D.  
Chairperson

C. FRED PECKHAM, Jr., D.O.  
MORTON KLEINMAN

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

-----X  
IN THE MATTER :  
OF : NOTICE  
EDWIN J. GRASMANN, D.O. : OF  
: HEARING  
-----X

TO: EDWIN J. GRASMANN, D.O.  
REDACTED

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990 and Supp. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 5th day of May, 1994, at 10:00 in the forenoon of that day at 5 Penn Plaza, Sixth Floor, New York, New York 10001 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. 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.

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 Administrative Law Judge's Office, Empire State Plaza, Tower Building, 25th Floor, Albany, New York 12237, (518-473-1385), 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 Section 230 (McKinney 1990 and Supp. 1994), you may file an answer to the Statement of Charges not less than ten days prior to the date of the hearing. If you wish to raise an affirmative defense, however, N.Y. Admin. Code tit. 10, Section 51.5(c) requires that an answer be filed, but allows the filing of such an answer until three days prior to the date of the hearing. Any answer shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to Section 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.

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 THE OTHER SANCTIONS SET OUT IN  
NEW YORK PUBLIC HEALTH LAW SECTION 230-a  
(McKinney Supp. 1994). YOU ARE URGED TO  
OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS  
MATTER.

DATED: New York, New York

March 25, 1994

REDACTED

CHRIS STERN HYMAN,  
Counsel

Inquiries should be directed to: Ann Hroncich  
Associate Counsel  
Bureau of Professional  
Medical Conduct  
5 Penn Plaza, 6th Floor  
New York, New York 10001  
Telephone No.: 212-613-2615

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

-----X AMENDED  
IN THE MATTER : STATEMENT  
OF : OF  
EDWIN J. GRASMANN, D.O. : CHARGES  
-----X

EDWIN J. GRASMANN, D.O., the Respondent, was authorized to practice medicine in New York State on August 16, 1985, by the issuance of license number 164126, by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 to December 31, 1994, at REDACTED

FACTUAL ALLEGATIONS

- A. Respondent treated Patient A, a 24 year old female, at his office, which at the time was located at 640 Belle Terre Road, Port Jefferson, New York, on or about February 25, 1993. (The identities of Patients A and B are disclosed in the attached Appendix.) Patient A's chief complaint was severe headache.

1. In the course of a purported physical examination, but not for a proper medical purpose, Respondent touched Patient A inappropriately as follows:
    - a. While Patient A was seated on the examining table, Respondent placed his hand on her entire breast.
    - b. Also while Patient A was seated on the examining table, Respondent placed his finger under Patient A's bra strap on Patient A's back, and he ran his finger up and down against her skin.
  2. Respondent engaged in inappropriate conduct as follows:
    - a. While Patient A was sitting on the examining table, Respondent made inappropriate comments about Patient A's eyes.
- B. Respondent treated Patient B, a 27 year old female, at his office, which at the time was located at 640 Belle Terre Road, Port Jefferson, New York, on approximately 2 occasions in



approximately April and May, 1989. Patient B's chief complaints were sinus congestion and facial pressure in April, and swollen glands in May.

1. On or about May 22, 1989, in the course of a purported physical examination, but not for a proper medical purpose, Respondent touched Patient B inappropriately as follows:

a. While Patient B was sitting on the examining table, Respondent touched Patient B's leg(s) and made inappropriate comments.

b. While Patient B was lying on the examining table, Respondent unbuttoned her shorts (and pressed down on her abdomen below her navel).

2. Respondent engaged in inappropriate conduct as follows:

a. While Patient B was sitting on the examining table, Respondent made inappropriate comments about Patient B's bra.

SPECIFICATION OF CHARGES

FIRST THROUGH SECOND SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with conduct in the practice of medicine which evidences moral unfitness to practice medicine, under N.Y. Educ. Law Section 6530(20) (McKinney Supp. 1994), in that Petitioner charges:

1. The facts contained in paragraphs A., A.1., A.1.a. and/or b. and/or A.2. and A.2.a.
2. The facts contained in paragraphs B., B. 1. and B.1.a. and/or b and/or B.2. and B.2.a.

THIRD THROUGH FOURTH SPECIFICATIONS

PRACTICING FRAUDULENTLY

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

3. The facts contained in paragraphs A., A.1., A.1.a. and/or b. and/or A.2. and A.2.a.

4. The facts contained in paragraphs B., B. 1. and B.1.a. and/or b and/or B.2. and B.2.a.

FIFTH THROUGH SIXTH SPECIFICATIONS

WILLFULLY HARASSING, ABUSING OR INTIMIDATING PATIENTS

Respondent is charged with willfully harassing, abusing or intimidating patients either physically or verbally, under N.Y. Educ. Law Section 6530(31) (McKinney Supp. 1994), in that Petitioner charges:

5. The facts contained in paragraphs A., A.1., A.1.a. and/or b. and/or A.2. and A.2.a.
6. The facts contained in paragraphs B., B. 1. and B.1.a. and/or b and/or B.2. and B.2.a.

DATED: New York, New York

May 5, 1994

REDACTED

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CHRIS STERN HYMAN  
Counsel  
Bureau of Professional Medical  
Conduct