



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.  
*Commissioner*

Karen Schimke  
*Executive Deputy Commissioner*

August 27, 1996

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Dianne Abeloff, Esq.  
NYS Department of Health  
5 Penn Plaza-Sixth Floor  
New York, New York 10001

Richard A. Brown, Esq.  
Brown, Painbiris & Zarella, Esqs.  
100 Pearl Street  
Hartford, Connecticut 06103

Arthur Blumer, M.D.  
38 Castleman Drive  
Southington, Connecticut 06489

**RE: In the Matter of Arthur Blumer, M.D.**

Effective Date: 09/03/96

Dear Ms. Abeloff, Mr. Brown and Dr. Blumer:

Enclosed please find the Determination and Order (No.96-115) 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.

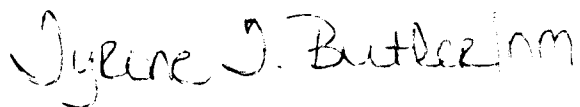
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

A handwritten signature in black ink that reads "Tyrone T. Butler" followed by a vertical line and the letters "nm".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm

Enclosure

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

COPY

IN THE MATTER

OF

ARTHUR BLUMER, M.D.

Administrative Review from a Determination by a Hearing  
Committee on Professional Medical Conduct

ADMINISTRATIVE  
REVIEW BOARD  
DETERMINATION  
ARB NO. 96-115

The Office of Professional Medical Conduct (Petitioner) requests, pursuant to New York Public Health Law (Pub.H.L.) §230-c(4)(a) (McKinney's Supp. 1996), that the Administrative Review Board for Professional Medical Conduct (Board) review and modify a Determination by a Hearing Committee on Professional Medical Conduct (Committee), which determined that the Respondent **ARTHUR BLUMER, M.D.** (Respondent) committed professional misconduct in violation of New York Education Law (Educ. L.) §§6530(9)(d), 6530(20) and 6530(31). The Respondent, in replying to the Petitioner's request, has asked the Board to clarify a provision from the Committee's penalty. Board Members **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** conducted deliberations in this case on July 19, 1996, and the Board now renders this Determination. Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer. The Board votes 5-0 to overturn the Hearing Committee's penalty in this case. We vote to revoke the Respondent's license to practice medicine in New York State. The Board also modifies the Committee's Determination on guilt. The Board discusses the reasons for this Determination below after summarizing the Committee's Determination on the charges, the issues the parties' raised on review and the Board's review authority.

**RICHARD A. BROWN, ESQ.** (Brown, Paineris & Zarella, LLP) represented the Respondent on this review.

**DIANNE ABELOFF, ESQ.**, Associate Counsel for the New York State Department of Health, represented the Petitioner.

## CHARGES AND COMMITTEE DETERMINATION

Pub.H.L. §230 authorizes three member committees from the State Board for Professional Medical Conduct (BPMC) to conduct disciplinary proceedings to determine whether physicians have committed professional misconduct by violating Educ. L. §6530. The Petitioner filed charges with BPMC alleging that the Respondent violated Educ. L. §6530(9)(d) by:

- having disciplinary action taken by a duly authorized professional agency for another state;
- for conduct which would constitute professional misconduct if committed in New York State.

The Petitioner alleged that the Respondent's conduct, if committed in New York would have constituted:

- practicing medicine evidencing moral unfitness, in violation of Educ. L. §6530(20); and
- willfully harassing, abusing or intimidating a patient, in violation of Educ. L. §6530(31).

The Petitioner brought this case as an expedited proceeding pursuant to Pub.H.L. §230(10)(p). The purpose for such a proceeding is to determine the nature and severity for the penalty to be imposed for the misconduct, Matter of Siddiqui, Index No. 73383 (Third Dept. June 6, 1996). The charges arose from a 1995 Order through which the Connecticut Medical Examining Board (Connecticut Board) placed the Respondent on five years probation.

Three BPMC Members, **STEPHEN A. GETTINGER, M.D. (Chair)**, **REV. JAMES H. MILLER** and **LAXMI V. BAXI, M.D.** comprised the Committee, which conducted a hearing pursuant to Pub.H.L. §230(10) and which rendered the May 14, 1996 Determination that the Board now reviews. Administrative Law Judge **LARRY STORCH** served as the Committee's Administrative Officer. The Committee determined that the Respondent entered a consent agreement with the Connecticut Board which formed the basis for the Connecticut Order. By the consent agreement, the Respondent chose not to contest allegations that the Respondent:

- between 1982 and 1994, while providing care to pediatric patients, touched several of his patients' mothers and/or adult female patients in a sexually inappropriate manner; and
- in 1994, inappropriately entered a closed private shower room of a patient's mother, while she was taking a shower, at a hospital facility.

The Connecticut Order placed the Respondent on probation and directed that the Respondent:

- undergo a psychiatric evaluation; and
- provide care and communicate in person with patients' mothers only in the presence of a third party monitor, pre-approved by the Connecticut Department of Public Health.

The Respondent underwent a psychiatric evaluation which determined that he could return to practice with reasonable skill or safety, provided that he:

- resumed psychotherapy;
- underwent psychosexual consultative evaluation to be conducted by a psychologist or psychiatrist with specialized expertise in psychosexual disorders; and
- underwent neuropsychological evaluation to explore reasons for unevenness in his psychological profile.

The Connecticut Board adopted those terms as part of the Respondent's probation by letter on April 23, 1996.

The Committee concluded that the Respondent's conduct in Connecticut would constitute conduct in practicing medicine which evidences moral unfitness. The Committee referred incorrectly, however, to the citation for that statute as Educ. L. §6530(31). That Educ. L. section actually prohibits willfully harassing, abusing or intimidating a patient. Educ. L. §6530(20) prohibits moral unfitness. The Committee made no mention as to whether they sustained the charge that the Respondent's conduct would also have constituted willfully harassing, abusing or intimidating a patient.

The Committee stated that they would have found revocation to be the appropriate penalty in this case, but concluded that in this proceeding there was only sketchy information from the Connecticut Order, which was insufficient to warrant a revocation. The Committee noted that the Connecticut Board had more information in their possession and determined that the Respondent could practice safely under imposed probation terms. The Committee did express concern that the Respondent lacked insight into his previous conduct. The Committee voted to suspend the

Respondent's New York license for two years and to stay the suspension pending full compliance with the terms and conditions from the Connecticut Consent Order. The Committee provided that should the Respondent resume active medical practice in New York, he shall be on five years probation. The probation terms provide that the Respondent may provide care and treatment to patients and communicate in person with patients' mothers only in the presence of a third party monitor. The probation also required that the Respondent provide the Petitioner with copies of the records from all psychiatric/psychological evaluations and treatments.

### **RECORDS AND ISSUES ON REVIEW**

The Petitioner filed a Notice requesting a review on the Committee's Determination, which the Board received on May 28, 1996. The Notice stayed the Committee penalty automatically, pending the Board's final Determination on the review (Pub.H.L. §230-c(4)(a)). The Record on review contained the hearing transcript and exhibits and the parties' briefs. The Board received the Respondent's brief on June 20, 1996 and the Petitioner's brief on June 24, 1996.

The Respondent contends that the Committee acted appropriately in placing the Respondent on probation and that the Petitioner failed to establish any just cause for revocation. The Respondent agrees with the Committee's conclusion that the Connecticut Board was in the best position to determine the appropriate resolution for this case. The Respondent also notes that fourteen months have passed since the first allegation appeared against Dr. Blumer and the Respondent has cooperated completely since that time with the Connecticut Board in their investigation.

The Respondent asks that the Board clarify the Hearing Committee's penalty concerning the time period during which the Respondent shall serve on probation. The Respondent contends that the time period for any New York probation should run concurrently with the time remaining on the Respondent's Connecticut probation, in the event that the Respondent returns to active practice in New York during that time. The Respondent offers clarifying language for the Board's consideration on page 6 of his brief.

The Petitioner contends that the Committee's penalty is inappropriate and urges the Board to revoke the Respondent's license. The Petitioner contends that the Connecticut Board clearly disciplined the Respondent for touching patients' mothers and adult patients in a sexual and inappropriate way over a course of twelve years. The Petitioner contends that New York is not bound by the Connecticut decision to allow the Respondent to remain in practice.

The Petitioner argues, in the alternative, that if the Board will not overturn the Committee's sanction, that the Board must clarify the penalty to indicate whether the probation runs concurrently with the Connecticut probation or whether the probation begins only at the point when the Respondent returns to active medical practice in New York.

### **THE BOARD'S REVIEW AUTHORITY**

Pub.H.L. §230(10)(i), §230-c(1) and §230-c(4)(b) authorize the Board to review determinations by hearing committees for professional medical conduct and to decide:

- 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.

Pub.H.L. §230-c(4)(b) permits the Board to remand a case to the Committee for further consideration. Pub.H.L. §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

The Board has the authority to substitute our judgement for that of the Hearing Committee, in deciding upon a penalty Matter of Bogdan 195 AD 2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, Matter of Spartalis 205 AD 2d 940, 613 NYS 2d 759 (Third Dept. 1994), and in deciding credibility issues, Matter of Minielly \_\_AD 2d \_\_, 634 NYS 2d 856, 1995 N.Y. App. Div. LEXIS 12692 (Third Dept. 1995).

## THE BOARD'S DETERMINATION

The Board renders this Determination after reviewing the hearing record, the Committee's Determination and Order and the parties' briefs. The Board sustains the Committee's Determination finding the Respondent guilty for professional misconduct. The Connecticut Consent Order provided that the Respondent agreed that the Connecticut Order would have the same effect as if the charges were proven and ordered after a full hearing. We modify the Committee's Determination as to which misconduct categories that this case involves. The Petitioner charged that the Respondent's Connecticut conduct, if committed in New York, would amount to violating:

- Educ. L. §6530(20)-conduct in practicing medicine which evidences moral unfitness; and
- Educ. L. §6530(31)-willfully harassing, abusing or intimidating a patient either physically or verbally.

The Hearing Committee's Determination at page 4 states that the Committee found that the Respondent's misconduct would constitute moral unfitness in the practice of medicine, but the Committee referred to Educ. L. §6530(31), which prohibits willful abuse. The Board can not be sure whether the Committee meant to sustain only one category of misconduct or whether the wording from the Committee Determination is a word processing error. The Board sees no reason to delay this case by remanding to the Committee for clarification. The Board concludes that touching a patient or a pediatric patients' mother in an inappropriate and sexual manner and entering the private shower room of a patients' mother, if committed in New York, would constitute:

- conduct evidencing moral unfitness to practice medicine, in violation of Educ. L. §6530(20); and
- willfully harassing, abusing or intimidating a patient, in violation of Educ. L. §6530(31).

The Board votes to overturn the Committee's stayed suspension/probation penalty. We vote unanimously to revoke the Respondent's New York medical license. We agree with the Committee that if the Respondent had committed this conduct in New York, his actions would warrant revocation. We also agree with the Committee that the Respondent shows no insight into his misconduct. The Board disagrees with the Committee's conclusion, that since Connecticut had more



information about the case, that New York should take guidance from Connecticut's sanction. Although the Committee and the Board are bound by the Connecticut Order's findings, both the Committee and the Board must fashion the appropriate penalty to protect the public in this State. The Board finds nothing in this record to convince us that we can trust the Respondent to practice safely in New York.

The Respondent committed abusive and morally unfit conduct towards patients and pediatric patients' mothers over a twelve year period. The Respondent demonstrated no remorse over his conduct and over the harm he may have caused to the women he abused during the twelve year period. He entered counselling only after Connecticut brought charges against him. The Respondent showed no insight into his problem, which leads the Board to fear that the Respondent remains a danger to his patients or their mothers.

The Board discussed a penalty less harsh than revocation, such as probation with a monitor. The Board felt that probation would be insufficient, because we feared that the Respondent would return to his abusive behavior after the monitoring ceased. The Board also discussed a permanent limitation on the Respondent's license to assure that he would never have personal contact with a patient or a patient's mother unless a third party monitor was present. The Board has expressed our reservations in the past, however, over trusting a patient's safety to a third party monitor who is a paid employee of a Respondent and whose continued employment depends on that Respondent remaining in practice. The Board concluded that if we could never trust this physician around patients or their mothers without a third party monitor, that this physician was unfit to practice medicine in New York. The Board concludes 5-0 that revocation is the appropriate penalty in the Respondent's case.

**ORDER**

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

1. The Board **SUSTAINS** the Committee's May 14, 1996 Determination finding the Respondent guilty of professional misconduct, but we modify the Determination as noted in this Determination.
2. The Board **OVERTURNS** the Hearing Committee's penalty in this case.
3. The Board **REVOKES** the Respondent's license to practice medicine in New York State.

**ROBERT M. BRIBER**

**SUMNER SHAPIRO**

**WINSTON S. PRICE, M.D.**

**EDWARD SINNOTT, M.D.**

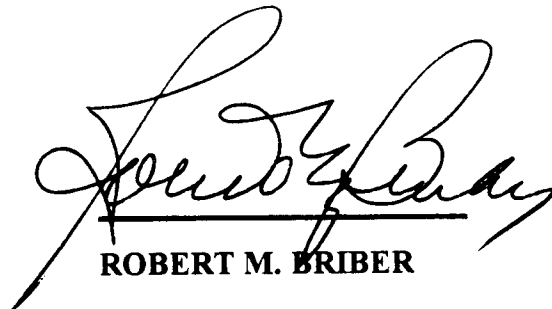
**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF ARTHUR BLUMER, 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. Blumer.

**DATED: Schenectady, New York**

 , 1996

  
**ROBERT M. BRIBER**

**IN THE MATTER OF ARTHUR BLUMER, M.D.**

**SUMNER SHAPIRO**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Blumer

**DATED: Delmar, New York**

August 19, 1996

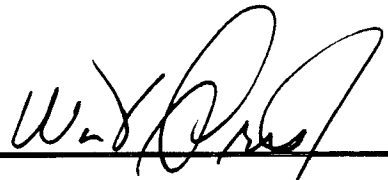
  
**SUMNER SHAPIRO**

**IN THE MATTER OF ARTHUR BLUMER, M.D.**

**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. Blumer.

**DATED: Brooklyn, New York**

8/22, 1996

  
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**WINSTON S. PRICE, M.D.**

**IN THE MATTER OF ARTHUR BLUMER, 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. Blumer.

**DATED: Roslyn, New York**

*Aug 17, 1996*

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", written over a horizontal line.

**EDWARD C. SINNOTT, M.D.**

**IN THE MATTER OF ARTHUR BLUMER, 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. Blumer.

**DATED: Syracuse, New York**

*19 Aug*, 1996

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in black ink and is positioned above the printed name.

**WILLIAM A. STEWART, M.D.**