

DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

April 16, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Young Kim, M.D.
76 Southaven Avenue
Medford, New York 11763

Raymond G. Perini, Esq.
Perini & Hoerger, Esqs.
1770 Motor Parkway
Hauppauge, New York 11788

RE: In the Matter of Young I. Kim, M.D.

Dear Ms. Abeloff, Dr. Kim and Mr. Perini:

Enclosed please find the Determination and Order (No.98-22) 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.

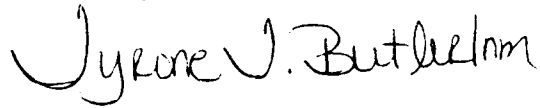
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street-Fourth Floor
Troy, New York 12180

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 nm". The signature is written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

COPY

STATE OF NEW YORK : DEPARTMENT OF HEALTH (Petitioner)

**In The Matter Of
Young I. Kim, M.D. (Respondent)**

**Administrative Review
Board (ARB)
Determination and
Order 98 - 22**

**Proceeding to review a Determination by a Hearing Committee (Committee)
from Board for Professional Medical Conduct (BPMC)**

**Before Board Members : Briber, Stewart, Sinnott, Price & Shapiro.
Administrative Law Judge James F. Horan served as the Board's Administrative Officer.**

**For the Respondent: Raymond G. Perini, Esq.
For the Petitioner: Dianne Abeloff, Esq.**

After a hearing into charges that the Respondent committed professional misconduct, a BPMC Committee sustained charges that the Respondent abused or harassed patients, practiced medicine fraudulently and with moral unfitness and knowingly filed false applications for professional privileges. The Committee voted to revoke the Respondent's New York Medical License and to fine him One Hundred Thirty Thousand Dollars (\$130,000.00). In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney Supp. 1997-1998), the Respondent asks the ARB to overturn the Committee's Determination, because the Petitioner failed to prove the charges by preponderant evidence, or in the alternative, that the Committee imposed an unduly harsh penalty. After considering the hearing record and the parties' briefs, the ARB sustains the Committee's Determination on the charges and the penalty.

COMMITTEE DETERMINATION ON CHARGES

The Petitioner filed charges with BPMC alleging that the Respondent violated N. Y. Educ. Law §§ 6530(2), 6530(14), 6530(20) & 6530(31) (McKinney Supp. 1997-1998), under the following categories:

- practicing medicine fraudulently,
- intentionally and knowingly omitting answers or answering falsely on hospital staff applications,
- engaging in conduct in medical practice that evidences moral unfitness, and,
- willfully harassing, abusing or intimidating a patient, whether physically or verbally.

The charges involved 1.) the care the Respondent, an Obstetrician/Gynecologist, provided to thirteen

patients A-E, G-L and N-O, and 2.) the Respondent's Applications for Reappointment to the Medical Staff at Brookhaven Memorial Hospital Medical Center in 1992, 1994 and 1996 (Brookhaven Applications). The record refers to patients by initials to protect their privacy. A hearing ensued pursuant to Pursuant to N.Y. Pub. Health Law § 230(10)(McKinney Supp. 1998), before a BPMC Committee who rendered the Determination which the ARB now reviews¹.

The Committee sustained the charges concerning the Respondent's Brookhaven applications. The Committee found that the Respondent completed applications for reappointment at Brookhaven in 1992, 1994 and 1996, on which the Respondent answered "No", knowingly, intentionally and falsely, to the question " Has your license to practice medicine in any jurisdiction ever been limited, suspended or revoked, or is any such action pending?". The Committee found that the New York Education Department had suspended the Respondent's License in March, 1991, stayed that suspension and placed the Respondent on probation for one year. The Committee found further that New Jersey suspended the Respondent's License in that state and informed the Respondent about that suspension prior to April 5, 1994. The Committee concluded that the Respondent's answers on the Brookhaven Applications constituted practicing fraudulently and intentionally and knowingly omitting answers or answering falsely on hospital staff applications.

As to allegations relating to patient care, the Committee found that the Respondent made internal examinations on some Patients without a legitimate medical purpose, commented to some Patients about their bodies or about sexual relations between the Patients and their partners and touched some Patients without legitimate medical purposes on those Patients' breasts, nipples, vagina, clitoris, inner thighs, buttocks, anus or external genitalia. In reaching their findings and conclusions on the patient care charges, the Committee found the Respondent to lack credibility and found the thirteen Patients credible witnesses, who, although unknown to each other, related substantially similar stories.

¹ The Petitioner began this case through a Summary Order from the Commissioner of Health, suspending the Respondent's License pending this proceeding's outcome, following the Commissioner's Determination that the Respondent posed a threat to the public health. The Committee found the Commissioner's Summary Order appropriate. The ARB lacks the authority to review that Summary Order [see N. Y. Pub. Health Law § 230-c(1) (McKinney Supp. 1998)].

In deciding upon a sanction, the Committee considered factors such as the trauma to the Patients, who included minors. The Committee found that the egregious sexual abuse against the Patients resulted in fright, embarrassment and feelings about violation and resulted in reluctance by some to seek gynecological treatment for times thereafter. The Committee found that the Respondent showed no remorse nor even recognition that he had done anything wrong and that the Respondent showed a callous disregard for his patients' needs and emotional states. The Committee voted to revoke the Respondent's License and to fine him Ten Thousand Dollars (\$10,000.00) in each Patient case at issue in the proceeding.

REVIEW HISTORY AND ISSUES

The Committee rendered their Determination on January 28, 1998. The Respondent then commenced this proceeding on February 9, 1998, when the ARB received the Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's reply brief. The record closed when the ARB received the Petitioner's reply on March 13, 1998.

Respondent's Issues: The Respondent contends that the Petitioner presented insufficient evidence to support the charges, that the Committee failed to weigh the evidence properly and that the Committee imposed an overly harsh penalty. The Respondent notes that many cases involved very old charges and that many witnesses demonstrated bias against the Respondent in their testimony. The Respondent raised the issues for review that we summarize below.

1. The Committee erred in failing to give appropriate weight to the medical charts and changes in testimony from direct to cross examination, that occurred when patients were confronted with the medical records.
2. The Committee failed to give appropriate weight to the independent findings of outside medical laboratories.
3. The Petitioner failed to prove the specifications regarding improper examinations, because the Petitioner called no expert witness to testify about proper techniques and because the

Respondent had no opportunity to cross-examine the Committee about their expertise in making proper examinations.

4. Examining the evidence in each Patient case shows neither substantial nor preponderant evidence to support the charges, in that:

- the only timely and recent complaint failed to comport with surrounding facts and lacked credibility and substance; and,
- other patient complaints were unpersuasive for a variety of reasons.

As to the penalty, the Respondent argues that he should be able to offer proof at a separate hearing concerning his financial condition and whether he derived any monetary gain. The Respondent notes that even if these matters had been charges in a criminal case, the Respondent would face a fine in each case amounting to only Five Hundred Dollars (\$500.00).

Petitioner's Reply: The Petitioner urges the ARB to sustain the Committee's Determination on the charges, the fine and the revocation. The Petitioner made five points in replying to the Respondent's brief.

- A. The Respondent's brief asks the ARB to exceed our limited review authority.
- B. The ARB should refuse to accept the Respondent's unsubstantiated attacks on the Committee's expertise and unsubstantiated allegations concerning bias by the witnesses.
- C. The evidence supports the Committee's finding that the Respondent filed false applications for hospital privileges in 1992, 1994 and 1996.
- D. The Committee's penalty constitutes an appropriate sanction for the Respondent's misconduct.
- E. The ARB should seal the Respondent's brief and redact patient names that appear on the brief, in violation of the patients' rights to confidentiality and privacy.

REVIEW BOARD DETERMINATION

The ARB has considered the record and the parties' briefs. All members participated in the

case. Dr. Stewart and Mr. Shapiro participated in the deliberations on March 27, 1998 by telephone. The ARB sustains the Committee's Determination on the charges, we reject the Respondent's procedural challenges concerning timeliness and no separate penalty hearing and we sustain the Committee's Determination revoking the Respondent's License and imposing a fine.

Procedural Issues: The Respondent alleged that only Patient A came forward in a "timely" manner. The ARB takes this comment as a challenge to the other Patients' complaints and we reject the challenge, because N. Y. Educ. Law § 6530 (McKinney Supp. 1997-1998) places no statute of limitations on the time frame for the Petitioner to commence an action or for a patient to file a complaint against a physician. A delay in bringing an enforcement action against a physician can result in a due process violation, if the delay causes the physician actual prejudice in defending against the charges, Matter of Gold v. Chassin, 215 A.D.2d 18, 632 N.Y.S.2d 276 (Third Dept. 1995), but the physician has the forum to object to that delay before the courts, rather than before the ARB, Matter of Gottesman v. N.Y.S. Dept. of Health, 229 A.D.2d 742, 645 N.Y.S.2d 609 (Third Dept. 1996).

The ARB also rejects the Respondent's assertion that the Committee should have conducted a separate hearing to consider a penalty against the Respondent. The Committees in BPMC hearings conduct only a single proceeding and, if the Committee sustains any charges against a Respondent, the Committee decides on a penalty at the same time as they make their Determination on the charges. Nothing in N. Y. Pub. Health Law §§ 230 or 230-a (McKinney Supp. 1997-1998) required the Committee to conduct a separate proceeding or a bifurcated hearing in which to address possible penalties.

The Charges: The ARB sustains the charges that the Respondent engaged in professional misconduct under N. Y. Educ. Law §§ 6530(2) & (14) (McKinney Supp. 1997-1998) and N. Y. Pub. Health Law § 2805-k (McKinney Supp. 1997-1998), by providing false answers on his 1992, 1994 and 1996 Brookhaven Hospital Applications, concerning prior disciplinary actions against him by New York and New Jersey. In rejecting the Respondent's explanations for his answers on the Brookhaven Applications, the Committee acted properly as a fact finder, in assessing and rejecting the Respondent's testimony. The other evidence in the record, including the Respondent's answers on

the Applications and his disciplinary history, provided the Committee with sufficient credible evidence to support their Findings of Fact 61-68 and to support their Determination to sustain the charges.

The ARB sustains the Committee's Determination that the Respondent practiced medicine with moral unfitness and willfully abused, harassed or intimidated the Patients, whose cases are in issue in this proceeding. The Committee acted within their authority as fact finder in determining that the testifying Patients testified credibly and in rejecting the conflicting evidence from the Respondent, including the Respondent's testimony. The ARB finds no evidence in the record to support the Respondent's conclusory allegation that some Patients' accusations against the Respondent resulted from the Patients' ethnic bias against the Respondent.

The ARB rejects the Respondent's contention that the Petitioner needed to submit expert testimony about proper examination technique in order to prove the charges arising from the Respondent's physical contact with and remarks to the Patients. The evidence in the record, from the testifying Patients, provided the Committee with sufficient evidence to demonstrate that the Respondent acted for his own sexual gratification rather than for legitimate medical reasons, in touching the Patients breasts and genitalia and in commenting on the Patients' bodies and asking about their sex lives, see Matter of Murray v. Chassin, 213 A.D.2d 858, 623 N.Y.S.2d 951(Third Dept. 1995). The Respondent produced no contrary testimony to show any legitimate medical basis for his actions or his statements, but rather, he denied the conduct and the statements.

The Penalty: The ARB sustains the Committee's Determination to revoke the Respondent's License. The Respondent's repeated false applications to Brookhaven, standing alone, would warrant revocation, Matter of Glassman v. N. Y. S. Comm. of Health, 208 A.D.2d 1060, 617 N.Y.S.2d 413 (Third Dept. 1994). The Respondent's abusive and harassing conduct toward his Patients, standing alone, also provides sufficient grounds to revoke his License. The ARB notes that the Respondent served a previous disciplinary penalty and apparently learned nothing from that experience to guide his future conduct. The ARB can see no way to protect the public from this Respondent, other than to revoke his License.

The ARB finds the Respondent's repeated abusive conduct towards his Patients and his failure

to learn from his prior disciplinary experience demonstrates that the Committee acted appropriately in imposing a fine in addition to revoking the Respondent's License. We reject the Respondent's contention that the Committee should have inquired into the Respondent's financial condition or into any financial gain. Committing sexual abuse against Patients provides a sufficient grounds on which to impose a Ten Thousand Dollar (\$10,000) Fine against the Respondent for each Patient against whom the Respondent committed misconduct, see Matter of Sunnen v. Admin. Rev. Bd. for Prof. Med. Conduct. __ A.D.2d. __, 666 N.Y.S.2d 239 (Third Dept. 1997). We reject the Respondent's assertion that the Committee failed to deliberate sufficiently in arriving at their penalty. The Committee's Determination at pages 17-18 details the issues that the Committee considered in assessing the penalty against the Respondent and shows that the Committee made a well reasoned decision when they imposed their penalty.

ORDER

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

1. The ARB **SUSTAINS** the Committee's Determination finding the Respondent committed professional misconduct.
2. The ARB **SUSTAINS** the Committee's Determination revoking the Respondent's License.
3. The ARB **SUSTAINS** the Committee's Determination fining the Respondent One Hundred Thirty Thousand Dollars (\$130,000.00).

Robert M. Briber

Sumner Shapiro

Winston S. Price, M.D.

Edward C. Sinnott, M.D.

William A. Stewart, M.D.

In The Matter Of Young I. Kim, 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. Kim.

Dated: April 2, 1997

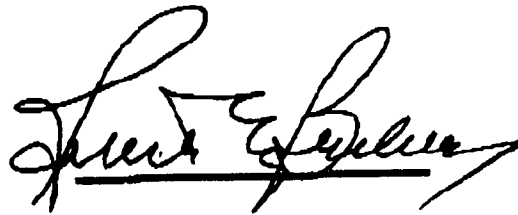
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Edward C. Sinnott, M.D.

In The Matter Of Young I. Kim, 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. Kim.**

Dated : April 3 , 1998

A handwritten signature in black ink, appearing to read "Robert M. Briber", written over a horizontal line.

Robert M. Briber

In The Matter Of Young I. Kim, 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. Kim.

DATED: April 4, 1998


Sumner Shapiro

In The Matter Of Young L. Kim, 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. Kim.

Dated: *11 April*, 1998

William A Stewart

William A. Stewart, M.D.