



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson E. Rockefeller Empire State Plaza

Albany, New York 12237

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

May 9, 1995

RECEIVED  
MAY 10 1995  
OFFICE OF PROFESSIONAL MEDICAL CONDUCT

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Robert S. Asher, Esq.  
295 Madison Avenue  
New York, New York 10017

Alan M. Kurz, M.D.  
61 Edgewood Avenue  
Clifton, New Jersey 07012

**RE: In the Matter of Alan M. Kurz, M.D.**

EFFECTIVE DATE: 05/16/95

Dear Ms. Koch, Mr. Asher and Dr. Kurz :

Enclosed please find the Determination and Order (No. 95-26) 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.

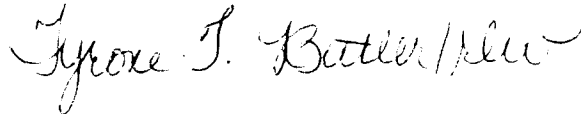
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

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  
ALAN M. KURZ, M.D.**

**ADMINISTRATIVE  
REVIEW BOARD  
DECISION AND  
ORDER NUMBER  
ARB NO. 95-26**

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.**<sup>1</sup> held deliberations on April 21, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) February 2, 1995 Determination finding Dr. Alan M. Kurz (Respondent) guilty of professional misconduct. Both the Respondent and the Office of Professional Medical Conduct (Petitioner) requested the Review through Notices which the Board received on February 13 and February 21, 1995. James F. Horan served as Administrative Officer to the Review Board. Irene M. Koch, Esq. filed a brief for the Petitioner which the Review Board received on March 23, 1995 and a reply brief which the Board received on March 31, 1995. Robert A. Asher, Esq. filed a brief for the Respondent which the Review Board received on April 3, 1995.

**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.

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<sup>1</sup>Dr. Stewart and Dr. Price participated in the case by telephone.

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's Amended Statement of Charges alleged that the Respondent practiced medicine with moral unfitness and practiced fraudulently. The charges arose from the Respondent's conduct toward two patients, A and B, and toward a Supervisor at Montefiore Comprehensive Care Center, who the record refers to as Supervisor C. The charges also allege that the Respondent willfully abused, harassed or intimidated Patients A and B. The Committee sustained only the charge that the Respondent wilfully harassed, abused or intimidated Patient B.

The Hearing Committee sustained a factual allegation that the Respondent had placed both his hands on Patient B's breasts, under her shirt and over her bra, and squeezed her breasts. The Committee also sustained a factual allegation that the Respondent lowered both his hands under Patient B's shirt, squeezed both her sides and remarked about excess weight on Patient B's side and/or sides above her hip and/or hips.

The Committee determined that the inappropriate action by the Respondent during his examination of Patient B was not taken for sexual gratification and was not fraudulent practice of medicine. The Committee did, however, find that the Respondent's conduct were wilful acts intended to harass, abuse or intimidate the Patient. The Committee reasoned that the Respondent squeezed Patient B's breasts and commented on her weight as a way to quiet an assertive and verbal patient and to maintain control of the examination.

The Committee voted to censure and reprimand the Respondent. The Committee concluded that the Respondent's inappropriate actions were caused by poor communication with patients and problems with inter-personal relationships. The Committee felt that the improvement of physician-patient communication develops through experience and not through formalized training. The

Committee felt that the penalty would cause the Respondent to recognize that his actions, which resulted in a finding of professional misconduct, would not be tolerated or condoned.

### **REQUESTS FOR REVIEW**

Both the Respondent and Petitioner have asked that the Review Board review and modify the Hearing Committee's Determination.

**RESPONDENT:** The Respondent has asked that the Review Board overturn the determination that the Respondent willfully harassed, abused or intimidated Patient B. The Respondent alleges that the Committee's findings of fact do not support the conclusion. The Respondent also argues that the Committee had no basis to credit the testimony of Patient B. The Respondent contends that even if the acts occurred as Patient B testified, that the acts were not wilful and that the acts did not constitute harassment, abuse or intimidation.

In reply to the Respondent's brief, the Petitioner argues that the Review Board can not overturn the Hearing Committee's findings of fact and that the Respondent can not relitigate the facts before the Review Board. The Petitioner argues that the Committee's findings, that the Respondent pinched or squeezed Patient B's sides and commented on her weight and that the Respondent cupped and squeezed the Patient's breasts, is consistent with the Committee's Determination that the Respondent wilfully harassed, abused or intimidated the Patient.

**PETITIONER:** The Petitioner argues that the Hearing Committee erred in failing to sustain the charges that the Respondent's conduct toward Patient B did not constitute fraud in the practice of medicine. The Petitioner also contends that the Hearing Committee's penalty was too lenient.

The Petitioner argues that the Respondent's willful acts, performed during the course of a medical examination but not for a medical purpose, amount to an intentional misrepresentation and constitute fraud. The Petitioner argues further that the Respondent's intentional acts, based on the desire to quiet and control the Patient, constitute moral unfitness.

The Petitioner argues that the Committee's penalty is inappropriate in light of the intentional abuse of Patient B. The Petitioner argues that, at a minimum, the Board should order a period of actual suspension, followed by probation with monitoring.

In reply to the Petitioner's brief, the Respondent argues that the Hearing Committee's findings of fact concerning Patient B do not support a determination of moral unfitness, because the Committee found that the touching was not done for the Respondent's sexual gratification. The Respondent argues that the findings also do not support a determination of fraud because there is no proof of intentional misrepresentation or concealment of a known fact. In response to the Petitioner's argument that the Committee's penalty was too lenient, the Respondent contends that any finding of guilt, no matter the penalty imposed, will have draconian effects upon Dr. Kurz and his medical career.

#### **REVIEW BOARD DETERMINATION**

The Review Board has considered the entire 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 wilfully intimidating Patient B. The Review Board finds the Committee's Determination is consistent with the Committee's findings that the Respondent placed both his hands on Patient B's breasts, under her shirt and over her bra, and squeezed her breasts. The Board also finds that the Determination is consistent with the Committee's findings that the Respondent squeezed both the Patient's sides and remarked about excess weight on the Patient's sides. The Determination is also consistent with the Committee's conclusion that the Respondent's actions were not sexually motivated, but rather were willful, intentional acts to quiet an assertive patient and to maintain control of an examination.

The Review Board denies Petitioner's request to overturn the Hearing Committee's Determination finding the Respondent not guilty of fraudulent conduct or moral unfitness arising from his conduct toward Patient B. The Review Board agrees with the Hearing Committee that the Respondent's acts did not amount to moral unfitness because the Respondent's actions were not taken

for sexual gratification. The Review Board believes that the Respondent's acts did not amount to fraud because there was no evidence of intentional misrepresentation by the Respondent.

By a vote of 3-2, the Review Board overrules the Hearing Committee's Determination to Censure and Reprimand the Respondent. The majority votes to send the Respondent for an educational session with a physician designated by the Office of Professional Medical Conduct, who will counsel the Respondent on the proper methods for conducting a physical examination. The dissenters would sustain the Hearing Committee's Censure and Reprimand penalty.

The Hearing Committee in this case found that the Respondent wilfully intimidated Patient B as a way to quiet an assertive patient and to maintain control of an examination. The Respondent's actions demonstrate an insensitivity towards patients and a lack of knowledge about how to conduct an examination. The majority finds that the Respondent is in need of instruction in how to conduct examinations, in a manner which will not be insensitive or intimidating to a patient. The Review Board's majority believes that an educational session with an OPMC designated physician, would provide the Respondent with such education and/or guidance. The censure and reprimand penalty will not provide such guidance.

The Review Board does not believe that the Respondent's conduct is serious enough, however, to call for a period of suspension. We agree with the Hearing Committee that the disciplinary proceeding and the misconduct finding will impress upon the Respondent and other physicians that the conduct which the Respondent exhibited toward Patient B is not acceptable. The Board finds that the effect of the disciplinary proceeding combined with the mandated educational session will deter the Respondent from such conduct in the future.

**ORDER**

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

1. The Review Board **SUSTAINS** the Hearing Committee's February 2, 1995 Determination finding Dr. Alan M. Kurz guilty of professional misconduct.
  
2. The Review Board, by a vote of 3-2, **OVERRULES** the Hearing Committee's penalty censuring and reprimanding Dr. Kurz.
  
3. By a vote of 3-2, the Review Board **ORDERS** the Respondent to undergo an educational session with a physician whom the Office of Professional Medical Conduct shall designate. During this educational session, the OPMC designated physician shall counsel the Respondent on the proper methods for conducting an examination.

**ROBERT M. BRIBER**

**SUMNER SHAPIRO**

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

**EDWARD SINNOTT, M.D.**

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

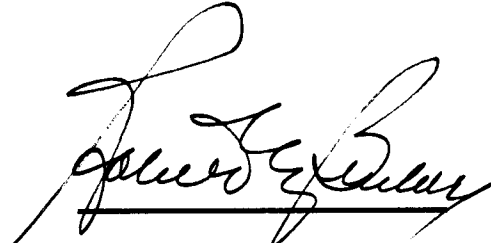


**IN THE MATTER OF ALAN M. KURZ, M.D.**

**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. Kurz.

**DATED: Albany, New York**

May 9, 1995



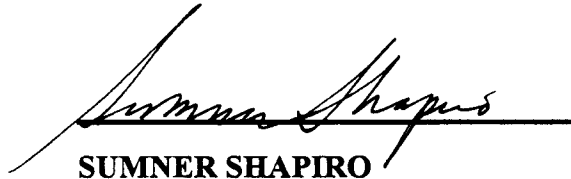
**ROBERT M. BRIBER**

**IN THE MATTER OF ALAN M. KURZ, 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. Kurz.

**DATED: Delmar, New York**

May 2, 1995

  
**SUMNER SHAPIRO**

**IN THE MATTER OF ALAN M. KURZ, 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. Kurz.

**DATED: Brooklyn, New York**

4/25, 1995



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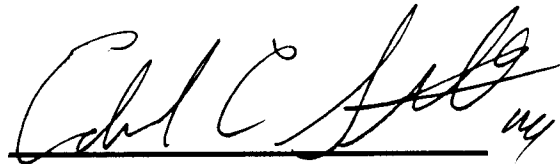
**WINSTON S. PRICE, M.D.**

**IN THE MATTER OF ALAN M. KURZ, 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. Kurz.

**DATED: Roslyn, New York**

May 1, 1995

A handwritten signature in cursive script, appearing to read "Ed C. Sinnott", written over a horizontal line. The signature is positioned to the right of the date.

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

**IN THE MATTER OF ALAN M. KURZ, M.D.**

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

*voted to sustain the penalty of censure  
and reprimand.*

**DATED: Syracuse, New York**

1 May, 1995

*William A Stewart*

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