



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

PUBLIC

January 8, 2003

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Arun Kumar Tiwari, M.D.  
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5 Penn Plaza, 6<sup>th</sup> Floor  
New York, New York 10001

**RE: In the Matter of Arun Kumar Tiwari, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-08) 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.

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), "the 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.

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  
Hedley Park Place  
433 River Street, Fifth Floor  
Troy, New York 12180

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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:djh  
Enclosure

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

**IN THE MATTER  
OF  
ARUN KUMAR TIWARI, M.D.**

**COPY**  
**DETERMINATION  
AND  
ORDER  
BPMC 03 - 08**

**SHARON C. MEAD, M.D.**, (Chairperson), **NISHA K. SETHI, M.D.**, and **RANDOLPH MANNING, Ph.D.** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10) of the Public Health Law.

**MARC P. ZYLBERBERG, ESQ.**, ADMINISTRATIVE LAW JUDGE, ("ALJ") served as the Administrative Officer.

The Department of Health appeared by **DIANNE ABELOFF, ESQ.**, Associate Counsel.

Respondent, **ARUN KUMAR TIWARI, M.D.**, appeared personally and was represented by **WOOD & SCHER** by **ANTHONY Z. SCHER, ESQ.** of Counsel.

Evidence was received and examined, including witnesses who were sworn or affirmed. Transcripts of the proceeding were made. After consideration of the record, the Hearing Committee issues this Determination and Order pursuant to the Public Health Law and the Education Law of the State of New York.

## PROCEDURAL HISTORY

|  |   |
|--|---|
| Date of Notice of Hearing:   | August 8, 2002  |
| Date of Statement of Charges:  | August 8, 2002  |
| Date of Service of Notice of Hearing and Statement of Charges:                             | August 8, 2002  |
| Date of Answer to Charges:   | August 30, 2002   |
| Pre-Hearing Conferences Held:  | September 6, 2002<br>September 24, 2002   |
| Hearings Held: - (First Hearing day):  | September 24, 2002<br>October 29, 2002  |
| Intra-Hearing Conference Held:   | October 29, 2002  |
| Witnesses called by the Petitioner,<br>Department of Health (in the order they testified): | Patient A<br>William Dickinson, R.N.<br>Vaishali Thati, M.D.<br>Carol Mitchell<br>Mieczyslaw Finster, M.D.<br>Patient C |
| Witnesses called by the Respondent,<br>Arun Kumar Tiwari, M.D.:                            | Arun Kumar Tiwari, M.D.<br>Albert Khaski, M.D.<br>Mustafa Mustafa, Ph.D.<br>Shreshtha Tiwari                            |
| Department's Proposed Findings of Fact,<br>Conclusions of Law and Sanction:                | Received December 4, 2002   |
| Respondent's Post-Hearing Memorandum:  | Received December 4, 2002   |
| Deliberations Held: (last day of Hearing)  | December 11, 2002   |

## STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (§230 et seq. of the Public Health Law of the State of New York [**"P.H.L."**]).

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("**Petitioner**" or "**Department**") pursuant to §230 of the P.H.L.

ARUN KUMAR TIWARI, M.D., ("**Respondent**") was charged with seven (7) specifications of professional misconduct, as delineated in §6530 of the Education Law of the State of New York ("**Education Law**").

Respondent was charged with professional misconduct by reason of: (1) willfully physically or verbally harassing or abusing a patient<sup>1</sup>; (2) engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice the profession of medicine<sup>2</sup>; and (3) practicing the profession of medicine fraudulently<sup>3</sup>.

These Charges and Specifications of professional misconduct result from Respondent's alleged conduct towards three patients. Respondent denies all factual allegations and all Specifications of professional misconduct contained in the Statement of Charges. On the second day of Hearing the Department withdrew factual allegation B and the Specification of misconduct which involved Patient B.

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<sup>1</sup> Education Law §6530(31) and the First through Third Specifications of the Statement of Charges (Department's Exhibit #1).

<sup>2</sup> Education Law §6530(20) and the Fourth Specification of the Statement of Charges (Department's Exhibit #1).

<sup>3</sup> Education Law §6530(2) and the Fifth through Seventh Specifications of the Statement of Charges (Department's Exhibit #1).

Therefore, Respondent is charged with physically abusing two patients, with moral unfitness with regard to these two patients and with two acts of fraudulent practice with respect to one of these two patients.

A copy of the Statement of Charges and a copy of the Answer are attached to this Determination and Order as Appendix I and II respectively.

### **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent documentary evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Where there was conflicting evidence, the Hearing Committee considered all of the evidence presented and rejected what was not relevant, believable or credible in favor of the cited evidence. The Department, which has the burden of proof, was required to prove its case by a preponderance of the evidence. Unless otherwise noted, the Hearing Committee unanimously agreed on all Findings of Fact. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent is not presently licensed to practice medicine in New York State. Respondent was issued a three year limited license to practice medicine in a medically underserved area on July 22, 1997 by the New York State Education Department. Respondent's limited license expired and Respondent is a current applicant for licensure in New York. Respondent was Board Certified in Internal Medicine in 1997. Respondent does hold a license to practice medicine in the State of Indiana (Department's Exhibits # 1 and # 2)<sup>4</sup>; [T-188-191]<sup>5</sup>.

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<sup>4</sup> Refers to exhibits in evidence submitted by the New York State Department of Health (Department's Exhibit #) or by Dr. Arun Kumar Tiwari (Respondent's Exhibit #).

<sup>5</sup> Numbers in brackets refer to Hearing transcript pages [T- ], to Pre-Hearing transcript pages [P.H.T- ], or to Intra-Hearing transcript pages [I.H.T-]. The Hearing Committee did not review the Pre-Hearing or the Intra-Hearing transcripts but, when necessary, was advised of the relevant legal decisions or rulings made by the ALJ.

2. The State Board for Professional Medical Conduct has obtained personal jurisdiction over Respondent (determination made by the ALJ); (P.H.L. §230[10][d]); [P.H.T-5-6].

**PATIENT A**

3. On July 14, 2000, Patient A, went to Interfaith Hospital emergency department with a complaint of vaginal itching (Department's Exhibit # 3); [T-26, 45, 90].

4. Patient A was directed to Room No. 7 where gynecologic patients are seen. Room No. 7 is a very small room with a curtain which can be drawn for privacy. The curtain is separated from the doorway by about 2 ½ to 3 feet. Room No. 7 is located where there is a high degree of human traffic [T-91-92, 239, 241-242].

5. Respondent first met Patient A in Room No. 7. Patient A was lying on the examination table in a hospital gown [T-242]. Before entering the room, Respondent asked Carol Mitchell to assist him (serve as a chaperone) [T-243]. Ms. Mitchell nodded in response to Respondent's request [T-243].

6. Respondent introduced himself to Patient A and told her that he would wait for the female attendant [T-244]. Respondent waited for a few minutes and when Carol Mitchell did not enter the room, he left and advised Ms. Mitchell again that he needed her assistance [T-245]. Respondent re-entered the room and began taking a patient history [T-245-246]. As part of the history, Patient A told Respondent that she had some boils on her back just above the rectal area and had some discomfort in her throat and ears which she also wanted checked [T-245-246].

7. Respondent then went to get the otoscope which was kept at the nursing station outside of room 7 [T-246-247]. Respondent again asked Carol Mitchell to come into the room and she indicated that she would be coming in [T-247]. Respondent left the door open for Ms. Mitchell and

noted in the chart that Carol Mitchell was the female attendant (Department's Exhibit # 3); [T-87, 89, 92, 94, 247, 259].

8. Respondent re-entered the room and told Patient A that the attendant would be coming in. Patient A indicated that she was very busy and that she was escorting a dialysis patient and asked Respondent to conduct the examination [T-247-249].

9. Respondent began the examination checking Patient A's ears, nose and throat [T-249], listened to Patient A's heart and did chest percussions with a finger on the front and back [T-250], and began the pelvic examination [T-251]. Respondent performed the pelvic exam on Patient A without a chaperone at the insistence of Patient A [T-251-255].

10. Towards the end of the examination, William Dickinson appeared in the doorway with a question for Respondent about another patient. Nurse Dickinson was not present in the examination room (No. 7) when Respondent examined Patient A [T-29, 34, 82-83, 251-254].

*Finding # 10 is by a VOTE of 2 - 1*

11. After Respondent finished the pelvic examination, Patient A mentioned to Respondent that he had not checked her boils which she indicated were on her lower back area [T-255-256]. Respondent asked Patient A to bend over and he examined her and ran his finger in the anal cleft area. Respondent then came out from behind the curtain and left with Mr. Dickinson to go to treat another patient [T-256-258].

12. Respondent did not inappropriately touch Patient A's breast, vagina or anal area. A vaginal examination was routine given Patient A's complaint of vaginal itching. An anal examination was also routine given Patient A's complaint about boils in that area (Department's Exhibit # 3); [T-251, 254, -256, 269, 288, 293].

13. On July 14, 2000 Dr. Vaishali Thati was a resident in the emergency department at Interfaith Medical Center. Respondent was an attending while Dr. Thati was a resident. Dr. Thati had her own patient load [T-99-100, 104].

14. Dr. Thati worked on July 14, 2000 but she never treated Patient A, nor did she ever go into Patient A's examination room, not even to speak with Respondent about a different patient [T-100-102].

15. On July 14, 2000, Respondent asked Dr. Thati to tell anyone who might ask, that she was present in the room when he examined Patient A. She told Respondent that she would not say that because she was not present. Dr. Thati felt that it was not proper for her to say that she was present when she was not [T-102-104, 111].

16. On March 6, 2001, during an interview with an investigator and a medical coordinator (Dr. Finster) from the Office of Professional Medical Conduct ("OPMC"), Respondent indicated that Nurse William Dickinson walked in as he (Respondent) began to examine the patient and stayed till the end of the examination [T-142-143].

#### **PATIENT B**

Charges withdrawn by the Department [T-182-183]; [I.H.T-4-14].

#### **PATIENT C**

17. On April 9, 1995 Patient C went to the emergency department at Long Island College Hospital, with complaints of a bad rash all over her body. Patient C had been released the day before from Lenox Hill Hospital after being on Dilantin for a week [T-147-148].

18. At Long Island College Hospital Patient C was placed on IV steroids and admitted to the hospital [T-148].

19. The next day Patient C was seen in the morning by her neurologist, Dr. Sol Mora. Respondent saw Patient C sometime in that afternoon [T-153]. Respondent asked Patient C whether she had ever had a venereal disease and asked to see her tongue, palms, and abdomen [T-153-154]. Then Respondent asked to see Patient C's "private parts" [T-154]. Prior to performing a vaginal examination, Respondent left briefly and returned with a young girl in a red jacket. Respondent then proceeded to examine Patient C's genitals [T-154-155, 169, 175-176, 180-181, 205-206].

20. Respondent's examination of Patient C's genitals was to see whether the rash was secondary to syphilis [T-156, 201-204]. Respondent's differential diagnosis included syphilis (Department's Exhibit # 4, page 30).

21. There was nothing inappropriate about the examination conducted by Respondent on Patient C. Respondent wore gloves; there was a chaperone present; he asked permission to conduct the examination; and there was a valid medical reason for conducting the examination. Respondent conducted a thorough examination of the patient as reflected in the hospital medical records in an extensive note written by Respondent and countersigned by Dr. Mora (Department's Exhibit # 4); [T-170-171, 180-181, 205-206].

### CONCLUSIONS OF LAW

Based on the entire record, including the Findings of Fact above, and the discussion below, the Hearing Committee concludes:

Factual Allegation A.1. is sustained. (Paragraphs 9 - 11, 13 - 15) (Vote 3 - 0).

Factual Allegation A.3. is sustained (except for "and in a letter submitted to OPMC on July 7, 2001. "). (Paragraphs 9 - 11, 16) (Vote 2 - 1).

Factual Allegations A. and A.2. are NOT sustained. (Paragraphs 3 - 12) (Vote 3 - 0).

Factual Allegation B. is NOT sustained.

Factual Allegation C. is NOT sustained. (Paragraphs 17 - 21) (Vote 3 - 0).

The FIRST through THIRD SPECIFICATIONS (PHYSICALLY ABUSING A PATIENT) contained in the Statement of Charges are **NOT SUSTAINED**; *VOTE 3-0*

The FOURTH SPECIFICATION (MORAL UNFITNESS) is **SUSTAINED** as it relates to Patient A and paragraph A.1 contained in the Statement of Charges; *VOTE 3-0*

The FOURTH SPECIFICATION (MORAL UNFITNESS) is **SUSTAINED** as it relates to Patient A and paragraph A.3 contained in the Statement of Charges; *VOTE 2-1*

The FIFTH SPECIFICATION (FRAUDULENT PRACTICE) contained in the Statement of Charges is **SUSTAINED**; *VOTE 3-0*

The SIXTH SPECIFICATIONS (FRAUDULENT PRACTICE) contained in the Statement of Charges is **NOT SUSTAINED** *VOTE 3-0*

The SEVENTH SPECIFICATION (FRAUDULENT PRACTICE) contained in the Statement of Charges is **SUSTAINED**; *VOTE 2-1*

The rationale for the Hearing Committee's conclusions is set forth below.

### **DISCUSSION**

Respondent is charged with physically abusing two patients, with moral unfitnes with regard to these two patients and with two acts of fraudulent practice with respect to one of these two patients.

The six (6) remaining specifications allege professional misconduct within the meaning of §6530 of the Education Law. §6530 of the Education Law sets forth a number and variety of

forms or types of conduct, which constitute professional misconduct. However, §6530 of the Education Law does not provide definitions or explanations of some of the types of misconduct charged in this matter.

The ALJ provided to the Hearing Committee some suggested definitions of medical misconduct<sup>6</sup> as alleged in this proceeding. These suggested definitions include:

Moral Unfitness

To sustain a specification of moral unfitness, the Department must show that Respondent committed acts which “evidence moral unfitness”. There is a distinction between a finding that an act “evidences moral unfitness” and a finding that a particular person is morally unfit. In a proceeding before the State Board for Professional Medical Conduct, the Hearing Committee is asked to decide if certain alleged conduct is suggestive of, or would tend to prove, moral unfitness. The Hearing Committee is not called on to make an overall judgment regarding a Respondent's moral character. It is noteworthy that an otherwise moral individual can commit an act “evidencing moral unfitness” due to a lapse in judgment or other temporary aberration.

The standard for moral unfitness in the practice of medicine is twofold. First, there may be a finding that the accused has violated the public trust which is bestowed by virtue of his licensure as a physician. Physicians have privileges that are available solely due to the fact that one is a physician. The public places great trust in physicians solely based on the fact that they are physicians. For instance, physicians have access to controlled substances and billing privileges that are available to them solely because they are physicians. Patients are asked to place themselves in potentially compromising positions with physicians, such as when they disrobe for examination or

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<sup>6</sup> These suggested definitions were made available to both parties at the Pre-Hearing Conference [P.H.T-30-31].

treatment. Hence, it is expected that a physician will not violate the trust the public has bestowed on him or her by virtue of his or her professional status. Second, moral unfitness can be seen as a violation of the moral standards of the medical community which the Hearing Committee, as delegated members of that community, represent.

#### Practicing the Profession Fraudulently

Fraudulent practice of medicine is an intentional misrepresentation or concealment of a known fact, in connection with the practice of medicine. An individual's knowledge that he is making a misrepresentation or concealing a known fact with the intention to mislead may properly be inferred from certain facts. In order to support the charge that medicine has been practiced fraudulently, the Department must prove by a preponderance of the evidence that (1) Dr. Tiwari made a false representation, whether by words, conduct, or concealment of that which should have been disclosed; (2) Dr. Tiwari knew that the representation was false; and (3) Dr. Tiwari intended to mislead through the false representation. The Hearing Committee is the sole arbiter of whether fraud occurred and must base its determination on the credible facts (including Respondent's testimony) and not on whether others believe that fraud occurred or did not occur.

For all other terms, including "physical harassment", "abuse", and "willful", the Hearing Committee used ordinary English usage and their general understanding of those terms.

The Hearing Committee was aware of its duty to keep an open mind regarding the allegations and testimony. The Hearing Committee was made aware, by both parties and some of the witnesses, that there may have been police activity in this matter. The fact or inferences that the police may have been involved does not in any way add or detract weight to a given charge or circumstance. All findings by the Hearing Committee were established on their own merits and not

based, bolstered, or diminished because of police involvement.

With regard to the testimony presented herein, including Respondent's, the Hearing Committee evaluated all the witnesses for possible bias or motive. The witnesses were also assessed according to their training, experience, credentials, demeanor, and credibility. We considered whether the testimony was supported or contradicted by other independent objective evidence. The Hearing Committee understood that as the trier of fact we may accept so much of witnesses' testimony as is deemed true and disregard what we find and determine to be false.

Respondent testified on his own behalf and clearly has an interest in the outcome of the case. We found the testimony presented by Respondent to be generally credible and mostly, but not always, supported by the patients' medical records. Dr. Tiwari is a well educated and well trained physician. He is Board Certified in Internal Medicine. The Hearing Committee believes that when Respondent was confronted by a complaint from Patient A and possible police activity, he over reacted.

#### **Patient A**

At first the Hearing Committee found Patient A to be a reasonably reliable witness. After hearing other testimony and reviewing the medical records we placed less belief in her testimony. For example, the breast examination complaint surfaced much later in time than the date of the alleged incident and with inconsistent versions. The location of the examination was a high traffic area with an open door which did not lend itself to privacy possibilities. The patient presented with vaginal itching and boils on her backside. Respondent's examination of Patient A's vagina and rectal area was medically appropriate. The Hearing Committee was not convinced that Respondent's performance of the examination was inappropriate. The Specification of committing

misconduct by willfully physically abusing Patient A is not sustained and is dismissed unanimously by the Hearing Committee.

The Hearing Committee found Dr. Thati to be a very credible witness with nothing to gain by lying and no animus towards Respondent. The Hearing Committee does not believe that there was a misunderstanding or language problem. Rather, we believe that Respondent panicked when faced with the accusation. We also believe that Respondent knew there was no one in the room since he told Patient A that he wanted to wait for the chaperone and was asked to proceed anyway. Since Respondent was aware that there was no chaperone, his request to Dr. Thati to state otherwise was both fraudulent and morally wrong. We believe that asking another physician to lie is a violation of the moral standards of our medical community. We also believe that Respondent intended to mislead others by asking Dr. Thati to make a representation that he knew was false. A majority of the Hearing Committee concluded that Respondent's statement to the Office of Professional Medical Conduct was made with intent to deceive and to mislead. One member of the Hearing Committee did not believe that the statement to OPMC was done with that intent and voted not to sustain the fraudulent misconduct and the moral unfitness misconduct for that specific allegation (A.3.).

The Hearing Committee unanimously sustains factual allegation A.1. and determines that Respondent's conduct in asking Dr. Thati to lie for him was an act of moral unfitness in the practice of medicine and an act of practicing the profession fraudulently. The Hearing Committee, by a vote of 2 to 1, sustains factual allegation A.3. and determines that Respondent's conduct in falsely reporting to the OPMC that Nurse Dickinson was present in the examination room when he knew that the nurse was not in fact in the examination room was an act of moral unfitness in the practice of medicine and an act of practicing the profession fraudulently.

### **Patient C**

The Department failed to submit credible evidence that the medical exam of Patient C was medically inappropriate. Respondent wore gloves, had a chaperone, asked permission from the patient to conduct the examination and had a legitimate medical reason (rule out syphilis) to perform the examination. It is more probable that if the medical examination had been medically inappropriate, Dr. Mora would not have countersigned the patient's medical records. Patient C did not convince the Hearing Committee that Respondent's performance of the examination was inappropriate. All Specifications of misconduct with regard to Patient C are not sustained and are dismissed unanimously by the Hearing Committee.

### **DETERMINATION AS TO PENALTY**

The Hearing Committee pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above unanimously determines that a penalty of:

- (1) a CENSURE and REPRIMAND; and (2) a requirement that Respondent attend and successfully complete an ethics course of not less than 6 hours<sup>7</sup>; and (3) a limitation that Respondent can not be granted a license to practice medicine in New York State for SIX (6) MONTHS from the date of this Determination and Order; and (4) that Respondent comply with all other licensure application requirements;
- is appropriate under the circumstances of this case.

This determination is reached after due and careful consideration of the full spectrum of penalties available in this case pursuant to P.H.L. § 230-a., including:

- (1) Censure and Reprimand; (2) Limitations; (3) The imposition of monetary penalties;
- (4) A course of education or training; (5) Performance of public service; (6) Probation and (7) Dismissal in the interest of justice.

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<sup>7</sup> Respondent must provide proof of successful completion when completing his application to the New York State Education Department for the issuance of a license to practice medicine in the State of New York.

The Hearing Committee's choices of penalties were limited because Respondent does not currently have a license nor, as we understand it, ever had a license issued by the Education Department to practice medicine in New York State. The Department's proposed sanction of a permanent limitation on Respondent's ability to register or obtain a license is based on a belief that all factual allegations and charges of misconduct would be sustained. As discussed above most of the more severe factual allegations were not sustained and the proposed penalty is much too harsh.

Respondent has practiced medicine, and it appears he continues to practice medicine, in a medically underserved area and therefore we believe that he is already performing community service. A monetary penalty is not appropriate in this case as Respondent had no monetary motives or gains by his actions. We believe that Respondent had a temporary lapse of judgment which we expect will not reoccur.

The penalties chosen by the Hearing Committee are meant to attempt to educate Respondent regarding telling the truth in a medical context and appropriate conduct towards his peers. The penalties are also imposed to indicate to Respondent that his lapses in judgment should be taken seriously and must not be repeated.

Taking all of the facts, details, circumstances, and particulars in this matter into consideration, the Hearing Committee determines that the above is the appropriate action under the circumstances.

All other issues raised by both parties have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

## **ORDER**

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The FOURTH, FIFTH and SEVENTH SPECIFICATIONS contained in the Statement of Charges (Department's Exhibit # 1) are **SUSTAINED**; and
2. The FIRST, SECOND, THIRD and SIXTH SPECIFICATIONS contained in the Statement of Charges (Department's Exhibit # 1) are **NOT SUSTAINED**; and
3. Respondent is **CENSURED** and **REPRIMANDED**; and
4. Respondent shall attend and successfully complete an ethics course of not less than 6 hours and provide proof thereof (see footnote 6 above); and
5. Respondent shall not be granted a license to practice medicine in New York State for **SIX (6) MONTHS** from the date of this Determination and Order; and
6. Respondent shall comply with all other licensure application requirements when applying to the New York State Education Department for the issuance of a license to practice medicine in New York State; and
7. This Order shall be effective on personal service on Respondent or 7 days after the date of mailing of a copy to Respondent by certified mail or as provided by P.H.L. §230(10)(h).

**DATED: New York  
January, 5 2003**

  
**SHARON C. MEAD, M.D., (Chairperson)**  
**NISHA K. SETHI, M.D.**  
**RANDOLPH MANNING, Ph.D.**

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5 Penn Plaza, 6<sup>th</sup> Floor  
New York, NY 10001

# APPENDIX I

IN THE MATTER  
OF  
ARUN KUMAR TIWARI, M.D.

STATEMENT  
OF  
CHARGES

Arun Kumar Tiwari, M.D., the Respondent, had been a "licensee," as that term is defined in N.Y. Public Health Law § 230 (7), at times in and after June 1994 and through in or about July 2001. He does not hold and has not held a license to practice medicine in New York State issued by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about July 14, 2000, at Interfaith Medical Center, Brooklyn, New York, Respondent inappropriately touched Patient A's (the patients' identity is contained in the attached appendix) breasts, vagina and her anal area.
1. On or about July 14, 2000, Respondent asked Vaishali Thati, M.D., to tell anyone who asked, that she was present in the examination room when Respondent examined Patient A. Respondent knew that Dr. Thati was not present during the course of the examination of Patient A and intended such false communication to mislead.
  2. Respondent wrote in Patient A's record that Carole Mitchell was present while Respondent examined the patient. Respondent knew that Ms. Mitchell was not present during the

course of the examination of Patient A and intended such false communication to mislead.

3. On or about March 6, 2001, during the course of an interview with personnel from the Office of Professional Medical Conduct (OPMC), and in a letter submitted to OPMC on July 7, 2001, Respondent stated that William Dickinson, R.N., was in the examination room with him when he examined Patient A. Respondent knew that Nurse Dickinson was not present in the examination room when he examined Patient A. Respondent intended such false communication to mislead.

~~B. On or about November 19, 1999, at Interfaith Medical Center, Respondent inappropriately touched Patient B's breasts and vagina.~~

*Withdrawn  
10-29-02 PREP.  
MP2*

- C. On or about April 9, 1995, at Long Island College Hospital, Brooklyn, N.Y., Respondent inappropriately touched Patient C's genitals.

### SPECIFICATION OF CHARGES

#### **FIRST THROUGH THIRD SPECIFICATIONS PHYSICALLY ABUSING PATIENT**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(31) by willfully harassing, abusing, or intimidating a patient either physically or verbally, as alleged in the facts of:

1. Paragraph A
- ~~2. Paragraph B~~ WITHDRAWN w/PREJUDICE 10-29-02 (MPZ)
3. Paragraph C

**FOURTH SPECIFICATION**  
**MORAL UNFITNESS**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

4. Paragraph A and its subparagraphs, ~~Paragraph B~~ and/or Paragraph C. WITHDRAWN w/PREJUDICE 10-29-02 (MPZ)

**FIFTH THROUGH SEVENTH SPECIFICATIONS**  
**FRAUDULENT PRACTICE**

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

5. Paragraph A and A1
6. Paragraph A and A2.
7. Paragraph A and A3.

DATED: August 6, 2002  
New York, New York



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Roy Nemerson  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

# APPENDIX II

|                                   |            |    |          |
|-----------------------------------|------------|----|----------|
| Case                              | Respondent | EX | A. Scher |
| DATE                              | 9-6-02     |    |          |
| ACCU-SCRIBE REPORTING, INC. M S B |            |    |          |

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

IN THE MATTER

OF

Arun Kumar Tiwari, M.D.

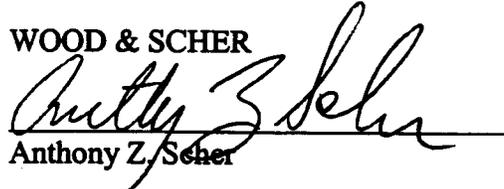
RESPONDENT'S  
ANSWER

Respondent, ARUN KUMAR TIWARI, M.D., by his attorneys, Wood & Scher, answers the Statement of Charges as follows:

1. Denies each and every factual allegation contained in the Statement of Charges.
2. Denies each and every specification of misconduct contained in the Statement of Charges.
3. States that the State Board for Professional Medical Conduct lacks jurisdiction because the acts alleged in the Statement of Charges allegedly took place when respondent was not a licensee as that term was defined (at the relevant times) in Section 230 of the Public Health Law.

Dated: Scarsdale, NY  
August 30, 2002

WOOD & SCHER

  
Anthony Z. Scher

Attorneys for Respondent,  
Arun Kumar Tiwari, M.D.  
The Harwood Building  
Scarsdale, NY 10583

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

X

**IN THE MATTER**

**- OF -**

**ARUN KUMAR TIWARI, M.D.**

X

**RESPONDENT'S  
ANSWER**

**WOOD & SCHER**

*Attorney(s) for*

**Respondent**

*Office and Post Office Address, Telephone*

**THE HARWOOD BUILDING  
SCARSDALE, NEW YORK 10583  
(914) 723-3500**

To

Signature (Rule 130-1.1-a)

Print name beneath

Service of a copy of the within is hereby admitted.

Attorney(s) for

Dated: \_\_\_\_\_

**PLEASE TAKE NOTICE:**

NOTICE OF ENTRY

that the within is a (*certified*) true copy of a  
duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT

that an order  
will be presented for settlement to the HON.  
within named Court, at  
on \_\_\_\_\_ at \_\_\_\_\_ M.

of which the within is a true copy  
one of the judges of the

Dated,

Yours, etc.

**WOOD & SCHER**