



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

May 14, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dianne Abeloff, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

Richard R. Brown, Esq.
Brown, Paindiris &
Zarella, LLP
100 Pearl Street
Hartford, CT 06103-4506

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

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

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

Enclosed please find the Determination and Order (No. 96-115) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "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.

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.

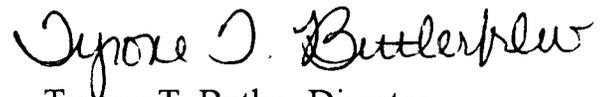
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw
Enclosure

COPY

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

-----X
IN THE MATTER : DETERMINATION
OF :
ARTHUR BLUMER, M.D. : ORDER
-----X

BPMC-96-115

A Notice of Referral Proceeding and Statement of Charges, both dated April 3, 1996, were served upon the Respondent, Arthur Blumer, M.D. **STEPHEN A. GETTINGER, M.D. (Chair), REV. JAMES H. MILLER, and LAXMI V. BAXI, M.D.,** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Dianne Abeloff, Esq., Associate Counsel. The Respondent appeared by Brown, Paindiris & Zarella, LLP, Richard R. Brown, Esq., of Counsel. A hearing was held on May 2, 1996. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law §6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. 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.

1. Arthur Blumer, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on July 28,

1967 by the issuance of license number 99429 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine in New York State. (Pet. Ex. #2).

2. On or about October 17, 1995, the Connecticut Medical Examining Board (hereinafter the "Connecticut Board"), ordered that Respondent's license to practice medicine in Connecticut be placed on probation for a period of five years subject to certain terms of probation. The Order was based upon a consent agreement in which Respondent chose not to contest allegations that during the period of 1982 through and including 1994, while providing care and treatment to pediatric patients, he touched several of his patients' mothers and/or adult female patients in a sexually inappropriate manner and that, in 1994, he inappropriately entered a closed private shower room of a patient's mother while she was taking a shower in a hospital facility. (Pet. Ex. #3).

3. By entering into the Consent Order, Respondent agreed that the Consent Order shall have the same effect as if proven and ordered after a full hearing held pursuant to §19a-9, §19a-14, and §20-13c of the General Statutes of Connecticut. (Pet. Ex. #3).

4. Pursuant to the terms of the Connecticut Consent Order, Respondent underwent a psychological evaluation, conducted by Michael N. Fulco, Ph.D. Following this evaluation, Dr. Fulco concluded that Respondent can practice medicine with reasonable skill and safety, with the proviso that he:

--resume psychotherapy;

--undergo psychosexual consultative evaluation to be conducted by a psychologist or psychiatrist with specialized expertise in psychosexual disorders;

--undergo neuropsychological evaluation to explore the reasons for unevenness in the cognitive profile.

These requirements were adopted by the Connecticut Board in a letter to Respondent dated April 23, 1996. (Resp. Ex. A).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee unanimously concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent's Connecticut medical license was placed on probation by the Connecticut Board after a disciplinary action was instituted by the duly authorized professional disciplinary agency of the State of Connecticut. The Hearing Committee further concluded that the conduct resulting in the probation would, if committed in New York State, constitute professional misconduct in violation of Education Law §6530(31) [conduct in the practice of medicine which evidences moral unfitness to practice medicine]. Consequently, the Hearing Committee voted to sustain the specification of professional misconduct.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be suspended. The suspension shall be stayed, and Respondent placed on probation, pending full compliance with all terms and conditions of the Connecticut Consent Order. In the event that Respondent decides to resume practice in New York, he shall be permitted to provide care and treatment to patients and shall communicate in person with patients' mothers only in the presence of a third party monitor, for a period of five years following the resumption of practice. Respondent shall also be required to provide records of all psychiatric/psychological evaluations and treatment to the Office of Professional Medical Conduct. The full terms and conditions of probation are set forth in Appendix II, which is attached to this Determination and Order and incorporated herein. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Department urged that this Hearing Committee revoke Respondent's license, arguing that inappropriate sexual touching is unacceptable. Under most circumstances, this Committee would be inclined to agree. However, in a referral proceeding such as this, the Committee is bound by the record established in the

sister state disciplinary action. The Consent Order issued by the Connecticut Board contains only sketchy information about the alleged misconduct. Under the circumstances, the Hearing Committee determined that there is insufficient evidence in the record to warrant a revocation.

Moreover, the Committee took some guidance from the disposition of the case by the Connecticut Board. That Board, in possession of more information regarding Respondent's conduct, determined that Respondent could safely continue to practice medicine, so long as certain terms and conditions were imposed and satisfied. The Hearing Committee is concerned about Respondent's apparent lack of insight into his previous conduct, but notes that Respondent has made plans for regular psychotherapy sessions, and is proceeding with the psychosexual and neuropsychological evaluations mandated by the Connecticut Board.

Under the totality of the circumstances, the Hearing Committee unanimously determined that the sanction chosen properly protects the public while providing Respondent for a meaningful opportunity for rehabilitation.

ORDER

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

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED**;

2. Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED**. Said suspension shall be **STAYED**, and Respondent placed on probation pending full compliance with all terms and conditions of the Consent Order issued by the Connecticut Department of Public Health;

3. In the event that Respondent decides to resume the active practice of medicine in New York State, he shall be permitted to provide care and treatment to patients and shall communicate in person with patients' mothers only in the presence of a third party monitor, for a period of five years following the resumption of practice. Respondent shall also be required to provide records of all psychiatric/psychological evaluations and treatment to the Office of Professional Medical Conduct. The full terms and conditions of probation are set forth in Appendix II, which is attached to this Determination and Order and incorporated herein.

4. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York
May 11, 1996


STEPHEN A. GETTINGER, M.D. (CHAIR)

REV. JAMES H. MILLER
LAXMI V. BAXI, M.D.

TO: Dianne Abeloff, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

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

Richard R. Brown, Esq.
Brown, Paindiris & Zarella, LLP
100 Pearl Street
Hartford, Connecticut 06103-4506

APPENDIX I

APPENDIX II

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

IN THE MATTER
OF
ARTHUR BLUMER, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: ARTHUR BLUMER, M.D.
38 Castleman Drive
Southington, CT 06489



PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on May 2, 1996, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any

witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the

administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT SUSPENDS OR REVOKES YOUR
LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE
AND/OR IMPOSES A FINE FOR EACH OFFENSE
CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY
TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
April 3, 1996



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Dianne Abeloff
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2615

IN THE MATTER
OF
ARTHUR BLUMER, M.D.

STATEMENT
OF
CHARGES

ARTHUR BLUMER, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 28, 1967, by the issuance of license number 99429 by the New York State Education Department. Respondent is not currently registered to practice medicine in New York State.

FACTUAL ALLEGATIONS

- A. On or about October 17, 1995, the Connecticut Medical Examining Board ordered that Respondent's license to practice medicine in Connecticut be placed on probation for a period of five years subject to certain terms of probation. The Order was based upon a consent agreement in which Respondent neither admitted nor denied that during the period of 1982 through and including 1994, while providing care and treatment to pediatric patients, he touched several of his patients' mothers and/or adult female patients in a sexually inappropriate manner and that, in 1994, he inappropriately entered a closed private shower room of a patient's mother while she was taking a shower, at a hospital facility.

SPECIFICATION OF CHARGES

SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1996) by having his license to practice medicine placed on probation for a period of five years subject to certain terms after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in probation would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530(31) and (20)) as alleged in the facts of the following:

1. Paragraph A.

DATED: ^{Ag} February 3, 1996
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II
TERMS OF PROBATION

1. Dr. Blumer shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.

2. Dr. Blumer shall comply with all federal, state and local laws, and with all rules and regulations governing the practice of medicine in New York State.

3. Dr. Blumer shall submit written notification to the Board addressed to the Director, office of Professional Medical conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, within thirty (30) days of any change in employment, practice, residence or telephone number, within or without New York State. Any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility shall also be reported to the Director, in writing, within thirty (30) days of each action.

4. Dr. Blumer shall comply fully with the October 17, 1995 Consent Order of the Connecticut Medical Examining Board, Connecticut Department of Public Health, and any subsequent modification thereof. Dr. Blumer shall provide the Connecticut Medical Examining Board a written authorization to provide the Director of the Office of Professional Medical Conduct with any/all information or documentation as deemed necessary and quarterly compliance reports. Such reports will verify Dr. Blumer's compliance with the Consent Order.

5. Dr. Blumer shall submit quarterly a signed Compliance Declaration to the Office of Professional Medical Conduct, which will attest that he has been in compliance with the Connecticut Consent Order during the declaration period specified. Misrepresentation of compliance will be considered a violation of this term of probation.

6. Dr. Blumer's failure to comply with any of the requirements set forth in Paragraphs 4 and 5, above, will be considered a violation of probation, subject to a violation proceeding or other proceeding as authorized by law.

7. Dr. Blumer shall provide written notice to the Director of the Office of Professional Medical Conduct at least sixty (60) days before resuming the active practice of medicine within New York State. For a period of five (5) years from the resumption of practice, Dr. Blumer shall be required to have a licensed or registered health professional monitor present during all examinations and treatment of patients, and shall communicate in person with patients' mothers only in the presence of such monitor. This third-party monitor shall not be related to Dr. Blumer, and shall be approved in advance by the Director or designee. Any practice of medicine prior to the submission and approval of a proposed third-party monitor will be determined to be a violation of probation. All terms of probation shall be extended for five (5) years from the resumption of active practice in New York State.

8. Dr. Blumer will authorize all third-party monitors to confirm their presence by placing their name and title in the patient record and will have available all information necessary for the Office of Professional Medical Conduct to confirm the above third-party monitoring. Each approved third-party monitor will maintain a list of all dates and patient names or chart numbers that the monitor witnessed and will submit quarterly Declarations of third-party attendance.

9. For a period extending five (5) years from the resumption of active practice within New York State, Dr. Blumer will authorize all treating psychiatrists and/or psychologists to provide records of all psychiatric/psychological evaluation and/or treatment.

10. In the event that Dr. Blumer leaves New York to reside or practice outside the State, Dr. Blumer shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.

11. Dr. Blumer shall have quarterly meetings with a member of the Office of Professional Medical Conduct staff, at the discretion of the Director of the Office or a designee. During these quarterly meetings Dr. Blumer's professional performance may

be reviewed by having a random selection of office records, patient records and hospital charts reviewed.

12. Dr. Blumer will maintain legible and complete medical records which accurately reflect evaluation and treatment of patients. Records will contain a comprehensive history, physical examination findings, chief complaint, present illness, diagnosis and treatment. In cases of prescribing, dispensing, or administering of controlled substances, the medical record will contain all information required by state rules and regulations regarding controlled substances.

13. Dr. Blumer shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the Office of Professional Medical Conduct at the address indicated above.

14. Dr. Blumer shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine with the New York State Education Department. If Dr. Blumer elects not to practice medicine in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.

15. If there is full compliance with every term set forth herein, Dr. Blumer may practice as a physician in New York State in accordance with the terms of probation; provided, however, that upon receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Dr. Blumer pursuant to New York Public Health Law §230(19) or any other applicable laws.