



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

July 7, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Courtney Berry, Esq.
NYS Department of Health
5 Penn Plaza – 6th Floor
New York, New York 10001

Albert Alim, M.D.
2585 Sedgwick Avenue
4th Floor
Bronx, New York 10468

RE: In the Matter of Albert Alim, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-149) 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.

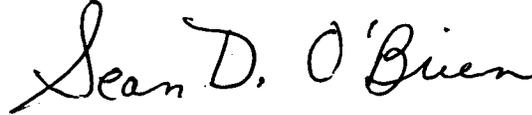
The notice of review served on the Administrative Review Board should be forwarded to:

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 cursive script that reads "Sean D. O'Brien".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

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

**IN THE MATTER
OF
ALBERT ALIM, M.D.**

DETERMINATION

AND

ORDER

BPMC -04-149

COPY

FRANK E. IAQUINTA, M.D., Chairperson, **ROBERT KLUGMAN, M.D.** and **MS. SHAHLA JAVDAN**, duly designated members of the State Board for Professional Medical Conduct appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY ARMON, ESQ.**, served as Administrative Officer for the Hearing Committee. After consideration of the entire record, the Hearing Committee submits this Determination.

SUMMARY OF PROCEEDINGS

Notice of Hearing/Statement of Charges:	December 30, 2003
Dates of Hearing:	February 4; April 21, 2004
Prehearing Conference:	January 21, 2004
Department of Health appeared by:	DONALD P. BERENS, JR., ESQ. General Counsel NYS Department of Health
Respondent appeared :	BY: COURTNEY BERRY, ESQ. NYS Department of Health 5 Penn Plaza, Suite 601 New York, New York 10001
	PRO SE

Witnesses for the Department of Health: Individual B
Patient A
Yazmin Collazo, M.D.
Ana Manegal

Witnesses for the Respondent: Gregory Schiffhauer, M.D.
Lida Prypchan, M.D.
Jennifer Richards, C.N.A.
Albert Alim, M.D., (Respondent)

Receipt of submissions and close of record: May 19, 2004

Deliberations held: May 26, 2004

NOTE: Numbers in parenthesis refer to transcript pages or exhibits, and they denote evidence that the Hearing Committee found persuasive in determining a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the evidence cited. All Hearing Committee findings were unanimous unless otherwise specified. The Statement of Charges (Ex. 1) is attached hereto as Appendix I.

Petitioner's Exhibits are designated by Numbers.

Respondent's exhibits are designated by Letters.

T = Transcript

LEGAL ISSUES

During these proceedings, issues arose which required the Administrative Law Judge (ALJ) to make certain rulings. The Department advised that Individual C was no longer residing in the United States and was unavailable to testify in person. In lieu of her personal testimony, the Department introduced Exhibit 3, which was the transcribed testimony of Individual C before a hearing panel at Elmhurst Hospital convened to address Respondent's continued participation in his residency program. Individual C's sworn testimony was subjected to cross-examination by Respondent's attorney and addressed the same subject matter involving the same parties as this proceeding. The ALJ relied on the provisions of Section 4517 of the CPLR as guidance in receiving the transcript in evidence, based on the unavailability of the witness.

In an effort to attack her credibility, Respondent attempted to introduce several documents related to the personal history of Patient A. These items included the September 18, 2001 clinical case conference presentation related to her hospital admission and 1995 and 1996 decisions by the Queens County Family Court concerning custody disputes between Patient A and her former husband. These documents were not received into the hearing record. The Committee had learned of her history of alcohol and substance abuse through her hospital records which were received in evidence. In addition, Patient A had testified that she was admitted to Elmhurst Hospital in July, 2001 following a nervous breakdown and suicide attempt. The ALJ determined that there was no additional relevant information in the clinical case presentation. Furthermore, the Committee was able to evaluate her credibility and demeanor during the time she testified in person. Other Department witnesses testified about Patient A's behavior during her hospitalization, when the alleged acts of harassment occurred. The ALJ concluded that the personal matters from many years earlier in Patient A's life that Respondent wanted to put in the record were irrelevant as factors to be weighed by the Committee in evaluating Patient A's credibility and were offered only as an attempt to smear the patient's character.

FINDINGS OF FACT

1. Respondent is not currently licensed to practice medicine by the New York State Education Department. At all times relevant to these charges, Respondent was a psychiatric resident at Elmhurst Hospital Center, Elmhurst, N.Y., and therefore a "licensee" within the meaning of Sec.230(7) of the Public Health Law.

2. From in or about July, 2001 through in or about January, 2002, Respondent was a PGY II resident at Elmhurst Hospital Center, Elmhurst, N.Y. Respondent was assigned to psychiatric unit AB10 at Elmhurst Hospital Center for December 2001 and January 2002. (T. 131, 154; Ex. D)

3. Patient A, a 46 year old female, was a psychiatric in-patient on AB10 at Elmhurst Hospital Center from July, 2001 through January, 2002. She was admitted to AB10 after a suicide attempt with a diagnosis of major depression, alcohol dependence and dependent personality disorder. She was a high functioning patient who remained on AB10 awaiting placement. (T. 65-7, 119-20, 137-8, 164; Ex. 2)

4. Patient A was a direct care patient assigned to Yasmin Collazo, M.D., the Unit Chief on AB10. She was not Respondent's patient. (T. 58, 67, 136, 156-158, 306, 314; Ex. D)

5. During the period of Patient A's hospitalization, Respondent

a. made sexually explicit comments to Patient A, including telling her that she "had beautiful breasts", that she "should lose weight because [she] would look even better", that "he was a man in a boy's body", that he "had a big penis", and "don't go by his physical look but what he had to offer. (T. 69-71, 118);

b. asked Patient A sexually explicit questions such as how many men she had slept with and what positions she liked. (T. 69-71, 118);

c. made sexual gestures towards patient A by pointing to his erection and then directing Patient A to go into the bathroom, saying that "it wouldn't take long." (T.125-126);

d. told Patient A that after her discharge he would take her out and show her the back of his van. (T. 70, 78-79).

6. While still an in-patient, Patient A mentioned to Individual B that Respondent had made inappropriate remarks to her. She did not make a formal complaint against Respondent while she was still an in-patient for fear that her discharge would be jeopardized. (T. 39-40, 77-80, 166)

7. Following her discharge, Patient A spoke with Individual B by telephone and indicated that Respondent had made sexual advances towards her. She repeated her disclosures to a social worker who contacted the patient at the Unit Director's request. (T. 39-43;80-81;165-6)

8. Individual B, a 36 year old female, has been a Community Liaison Worker an AB10 at Elmhurst Hospital Center since 2001. She was on AB10 during the same time as Respondent although they had no cases together. (T. 34)

9. Approximately twice per week during the period they worked on the Unit, Respondent asked Individual B to go out with him. She consistently declined and told Respondent that she was married and not interested. (T. 34-36, 55-59)

10. In January 2002, Respondent made the comment "I would like to make music to your ass" to Individual B. (T. 35)

11. Individual B complained to Dr. Collazo, the Unit Chief of AB10, and to her union representative. (T. 36-37)

12. Individual C was a social work student intern on AB10 at Elmhurst Hospital Center from September 2001 through May 2002. (Ex. 3)

13. During the period they worked together, Respondent asked Individual C to go out with him on almost a daily basis. She always said no or gave Respondent an excuse that she had to go home. Respondent offered to go home with Individual C and see her baby. (Ex. 3)

14. Respondent made comments about Individual C's hair, dress and physical appearance. Respondent's comments made Individual C feel very uncomfortable, to the point that she avoided being alone with him. (Ex. 3)

15. Individual C reported the situation to her supervisor, to the Director of Social Services and to the Unit Director. She told them that she wanted to try to handle the situation on her own, stating that if Respondent did not stop, she would report him. (Ex. 3)

16. Individual C told Respondent that he was very flirtatious and that flirting was not appropriate on the job. After that, Respondent did not ask Individual C out or make inappropriate comments again. (Ex. 3)

17. Following a hearing at Elmhurst Hospital, Respondent was terminated in 2002 from the residency program.

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.

The Hearing Committee concluded that ALL Factual Allegations should be **SUSTAINED**.

The Committee further determined that ALL Specifications of Charges should **BE SUSTAINED**.

DISCUSSION

It was necessary for the Committee to evaluate the testimony of each witness to determine which party was most believable. Patient A and Individual B were both considered to be reliable and credible. There was testimony from both the AB10 Unit Manager and a social worker that Patient A was a high functioning person who was not delusional or otherwise prone to making false accusations. She was articulate and appropriate during her testimony with no indication of any psychiatric impairment. The Committee could find no reason for either witness to falsely accuse the Respondent. In fact, each woman expressed a reluctance to make a formal complaint and thereby get the Respondent into trouble. Their complaints that Respondent repeatedly asked them out, made comments about their physical appearances and made them uncomfortable in his

presence were consistent and believable. Similar complaints made by Individual C bolstered the overall credibility of the three women. The Committee rejected Respondent's suggestion that they conspired together in some manner to bring false allegations against him and strongly believed that there was no ulterior motive in their testimony.

In contrast, the Committee did not find Respondent credible in any fashion. His explanations were considered to be inconsistent and evasive. Respondent took no responsibility for his inappropriate comments to Patient A, Individual B and Individual C. He would have been better served to have admitted his actions and apologize. Instead, the repeated denials that he had committed any of the acts that he was accused of made his entire testimony not believable. The Committee members noted that each woman warned Respondent that his comments were considered offensive, but that he continued his actions. He was considered to be unable to distinguish between right and wrong. Respondent also admitted to conversations with Patient A which were counter-therapeutic and should not have occurred.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, determined that Respondent should be precluded from any future licensure in New York. This decision was made following due consideration of the full spectrum of penalties available and in reliance on Section 230-a(6) of the Public Health Law, which includes as a penalty for professional misconduct the limitation on registration or issuance of any further license.

The Committee believed that Respondent's failure to admit to, and accept responsibility for actions that clearly occurred, demonstrated a lack of insight that could not be instilled in him through a lesser penalty. His lack of credibility in any aspect of his testimony demonstrated that he could not be expected to be rehabilitated. Any restriction short of a complete preclusion from future licensure would be both impractical and, in consideration of his medical specialty, inappropriate.

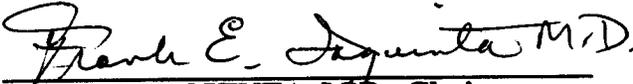
ORDER

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

1. All Specifications of Charges of professional misconduct as set forth in the Statement of Charges (Ex. 1) are **SUSTAINED**; and
2. Respondent shall be **PRECLUDED FROM ANY FUTURE MEDICAL LICENSURE** in New York; and
3. This Order shall be effective upon service on the Respondent or his attorney by personal service or by certified or registered mail.

DATED: Troy, New York

July 6, 2004


FRANK E. IAQUINTA, M.D., Chairperson

**ROBERT KLUGMAN, M.D.
MS. SHAHLA JAVDAN**

TO:

Courtney Berry, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001

Albert Alim, M.D.
2585 Sedgwick Avenue – 4th Floor
Bronx, New York 10468

APPENDIX I

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

IN THE MATTER

OF

Albert Alim, M.D.

STATEMENT

OF

CHARGES

Albert Alim, M.D., the Respondent, is not currently licensed to practice medicine by the New York State Education Department. At all times relevant to these charges, Respondent was a psychiatric resident at Elmhurst Hospital Center, Elmhurst, N.Y., and therefore a "licensee" within the meaning of Sec.230(7) of the Public Health Law.

FACTUAL ALLEGATIONS

- A. Patient A was an in-patient at the psychiatric ward of Elmhurst Hospital Center, Elmhurst, N.Y. from on or about July 9, 2001 through on or about January 4, 2002. Respondent was a psychiatric resident at Elmhurst Hospital Center, Elmhurst, New York from in or about July 2001 through in or about January 2002.
1. Respondent engaged in inappropriate sexual conversations with Patient A while she was an in-patient at Elmhurst Hospital Center.
- B. Individual B was a Community Liaison Worker at Elmhurst Hospital Center. Respondent and Individual B were both assigned to AB-10 from in or about October 2001 through in or about January 2002.
1. Respondent engaged in inappropriate sexual conversations with Individual B while on the job.

- C. Individual C was a Social Work Intern at Elmhurst Hospital Center.
Respondent and Individual C were assigned to AB-10 from in or about October 2001 through in or about January 2002.
1. Respondent engaged in inappropriate sexual conversations with Individual C while on the job.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

SEXUAL ABUSE

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

1. Paragraphs A and A1.

SECOND 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:

2. Paragraphs A and A1.
3. Paragraphs B and B1.
4. Paragraphs C and C1.

DATED: December 31, 2003
New York, New York

A handwritten signature in black ink, appearing to read "Roy Nemerson", is written over a horizontal line.

Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct