



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

March 19, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nathan L. Dembin & Associates, P.C.
Nathan L. Dembin, Esq.
225 Broadway Suite 1905
New York, New York 10007

Jean Bresler, Esq.
NYS Department of Health
5 Penn Plaza-6th Floor
New York, New York 10001

Richard Gold, M.D.
223 Route 59
Monsey, New York 10952

Effective Date: MAY 8, 1996

RE: In the Matter of Richard Gold, M.D.

Dear Mr. Dembin, Ms. Bresler and Dr. Gold:

Enclosed please find the Determination and Order Following Remittur (No. 94-128R) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

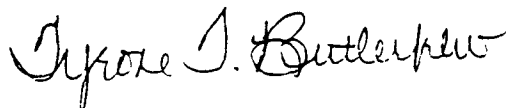
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NEW YORK STATE DEPARTMENT OF HEALTH 428

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw

Enclosure

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

COPY

IN THE MATTER
OF
RICHARD GOLD, M.D.

ADMINISTRATIVE
REVIEW BOARD
DETERMINATION
FOLLOWING
REMITTUR

94-128R

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.** held deliberations on February 16, 1996, to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) December 13, 1995 reconsideration of the penalty in the case of Dr. Richard Gold (Respondent). The Appellate Division for the Third Department remitted Dr. Gold's case for redetermination of the penalty¹, after modifying the Review Board's earlier Determination in this case.

THE CASE TO THIS POINT

In our original Determination in the Respondent's case (ARB No. 94-128), the Review Board sustained a Hearing Committee on Professional Medical Conduct's (Hearing Committee) July 28, 1994 Determination finding the Respondent guilty of moral unfitness in the practice of medicine and professional misconduct in the practice of psychiatry, for engaging in physical contact of a sexual nature with his patients. The Committee had found that the Respondent had engaged in sexual activity with four persons, whom the record referred to as Patients A, B, D and E and found that the Respondent made sexual overtures to an additional person, Patient C. The Review Board also sustained the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State.

¹Matter of Gold v Chassin, 215 AD2d 18, 623 NYS 2d 276 (Third Dept. 1995).

The Appellate Division modified the Review Board's Determination by dismissing the charges involving Patients B and E, due to actual prejudice resulting from a delay in bringing those charges against the Respondent. The Appellate Division sustained the findings involving Patients A, C and D, finding that the record amply supported the findings of guilt arising from those cases. The Appellate Division then remanded for redetermination of an appropriate penalty, because the original penalty was based on all the guilt findings, including those involving Patients B and E.

Following the Appellate Division's decision, the Petitioner submitted a November 6, 1995 letter asking whether the Review Board would reconsider the penalty. By letter dated November 7, 1995, the Respondent requested that the Board remand this matter to a new Hearing Committee and that the parties be allowed to submit written and oral arguments on a new penalty.

Upon reading the Appellate Division's decision remitting this case, and after considering the parties' recommendations, the Review Board remanded the case to the original Hearing Committee to redetermine the penalty. We determined that the Appellate Division's decision did not specify whether the Review Board should make the redetermination in this case or whether the Hearing Committee should begin the process. Since the Review Board's original Determination in this case basically sustained the Hearing Committee's Determination and Penalty, the Review Board concluded that the Hearing Committee should hold additional deliberations to determine the appropriate penalty in this case, based on the findings of guilt in the cases of Patients A, C and D. Since the Appellate Division had already decided that the record supports the finding of guilt in those cases, the Board found no need for any further hearing or findings of fact. The Review Board did not remand to a new Hearing Committee, because the Appellate Division did not order that a new Hearing Committee convene and because the Review Board's remand authority is limited to remanding to the original Hearing Committee.

The Review Board ordered the Hearing Committee to meet as soon as possible following receipt of the Remand Order, to conduct deliberations. The Board left the Hearing Committee to decide whether they needed written or oral arguments by the parties, in order to determine an appropriate penalty. The Board ordered that the Committee render a Supplemental Determination,

which they should serve on both parties, and the Board allowed either party to then request an administrative review of the Hearing Committee's Supplemental Determination, by filing a Notice of Review, within fourteen days of receiving the Supplemental Determination.

The Hearing Committee rendered a Supplemental Determination on December 13, 1995, and voted to revoke the Respondent's license to practice medicine in New York State. The Committee stated that they reviewed the evidence from the record relating only to Patients A, C and D.

After the Committee rendered their Supplemental Determination, the Respondent requested an additional administrative review on January 3, 1996.

REVIEW ISSUES REGARDING THE REVISED PENALTY

The Respondent asks that the Review Board reduce the penalty against the Respondent or that the Review Board return this case to a new Hearing Committee that would be free of any taint. The Respondent argues that the Committee's Determination prejudiced the Respondent's rights, that the Determination was not based on any documented meeting of the Hearing Committee, and that the Determination provided no foundation on which to base the revocation of the Respondent's license, a penalty which the Appellate Division expressly rejected.

The Respondent argues that:

1. The Respondent was denied an opportunity to be heard, in contradiction of the mandates from the Appellate Division and the Review Board;
2. The Committee failed to make a Determination based on the revised findings from the Appellate Division, but, instead made its decisions based on prior biased and preconceived notions; and,
3. The penalty is excessive, given that the Respondent has now practiced for fifteen years without an incident, allegation or charge. The Respondent contends, that revocation would not serve any purpose.

The Petitioner argues that the Appellate Division's decision did not mandate a hearing de novo in this matter, but, rather sustained the Committee's findings concerning Patients A, C and D. The Petitioner contends that the New York Court of Appeals has rejected a request from the Respondent for leave to appeal the Appellate's Division's ruling upholding the findings as to Patients A, C and D. The Petitioner argues that the Committee's penalty revoking the Respondent's medical license is justified by the facts in this case. The Petitioner argues that the Respondent has offered no evidence to support his claim that his rights have been violated and that the Respondent's brief cites no new evidence for consideration.

The Respondent, in response to the Petitioner's brief, has asked the Board to ignore the Petitioner's reference to the Respondent's Motion for Leave to Appeal to the Court of Appeals. The Respondent also argues that he could not legally bring new information before the Review Board as part of the review process.

REVIEW BOARD DETERMINATION

The Review Board has considered the record of this proceeding, including the Decision by the Third Department and the Hearing Committee's Supplemental Determination. The Board did not consider the recent Court of Appeals decision, which the Petitioner attached to their brief, as that decision was not part of the record before the Hearing Committee.

The Board votes 5-0 to sustain the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State. That Determination is consistent with the findings that the Respondent, a psychiatrist, had sexual relationships with two of his patients, A and D, and made sexual overtures toward another patient, Patient C. The Review Board rejects again the Respondent's request for a new hearing. The Appellate Division sustained the Hearing Committee's findings of guilt concerning Patients A, C and D. The Appellate Division did not order a new hearing on the facts and there is no purpose for the Review Board to order a new hearing on the facts. The Review Board rejects the Respondent's contention that there were inconsistent decisions regarding the Respondent's sexual relationship with Patient A, due to a civil jury verdict.

The Appellate Division's decision sustaining the charges concerning Patient A was quite clear and unequivocal and the findings on that Patient are before us properly in determining an appropriate penalty in this case.

The Review Board rejects the Respondent's contention that the Hearing Committee ignored the Appellate Division's mandate when the Committee issued their Supplemental Determination. The Appellate Division remitted this case because the prior penalty was invoked on all findings, including those relating to Patients B and E. The Appellate Division did not even specify that the Hearing Committee had to be involved in the remittur. The Appellate Division did not require that a new Hearing Committee convene, as they did in Matter of Afif, 134 AD2d 679, 521 NYS2d 340 (Third Dept. 1987); the Appellate Division did not remit with instructions that the Review Board and/or the Hearing Committee specifically consider evidence in mitigation, as they did in Matter of Murray, 213 AD2d 858, 623 NYS2d 951 (Third Dept. 1995); and, the Appellate Division did not state specifically that the penalty of revocation was inappropriate, based upon the sustained charges, as they did in Matter of Colvin, 214 AD2d 854, 625 NYS2d 351 (Third Dept. 1995). The Appellate Division remitted only for a redetermination of the penalty, without consideration of the dismissed charges.

The Review Board also rejects the Respondent's contention that the Hearing Committee failed to follow the Review Board's instructions for issuing the Supplemental Determination. The Review Board remanded only for the Hearing Committee to render a penalty based on the findings in the cases of Patients A, C and D. The Board left the Hearing Committee to decide whether they needed to review written or oral arguments by the parties, and the Committee obviously decided that they did not need to review such arguments. In remanding this case, the Review Board's main issue was whether the Committee felt that revocation was still warranted after the Appellate Division reduced the number of sustained charges. The Committee's Determination leaves no doubt that the Committee felt that the Respondent's conduct towards Patients A, C and D warrants revocation.

The Respondent argued that the Hearing Committee's Supplemental Determination reflects that the Committee is still basing their penalty in part on the cases of Patients B and E. The Review Board can find nothing in the Committee's Determination that would reflect that the Committee is still influenced by the charges that related to Patients B and E. The Committee's Supplemental Determination states that the Committee based the Determination on the evidence relating to Patients A, C and D only. The Respondent's argument, alleging the continuing influence on the Committee from the charges concerning Patients B and E, could only be convincing if the Committee's Supplemental penalty is not warranted based on the sustained charges relating to Patients A, C and D. The Board believes that the Committee's penalty is warranted based on the findings in the cases of Patients A, C and D. Revocation is warranted in a case in which a physician commits sexual misconduct with a single patient, Matter of Mohit (ARB 91-28, March 11, 1992). In the Respondent's case, revocation would be the appropriate penalty in the case of Patient A standing alone or in the case of Patient D standing alone. The cases of Patients A and D, combined with the Respondent's conduct of a sexual nature toward Patient C demonstrates a pattern in which the Respondent violated the trust between a psychiatrist and patient for his own sexual gratification.

The Review Board rejects the Respondent's contention that he did not have an opportunity to argue mitigation before the Hearing Committee. There are no separate phases for determining guilt and then determining penalty in these proceedings. The Respondent had an opportunity to argue mitigation before the Hearing Committee originally and neither the Appellate Division nor the Review Board found a need to remand this case for further argument about mitigation. The Respondent has argued throughout the proceeding that the passage of time since the occurrence of the last alleged incident of misconduct indicates that the Respondent does not constitute an ongoing danger to his patients. The Review Board finds that the extreme and repeated nature of the Respondent's misconduct outweighs any mitigating factors in this case. Accepting that the Respondent has committed no other misconduct in the years between last case of misconduct and the present time, the Board believes that revocation is still the appropriate penalty in this case. The Respondent has proved himself unfit to practice medicine in this state.

The Review Board rejects the Respondent's contention that the penalty in this case will not serve as a deterrent due to the passage of time since the misconduct occurred. The Review Board believes that the penalty in this case will make clear that sexual misconduct with a patient is not tolerated and that a physician will incur the most severe penalty possible if he/she commits such misconduct.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's Determination revoking the Respondent's license to practice medicine in New York State.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

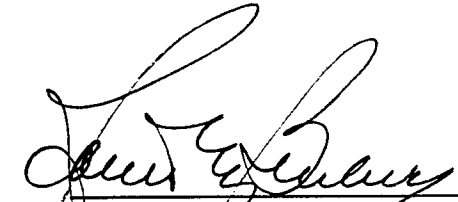
WILLIAM A. STEWART, M.D.

IN THE MATTER OF RICHARD GOLD, M.D.

ROBERT M. BRIBER, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination in the case of Dr. Gold.

DATED: Schenectady, New York

3/14, 1996



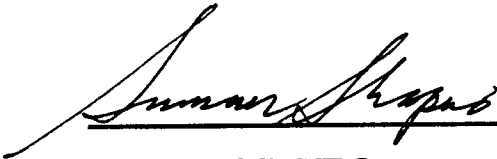
ROBERT M. BRIBER

IN THE MATTER OF RICHARD GOLD, M.D.

SUMNER SHAPIRO, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination in the case of Dr. Gold.

DATED: Delmar, New York

MARCH 13, 1996



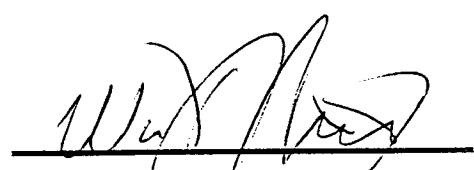
SUMNER SHAPIRO

IN THE MATTER OF RICHARD GOLD, M.D.

WINSTON S. PRICE, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination in the case of Dr. Gold.

DATED: Brooklyn, New York

MARCH 15, 1996

A handwritten signature in black ink, appearing to read 'Winston S. Price', is written over a solid horizontal line.

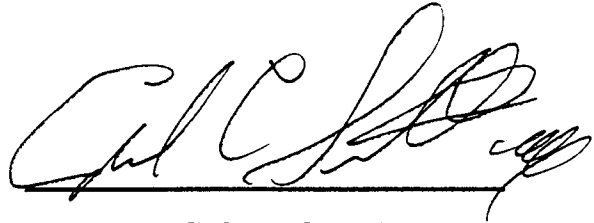
WINSTON S. PRICE, M.D.

IN THE MATTER OF RICHARD GOLD, M.D.

EDWARD C. SINNOTT, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination in the case of Dr. Gold.

DATED: Roslyn, New York

March 15, 1996



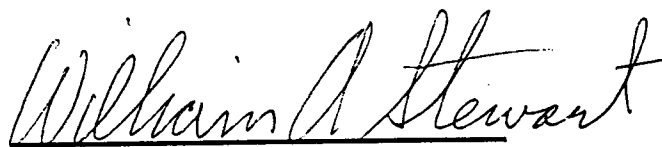
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF RICHARD GOLD, M.D.

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination in the case of Dr. Gold.

DATED: Syracuse, New York

11 May, 1996

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in black ink and is positioned above a solid horizontal line.

WILLIAM A. STEWART, M.D.