



STATE OF NEW YORK DEPARTMENT OF HEALTH

Office of Public 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

July 10, 1995

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MEDICAL CONDUCT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Leighton, M.D.
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Poughkeepsie, New York 12601

James Eberz, Esq.
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P.O. Box 151
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Robert Leighton, M.D.
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Diane Abeloff, Esq.
NYS Department of Health
Metropolitan Regional Office
5 Penn Plaza-Sixth Floor
New York, New York 10001

RE: In the Matter of Robert Leighton, M.D.

Dear Dr. Leighton, Mr. Eberz and Ms. Abeloff:

Enclosed please find the Determination and Order (No. 95-143) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

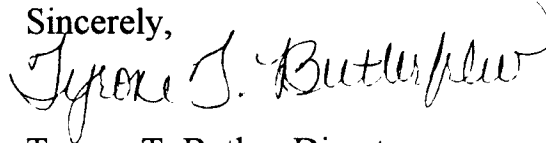
All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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,

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

IN THE MATTER : HEARING COMMITTEE
OF : DETERMINATION
ROBERT LEIGHTON, M.D. : AND ORDER

-----X BMC-95-143

Thea Graves Pellman, M.D., Chairperson, Henry Pinsker, M.D., and Norton Spritz, M.D., duly designated members of the State Board of 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 Sections 230(10)(e) and 230(12) of the Public Health Law. Stephen Bermas, Esq., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

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

SUMMARY OF THE PROCEEDINGS

Notice of Hearing dated: December 27, 1994

Amended Statement of Charges dated: January 31, 1995

Hearing Dates: January 6 and 25, Feb 1 and 6,
and May 10, 1995

Deliberation Date: June 7, 1995

Place of Hearing: NYS Department of Health
5 Penn Plaza
New York, New York

Petitioner Appeared By: Peter J. Millock, Esq.
General Counsel
NYS Department of Health
BY: Diane Abeloff, Esq.
Associate Counsel

Respondent Appeared By: Meiselman, Farber, Packman &
Eberz.
BY: James G. Eberz, Esq.

STATEMENT OF CHARGES

The Amended Statement of Charges has been marked as
Petitioner's Exhibit 8 and attached hereto as Appendix A.

FINDINGS OF FACT

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 cited evidence. All Findings are unanimous except as specifically indicated.

1. Patient A started seeing Respondent for therapy in 1991 for depression. She remained in therapy with Respondent until June of 1994 (T.18, 19,640)
2. Patient A felt that her relationship with Respondent was confusing. Although she was Respondent's patient, she felt she was his friend. Patient A felt that while Respondent had gotten to know her, she had in turn gotten to know about Respondent's life and problems in equal detail. (T.21, 46)
3. Respondent frequently discussed with Patient A problems in his marriage and his feelings about his wife, as well as other personal problems. (T.22,23, 87)

4. Respondent was distracted during the therapy sessions and intruded his personal issues into the therapy sessions. (T.46, 66)
5. Patient A became deeply attached to Respondent (T. 50) and "addicted to him". (T.76) Respondent never suggested to Patient A that she should switch to a different psychiatrist to assist in the transference issue. (T.67)
6. Respondent discussed his personal sexual fantasies with Patient A. (T. 29, 32,69)
7. In the spring of 1994, Patient A suggested to Respondent that they have sexual contact. Respondent did not effectively discourage the sexual contact. (T.35, 36,37,44)
8. Respondent asked Patient A to write a note stating that she was no longer his patient. (T.38,39,63;Ex.B) (This Finding was made by 2 Members of the Hearing Committee. The 3rd Member did not concur.)
9. On or about June 9, 1994, Patient A went to Respondent's office in the evening. They had wine, they undressed and Respondent performed cunnilingus upon Patient A. (T. 40,41) (This Finding was made by 2 Members of the Hearing Committee. The 3rd Member did not concur.)

10. Patient A was upset about the sexual contact between herself and Respondent. She contacted Dr. Maria Alba-Fisch, soon after the sexual contact, to talk about the incident, among other issues. Patient A also contacted the N.Y.S. Department of Health just a few days after the incident to report the sexual contact by Respondent. (T.45, 61,92, 232)
11. Patient/Employee H was Respondent's patient from approximately June 1992 until July 1994. (T. 382, 397, 429)
12. Patient/Employee H originally became Respondent's patient because she could not afford anyone else's fee. However, even the \$90 fee that Respondent charged was more than she could afford to pay. Respondent offered to reduce his fee if Patient/Employee H would act as his receptionist and she did. She also performed a number of errands for Respondent such as food shopping. (T.389, 390, 405)
13. Respondent discussed cunnilingus with Patient/Employee H. (T.386-387)
14. During the course of Patient/Employee H's therapy sessions with Respondent he would talk about his wife. He called her a bitch and indicated that the marriage was very rocky. On several occasions Respondent asked Patient/Employee H to

listen in on telephone conversations between Respondent and his wife. (T. 387,388)

15. Employee A was present in several of Patient/Employee H's therapy sessions. Employee A's presence made Patient/Employee H uncomfortable. Respondent touched Employee A and talked about how wonderful she was. Even when Employee A was not present, Respondent talked about her and about his relationship with Employee A. (T. 388,389, 395, 396)

16. Employee A started working for Respondent in November 1993 as an office manager, and in March 1994 she started working with Respondent as a co-therapist. Within months, Respondent had fallen in love with Employee A and wanted to marry her after his divorce. He encouraged Employee A to explore opening a therapy practice together and to find a house for them to live in. (T. 105,106, 114-116, 143, 152, 764-767, 805-809, 828)

17. Respondent was affectionate with Employee A in the presence of patients as follows:
 - (a) Rev. Kathy Brady was affiliated with Grace Smith House, a shelter for battered women. Over the course of several years she referred two clients to Respondent. To assist in making the women comfortable with Respondent she attended the initial therapy sessions. (T. 931) During

the course of one session she saw Employee A reach over and adjust Respondent's clothing. (T. 941)

(b) While Joan Kaiser and Patient B were in the room with Respondent, Employee A came into the room and leaned over Respondent to close the blinds. (T. 294)

(c) Respondent was physically affectionate with Employee A when she attended Patient/Employee H's sessions. (T.941, 812,395, 295)

18. Respondent was unable to remain focused on his patients during therapy sessions. Respondent, during a therapy session, answered the telephone, discussed music, himself, his relationship with his wife, his financial problems, and/or Employee A. (T.108, 110-112, 151, 157)

19. Respondent told Employee A about his fantasies of having oral sex with one particular patient. (T.121, 815)

20. Respondent told Employee A that he had attention deficit disorder and obsessive-compulsive disorder, and that he had problems with depression. He also told Employee A that his MD stood for "manic depressive." Respondent often wrote notes saying "K.B. lives long, her children live long", which he left in various places in his office. Respondent told Employee A that these notes were part of his condition. (T. 119,120)

21. Respondent also told Employee A that he did not want to be treated and that he did not want to take medicine. (T. 119,127)
22. When a patient becomes seductive towards a psychiatrist, it is a psychiatrist's responsibility to refuse the sexual advances of the patient. It is the psychiatrist's responsibility to tell the patient that there cannot be a personal relationship with the psychiatrist. (T.498, 499,509)
23. Sharing one's sexual fantasies, as well as engaging in conversations of a sexual nature with a patient, deviate from accepted medical standards. (T. 499, 512, 881, 883)
24. Any sexual conduct engaged in by a psychiatrist with a patient deviates from accepted medical standards (T. 501,508,880-885)
25. Respondent's Exhibit B written by Patient A was an unprofessional way of terminating a therapeutic relationship. Respondent's notes do not explain the circumstances of Patient A's termination of treatment. (T.504)
26. Even if a therapy relationship has been terminated, sexual contact between a psychiatrist and a "former" patient would be detrimental to the patient's well-being. (T. 613,614)

27. Discussion of Respondent's own problems with his patients was inappropriate. The discussion of a psychiatrist's personal problems takes time away from discussions of the patient's problems. A psychiatrist can only use his own experience to demonstrate a mature way of handling a problem, but that would not include discussion of one's own personal problems or interests. (T.516, 607-611, 883)

28. Allowing a patient to work for a psychiatrist rather than pay for sessions was exploitative and deviated from accepted medical standards. In addition, a patient may hesitate to be candid with the psychiatrist for fear of alienating him in his capacity as an employer. (T. 518-521, 885)

29. Arranging for a patient to listen in on a telephone conversation between Respondent and his wife deviated from accepted medical standards. This conduct involved the patient in the personal life of the psychiatrist in a way that can only have a negative effect on the patient. (T. 522)

30. To meet accepted medical standards, it is imperative for a psychiatrist to maintain boundaries between the patient and the psychiatrist. Respondent failed to maintain boundaries. This conduct fell below accepted medical standards. (T.525, 526, 885, 906-908, 910)

31. Respondent's medical records did not meet accepted medical standards for the following reasons: the records were not maintained by patient name; individual patient records were not maintained separately; frequently the medication prescribed was not noted; when the type of medication was noted, the dosage and frequency were missing; and mixed within the Respondent's notes for his patients were personal notes to himself about bank accounts, mortgages, car problems. Respondent failed to document chief complaints, diagnoses and treatment plans in his records. His records were simply quotes from the patient's conversations. (T.27, 124, 398, 532-534, 802; Ex. 6 A-D)

32. There was no evidence that Respondent's prescriptions for Patients D, F or G were improper. It was not established that Respondent prescribed inappropriately or that his prescriptions caused harm to any of his patients. The evidence did show that Respondent's records concerning these prescriptions were not adequate. (T.536-539)

33. Respondent suffers from a mental disability. Dr. Garson, Respondent's psychiatrist, diagnosed Respondent as suffering from obsessive compulsive disorder and bipolar illness. Dr. Halpern, Petitioner's expert witness, concluded that his review of Patricia Ann Cooney's conversations with Respondent and also his review of interviews of Patient B and Joan Kaiser

by Ms. Cooney were consistent with a diagnosis of bipolar disorder. (T. 539,871-3, 900-1,904, Ex D, page 8)

34. Respondent practiced medicine while impaired by a mental disability, either bipolar disorder, or obsessive compulsive disorder, or both. (T. 557, 889, 909-10)

35. Patient B was hospitalized in the psychiatric ward of Cornwall Hospital. Joan Kaiser helped Patient B to find a psychiatrist and accompanied Patient B to Respondent's office on June 1, 1994. (T. 278, 280, 323)

36. While Joan Kaiser and Patient B were sitting in Respondent's waiting room on June 1, 1994, Respondent opened the door to his office and wandered around in a very confused state saying, "What's this? What's going on? People all over. People, all these people." (T. 284, 286, 303)

37. Respondent invited Mrs. Kaiser to join him and Patient A in his office. Employee A also came into the room. Employee A leaned over Respondent to fix the blinds in an inappropriate manner. After Employee A walked out of the room, Respondent told Mrs. Kaiser and Patient A that he was extremely distressed that he and Employee A were breaking up. He also told them he was not sure that he could handle the break up. (T. 294, 295, 303, 777)

38. Respondent started talking to Mrs. Kaiser about Freud, Jung and Adler. After a conversation about technique, Mrs. Kaiser asked Respondent about Patient B and her problems. Respondent responded by saying "we'll have a quartet." He talked about music and about the difficulty he was having paying the rent. (T. 296-7)
39. Patricia Ann Cooney is an investigator with the Office of Professional Medical Conduct. She was responsible for investigating complaints about Respondent. (T. 335)
40. Ms. Cooney and Respondent had numerous telephone conversations in November and December 1994 to arrange a time for an interview. Respondent started these conversations in normal conversational tones; however, as a conversation continued he proceeded to get agitated and to ramble. He said, among other things, "Well, I can't focus properly...I don't think I've done anything wrong...He's trying to help, but he can't because he has too much pressure...I know I have a problem, I don't think I made any serious mistakes." In another conversation he said, "I take on too much." (Ex. 10, T. 761,762)
41. Respondent lived in his office. There were no shower or bathing facilities in the office. Dirty clothes and decaying food were around. The chairs were broken and the carpet was

badly stained. After Employee A started working there, the office became cleaner, but Respondent did not. (T. 33, 34, 101, 103, 113, 126, 300, 405-407, 464, 474, 828)

Conclusions of Law

All Conclusions are unanimous except as specifically indicated.

FIRST: Respondent is found to have engaged in professional misconduct in the practice of psychiatry because of physical conduct of a sexual nature with a patient in violation of N.Y. Education Law Section 6530 (44)(a) (McKinney Suppl. 1994) as set forth in Findings of Fact 1 through 10, supra.

(This FIRST Finding was made by two members of the Hearing Committee. The third member concluded that there was insufficient proof to establish sexual contact)

SECOND: Respondent is found to have engaged in professional misconduct by reason of practicing medicine with negligence on more than one occasion within the meaning of N.Y. Education Law Section 6530 (3) McKinney Suppl. 1994) as set forth in Findings of Fact 1 through 41, supra.

THIRD: Respondent is found to have engaged in professional misconduct by reason of practicing medicine while impaired by mental disability within the meaning of N.Y. Education Law Section 6530 (7) (McKinney Suppl. 1994) as set forth in Findings of Fact 1 through 10, 13 through 21, 33, 34, 36 through 38, 40 and 41.

FOURTH: Respondent is found to have engaged in professional misconduct by reason of failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient within the memory of N.Y. Education Law Section 6530 (32) (McKinney Suppl. 1994) as set forth in Findings of Fact 25, 31 and 31.

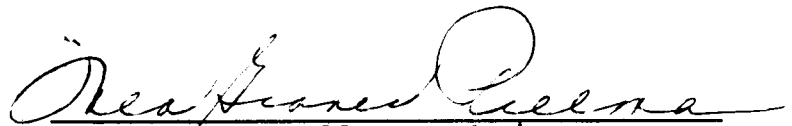
ORDER

The Hearing Committee concluded that Respondent's improper sexual contact with Patient A was not sexual exploitation by Respondent but rather a manifestation of Respondent's impairment by mental disability. The Committee found support for its view in the testimony of Dr. Abraham Halpern, the Petitioner's expert witness, and , perhaps more significantly, in the testimony of Dr. Paul Garson, Respondent's psychiatrist. Dr. Garson was clear in his statement that Respondent needs additional treatment. In the light of such a record, this Committee's obligation to the public made the result here inescapable.

If Respondent receives the necessary treatment and concludes it successfully, he can at that time establish to the appropriate authority his qualifications to resume the practice of medicine.

The Hearing Committee determines and orders that Respondent's license to practice medicine be revoked.

Dated: New York, NY
July 6, 1995



Thea Graves Pellman
Thea Graves Pellman, Chairperson

Henry Pinsker, M.D.
Norton Spritz, M.D.