



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

November 15, 1995 RECEIVED

CERTIFIED MAIL/RETURN RECEIPT

NOV 15 1995

Timothy J. Mahar, Esq.
NYS Dept. of Health
Room 2429 Corning Tower
Albany, New York 12237

Barry Gold, Esq. MEDICAL CONDUCT DIVISION
Thuillez, Ford, Gold & Connolly
90 State Street - Suite 1500
Albany, New York 12207-1715

Ronald Donelson, M.D.
550 Harrison Street
Syracuse, New York 13202

Effective Date: 11/22/95

RE: In the Matter of Ronald Donelson, M.D.

Dear Mr. Mahar, Mr. Gold and Dr. Donelson:

Enclosed please find the corrected Order page of the Determination and Order (No. 95-183) of the Professional Medical Conduct Administrative Review Board in the above referenced matter.

Line ten contains a correction of "five" years instead of "three" as originally sent to you.

We regret any inconvenience this may have caused you.

Sincerely,

Tyrone T. Butler, Director
Bureau of Adjudication

Enclosure

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

IN THE MATTER
OF
RONALD G. DONELSON, M.D.

ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
BPMC 95-183

A quorum of the Administrative Review Board for Professional Medical Conduct¹ (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, ²WINSTON S. PRICE, M.D., and EDWARD C. SINNOTT, M.D.** held deliberations on October 28, 1995, to review the Hearing Committee on Professional Medical Conduct's August 17, 1995 Determination finding Dr. Ronald G. Donelson (Respondent) guilty of professional misconduct. Both the Respondent and the Office of Professional Medical Conduct (Petitioner) requested the reviews through notices which the Review Board received on August 25, 1995. James F. Horan served as Administrative Law Officer to the Review Board. Barry A. Gold, Esq. filed the brief on the Respondent's behalf, which the Review Board received on October 3, 1995 and a reply brief which the Review Board received on October 12, 1995. Timothy J. Mahar, Esq. filed a brief for the Petitioner, which the Review Board received on October 3, 1995 and filed a reply brief for the Petitioner, which the Review Board received on October 11, 1995.

¹Dr. William Stewart recused himself from participating in this case due to Dr. Stewart's professional acquaintance with the Respondent.

²Prior to the deliberations in this case, Sumner Shapiro advised the members of the Review Board that he was acquainted socially with the Respondent's attorney Mr. Gold. Mr. Shapiro stated that he did not feel that his acquaintance would affect his ability to make an unbiased decision in this matter.

SCOPE OF REVIEW

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL §230-a.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

HEARING COMMITTEE DETERMINATION

The Office of Professional Medical Conduct charged that the Respondent, an orthopedic surgeon, committed professional misconduct on August 26, 1995 during an examination of a patient, whom the record refers to as Patient A. The Charges alleged that during the course of the examination the Respondent touched and manipulated the patient's genitalia with his ungloved fingers and alleged that this conduct was of a sexual nature without any medical purpose. The Specification of Misconduct in the Petitioner's Statement of Charges contended that the Respondent's conduct amounted to moral unfitness in the practice of medicine and wilful physical abuse of a patient.

The Committee determined that the Respondent was guilty of willful abuse but not guilty of moral unfitness. The Hearing Committee found that during an examination, the Respondent pulled the band of the Patient's underwear to the side, exposing the patients genitalia, and then used his ungloved finger to spread the Patients labia and put his fingers on top of the Patient's clitoris. The Committee found that the Respondent's fingers were in contact with the Patient's labia for three to four seconds and that after this contact, the Petitioner asked the Patient "how was intercourse" in a broken

and whispery voice. The Committee found that the Respondent's touching of the Patient's genitals was sexual in nature and not medically justified. The Committee noted the Respondent admitted during his testimony that, on the day of the exam, while dictating his report to the referring physician, that he began to query the necessity of the examination of labia. The Committee found that the Respondent acted intentionally, albeit impulsively, in touching the Patient's genitalia.

The Committee also made findings concerning the Respondent's actions following the examination of Patient A. The Committee found that the Respondent contacted the Committee on Professional Health (CPH) of the Medical Society of the State of New York (MSSNY). The Committee found that the Respondent began to have a chaperon present during the examination of female patients. The Committee also found that the Respondent consulted a psychiatrist and based on that psychiatrist's recommendation, underwent an evaluation, by a four person health care team, at the Behavioral Care Network (Network) in Minneapolis. The Network team assessed the Respondent as suffering from psychosexual disorder, or paraphilia, associated with professional boundary violation, compulsive thought patterns and impulsive action. The Network group recommended that the Respondent engage in psycho therapy, education in appropriate office conduct towards patients and have his practice monitored by an appropriate professional mentor. In April, 1993, the Respondent began treatment with Dr. Norman Lesswing, a psychologist. After spending approximately 8 hours with the Respondent, Dr. Lesswing submitted a report to CPH stating that the Respondent showed no signs of sexual disorder or paraphilia. Dr. Lesswing reported that the episode leading to the charge of professional misconduct represented a brief, temporary and isolated lapse in judgement. Dr. Lesswing testified at the hearing that the Respondent's lapse in judgement was not motivated by a prurient interest or any kind of sexual deviancy.

In making their findings, the Committee found that Patient A to be a credible witness. The Committee also found Dr. Lesswing to be a credible witness. The Committee gave greater weight to Dr. Lesswing's report than to the report from the Network, because Dr. Lesswing spent more time with the Respondent than any of the Network professionals, Dr. Lesswing is an expert in the area of addictive behavior, and psychological evaluation of sexual abuse, and, because Dr. Lesswing was subject to competent cross-examination.

The Committee determined that the Respondent was guilty of willful physical abuse based on Patient A's testimony. The Committee found the Respondent's touching of Patient A's genitals was sexual in nature and not medically justified. The Committee found that while dictating his report on the exam of Patient A, the Respondent began to query the appropriateness of the exam of the Patient's labia, and during his assessment by the Network, the Respondent stated that he was distressed by his "slip". In finding that the Respondent was not guilty of moral unfitness, the Committee relied upon the opinion of Dr. Lesswing. The Committee agreed with Dr. Lesswing that the Respondent's conduct was a brief, temporary and isolated lapse in judgement that was not motivated by prurient interest or any kind of sexual deviancy. The Committee agreed further with Dr. Lesswing that there was no pattern of psychosexual disorder because the Respondent's actions involved a single incident.

The Hearing Committee voted to suspend the Respondent's license for 5 years, stayed the suspension in its entirety and placed the Respondent on probation. The terms of the probation require the presence of a female chaperon during the examination of all female patients, the monitoring of the Respondent's records and psychiatric evaluations. The Committee found there was no reason for revocation in this instance and stated that the probation with the chaperon, psychiatric evaluations and monitoring is the appropriate sanction in this case.

REQUESTS FOR REVIEW

RESPONDENT: The Respondent has requested that the Review Board overturn the Hearing Committee's finding that the Respondent committed willful abuse against Patient A and has requested further that the Review Board overturn the Hearing Committee's Penalty.

The Respondent argues that this case involves a three or four second portion of an orthopedic exam, which was necessary medically due to the patient's complaint of right inguinal pain. The Respondent argues that the examination was medically justified and contends that a review of Patient A's testimony reveals that nothing sexual occurred during this portion of the examination. The Respondent states that he did have second thoughts about whether the palpation of Patient A's labia area had been necessary, but that this does not mean the exam was inappropriate. The Respondent

contends that there were no grounds for finding that this examination constituted abuse. The Respondent notes the Hearing Committee stated in their decision that a majority of its members found Dr. Donelson "even if momentarily distracted acted intentionally, albeit impulsively." The Respondent contends that if the three to four second touching was a result of momentary distraction, then the requirement of willfulness or intent was not met.

As to the psychological evidence at the hearing, the Respondent contends that Dr. Lesswing testified that the Respondent showed no signs of psycho-sexual disorder and that Dr. Lesswing testified that, from a psychological point of view, Dr. Donelson did not willfully abuse Patient A.

The Respondent requests that, if the Review Board does find evidence of guilt, that the Board recognize mitigation of penalty. The Respondent contends that five years of stayed suspension with probation is excessive, if the Respondent's conduct resulted from momentary distraction.

PETITIONER: The Petitioner has asked the Review Board to find that the Respondent was guilty of moral unfitness in the practice of medicine and has asked the Review Board to overturn the Hearing Committee's Penalty and revoke the Respondent's license to practice medicine.

The Petitioner alleges that the findings of fact which the Hearing Committee made support the Specification of moral unfitness. The Petitioner argues that the Respondent's contact with Patient A's genitals was sexual in nature and without medical justification and that this finding establishes moral unfitness. The Petitioner argues that such conduct violates both the moral standards of the medical profession as well as the trust which is conferred on a physician by virtue of his or her licensure. The Petitioner argues that the Hearing Committee erred in ignoring the Respondent's conduct toward Patient A and in dwelling extensively and exclusively on the question of whether the Respondent's suffered from a psycho-sexual disorder.

The Petitioner argues that the penalty against the Respondent is not adequate. The Petitioner contends that the Respondent's failure to acknowledge the impropriety of his conduct toward Patient A evidences a deep disrespect for the integrity of Patient A. The Petitioner argues that the revocation of the Respondent's license is the only appropriate sanction in this case.

The Petitioner requests, that if the Review Board does allow the Respondent to continue to practice medicine, that the Board modify the Committee's penalty to impose an actual period of suspension and that the Review Board modify the probationary terms to provide protection permanently to the Respondent's patients. The Review Board has reviewed the record below and the briefs and reply briefs from the parties.

REVIEW BOARD DETERMINATION

The Review Board votes 4-0 to sustain the Hearing Committee's Determination finding the Respondent guilty of willfully abusing Patient A. The Committee's Determination is consistent with their findings and conclusions that the Respondent's touching of Patient A's genitals was sexual in nature and not medically justified. The findings are supported by the testimony by Patient A, by the Respondent's statements that soon after the examination he questioned his conduct and, by the Respondent's statement during the Network assessment when he said he was distressed by his "slip".

By a vote of 4-0 the Review Board overrules the Hearing Committee and the Review Board finds the Respondent guilty of moral unfitness in the practice of medicine, arising from his examination of Patient A. The Review Board finds that the Respondent's contact with Patient A's genitals was sexual in nature rather than for legitimate medical purposes. The Review Board finds that such conduct constitutes moral unfitness in the practice of medicine. We find that the psychological evidence from the hearing concerning whether the Respondent suffers from a psycho-sexual disorder constitutes mitigation evidence, but is not a defense to moral unfitness. The Respondent's actions may have lasted only three or four seconds, but the Respondent's conduct during those three to four seconds constituted moral unfitness.

By a vote 4-0 the Review Board sustains the Hearing Committee's Determination to suspend the Respondent's license for a period of five years. By a vote of 3-1, the Review Board votes to sustain the Hearing Committee's Determination to stay the entire period of suspension, and place the

Respondent on five years probation. The remaining member of the Review Board would impose a period of actual suspension of six months. The majority votes further to modify the terms of probation to impose an additional condition.

The Review Board agrees with the Hearing Committee that we can sanction the Respondent for his misconduct and protect the public without imposing an actual period of suspension against the Respondent's license. The Respondent's misconduct was limited to a single instance of misconduct involving a single patient. We find mitigation in the Respondent's efforts to obtain treatment after he realized there was a problem involving the examination of Patient A. The Respondent sought assistance through the CPH of MSSNY, the Respondent began to use a chaperon and the Respondent underwent an assessment at the Network and an assessment by Dr. Lesswing. The Respondent's actions following the misconduct toward Patient A and the assessment by Dr. Lesswing demonstrate that the Respondent does not suffer an ongoing psycho-sexual disorder.

The Review Board majority makes one modification to the Hearing Committee's terms of probation. The Review Board agrees with the Petitioner's suggestion that any chaperon for the Respondent should understand the reasons why her presence is required during the Respondent's examination of female patients. The Review Board adds the following language to the end of paragraph 7, in the Hearing Committee's Terms of Probation, which appear at page 19 of the Hearing Committee Determination:

"Before she may assume these duties, every such chaperon must file an affidavit with OPMC attesting that she has read and understood the Hearing Committee's Determination and Order "

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's August 24, 1995 Determination finding the Respondent Ronald Donelson, M.D. guilty of willfully abusing Patient A.
2. The Review Board **OVERTURNS** the Committee's Determination on the charge of moral unfitness.
3. The Review Board finds the Respondent guilty of moral unfitness in the practice of medicine.
4. The Review Board **SUSTAINS** the Hearing Committee's Determination suspending the Respondent's license for five years.
5. By a vote of 3-1, the Review Board votes to **STAY** the entire period of suspension and to impose a period of 5 years probation in its place.
6. The Review Board votes to **MODIFY** the Hearing Committee's terms of probation to add additional terms as discussed in our Determination.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

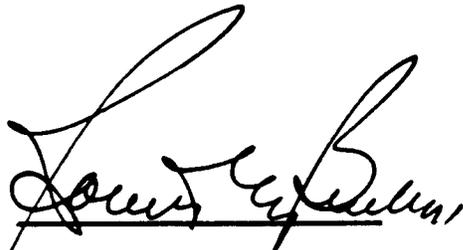
EDWARD SINNOTT, M.D.

IN THE MATTER OF RONALD G. DONELSON, M.D.

ROBERT M. BRIBER, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Donelson.

DATED: Albany, New York

11/10, 1995



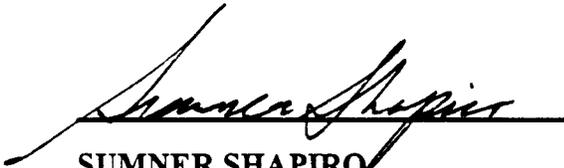
ROBERT M. BRIBER

IN THE MATTER OF RONALD G. DONELSON, M.D.

SUMNER SHAPIRO, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Donelson.

DATED: Delmar, New York

Nov. 10, 1995


SUMNER SHAPIRO

IN THE MATTER OF RONALD G. DONELSON, M.D.

WINSTON S. PRICE, M.D., a member of the Administrative Review Board for Professional Medical Conduct, affirms that he attended deliberations in the case of Dr. Donelson decision of the majority of the Review Board in this case.

DATED: Brooklyn, New York

11/10, 1995

A handwritten signature in cursive script, appearing to read "Winston S. Price, M.D.", is written above a horizontal line.

WINSTON S. PRICE, M.D.

IN THE MATTER OF RONALD G. DONELSON, M.D.

EDWARD C. SINNOTT, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Donelson.

DATED: Roslyn, New York

November 10, 1995

A handwritten signature in cursive script, reading "Edward C. Sinnott, M.D.", written over a horizontal line.

EDWARD C. SINNOTT, M.D.