

DOH 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

July 20, 1995

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Roy Nemerson, Esq.
NYS Dept. of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Anthony Scher, Esq.
Wood & Scher
The Harwood Building
14 Harwood Court
Scarsdale New York 10583

Norman Ackerman, M.D.
50 South Middleneck Road
Great Neck, New York 11201

RECEIVED

JUL 21 1995

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

RE: In the Matter of Norman Ackerman, M.D.

Dear Mr. Nemerson, Mr. Scher and Dr. Ackerman :

Enclosed please find the Determination and Order (No. 95-77) 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.

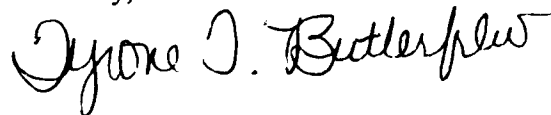
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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

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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a prominent initial "T" and a long, sweeping underline.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:

Enclosure

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

**IN THE MATTER
OF
NORMAN J. ACKERMAN, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
BPMC 95-77**

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D.¹, EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** held deliberations on June 13, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) March 31, 1995 Determination finding Dr. Norman J. Ackerman (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on April 10, 1995. James F. Horan served as Administrative Officer to the Review Board. Anthony Z. Scher, Esq. filed a brief for the Respondent, which the Review Board received on May 10, 1995. Roy Nemerson, Esq. filed a reply brief for the Office of Professional Medical Conduct on May 18, 1995.

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.

¹Dr. Price participated in the deliberations by telephone.

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 the Respondent, a Psychiatrist, with practicing medicine with negligence and gross negligence, with conduct evidencing moral unfitness in the practice of medicine, with physical abuse of a patient and with sexual contact with a patient. The charges arise from the Respondent's conduct with a patient whom the record refers to as "Patient A".

The Hearing Committee sustained all the charges. The Committee found that between 1972 and 1981, the Respondent provided psychiatric treatment and care to Patient A and her husband, Patient B, both individually and jointly. The Committee found that the Respondent engaged Patient A in repeated acts of a sexual nature and that those acts were committed while the Respondent was at all times the treating psychiatrist of Patients A and B, regardless of whether Patient A took a brief hiatus from therapy.

The Committee found that the Respondent's behavior failed to meet the standard of care of a reasonably prudent psychiatrist as to Patient A; that the Respondent failed in his medical and ethical duty to Patient B and abused Patient B's trust; that the Respondent's acts were particularly egregious because of the fragile emotional condition of Patient A and the passive nature of Patient B's personality; that the Respondent breached his ethical duty to both patients by placing his personal gratification ahead of the therapeutic welfare of his patients; that the Respondent physically abused Patient A because, due to transference, the Patient was not capable of consenting nor rejecting the Respondent's sexual advances; and, that the Respondent engaged in numerous sexual acts with Patient A during the course of a therapeutic relationship with her.

The Committee concluded, despite conflicting testimony and the passage of time, that the evidence clearly demonstrated that the Respondent inappropriately engaged in numerous sexual acts with Patient A. The Committee noted, that in addition, the Respondent disregarded the enormous emotional and potentially harmful impact of his actions on Patients A and B and their family and violated their trust in the Respondent. The Committee found that despite the passage of time, the consequences for these patients persist to this day. The Committee voted unanimously to revoke the Respondent's license to practice medicine in New York State.

REQUESTS FOR REVIEW

The Respondent contests the Hearing Committee's findings that the Respondent conducted a sexual relationship with Patient A during therapeutic treatment. The Respondent contends that the evidence demonstrates clearly that the sexual relationship between the Respondent and Patient A took place early in 1979. The Respondent alleges that Patient A had ceased being the Respondent's patient in November, 1978 and that the professional relationship had terminated then. The Respondent then alleges that after the sexual relationship with Patient A, the Respondent again began to treat Patient A due to an unexpected crisis involving Patients A and B's son. The Respondent contends that any finding contrary to this by the Committee are inconsistent and that the Committee concluded erroneously that the treatment was continuous.

The Respondent contends that in 1979 there was no prohibition on consensual sex between a psychiatrist and a former patient and that, therefore, the Respondent committed no misconduct.

The Respondent contends that the Hearing Committee's penalty was grossly excessive for the Respondent's brief affair with a former patient. The Respondent cites to two (2) cases decided by the Board of Regents, Portalatin and Orozco (copies enclosed with Respondent's brief), in which psychiatrists had sexual relations with current patients, in which the penalties were far short of revocation.

The Respondent asserts that the facts in this case call out for a reduction in penalty.

The Petitioner argues that the findings by the Hearing Committee merit revocation of the Respondent's license. The Petitioner argues that the Hearing Committee concluded unequivocally that the Respondent was Patient A's treating psychiatrist during their sexual relationship. The Petitioner contends that the Respondent's brief totally ignores the harm which the Respondent caused to Patient B. In response to the Respondent's argument concerning penalties for other psychiatrists, the Petitioner lists the names of several psychiatrists, whose licenses were revoked for exploiting their patients for their own sexual gratification. The Petitioner asks the Board to approve the Hearing Committee's Determination.

REVIEW BOARD DETERMINATION

The Review Board has considered the entire record below and the briefs which counsel have submitted.

The Review Board votes to sustain the Hearing Committee's Determination that the Respondent was guilty of gross negligence, negligence on more than one occasion, moral unfitness, physical abuse of a patient and sexual contact by a psychiatrist with a patient due to the Respondent's conduct toward Patient A. There was no dispute that the Respondent and Patient A had a sexual relationship. The Hearing Committee found that the sexual relationship took place while the Respondent was Patient A's treating psychiatrist. The Hearing Committee as the finder of fact weighed the evidence and assessed the credibility of the witnesses. Consistent with those findings, the Hearing Committee determined that the Respondent was guilty on all specifications relating to Patient A.

The Review Board also sustains the Committee's Determination finding the Respondent guilty of gross negligence and moral unfitness concerning Patient B. The Committee's Determination on those charges was consistent with the Committee's finding that the Respondent conducted a sexual relationship with Patient B's wife, while the Respondent was Patient B's treating psychiatrist, that the Respondent breached his ethical and medical duty to Patient B, and that the Respondent placed his personal gratification ahead of the therapeutic welfare of his patients.

The Review Board sustains the Hearing Committee's Determination revoking the Respondent's license to practice medicine in New York State. The Hearing Committee penalty is appropriate and is consistent with the Committee's findings. Revocation would be the appropriate penalty for the Respondent's misconduct concerning either Patient A or Patient B standing alone.

The Committee concluded that the Respondent's conduct towards Patient A was particularly egregious because of her fragile emotional condition. The Committee also found that given the fragile and passive psychological state of Patient A, and the issue of transference, Patient A was not capable of rejecting nor consenting to the Respondent's sexual advances.

The Committee concluded that the Respondent's actions were particularly egregious toward Patient B because of the fragile emotional condition of Patient B's personality. The Committee concluded that the Respondent completely abused Patient B's trust, invaded Patient B's family and continued to take money for treatment of members of Patient B's family, while engaging in sexual activities with Patient B's wife.

The Review Board finds the Respondent's action toward these Patients and their son to be abominable and morally reprehensible. The Respondent is unfit to practice medicine in New York State. We find the actions no less abominable due to the passage of time since the events occurred, nor do we find the acts any less abominable if these are the only Patients whom the Respondent has taken advantage of during his career. The passage of time has not apparently helped Patients A and B, as the Committee noted that the consequences for those persons persist to this day. Even if the Review Board could be assured that the Respondent would not commit any other form of misconduct for the rest of his career, we would impose the same penalty.

ORDER

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

1. The Administrative Review Board **SUSTAINS** the Hearing Committee's March 31, 1995 Determination finding Dr. Norman Ackerman guilty of professional misconduct.

2. The Review Board **SUSTAINS** the Hearing Committee's Determination to revoke 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.

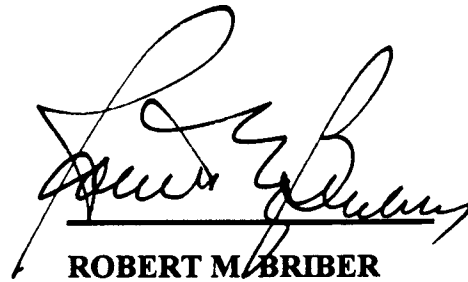
WILLIAM A. STEWART, M.D.

IN THE MATTER OF NORMAN J. ACKERMAN, 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. Ackerman.

DATED: Albany, New York

7/18, 1995



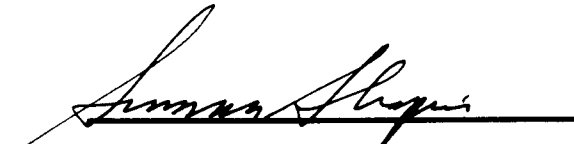
ROBERT M. BRIBER

IN THE MATTER OF NORMAN J. ACKERMAN, 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. Ackerman.

DATED: Delmar, New York

July 15, 1995

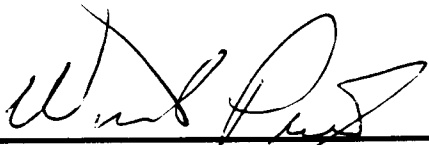

SUMNER SHAPIRO

IN THE MATTER OF NORMAN ACKERMAN, M.D.

WINSTON S. PRICE, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Ackerman.

DATED: Brooklyn, New York

_____, 1995



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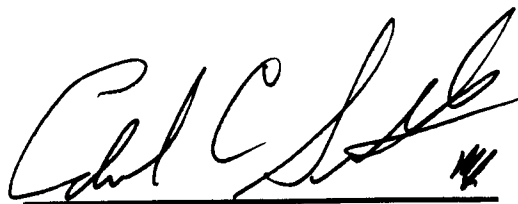
WINSTON S. PRICE, M.D.

IN THE MATTER OF NORMAN J. ACKERMAN, 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. Ackerman.

DATED: Roslyn, New York

June 29, 1995

A handwritten signature in black ink, appearing to read "Ed C. Sinnott", written over a horizontal line. There is a small mark to the right of the signature.

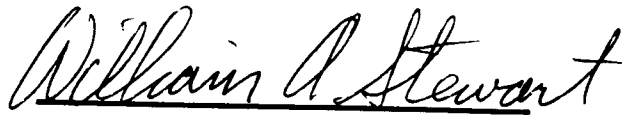
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF NORMAN J. ACKERMAN, M.D.

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Ackerman.

DATED: Syracuse, New York

30 June, 1995

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

WILLIAM A. STEWART, M.D.