



**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*

August 21, 1995

Karen Schimke  
*Executive Deputy Commissioner*

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Ira Cooper, Esq.  
Richard R. Leff, Esq.  
Cooper & Genetin  
80 Kew Gardens Road - Suite 300  
Kew Gardens, New York 11415

RECEIVED  
AUG 22 1995  
MEDICAL CONDUCT

Albert Gottesman, M.D.  
10 Olive Street  
Great Neck, New York 11021

**RE: In the Matter of Albert Gottesman, M.D.**

Effective Date: 10/07/95

Dear Mr. Smith, Mr. Cooper, Mr. Leff and Dr. Gottesman :

Enclosed please find the Determination and Order (No. 95-86) 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.

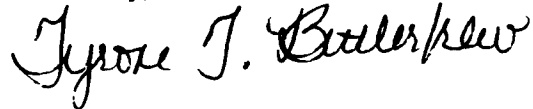
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:

Enclosure

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

-----X	
IN THE MATTER	:
	:
OF	:
	:
ALBERT GOTTESMAN, M.D.	:
-----X	:

ADMINISTRATIVE  
REVIEW BOARD  
DECISION AND  
ORDER NUMBER  
BPMC 95-86

A quorum of the Administrative Review Board for Professional Medical Conduct<sup>1</sup> (hereinafter the "Review Board"), consisting of SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD SINNOTT, M.D., and WILLIAM A. STEWART, M.D. held deliberations on July 14, 1995 to review the Hearing Committee on Professional Medical Conduct's (hereinafter the "Hearing Committee") April 10, 1995 Determination finding Dr. Albert Gottesman guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on April 27, 1995. Larry G. Storch served as Administrative Officer to the Review Board. Richard R. Leff, Esq., and Ira G. Cooper, Esq. filed a brief for the Respondent which the Review Board received on May 30, 1995. David W. Smith, Esq. filed a reply brief for the Petitioner which the Review Board received on June 6, 1995.

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<sup>1</sup>Robert Briber did not participate in this case.

### 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 Petitioner charged the Respondent with fourteen specifications of professional misconduct, including allegations of the fraudulent practice of medicine, negligence on more than one occasion, ordering excessive tests or treatment, moral unfitness, willful abuse of patients and exercising undue influence. These allegations concern the Respondent's medical care and treatment of five patients. An additional five specifications concerning the care rendered to two additional patients were withdrawn by the Petitioner prior to the close of

the hearing.

The Hearing Committee sustained twelve specifications of professional misconduct (regarding Patients A, C, D and G), based upon a determination that the Respondent was guilty of practicing with negligence on more than one occasion, practicing the profession fraudulently, ordering excessive tests or treatment, moral unfitness to practice medicine, willful abuse of patients and exercising undue influence. The Hearing Committee further determined that two additional specifications of professional misconduct concerning Patient F should be dismissed.

The Committee found that Patient A first saw the Respondent, an obstetrician/gynecologist, for a complaint of severe abdominal pain. Despite a normal sonogram, the Respondent performed a laparoscopy on the patient approximately two weeks later. The Committee found that the laparoscopy was not medically indicated and that the Respondent's use of the procedure did not meet acceptable standards. The Committee also found that approximately six months later, Patient A saw the Respondent for the purpose of obtaining a diaphragm. The Respondent asked the patient to describe the size of her boyfriend's penis and draw a picture of it. During the course of a subsequent examination, the Respondent placed the patient in a crawl position, placed his hand in her vagina and began to stimulate her. He then placed the patient's hand on his erection.

Patient C was treated by the Respondent during her pregnancy. The Committee found that although the patient weighed

266 pounds, the Respondent's records demonstrated inadequate and infrequent testing for diabetes.

Patient D saw Respondent for a bladder problem. The Committee found that the Respondent diagnosed an ovarian cyst and suggested a laparoscopy. The Committee found that the Respondent did not attempt to properly work up the patient to establish a differential diagnosis and that the laparoscopy was not justified.

The Committee also found that Respondent gave Patient D a consent form which he told her was necessary to remove the cyst. In fact, the form was a consent for sterilization, which the patient did not want. The Committee also found that the Respondent billed Patient D's insurance company for a colposcopy and hysteroscopy, neither of which were actually performed. In addition, the Committee found that the Respondent performed an excessive number of sonograms on the patient.

Patient G saw the Respondent during her pregnancy in 1989 because he was a participating GHI physician. The Committee found that during her last office visit prior to delivery, the Respondent asked for an additional \$350 above the GHI reimbursement rate. The Committee further found that GHI informed the patient that Respondent was not entitled to any payment above the reimbursement rate. The Committee also found that following the birth of Patient G's son, the Respondent again requested \$350, which the husband refused to pay. The Committee found that the Respondent then threatened to harm the baby during the course of the circumcision if the money wasn't paid.

The Committee stated that the evidence raised serious questions about the Respondent's clinical judgment as well as the manner in which he examines, treats, bills and personally deals with his patients. The Committee further stated that the evidence, including the Respondent's testimony, demonstrated a profound lack of clinical knowledge, skills and judgment.

The Committee voted to revoke the Respondent's license to practice medicine in New York State. The Committee found that the Respondent practiced the profession fraudulently, willfully abused patients, exercised undue influence over his patients, ordered excessive tests, and demonstrated moral unfitness. The Committee further found that professional misconduct of this nature involves personal characteristics that cannot be corrected by clinical retraining. The Committee stated that under the totality of the circumstances, revocation was the only appropriate sanction.

#### REQUEST FOR REVIEW

On his appeal, the Respondent has asked that the Review Board annul the Determination and Order. The Respondent argues that the findings of the Hearing Committee are contrary to the facts adduced at the hearing and are not based upon a preponderance of the evidence. The Respondent argues that he was prejudiced by undue delay in bringing the case. The Respondent argues that the penalty is unduly harsh and excessive.

The Respondent argues that the Determination should be

annulled as a result of improper conduct and bias by the Chairman of the Hearing Committee. The Respondent argues the Department failed to comply with statutory procedures. The Respondent argues that the investigation was improper.

In an answering brief, the Petitioner argues that the Respondent's brief makes no claim that there are any inconsistencies in the Hearing Committee's findings, conclusions, determination and penalty. The Petitioner further argues that the Respondent merely attacked the veracity of the witnesses and the interpretation of evidence. The Petitioner also states that the arguments raised by the Respondent in his brief regard issues which are beyond the scope of the Review Board's jurisdiction.

The Petitioner argues that the findings and conclusions of the Hearing Committee lead directly to the sanction of revocation and urges that the penalty be upheld.

#### REVIEW BOARD DETERMINATION

The Review Board has considered the entire record below and the briefs which counsel have submitted. It must be noted that Respondent sought to attach documentary evidence to his brief. This material was not part of the hearing record and therefore not considered by the Hearing Committee. The Petitioner objected to the inclusion of this material in the briefs submitted to the Review Board. In a letter decision dated June 14, 1995, the Administrative Officer ruled that this material was not within the scope of the Review Board's



jurisdiction and properly removed it from the briefs submitted to the Board.

The Review Board votes 4-0 to sustain the Hearing Committee's Determination that the Respondent was guilty of practicing with negligence on more than one occasion, practicing the profession fraudulently, ordering excessive tests or treatment, moral unfitness to practice medicine, willful abuse of patients and exercising undue influence. This Determination was consistent with the Committee's factual findings. The alleged procedural defects argued by the Respondent concern matters which are beyond the scope of the Review Board's jurisdiction and were not considered by the Board.

The Review Board votes 4-0 to sustain the Committee's Determination to revoke the Respondent's license to practice medicine in New York.

The Review Board shares the Committee's concern regarding the egregious nature of the Respondent's misconduct. He sexually abused Patient A and threatened physical harm to Patient G's baby in an attempt to extort an additional fee. Either of these cases, standing alone, would justify revocation. Taken together with the Respondent's other misdeeds, a compelling case for revocation is presented.

The Respondent's misconduct represents a serious breach of his professional trust and the ethical standards of the medical community. The Review Board agrees with the Committee that the Respondent's professional misconduct evidences a lack of moral character which cannot be corrected by a suspension or

clinical retraining. Revocation is the only appropriate sanction.

ORDER

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

1. The Review Board SUSTAINS the Hearing Committee's April 10, 1995 Determination finding the Respondent guilty of professional misconduct.
  
2. The Review Board SUSTAINS the Hearing Committee's Determination revoking the Respondent's license to practice medicine.

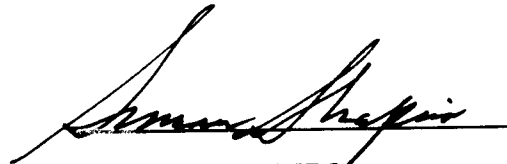
SUMNER SHAPIRO  
WINSTON S. PRICE, M.D.  
EDWARD SINNOTT, M.D.  
WILLIAM A. STEWART, M.D.

IN THE MATTER OF ALBERT GOTTESMAN, 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. Gottesman.

DATED: Delmar, New York

July 28, 1995



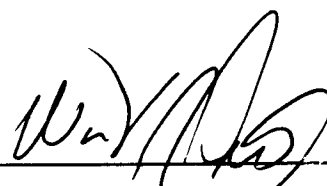
SUMNER SHAPIRO

IN THE MATTER OF ALBERT GOTTESMAN, 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. Gottesman.

DATED: Brooklyn, New York

8/18, 1995

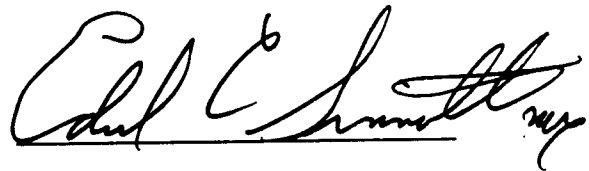
  
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WINSTON S. PRICE, M.D.

IN THE MATTER OF ALBERT GOTTESMAN, 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. Gottesman.

DATED: Roslyn, New York

July 1, 1995

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", with a horizontal line underneath it.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF ALBERT GOTTESMAN, 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. Gottesman.

DATED: Syracuse, New York

3 July, 1995



WILLIAM A. STEWART, M.D.