



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.  
*Commissioner*

Paula Wilson  
*Executive Deputy Commissioner*

October 3, 1994

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Marcia Kaplan, Esq.  
N.Y.S. Dept. of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001-1810

Bruce A. Smirti, Esq.  
Frankie, Smirti & Gentile  
233 Broadway - 18th Floor  
New York, New York 10279

Barbara Louise Nichols, M.D.  
201 East 87th Street, Apt. 25-K  
New York, New York 10128

Effective Date: 10/10/94

### **RE: In the Matter of Barbara Louise Nichols, M.D.**

Dear Ms. Kaplan, Mr. Smirti & Dr. Nichols :

Enclosed please find the Determination and Order (No.94-103) 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.

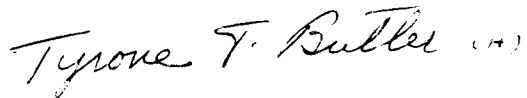
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

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**

**BARBARA LOUISE NICHOLS, M.D.**

**ADMINISTRATIVE  
REVIEW BOARD  
DECISION AND  
ORDER NUMBER  
ARB NO. 94-103**

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 September 16, 1994 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) July 5, 1994 Determination finding Dr. Barbara Louise Nichols (Respondent) guilty of professional misconduct. The Office of Professional Medical Conduct (Petitioner) requested the Review through a Notice which the Board received on July 20, 1994. James F. Horan served as Administrative Officer to the Review Board. Marcia Kaplan, Esq. filed a brief for the Petitioner on July 25, 1994. The Respondent did not file a brief.

**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 brought this case pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9)(a)(i), which provide an expedited hearing in cases in which professional misconduct charges against a Respondent are based upon a prior criminal conviction in New York or another jurisdiction or upon a prior administrative adjudication which would amount to misconduct if committed in New York State. The expedited hearing determines the nature and severity of the penalty which the Hearing Committee will impose based upon the criminal conviction or prior administrative adjudication.

The Hearing Committee in this case found that the Petitioner had met its burden of proof in establishing that the Respondent was convicted in the United States District Court for the Southern District of New York for failure to file income tax returns for 1988. The Committee found that the Respondent was guilty of professional misconduct based on the conviction for the crime, which is a misdemeanor. The Committee found further that the District Court sentenced the Respondent to three years probation, which included requirements that the Respondent pay taxes and other outstanding debts and receive financial and psychiatric counseling.

The Hearing Committee determined that the Respondent should receive a censure and reprimand. The Committee found that the Respondent's misconduct was not related to patient care and that the Respondent had made no case for psychiatric impairment. The Committee noted that the Respondent is employed and is continuing with psychiatric counseling.

### **REQUESTS FOR REVIEW**

The Petitioner has asked that the Review Board overturn the Hearing Committee's penalty and place the Respondent on probation and order that the Respondent continue psychiatric counseling as a condition of probation. The Petitioner states that the evidence in this case included a letter from the Respondent's psychiatrist stating that the Respondent had been functioning as impaired from the birth of her child in 1985. The Petitioner contends that the Respondent is recovering from a long term psychiatric illness, which impaired her ability to practice medicine and that the public's protection demands a penalty which would mandate psychiatric counseling.

## REVIEW BOARD DETERMINATION

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

The Review Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty of professional misconduct based upon the Respondent's Federal misdemeanor conviction for failing to file income tax returns for 1988.

The Review Board sustains the Hearing Committee's Determination to censure and reprimand the Respondent. The Respondent's misconduct did not involve patient care and the Federal Court's sentence penalized the Respondent sufficiently for her misconduct.

The Review Board finds no findings of fact by the Hearing Committee on which we could impose a penalty including mandated psychiatric counseling. The Hearing Committee found that the Petitioner made no showing of impairment. Further, the Statement of Charges in this case charges the Respondent with misconduct based solely on the Federal criminal conviction and gives the Respondent no notice that she must also answer charges involving impairment. Whether or not the Respondent is impaired was not an issue before the Hearing Committee.

**ORDER**

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

**ORDER:**

1. The Review Board **sustains** the Hearing Committee on Professional Medical Conduct's July 5, 1994 Determination finding Dr. Nichols guilty of professional misconduct.
2. The Review Board **sustains** the Hearing Committee's Determination to **censure and reprimand** Dr. Nichols.

**ROBERT M. BRIBER**

**SUMNER SHAPIRO**

**WINSTON S. PRICE, M.D.**

**EDWARD SINNOTT, M.D.**

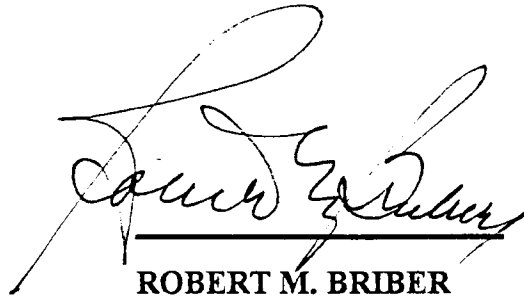
**WILLIAM A. STEWART, M.D.**

IN THE MATTER OF BARBARA LOUISE NICHOLS, 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. Nichols.

DATED: Albany, New York

9/23, 1994



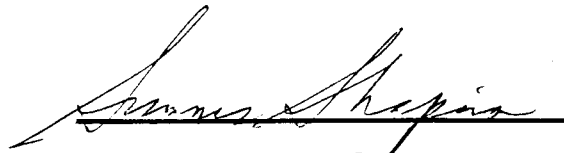
ROBERT M. BRIBER

IN THE MATTER OF BARBARA LOUISE NICHOLS

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

DATED: Delmar, New York

SEPT. 28, 1994

  
SUMNER SHAPIRO

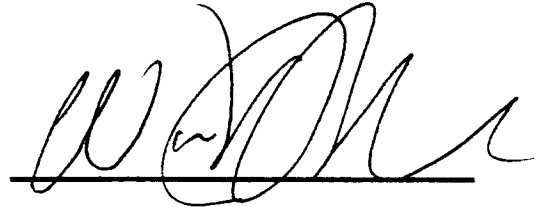


**IN THE MATTER OF BARBARA LOUISE NICHOLS, M.D.**

**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. Nichols.

DATED: Brooklyn, New York

\_\_\_\_\_, 1994

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

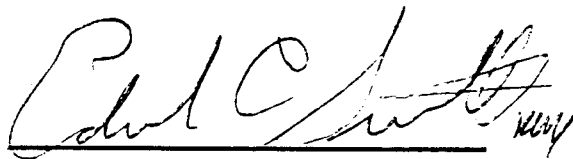
**WINSTON S. PRICE, M.D.**

IN THE MATTER OF BARBARA LOUISE NICHOLS, 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. Nichols.

DATED: Roslyn, New York

September 21, 1994

A handwritten signature in cursive script, reading "Edward C. Sinnott", with a horizontal line underneath. To the right of the signature, the year "1994" is written.

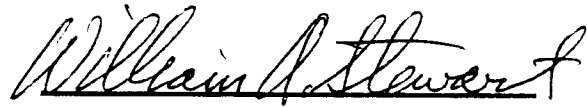
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF BARBARA LOUISE NICHOLS, 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. Nichols:

DATED: Syracuse, New York

21 Sept., 1994

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in black ink and is positioned above the printed name.

WILLIAM A. STEWART, M.D.



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.  
*Commissioner*

Paula Wilson  
*Executive Deputy Commissioner*

**OFFICE OF PUBLIC HEALTH**  
Lloyd F. Novick, M.D., M.P.H.  
*Director*  
Diana Jones Ritter  
*Executive Deputy Director*

July 5, 1994

## CERTIFIED MAIL - RETURN RECEIPT

Marcia Kaplan, Esq.  
New York State Department of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001-1810

Bruce A. Smirti, Esq.  
Frankie, Smirti & Gentile  
233 Broadway - 18th Floor  
New York, New York 10279

Barbara Louise Nichols, M.D.  
201 East 87th Street, Apt. 25-K  
New York, New York 10128

### **Re: In the Matter of Barbara Louise Nichols, M.D.**

Dear Ms. Kaplan, Mr. Smirti and Dr. Nichols:

Enclosed please find the Determination and Order (No. BPMC-94-103) of the Hearing Committee 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:**

New York State Department of Health  
Office of Professional Medical Conduct  
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 (p), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he 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  
Corning Tower - Room 2503  
Empire State Plaza  
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.

Very truly yours,

  
Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:crc

Enclosure

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

**IN THE MATTER  
OF  
BARBARA LOUISE NICHOLS, M.D.**

**DETERMINATION  
AND  
ORDER**

NO. BPMC-94-103

A Notice of Referral Proceeding and Statement of Charges, both dated March 9, 1994, were served upon the Respondent, BARBARA LOUISE NICHOLS, M.D. **ROBERT BRUCE BERGMAN, M.D.** (Chair), **ANDREW CONTI, M.D.**, and **EUGENIA HERBST**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **CHRISTINE C. TRASKOS**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on April 27, 1994. The Department of Health appeared by **MARCIA KAPLAN, ESQ.**, Associate Counsel. The Respondent appeared by **FRANKIE, SMIRTI & GENTILE, BRUCE A. SMIRTI, ESQ.**, of counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

**STATEMENT OF CASE**

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior

administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law Section 6530 (9) (a) (ii). A Copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

### **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter. 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 the cited evidence.

1. Barbara Louise Nichols, M.D., (hereinafter "Respondent"), was authorized to practice medicine in New York State on August 1, 1980 by the issuance of license number 143069 by the New York State Education Department. (Dept.'s Ex.2).

2. On or about March 3, 1993, Respondent was convicted after a plea of guilty in the United States District Court, Southern District of New York of willful failure to file income tax returns, a misdemeanor, in violation of 26 USC 7203, in that Respondent unlawfully, willfully and knowingly failed to make an income tax return for the calendar year 1988 to the District Director of the Internal Revenue District of Manhattan. (Dept. Ex. 3).

3. As a result of the aforesaid conviction, Respondent was placed on probation for three years which included the following special conditions: payment of all owed taxes, interest and penalties; arrangement to pay all outstanding debts; written permission from the Probation Department prior to the incurrence of any new debts; financial and psychiatric counseling; submission of all financial statements requested by the Probation Department and submission to required drug testing. (Dept. Ex. 3).

4. At the hearing, Respondent represented that since 1991, she has been under the care and treatment of a psychiatrist, Marianne Goodman, M.D. (Resp. Ex. A)

5. At the hearing, Respondent represented that the drug testing requirement provision of her probation is a mandatory requirement in all Federal cases and that there was no issue of any illicit drug use in the Federal District Court matter. (Tr. 12, 13).

### **CONCLUSIONS OF LAW**

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent plead guilty to failure to file an income tax return and was sentenced to three years probation with special conditions. Education Law Section 6530 (9) (a) (ii) defines professional misconduct as "being convicted of committing an act constituting a crime under federal law." As a result, the Hearing Committee unanimously voted to sustain the specification of professional misconduct contained within the Statement of Charges.

### **DETERMINATION AS TO PENALTY**

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent should be censured and reprimanded for the aforementioned professional misconduct. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. The Hearing Committee acknowledges that the specification of misconduct in this instance is



not related to patient care. In addition no case for physician impairment was made by the Department. Respondent continues with psychiatric counseling and is presently employed as a physician with the Long Island Railroad. The Hearing Committee feels that there is no evidence to warrant any further action on their part. Therefore the Hearing Committee has determined that censure and reprimand is the appropriate sanction under these circumstances.

**ORDER**

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED**;
2. Respondent shall receive a **CENSURE** and **REPRIMAND** in full satisfaction of the violation.

**Dated: Albany, New York**

*June 29, 1994*

  
**ROBERT BRUCE BERGMAN, M.D.**  
(Chair)

**ANDREW CONTI, M.D.**  
**EUGENIA HERBST**

TO: Marcia Kaplan, Esq.  
Associate Counsel  
NYS Department of Health  
5 Penn Plaza - 6th Floor  
New York, New York 10001

Bruce A. Smirti, Esq.  
Frankie, Smirtie & Gentile, Esqs.  
233 Broadway - 18th fl.  
New York, NY 10279

Barbara Louise Nichols, M.D.  
201 East 87th Street, Apt. 25-K  
New York, NY 10128

APPENDIX I

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

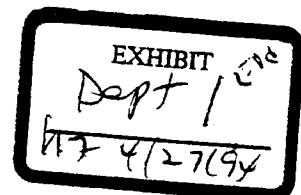
-----X  
: IN THE MATTER : NOTICE OF  
: OF : REFERRAL  
: BARBARA LOUISE NICHOLS, M.D. : PROCEEDING  
: :  
-----X

TO: BARBARA LOUISE NICHOLS, M.D.  
201 East 87th Street, Apt. 25-K  
New York, N.Y. 10128

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 27th day of April 1994 at 2:00 o'clock in the afternoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.



You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before April 18, 1994 .

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before April 18, 1994 and a copy of all

papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A  
DETERMINATION THAT SUSPENDS OR REVOKES YOUR  
LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE

AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED,  
YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT  
YOU IN THIS MATTER.

DATED: New York, New York  
*March 9,* 1994



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CHRIS STERN HYMAN  
Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

Marcia E. Kaplan  
Associate Counsel  
212-613-2615

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

-----X  
IN THE MATTER : STATEMENT  
OF : OF  
BARBARA LOUISE NICHOLS, M.D. : CHARGES  
-----X

BARBARA LOUISE NICHOLS, M.D., the Respondent, was authorized to practice medicine in New York State on August 1, 1980 by the issuance of license number 143069 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994.

FIRST SPECIFICATION

HAVING BEEN CONVICTED OF AN ACT  
CONSTITUTING A CRIME UNDER FEDERAL LAW

1. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(9)(a)(ii) (McKinney Supp. 1994) in that she has been convicted of

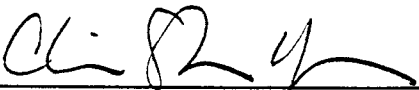


committing an act constituting a crime under federal law,  
specifically:

On or about March 3, 1993, the Respondent was convicted after a plea of guilty in the United States District Court, Southern District of New York, of Willful Failure to File Income Tax Returns, a misdemeanor, in violation of 26 USC 7203, in that the Respondent unlawfully, willfully and knowingly failed to make an income tax return for the calendar year 1988 to the District Director of the Internal Revenue Service for the Internal Revenue District of Manhattan.

On or about May 19, 1993, the Respondent was sentenced to three years probation, with special conditions of probation as follows: that she make arrangements to pay all owed taxes, including interest and penalties; that she receive financial counseling and make arrangements to pay her outstanding debts; that she not incur any new debts without the written permission of the Court or the Probation Department; that she provide the Probation Department with all requested financial documents; that she continue to receive psychiatric counseling; that she receive drug testing as deemed necessary by the Probation Department.

DATED: NEW YORK, NEW YORK  
March 9, 1994



CHRIS STERN HYMAN  
Counsel  
Bureau of Professional  
Medical Conduct

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

X

IN THE MATTER OF

:

BARBARA LOUISE NICHOLS, M.D.

:

AFFIDAVIT OF SERVICE

:

X

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS:

DAVID K. TRENARY, being duly sworn, states:

1. I am over eighteen years of age and am not a party to the above-captioned proceeding.

2. I am employed by the New York State Department of Health's Office of Professional Medical Conduct as a Sr. Medical Conduct Investigator

3. I served the annexed Notice of Referral Proceeding/Statement of Charges upon Barbara Louise Nichols by going to 5 Penn Plaza, 6th Floor New York, N.Y. on March 22, 1994, at approximately 11:40 a.m. p.m. and handing said person a true copy thereof.

4. A description of the person so served is as follows:  
Approx. age: 42; Approx. weight 120; Approx. height: 5'4";  
Sex F; Skin Color: White; Hair Color: Brown;  
Other identifying characteristics:

David K Trenary

SIGNATURE

Sworn to before me  
on this 25 day of

March 1994

Frank Wilson  
NOTARY PUBLIC

FRANK WILSON  
Notary Public for New York  
Commission Expires 10-3-94