



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

March 27, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael Jacob Teplitsky, M.D.
415 Oceanview Avenue
Brooklyn, New York 11235

Robert Harris, Esq.
Schneider, Harris & Harris
1015 Broadway
Woodmere, New York 11598

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

RE: In the Matter of Michael Jacob Teplitsky, M.D.

Effective Date: 04/03/95

Dear Dr. Teplitsky, Mr. Harris and Ms. Kaplan :

Enclosed please find the Determination and Order (No.94-262) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

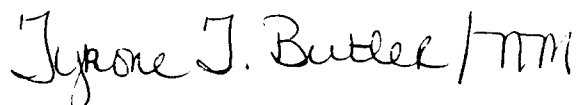
Office of Professional Medical Conduct
New York State Department of Health
Empire State Plaza
Corning Tower, Room 438
Albany, New York 12237

RECEIVED
MAR 27 1995
OFFICE OF
MEDICAL CONDUCT

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,

Handwritten signature of Tyrone T. Butler in cursive script, followed by a vertical line and the letters 'MM'.

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
MICHAEL JACOB TEPLITSKY, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 94-262**

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.**¹ held deliberations on March 10, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) January 17, 1995 Determination finding Dr. Michael Jacob Teplitsky (Respondent) guilty of professional misconduct. The Office of Professional Medical Conduct (Petitioner) requested the Review through a Notice which the Board received on January 19, 1995. James F. Horan served as Administrative Officer to the Review Board. Marcia Kaplan, Esq. filed a brief for the Petitioner which the Review Board received on February 21, 1995. Robert Harris, Esq. filed a reply brief for the Respondent which the Board received on March 3, 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

¹Dr. Stewart participated in the deliberations by conference call.

- 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 had committed professional misconduct, due to his conviction for committing an act which constituted a crime under New York State Law. The Committee found that the Respondent was convicted, after a bench trial in New York City Criminal Court for Kings County, for Sexual Abuse, Third Degree, a Class B Misdemeanor. The Court found that the Respondent subjected another person, KT, to sexual contact without her consent by grabbing her breasts without her permission. The Court sentenced the Respondent to a conditional discharge, imposed a Five Hundred (\$500.00) Dollar fine and issued a Protection Order ordering the Respondent to stay completely away from K.T.

The Hearing Committee voted to suspend the Respondent's license for three years, to stay the suspension in full and to place the Respondent on probation, under terms which appear in the Determination at Appendix II. The Committee noted that the Respondent testified that since the incident with K.T., he always has a nurse or receptionist with him whenever he is in an examination

room with a female patient and that he keeps his consultation room door open when speaking to a female patient. The Committee also noted that the Respondent offered the testimony of a Board certified psychiatrist, Dr. Paul Goodbill, who testified that the Respondent was an emotionally stable person whose actions stemmed from naivety and not an intrinsic problem.

The Committee concluded that the Respondent was a credible witness, that the actions underlying the conviction were a one time incident and that the Respondent apparently learned his lesson not to examine female patients alone. The Committee felt that probation, which includes counselling, establishes adequate monitoring of the Respondent for a sufficient period of time, in the event a repeat episode of sexual contact with a patient was to occur.

REQUESTS FOR REVIEW

PETITIONER: The Petitioner has requested that the Review Board overrule the Hearing Committee's Determination and revoke the Respondent's license to practice medicine in New York. The Petitioner contends that sexual abuse of a patient is a dangerous breach of the public trust and that the Respondent has shown himself to be without the requisite character to practice medicine. The Petitioner notes that the Review Board has ruled in previous cases that there is no mitigation for sexual abuse of a patient and that revocation is the appropriate remedy, Matter of Rudell BPMC No. 92-40A; Matter of Parikh ARB No. 92-93; Matter of Sebollena ARB No. 92-92.

The Petitioner contends that the Hearing Committee's reasoning was inconsistent and challenges the psychiatric testimony from the hearing that characterized the Respondent's act as stemming from naivety. The Petitioner contends that the Respondent has not acknowledged his culpability for his crime and has no remorse for his crime.

RESPONDENT: The Respondent contends that the facts and circumstances of the Respondent's case support the Hearing Committee's penalty and the Respondent contends that neither the facts nor the case law support the Petitioner's request for revocation. The Respondent notes that the cases cited by the Petitioner, in which Respondents' licenses were revoked for sexual abuse, involved multiple cases of disturbing sexual abuse. The Respondent contends that Dr. Teplitsky's

case can be distinguished from these other cases because the abuse in this case was limited to a one time transgression of aberrant behavior. The Respondent argues that a stayed suspension with probation is the appropriate penalty in a case such as Dr. Teplitsky's.

The Petitioner argues that the Hearing Committee, as the finder of fact, was in the best position to assess the credibility of the witnesses and that the Committee's Determination is consistent with the Committee's findings that the Respondent's misconduct was a one time incident. The Respondent argues that there is no basis from the record on which to overturn 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 professional misconduct. The Committee's Determination was consistent with their finding that the Respondent was convicted of Sexual Abuse in the Third Degree, a Class B Misdemeanor, in New York City Criminal Court for Kings County, after a finding that the Respondent had sexual contact with a patient - employee, without her consent, by grabbing the patient - employee's breasts without her permission. The Respondent did not contest the Hearing Committee's Determination that he was guilty of misconduct.

The Review Board votes 4-1 to sustain the Hearing Committee's Determination to suspend the Respondent's license for three years, to stay the suspension in full and to place the Respondent on probation. The Review Board finds that the period of probation shall be the three year period of the stayed suspension. The Review Board sustains the Terms of Probation as set out in the Hearing Committee's Appendix II.

The Review Board majority feels that the Hearing Committee's penalty will be appropriate to protect the public and is consistent with the Committee's findings. The Respondent's misconduct consisted of a single act and that single act did not rise to the level of misconduct to warrant

revocation. The testimony at the hearing indicated that the Respondent's behavior toward the patient - employee was a one time occurrence.

The Review Board's majority considered imposing a Five Thousand (\$5000.00) Dollar civil penalty against the Respondent, but the majority voted 3-1 against such a civil penalty.

The Review Board's dissenting member would revoke the Respondent's license to practice medicine, as the Petitioner recommended.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's January 17, 1995 Determination finding the Respondent guilty of professional misconduct.

2. The Review Board by a vote of 4-1 **SUSTAINS** the Hearing Committee's Determination to suspend the Respondent's license for three years, to stay the suspension in full, and to place the Respondent on probation for three years, under the terms which the Committee set out in their Determination at Appendix II.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

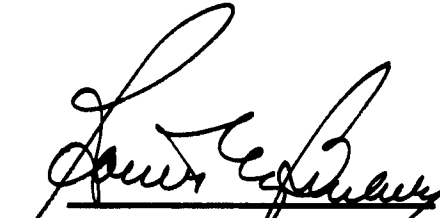
WILLIAM A. STEWART, M.D.

IN THE MATTER OF MICHAEL JACOB TEPLITSKY, 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. Teplitsky.

DATED: Albany, New York

March 22, 1995



ROBERT M. BRIBER

IN THE MATTER OF MICHAEL JACOB TEPLITSKY, 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. Teplitsky.

DATED: Delmar, New York

March 18, 1995



SUMNER SHAPIRO

IN THE MATTER OF MICHAEL JACOB TEPLITSKY, 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. Teplitsky.

DATED: Brooklyn, New York

_____, 1995



WINSTON S. PRICE, M.D.

IN THE MATTER OF MICHAEL JACOB TEPLITSKY, 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. Teplitsky.

DATED: Roslyn, New York

March 21, 1995

A handwritten signature in black ink, appearing to read "Edward C. Sinnott", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF MICHAEL JACOB TEPLITSKY, M.D.

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board for Professional Medical Conduct, affirms that he participated in the deliberations in this case and that the attached Determination reflects accurately the decision by the majority of the Review Board in Dr. Teplitsky's case.

DATED: Syracuse, New York

17 Mar, 1995

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.