

**DOH** STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

August 7, 1997

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Karen E. Carlson, Esq.  
NYS Department of Health  
Corning Tower Room 2503  
Empire State Plaza  
Albany, New York 12237

Robert Tichell, M.D.  
125 Lattimore Road  
Rochester, New York 14620-4107

John C. Herbert, Esq.  
Harter, Secrest & Emery  
700 Midtown Tower  
Rochester, New York 14604

**RE: In the Matter of Robert Tichell, M.D.**

Dear Ms. Carlson, Dr. Tichell and Mr. Herbert:

Enclosed please find the Determination and Order (No.97-121) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
Hedley Park Place  
433 River Street-Fourth Floor  
Troy, New York 12180

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 nm". The signature is written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm

Enclosure

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

COPY

IN THE MATTER

OF

ROBERT TICHELL, M.D. (Respondent)

Proceeding to review a Determination by a Hearing Committee  
(Committee) from Board for Professional Medical Conduct  
(BPMC)

ADMINISTRATIVE  
REVIEW BOARD  
DECISION AND  
ORDER NUMBER  
ARB NO. 97-121

**BEFORE: ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D.,  
EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.**

After a hearing into charges that the Respondent, an obstetrician/gynecologist, committed professional misconduct, a BPMC Committee sustained charges that the Respondent willfully abused or harassed two patients, dismissed charges that the Respondent practiced medicine with moral unfitness, suspended the Respondent's New York Medical License for three months and limited the Respondent's License thereafter. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1997), the New York State Department of Health (Petitioner) asks the Board to modify the Committee's Determination on the charges and to revoke the Respondent's License. The Respondent requests that the Board dismiss all charges or stay the entire License suspension. After considering the hearing record and the parties' briefs, the Board modifies the Committee's Determination, by sustaining the additional charge that the Respondent practiced medicine with moral unfitness in treating one patient, and we modify the Committee's Penalty to extend the suspension period for three additional months.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination.

**JOHN C. HERBERT, ESQ.** (Harter, Secrest & Emery) represented the Respondent.

**KAREN EILEEN CARLSON, ESQ.** (Asst. Counsel NYS Dept. of Health) represented the Petitioner.

## COMMITTEE DETERMINATION ON CHARGES

The Petitioner filed charges with BPMC alleging that the Respondent violated N.Y. Educ. Law §§ 6530 (20) & (31)(McKinney's Supp. 1997) by practicing medicine with moral unfitness on four occasions and by willfully abusing or harassing patients on four occasions. The charges alleged that the Respondent had committed sexual misconduct while providing treatment to four persons, Patients A through D. The record refers to the Patients by initials to protect their privacy. **THERESE G. LYNCH, M.D., Chair, STEPHEN GETTINGER, M.D. and CLAUDIA GABRIEL** comprised the BPMC Committee who conducted a hearing into the charges, pursuant to N.Y. Pub. Health Law § 230(7) (McKinney's Supp. 1997), and who rendered the Determination which the Board now reviews. Administrative Law Judge **LARRY G. STORCH** served as the Committee's Administrative Officer. The Committee sustained the charges that the Respondent willfully harassed or abused Patients A and B. The Committee dismissed charges alleging harassment or abuse concerning Patients C and D and dismissed the charges alleging moral unfitness involving all four Patients.

As to the sustained charges, the Committee found that the Respondent treated Patient A from 1977 to 1986 and that the Respondent hugged, embraced and finally kissed the Patient during office visits, leading the Patient to discontinue receiving care from the Respondent. In 1990, the Patient returned to the Respondent due the need for an immediate examination concerning a mass on her ovary. Concerning that visit, the Committee found that the Respondent complimented the Patient on how she looked, pulled her to a sitting position on the examining table, french-kissed her several times, fondled her breasts and buttocks, expressed interest in seeing her outside the office and repeatedly pulled the Patient's hand to the Respondent's penis. The Committee found the Respondent's conduct willful, abusive, impulsive and poorly controlled, but found no premeditation. As to Patient B, the Committee found that, during a 1991 office visit, the Respondent asked the Patient what she did when she got horny, placed both arms around her in a hug, told her that she was pretty and she had a hard life and leaned her head towards the Respondent, as if to kiss the Patient. The Committee found the Respondent's remarks intentional and lacking in medical context. The Committee found the

physical contact outside appropriate conduct. As with Patient A, the Committee found no premeditation.

The Committee voted to suspend the Respondent's License for thirty-six months, stayed all but thirty-three months and placed the Respondent on probation during that time. The Committee voted further to limit the Respondent's License to practice in a group practice or a licensed facility and limited the License to prohibit the Respondent from seeing a female patient for examination or consultation, except with a chaperon present. The Committee found the Respondent compassionate and concluded that he possessed excellent medical skills. The Committee concluded that the Respondent's conduct represented isolated incidents involving impulsive conduct rather than premeditated conduct. The Committee also concluded that the Respondent showed signs that he learned from his experience and showed a potential for rehabilitation. The Committee determined that the Respondent's conduct warranted a severe sanction, but determined that their Penalty struck an appropriate balance between the needs for punishment and public protection and the possibility for rehabilitation.

### **REVIEW HISTORY AND ISSUES**

The Committee rendered their Determination on May 28, 1997. The Petitioner then commenced this proceeding on June 4, 1997, at which time the Board received the Petitioner's Notice requesting a Review pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1997). The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and post trial memorandum and the Petitioner's brief and reply brief. The Board received the Respondent's brief and memorandum on July 7, 1997, the Petitioner's brief on July 7, 1997, and the Petitioner's reply on July 10, 1997.

**Petitioner's Issues:** The Petitioner asks that the Board find that the Respondent committed moral unfitness in treating Patients A and B, that the Board sustain the charges involving Patient C and that the Board overrule the Hearing Committee and revoke the Respondent's License.

**Respondent's Issues:** The Respondent asks that the Board review the entire record and consider rejecting the Hearing Committee' findings, arguing that the record shows no inappropriate or intentional conduct by the Respondent, except for the non-credible testimony by Patient A. The Respondent asks further that the Board consider staying the entire suspension against the Respondent, or if the Board finds the suspension appropriate, that the Board limit the suspension to the period the Committee imposed.

### **REVIEW BOARD AUTHORITY**

In reviewing a Committee's Determination, the Board determines: whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law, and whether the Penalty is appropriate and within the scope of penalties which the law permits [N.Y. Pub. Health Law § 230(10)(i), § 230-c(4)(b)(McKinney's Supp. 1997)]. The Board may remand a case to the Committee for further consideration [N.Y. Pub. Health Law § 230-c(4)(b)(McKinney's Supp. 1997)]. The Board's Determinations result from a majority concurrence among the Board's Members [N.Y. Pub. Health Law § 230-c(4)(c)(McKinney's Supp. 1997)].

The Review Board may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 Ad 2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 AD 2d 940, 613 NYS 2d 759 (Third Dept. 1994), and in determining credibility Matter of Minielly v. Comm. of Health 222 AD 2d 750, 634 NYS 2d 856 (Third Dept. 1995).

### **REVIEW BOARD DETERMINATION**

The Board has considered the record below, the parties' briefs and the Respondent's post trial memorandum. We conducted deliberations in this case on July 25, 1997. Dr. Stewart participated in the deliberations by telephone. The Board sustains the Committee's Determination finding that the Respondent willfully abused or harassed Patients A and B. We modify the Committee's Determination

to find the Respondent's conduct toward Patient A also constituted moral unfitness in practicing medicine. We sustain the Committee's Determination concerning Patient C. We modify the Committee's Penalty to increase the suspension period from three months to six months.

We reject the Respondent's contention that record provides no support for the charges. As to Patient A, the Committee observed both the Patient and the Respondent testify and the Committee found the Patient's testimony credible. The Board owes deference to the Committee, as fact-finder, concerning their judgement on witness credibility and we find no reason to overturn the Committee's judgement in this case. The evidence that the Committee found credible demonstrated that the Respondent willfully abused and harassed Patient A, by fondling her breasts and buttocks, kissing her and placing her hand on the Respondent's penis, during a medical examination. The findings involving Patient A also support a determination that the Respondent's conduct toward Patient A constituted moral unfitness in practicing medicine. We disagree with the Committee's conclusion that a moral unfitness determination must include a finding that the Respondent acted with premeditation. Even if the determination did require premeditation, we find that the Respondent's conduct in this case demonstrates premeditation. The Respondent kissed the Patient repeatedly and pulled her hand to his penis repeatedly. The Patient asked the Respondent to stop and the Patient tried to pull away but was unable to do so.

As to Patient B, the Board finds that the Respondent's conduct toward Patient B constituted willful abuse and harassment. Clearly the Respondent acted in an intentional manner for no appropriate medical reason, although the Respondent's conduct towards Patient B falls short from demonstrating moral unfitness. We reject, therefore, the Petitioner's request that we find that the Respondent's conduct toward Patient B constitutes moral unfitness.

The Board also rejects the Petitioner's request that we sustain the misconduct specifications charging that the Respondent with moral unfitness and willful abuse and/or harassment in treating Patient C. We agree with the Committee that the Respondent made boorish and immature remarks in complimenting Patient C on her tan lines, during an examination. We agree further that the Respondent's comments amount to neither harassment, abuse nor moral unfitness.

We reject the Petitioner's request that we revoke the Respondent's License and we reject the

Respondent's request that we stay the entire suspension Penalty or leave the Committee's suspension in place. We agree with the Committee that the Respondent's conduct merits a severe penalty and we agree with the Committee that the Respondent's conduct merits a penalty less severe than revocation. The Board concludes, however, that the Respondent should serve six months rather than three months on actual suspension. The longer period will provide the Respondent a sufficient opportunity to reflect on his misconduct and on the pain he has caused to the Patients who turned to him for medical care. We conclude that the longer actual suspension, in combination with the other sanctions that the Committee imposed against the Respondent, will punish the Respondent for his misconduct, protect the public and provide the Respondent a chance for rehabilitation and a chance to continue to provide compassionate and high quality medical care.



**ORDER**

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

1. The Board **SUSTAINS** the Committee's Determination that the Respondent willfully abused and/or harassed Patients A and B.
2. The Board **MODIFIES** the Committee's Determination and we **SUSTAIN** the charge that the Respondent evidenced moral unfitness in medical practice in his conduct towards Patient A.
3. The Board **SUSTAINS** the Committee's Determination suspending the Respondent's License, staying the suspension in part, placing the Respondent on probation and limiting his License following the suspension.
4. The Board **MODIFIES** the Committee's Penalty to extend the actual suspension period from three months to six months.

**ROBERT M. BRIBER**

**SUMNER SHAPIRO**

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

**EDWARD SINNOTT, M.D.**

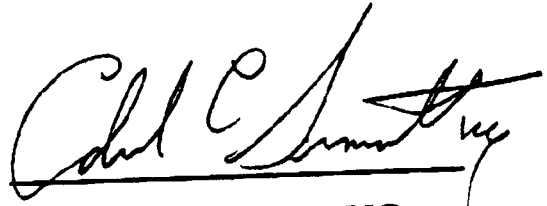
**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF ROBERT TICHELL, 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. Tichell.

**DATED: Roslyn, New York**

*Aug 1*, 1997



**EDWARD C. SINNOTT, M.D.**

**IN THE MATTER OF ROBERT TICHELL, 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. Tichell.

**DATED: Delmar, New York**  
**August 2, 1997**

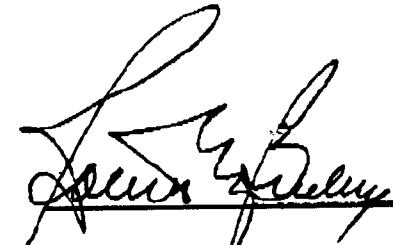
  
**SUMNER SHAPIRO**

**IN THE MATTER OF ROBERT TICHELL, 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. Tichell.

**DATED: Schenectady, New York**

**August 3 , 1997**



**ROBERT M. BRIBER**

**IN THE MATTER OF ROBERT TICHELL, 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. Tichell.

**DATED: Syracuse, New York**

5 Aug., 1997



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