



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson E. Rockefeller Empire State Plaza

Albany, New York 12237

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

May 9, 1995

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Jeffrey Rubin, Esq.  
Rubin & Shang  
9 East 40th Street  
New York, New York 10016

David L. Gordon, M.D.  
94-R-2142  
Queensboro Correctional Facility  
47-04 Van Dam Street  
Long Island City, New York 11101

RECEIVED  
MAY 10 1995  
MEDICAL CONDUCT

**RE: In the Matter of David L. Gordon**

Effective Date: 05/16/95

Dear Ms. Koch, Mr. Rubin and Dr. Gordon :

Enclosed please find the Determination and Order (No. 95-36) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
DAVID L. GORDON, M.D.**

**ADMINISTRATIVE  
REVIEW BOARD  
DECISION AND  
ORDER NUMBER  
ARB NO. 95-36**

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.**<sup>1</sup> held deliberations on April 21, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) February 13, 1995 Determination finding Dr. David L. Gordon (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on February 27, 1995. James F. Horan served as Administrative Officer to the Review Board. Jeffrey M. Rubin, Esq. filed a brief for the Respondent on March 10, 1995. Irene M. Koch, Esq. filed a reply brief for the Office of Professional Medical Conduct (Petitioner) on April 10, 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

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<sup>1</sup>Dr. Price and Dr. Stewart participated in the deliberations by telephone.

- 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 of a crime under New York State Law. The Committee found that the Respondent entered a guilty plea, in New York State Supreme Court for Queens County, on October 28, 1992, to Grand Larceny Second Degree, a Class C Felony. The Committee found that the Court sentenced the Respondent to one to three years incarceration and to sign a confession of judgement of Five Hundred Thousand (\$500,000.00) Dollars in restitution.

The Committee voted to revoke the Respondent's license to practice medicine in New York State. The Committee found that the Respondent was convicted of a serious crime arising from a scheme to defraud the Medicaid System. The Committee concluded that there were no mitigating circumstances to be considered.

## **REQUESTS FOR REVIEW**

The Respondent has asked the Review Board to reverse the Hearing Committee's Determination because of mitigating factors which the Hearing Committee failed to consider. The Respondent requests that the Review Board impose a lesser penalty. In the alternative, the Respondent has asked that the Review Board remand this matter for a Determination which accounts for the mitigating factors present in this case.

The Respondent argues that there were no allegations that the Respondent provided negligent or improper patient care and that the sole issue at the hearing was Dr. Gordon's character. The Respondent contends that the Hearing Committee heard evidence of the Respondent's good character from three witnesses at the hearing, Dr. Sandy Cowan, who knows the Respondent personally and professionally, and two members of the Respondent's family. The Respondent also testified at the hearing that he was remorseful for his actions. The Respondent blamed the crimes on his brother, whom the Respondent accused of conducting Medicaid business illegally.

The Respondent asserts that the Hearing Committee erroneously excluded the character testimony in considering a penalty.

The Petitioner urges the Department to uphold the Hearing Committee's penalty. The Petitioner argues that the revocation of the Respondent's license is appropriate as a penalty for Medicaid fraud. The Petitioner contends that the Hearing Committee considered all the evidence presented and rejected any evidence conflicting with the Committee's findings.

## **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 finding the Respondent guilty of professional misconduct. The Determination was consistent with the

Committee's findings that the Respondent had been convicted of a crime in Queens County Supreme Court that arose from a plan to defraud the Medicaid program.

The Review Board votes to deny the Respondent's request for further proceedings. The Review Board sustains the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State. That penalty is appropriate in view of the Respondent's criminal conviction for participating in a plan to defraud the Medicaid program.

The evidence which the Respondent introduced at the hearing does not constitute mitigation in view of the Respondent's serious and intentional misconduct. The Respondent's argument placing the blame for the Medicaid fraud scheme on his brother is an impermissible attempt to relitigate the Respondent's criminal conviction. The testimony concerning the Respondent's character had little weight when considered against the much more compelling evidence of the Respondent's criminal conduct.

The weight of the evidence at the hearing demonstrated that the Respondent does not possess the requisite character or integrity that is necessary to practice medicine in New York State.

**ORDER**

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

1. The Review Board **SUSTAINS** the Hearing Committee's February 13, 1995 Determination finding Dr. David L. Gordon 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.**

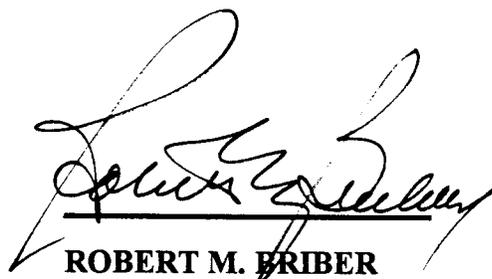
**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF DAVID L. GORDON, 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. Gordon.

**DATED: Albany, New York**

May 9, 1995



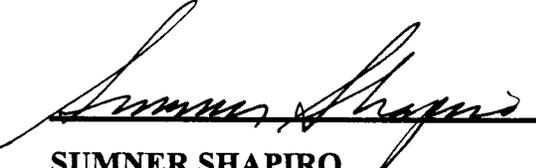
**ROBERT M. BRIBER**

**IN THE MATTER OF DAVID L. GORDON, 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. Gordon.

**DATED: Delmar, New York**

*May 2*, 1995

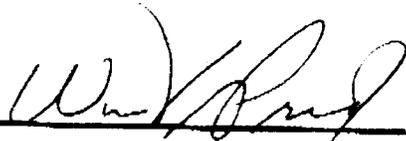
  
**SUMNER SHAPIRO**

**IN THE MATTER OF DAVID L. GORDON, 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. Gordon.

**DATED: Brooklyn, New York**

4/25, 1995

A handwritten signature in cursive script, appearing to read "Winston Price", is written over a horizontal line.

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

**IN THE MATTER OF DAVID L. GORDON, 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. Gordon.

**DATED: Roslyn, New York**

May 1, 1995

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", written over a horizontal line. The signature is located to the right of the date.

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

**IN THE MATTER OF DAVID L. GORDON, 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. Gordon.

**DATED: Syracuse, New York**

1 May, 1995



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