

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

-----X
IN THE MATTER : ADMINISTRATIVE
OF : REVIEW BOARD
MORTEZA MOHIT, M.D. : ORDER
-----X

Pursuant to the Respondent's December 13, 1991 Notice of Review, a quorum of the Administrative Review Board for Professional Medical Conduct, Robert M. Briber, Edward C. Sinnott, M.D. and William A. Stewart, M.D., met on March 11, 1992 to review the November 21, 1991 Determination by the Hearing Committee in this matter. James Horan, Esq., served as Administrative Officer to the Review Board. Counsel for the Respondent, Anthony Scher, Esq. and Counsel for the Department of Health, Diane Abeloff, Esq., submitted Briefs to the Board.

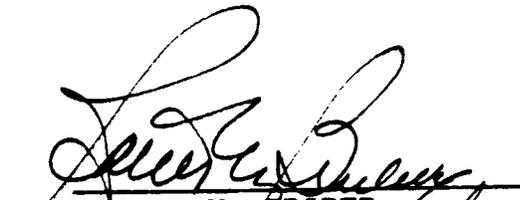
The Administrative Review Board has reviewed the entire record in this matter, including the transcripts and all exhibits, as well as the briefs submitted by the parties, and the Board has reached the attached Determination unanimously.

Now upon reviewing the Hearing Committee's Determination, the full hearing record and the Review Briefs from Counsel, and based upon its attached Determination, the Board issues the following Order:

The November 21, 1991 Determination of the Hearing Committee on Professional Medical Conduct is sustained in full.

The Penalty which the Hearing Committee imposed is sustained.

Dated: Albany, New York
March 11, 1992


ROBERT M. BRIBER


EDWARD C. SINNOTT, M.D.


WILLIAM A. STEWART, M.D.

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

IN THE MATTER : ADMINISTRATIVE
OF : REVIEW BOARD
MORTEZA MOHIT, M.D. : DETERMINATION
-----X

A quorum of the Administrative Review Board for Professional Medical Conduct consisting of Robert M. Briber, Edward C. Sinnott, M.D. and William A. Stewart, M.D.¹ met on March 10, 1992 to review the Hearing Committee's November 21, 1991 Determination revoking Dr. Morteza Mohit's license to practice medicine in New York State. Dr. Mohit filed a notice seeking review of the Hearing Committee's Determination on December 15, 1991. James F. Horan, Esq. served as the Administrative Officer to the Review Board. Anthony Scher, Esq., representing Dr. Mohit and Diane Abeloff, Esq., representing the New York State Department of Health, submitted briefs for the Review Board's consideration in this matter.

THE HEARING COMMITTEE'S DETERMINATION

The Hearing Committee voted unanimously to revoke Dr. Mohit's license upon sustaining one specification that Dr. Mohit was unfit morally to practice medicine and one specification that Dr. Mohit had physically abused a patient.

¹ By the date of these deliberations, the New York State Senate had confirmed only three members of the five member Administrative Review Board created pursuant to Chapter 606 of the Laws of 1991.

The Committee's Conclusions were based upon the findings, that on August 14, 1990, during a pelvic examination of a patient, Dr. Mohit had massaged the patient's clitoris, inserted his penis into the patient's vagina and fondled the patient's breasts, without the patient's consent. The patient, designated as Patient A, testified at the hearing and the Hearing Committee determined that Patient A was a credible witness and that the evidence supported her version. The Hearing Committee dismissed the Respondent's testimony that the Patient had consented to the sexual activity and had enticed the Respondent, finding that the Respondent's responses to questions were evasive and inconsistent. The Committee also questioned the validity of notations in Patient A's medical record, noting that the record was not prepared until after the Respondent's interview by police, during which the Respondent denied having intercourse with the Patient. The Hearing Committee concluded that the Respondent's actions violated general accepted standards of medical misconduct, whether or not Patient A consented. (Tr. pp. 11-13).

THE ISSUES ON REVIEW

The Respondent has challenged the Hearing Committee's Determination on two grounds: first, that because a jury acquitted the Respondent of rape and sexual abuse charges at a criminal trial, the Hearing Committee was

obligated to defer to the acquittal returned on what were the same issues as presented before the Hearing Committee; and secondly, the revocation was excessively harsh, because the Respondent believed the Patient consented to sexual intercourse, the Respondent was unaware of Patient A's previous psychiatric history, the Respondent had a previously unblemished record and the act in question was isolated in nature and unlikely to ever be repeated.

Counsel for the Respondent asks that the Administrative Review Board either dismiss the charges or impose a more reasonable sanction.

SIGNIFICANT LEGAL RULINGS

The Respondent's Counsel filed his appeal brief on January 15, 1992. Under the statutory time frames established in Public Health Law §230-c(4)(a) (McKinney Supp. 1992), the Review Board's Determination was due on or before February 29, 1992. On February 25, 1992, however, the Director of the Bureau of Adjudication of the Department of Health advised Counsel for both parties in this case that no members for the Administrative Review Board had yet received confirmation by the New York State Senate, so that the Board would not issue a Determination by February 29, 1992. The Director of the Bureau advised the parties that the Board would hold deliberations in this case as soon as the members received Senate confirmation, and that until the Board made a

Determination, the statutory stay would remain in effect against the Department of Health's enforcement of the Hearing Committee's Determination to revoke the Respondent's license. The Bureau has received no comments concerning this delay from the Respondent's counsel.

On March 10, 1992, the present three members of the Administrative Review Board received New York State Senate confirmation. At the time these members' nominations were forwarded to the Senate by the Governor but prior to Senate confirmation, the members received copies of the hearing transcripts and Counsels' briefs in this case, so that the Board would be prepared to begin deliberations in this case immediately upon confirmation. The Administrative Officer has determined that the Board can meet with only a three-member majority because the statute provides that the Administrative Review Board may issue a Determination based upon the concurrences of a majority of the Board, Public Health Law §230-c(4)(C) (McKinney Supp. 1992). In order to reach a Determination, however, any conclusion by the present three members of the Board will require unanimous consent.

THE BOARD'S DETERMINATION

After review of the transcripts of this proceeding, the Administrative Review Board finds no reason to overturn the Hearing Committee's Determination. The Board believed Patient A's testimony that she had not consented to sexual

relations with the Respondent. The Board found that Patient A's testimony about her post-incident behavior was entirely credible and did not discount her testimony because she was confused about the amount of time which passed during sexual relations or that Patient A waited until she was at the Planned Parenthood Offices to report the incident.

The Board found that the Respondent's testimony was evasive and inconsistent. The Respondent denied the incident at his initial interview with the police, but admitted to sexual relations with the patient while testifying at the hearing. The Respondent's explanation for the events were often glib and the Respondent's explanation that he had merely acted on impulse in accepting an invitation for sexual relations from a patient whom he had never seen, who was suffering from a vaginal discharge and who was in stirrups on the examining table in a vulnerable position was not believable.

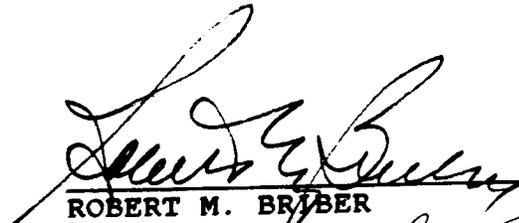
The Administrative Review Board finds that the Hearing Committee's Determination that the Respondent was guilty of Moral Unfitness to Practice Medicine and Physical Abuse of a Patient was consistent with the Hearing Committee's Findings of Fact.

Having determined that the Respondent had sexual relations with Patient A without Patient A's consent, the Administrative Review Board finds that the penalty of revocation is consistent with the Findings of Fact and

Conclusions of Law and is appropriate in this case.

The Administrative Review Board reaches these conclusions unanimously.

DATED: Albany, New York
March 11, 1992


ROBERT M. BRIBER


EDWARD C. SINNOTT, M.D.


WILLIAM A. STEWART, M.D.

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

-----X
IN THE MATTER ;

OF ;

MORTEZA MOHIT, M.D. ;

ORDER

#BPMC 91-28
-----X

A hearing in the above-entitled proceeding was held on October 24, 1991 and October 28, 1991. Respondent, Morteza Mohit, M.D., appeared by Anthony Z. Scher, Esq. The evidence in support of the charges against the Respondent was presented by Dianne Abeloff, Esq.

The Respondent, Morteza Mohit, M.D., was found to have physically abused a patient and is morally unfit to practice medicine. The Hearing Committee hereby orders that his license to practice medicine in the State of New York be revoked.

The Hearing Committee further orders that, if the Respondent applies for reinstatement of his license in the future, his application must be accompanied by a complete psychiatric evaluation.

DATED: White Plains, New York
December 9, 1991


TERRI L. WEISS, ESQ., CHAIRPERSON

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

-----X
IN THE MATTER

: DETERMINATION

OF

: OF THE HEARING

MORTEZA MOHIT, M.D.

: COMMITTEE
-----X

TO: LORNA MCBARNETTE
EXECUTIVE DEPUTY COMMISSIONER
NEW YORK STATE DEPARTMENT OF HEALTH

Terri L. Weiss, Esq., Chairperson,
Machelle H. Allen, M.D. and Robert J. O'Connor, M.D. duly
designated members of the State Board for Professional Medical
Conduct, appointed by the Commissioner of Health of the State
of New York pursuant to Section 230(1) of the Public Health Law,
served as the Hearing Committee in this matter pursuant to
Section 230(10)(e) of the Public Health Law.

Michael P. McDermott, Esq., Administrative Law Judge, served as
Administrative Officer for the Hearing Committee

After consideration of the entire record, the Hearing
Committee submits this report.

SUMMARY OF THE PROCEEDINGS

Notice of Hearing dated: September 19, 1991

Statement of Charges dated: August 8, 1991

Amended Statement of Charges dated: October 24, 1991

Pre-hearing conferences: October 7, 1991
October 24, 1991

Intra-Hearing conference: October 28, 1991

Hearing Dates: October 24, 1991
October 28, 1991

Place of Hearing: New York State
Department of Health
5 Penn Plaza
New York, NY

Deliberations: November 14, 1991

Petitioner appeared by: Peter J. Millock, Esq.
General Counsel
New York State
Department of Health
By: Dianne Abeloff, Esq.
Associate Counsel

Respondent appeared by:

Wood & Scher, Esqs.
The Harwood Building
14 Harwood Court
Scarsdale, NY 10583
by: Anthony Z. Scher, Esq.,
and
Janet Galdolofo, Esq.
55 South Broadway
Tarrytown, NY 10591
Co-counsels

MOTIONS

1. October 7, 1991 - Respondent's pre-hearing motion to dismiss - DENIED
2. October 24, 1991 - Petitioner's motion to amend the Statement of Charges to include the charge of Fraudulent Practice of Medicine - GRANTED.

WITNESSES

For the Petitioner:

1. Patient A
2. Susan Tlusty
3. Marcia Brown

For the Respondent

1. Morteza Mohit, M.D., the Respondent
2. Ashley Roughsedge
3. Ervand Abrahamian
4. Reza Delghavi

STATEMENT OF CHARGES

Essentially the Respondent is charged with: a. Moral unfitness to practice medicine; b. Physical abuse of a patient; c. Fraudulent practice of medicine.

The charges are more specifically set forth in the Amended Statement of Charges, a copy of which is attached hereto and made a part hereof.

FINDINGS OF FACT

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.

GENERAL FINDINGS

1. Dr. Morteza Mohit, the Respondent, was duly licensed to practice medicine in New York State as of

August 3, 1987 by the issuance of license number 171551 by the New York State Education Department (Pet's Exs. 1 and 2).

2. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1991 through December 31, 1991 from 11 Colonial Road, Scarsdale, New York (Pet's Ex. 1).

3. This proceeding was commenced by the service of Notice of Hearing and Statement of Charges upon the Respondent on September 24, 1991 (Pet's Ex. 1).

4. On October 24, 1991, respondent's counsel was served with an Amended Statement of Charges (Pet's Ex. 1A).

FINDINGS AS TO PATIENT A

5. On August 14, 1990, Patient A went to the Respondent's office at 29 South Broadway, Yonkers, New York for the purpose of having a pregnancy test (Tr. 45).

6. Patient A had made previous visits to the facility and had been seen by other physicians, however she had never seen nor met the Respondent prior to the visit of August 14, 1990. The Respondent called Patient A into the office but did not introduce himself. Patient A learned the Respondent's name from a sign on the wall (Tr. 46-47).

7. Patient A told the Respondent that her chief complaint was for a pregnancy test. She also told him that she had a cyst in her eye and had a vaginal discharge (Tr. 48, 111).

8. The Respondent took a brief medical history. Patient A gave a factual family and medical history which included her use of marijuana and alcohol (Pet's Ex. 3; Tr. 172, 309).

9. During the course of taking the medical history, the Respondent asked Patient A to undress while he was present in the room. Patient A found the situation uncomfortable (Tr. 48-49, 307).

10. The Respondent weighed Patient A while she was undressed except for her shoes (Tr. 50).

11. The Respondent advised Patient A that he would give her a pelvic and breast examination and she agreed (Tr. 48, 111, 175).

12. The Respondent then gave Patient A a large paper towel/sheet. Patient A lay on the examination table with her legs in the stirrups and the Respondent pushed and piled the paper towel/sheet across the fat part of her abdomen (Tr. 51-52).

13. The Respondent inserted his fingers in Patient A's vagina to do an examination. Patient A immediately turned

her head to the side because she experienced discomfort.

Patient A had had a history of pelvic infections and consequently had experienced pain during previous pelvic examinations and so advised the Respondent (Tr. 53, 131).

14. During the course of the examination Patient A felt the Respondent rubbing her clitoris in a manner which she believed was designed to stimulate her. She then turned her head to look at him, and he immediately stopped. After he stopped rubbing her clitoris, she again turned her head away (Tr. 54, 131).

15. The Respondent discontinued the examination and took a vaginal culture (Tr. 55, 314-315).

16. The Respondent went to the sink and when he returned Patient A felt a cold substance which she thought to be a gel being squeezed into her vagina. Once again the Respondent inserted his fingers into her vagina and Patient A again turned her head. The Respondent then completed the examination (Tr. 57, 316-317).

17. The Respondent then stepped on the step and inserted his penis into Patient A's vagina. He leaned over her body with his hands on each side of her body. He then picked up his arms, reached up towards Patient A's neck, grabbed her breasts, pushed up on her and ejaculated inside her vagina. The

entire act occurred while the patient was in stirrups (Tr. 57-60, 319, 325-326, 406)

18. The Respondent withdrew his penis from Patient A's vagina, re-zipped his pants and told her to get dressed (Tr. 60-62, 326).

19. After the sexual relations, Patient A got dressed and sat down next to Respondent's desk. The Respondent prescribed Sultrin vaginal cream and Cortisporin eye drops for Patient A. He and Patient A discussed these medications and their application (Tr. 63, 327-328).

20. The Respondent and Patient A left the Respondent's office together and went to the laboratory area for the purpose of having Patient A's blood drawn for a pregnancy test. The Respondent gave the swab used for the vaginal discharge to a laboratory technician and asked the technician to draw blood from Patient A for a pregnancy test. Patient A cooperated with the laboratory technician (Tr. 64, 328).

21. After her blood was drawn, Patient A left the Respondent's medical office and went to the Yonkers Probation office as she had previously planned (Tr. 70-73, 123).

22. After she left the Probation Department, Patient A went to Planned Parenthood where she complained that the Respondent had sexually assaulted her (Tr. 74).

23. Patient A became extremely emotional and the personnel at Planned Parenthood arranged for her to be transported by ambulance to St. Joseph's Hospital (Tr. 79, 188-189).

24. A complete examination utilizing a rape kit was performed in the Emergency Room at St. Joseph's Hospital. The Emergency Room records indicate a bruise on Patient A's right breast (Pet's Ex. 4, pgs. 8 and 11, Tr. 79-80).

25. Patient A also complained to the police that evening and gave a written statement of the events (Resp's Ex. A).

26. On the following day, August 15, 1990, the Respondent was visited by police officers and was interviewed concerning the incident involving Patient A. The Respondent denied having sexual intercourse with Patient A when questioned by the police (Tr. 329, 332, 333, 348).

27. On the evening of August 15, 1990, after being interviewed by the police, the Respondent prepared Patient A's medical record (Tr. 334-335, 451).

28. The Respondent was criminally charged with rape in the first degree and sexual abuse in the first degree and was acquitted of both charges. The Respondent did not testify at the criminal trial (Tr. 14-15, 18, 104).

29. At the hearing the Respondent admitted having sexual intercourse with Patient A but claimed it was consensual (Tr. 319, 325, 345).

30. The Respondent also testified that it was wrong that he had sex with Patient A; that he was aware of how relations between a doctor and a patient should be; that he considered it to be a mistake and he knew the implications for himself (Tr. 410, 418-420).

FINDINGS AS TO BILLING

31. The Department of Social Services was billed by the Respondent's billing service for range of motion tests, an audiometry screening and a skin test on Patient A (Pet. Ex. 9).

32. The Respondent did not, in fact, perform these tests on Patient A (Pet's Ex. 3; Tr. 67-68).

33. The Respondent's billing practice was to submit a form to his billing company for those services performed on patients. The billing company would then enter the services listed by the Respondent into a computer and would then send a diskette to DSS' fiscal agent for reimbursement to the Respondent (Tr. 342).

34. The Respondent was unable to remember whether or not he submitted a form to his billing company for the tests in issue (Tr. 343).

35. The form allegedly sent by the Respondent to his billing company were not introduced into evidence.

CONCLUSIONS

Patient A was a credible witness and the evidence supports her version of the incident.

Patient A had just met the Respondent for the first time. She knew nothing about him. She was there to be tested because she was worried about being pregnant. She experienced pain during the vaginal examination and had a history of such discomfort. She was in the gynecological stirrups to be examined and she was undressed and vulnerable. Given these circumstances, it is highly unlikely that she anticipated or provoked such an incident.

The Respondent testified that Patient A smiled at him, moved her hips while in the gynecological stirrups and mumbled, "I want you." He further testified that he became aroused, stepped up onto the step of the examining table, unzipped his pants, and told Patient A, a woman he had never met before, that

he was "going inside of her" and then inserted his penis into her vagina. The Respondent's testimony of being provoked by Patient A is not credible. There is absolutely no evidence of any enticement or seduction on the part of Patient A. She was so upset that she sought help from Planned Parenthood and the police almost immediately after the incident.

The Respondent was often evasive and inconsistent in his responses to questions. The Hearing Committee also questions the validity of some of the notations in the Respondent's medical records on Patient A. The medical record was prepared after his interview with the police during which he falsely denied that he had had sexual intercourse with Patient A.

The Hearing Committee unanimously concludes (3-0) that during the course of the Respondent's pelvic examination of Patient A, the Respondent massaged Patient's A's clitoris; inserted his penis into Patient A's vagina and fondled her breasts, and that such action by the Respondent was not consented to by Patient A.

In addressing the issue of consent and specifically finding that Patient A did not consent to the Respondent's behavior, the Hearing Committee does not want to leave the impression that it would have considered the actions by the

Respondent to be acceptable if Patient A had in fact consented. On the contrary, the Hearing Committee concludes that the actions by the Respondent violated general accepted standards of medical practice and constitute professional misconduct, whether or not Patient A consented.

In the absence of the Respondent's billing records, the Hearing Committee unanimously concludes (3-0) that there is insufficient evidence to sustain the charge of fraudulent practice of medicine.

VOTE OF THE HEARING COMMITTEE

THE HEARING COMMITTEE VOTES UNANIMOUSLY (3-0) FOLLOWS:

First Specification

Moral unfitness to practice medicine - SUSTAINED

Second Specification

Physical Abuse of a Patient - SUSTAINED

Third Specification

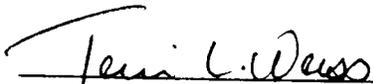
Fraudulent Practice of Medicine - NOT SUSTAINED

RECOMMENDATIONS

The Hearing Committee recommends unanimously (3-0), that the Respondent's license to practice medicine in the State of New York be REVOKED. The Hearing Committee further recommends that should the Respondent apply for reinstatement his application be accompanied by a complete psychiatric evaluation.

DATED: White Plains, New York
November , 1991

Respectfully submitted



TERRI L. WEISS, ESQ.
Chair

Machelle H. Allen, M.D.
Robert J. O'Connor, M.D.

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

-----X AMENDED
IN THE MATTER : STATEMENT
OF : OF
MORTEZA MOHIT, M.D. : CHARGES
-----X

MORTEZA MOHIT, M.D., the Respondent, was authorized to practice medicine in New York State on August 3, 1987 by the issuance of license number 171551 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, 1991 through December 31, 1992 from 11 Colonial Road, Scarsdale, N.Y. 10583.

PLAINTIFF'S
DEFENDANT'S
COMPANY'S
DEPARTMENT'S
PETITIONER'S
RESPONDENT'S
DATE 10-24-91
STERLING REPORTING SERVICE, INC.

EXHIBIT 1-A

for identification
in evidence

FACTUAL ALLEGATIONS

A. On or about August 14, 1990, at or about 3:00 p.m., Patient A (Patient A's identity is contained in the attached appendix) went to the Yonkers Medical and Dental Mall located at 29 Broadway, Yonkers, N.Y. for a pregnancy test. Patient A was told by the receptionist that she would be examined by Respondent.

1. During the course of Respondent's pelvic examination of Patient A, Respondent massaged Patient A's clitoris, inserted his penis into Patient A's vagina and fondled her breasts.

B. Following the visit of Patient A to Respondent's office on or about August 14, 1990, Respondent submitted claims to the Medicaid Management Information System of the N.Y.S. Department of Social Services for the following tests performed on Patient A: skin; pure tone audiometry, air and bone; and, range of motion test and report. Respondent knew he did not perform these tests on Patient A when he submitted the claims.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

MORAL UNFITNESS TO PRACTICE MEDICINE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530 (20) as added by ch. 606, laws of 1991, in that Respondent's conduct in the practice

of medicine evidences moral unfitness to practice medicine,
specifically:

1. The facts in paragraph A and A.1.

SECOND SPECIFICATION

PHYSICAL ABUSE OF A PATIENT

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530 (31) as added by ch.606, laws of 1991, in that he willfully physically abused Patient A, specifically:

2. The facts in paragraph A and A.1.

THIRD SPECIFICATION

FRAUDULENT PRACTICE OF MEDICINE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530 (2) as amended by ch. 606, laws of 1991, in that he practiced the profession fraudulently, specifically:

3. The facts in paragraph B.

DATED: ^{New York}
~~Albany~~, New York
October 24, 1991



Chris Stern Hyman
Counsel
Bureau of Professional Medical
Conduct