



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

July 17, 1995

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Claudia Morales Bloch, Esq.
NYS Dept. of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Vivian Shevitz, Esq.
19 North Moger Avenue
Mount Kisco, New York 10549

Gilbert Ross, M.D.
833 Northern Blvd.
Suite 120
Great Neck, New York 11021

REC-111
JUL 18 1995

RE: In the Matter of Gilbert Ross, M.D.

Dear Ms. Bloch, Ms. Shevitz and Dr. Ross:

EFFECTIVE DATE JULY 24, 1995

Enclosed please find the Determination and Order (No. 95-42) 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.

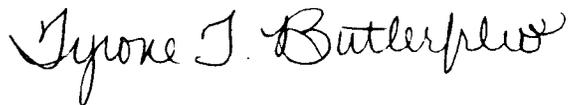
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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 black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large, prominent initial "T".

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
GILBERT ROSS, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 95-42**

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 May 19, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) March 1, 1995 Determination finding Dr. Gilbert Ross (Respondent) guilty of professional misconduct. The Office of Professional Medical Conduct (Petitioner) requested the Review through a Notice which the Board received on March 15, 1995. James F. Horan served as Administrative Officer to the Review Board. Claudia Morales Bloch, Esq. filed a brief for the Petitioner which the Board received on April 17, 1995. Vivian Shevitz, Esq. filed a reply brief for the Respondent which the Board received on April 25, 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

- 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 been convicted in the United States District Court for the Southern District of New York for one count of participating in a racketeering enterprise, one count of violation and pattern of racketeering activity, ten counts of mail fraud and one count of criminal forfeiture. The Hearing Committee found that the Respondent's conviction constituted professional misconduct. The Committee found that the District Court sentenced the Respondent to forty-six months incarceration, three years supervision following release and ordered the Respondent to make restitution to the New York State Department of Social Services amounting to Six Hundred Twelve Thousand Eight Hundred and Fifty-Five (\$612,855.00) Dollars.

The Hearing Committee found that there were mitigating circumstances in the Respondent's case. The Committee found that the Respondent had participated in illegal activity for a limited period of seven weeks and that he voluntarily resigned when he perceived irregularities in the practice arrangement. The Committee found that since July, 1993, the Respondent has been the volunteer

Medical Director of Roto Care, a free health service for the poor and homeless. The Committee determined that the Respondent was performing a needed service that should continue.

The Committee voted to suspend the Respondent's license to practice medicine, stayed the suspension and placed the Respondent on probation for two years. The terms of probation require the Respondent to perform five hundred hours community service.

REQUESTS FOR REVIEW

PETITIONER: The Petitioner has asked that the Review Board overturn the Hearing Committee's Determination and revoke the Respondent's license, because the Hearing Committee's lenient penalty is inconsistent with the Respondent's conviction for Medical Fraud. The Petitioner argues that the Committee's Determination draws a distinction between the Respondent and other physicians who participated in the same scheme as the Respondent did. The Petitioner notes that four of the Respondent's co-defendants in the criminal trial have lost their New York Medical licenses following hearings. In two of those cases the Review Board reviewed the revocations and sustained the Hearing Committee's penalties¹.

The Petitioner also disputes the Committee's conclusion that the Respondent's illegal activity was limited to seven weeks and that the Respondent resigned voluntarily when he perceived irregularities in the practice arrangement. The Petitioner contends that the Hearing Committee could only have reached that conclusion based on the Respondent's testimony. The Petitioner argues that such a conclusion is inconsistent with the criminal conviction for fraud. The Petitioner also points out that the trial judge in the criminal case found that the Respondent perjured himself at the criminal trial.

¹Matter of Saba-Khalil, ARB #95-06; and Matter of Williams, ARB #94-225.

RESPONDENT: First, the Respondent asserts that the Petitioner has waived the right to seek an administrative review by failing to serve the Respondent and his counsel by certified mail rather than regular mail, as Public Health Law §230-c(4) requires. The Respondent contends that the failure to follow the statutory rules for the appeal should lead to a dismissal.

If the Review Board does not dismiss the Petitioner's appeal, the Respondent requests that the Review Board sustain the Hearing Committee's Determination. The Respondent argues that the Committee's penalty is appropriate in view of the mitigating circumstances in this case, such as the Respondent's limited participation in the business arrangement and the Respondent's work at the Roto Care Soup Kitchen.

The Respondent opposes the Petitioner's argument that revocation is the only appropriate penalty for a criminal conviction or that it would be dangerous to assess a different penalty for the Respondent than for the four co-defendants who lost their licenses. The Respondent contends that the statute does not mandate revocation automatically for a criminal conviction, so that each physician's case must be considered individually. The Respondent points out that a fifth co-defendant in the criminal trial, Dr. Sadaplied, did not lose her license.

REVIEW BOARD DETERMINATION

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

The Review Board denies the Respondent's request to dismiss this appeal because the Petitioner did not mail the Notice to the Respondent and counsel by certified mail. The Respondent and the Respondent's counsel have obviously received notice of the appeal in a timely fashion.

The Review Board votes to sustain the Committee's Determination that the Respondent committed professional misconduct, based upon the Respondent's conviction for participating in a scheme to defraud the Medicaid program.

The Review Board votes 5-0 to overturn the Hearing Committee's penalty, because the penalty is not consistent with the finding that the Respondent was convicted of fraud. The Review Board votes to revoke the Respondent's license to practice medicine.

The Respondent has violated the public trust in the Medical profession and used his medical license to commit fraud. The Committee felt that the Respondent's participation in the scheme for only seven weeks was mitigation. The Review Board disagrees. During that seven week association, the Respondent received payments of roughly Eighty-Two Thousand (\$82,000) Dollars from the Medicaid fraud scheme. That is a great sum of money for such a short time. Also, the Respondent kept all the money he obtained, even though he claims he left the scheme because he was concerned about irregularities. Further, the trial court found that the Respondent's participation in the scheme was intentional. The Review Board finds that the Roto Care soup kitchen does not compensate for the Respondent's intentional misconduct. The appropriate penalty for the Respondent's violation of the public trust and the Respondent's intentional misconduct is the revocation of the Respondent's license 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 March 1, 1995 Determination finding Dr. Gilbert Ross guilty of professional misconduct.
2. The Review Board **OVERTURNS** the penalty which the Hearing Committee imposed in their Determination.
3. The Review Board votes unanimously 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.

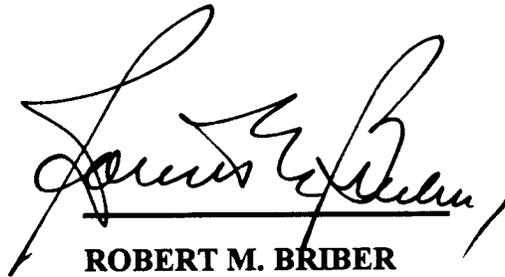
WILLIAM A. STEWART, M.D.

IN THE MATTER OF GILBERT ROSS, 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. Ross.

DATED: Albany, New York

6/7, 1995



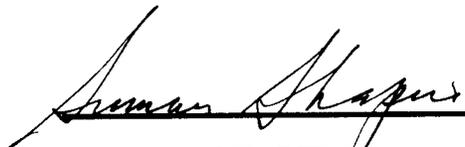
ROBERT M. BRIBER

IN THE MATTER OF GILBERT ROSS, 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. Ross.

DATED: Delmar, New York

June 5, 1995



SUMNER SHAPIRO

IN THE MATTER OF GILBERT ROSS, 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. Ross.

DATED: Brooklyn, New York

_____, 1995



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

WINSTON S. PRICE, M.D.

IN THE MATTER OF GILBERT ROSS, 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. Ross.

DATED: Roslyn, New York

June 5, 1995

A handwritten signature in cursive script, reading "Edward C. Sinnott, M.D.", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF GILBERT ROSS, 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. Ross.

DATED: Syracuse, New York

5 June, 1995

William A. Stewart

WILLIAM A. STEWART, M.D.