



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

November 14, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Silvia Finkelstein, Esq.
NYS Dept. of Health
5 Penn Plaza - Sixth Floor
New York, New York 1001

Ivan S. Fisher, Esq.
746 Fifth Avenue - 9th Floor
New York, New York 1015

Jerome Steiner, M.D.
451 East 83rd Street, Apt. 2B
New York, New York 10028

Effective Date: 11/21/95

RE: In the Matter of Jerome Steiner, M.D.

Dear Mr. Fisher, Ms Finkelstein and Dr. Steiner :

Enclosed please find the Determination and Order (No. 95-180) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. The 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.

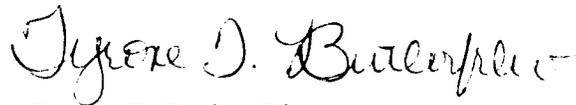
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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 horizontal line at the end.

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
JEROME STEINER, M.D.

ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 95-180

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 October 28, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) August 17, 1995 Determination finding Dr. Jerome Steiner (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice, which the Review Board received on August 30, 1995. James F. Horan served as Administrative Officer to the Review Board. Ivan S. Fisher, Esq., submitted a brief on the Respondent's behalf, which the Review Board received on October 16, 1995. Silvia Finklestein, Esq., submitted a brief on behalf of the Office of Professional Medical Conduct (Petitioner), which the Review Board received on October 24, 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 charged the Respondent, a psychiatrist, with gross negligence in the practice of medicine, committing negligence on more than one occasion, practicing medicine fraudulently, wilfully harassing, abusing or intimidating a patient, sexual contact between a patient and psychiatrist, exercising undue influence on a patient for financial gain of the licensee, engaging in conduct in the practice of medicine evidencing moral unfitness, and failing to maintain adequate records. These charges arose from the Respondent's treatment of a single patient, Patient A, from 1978 to 1988.

The Hearing Committee sustained all the specifications of misconduct against the Respondent. The Committee found the Respondent engaged in sexual contact with Patient A on numerous occasions from Spring 1982 through March, 1988 and that the Respondent performed fellatio on Patient A on numerous occasions from Spring 1982 through March 1988, under the pretext that the sexual conduct was part of treatment or therapy. The Committee found that the Respondent induced Patient A to lend the Respondent Three Thousand (\$3000.00) Dollars in April 1980 and Five Thousand (\$5000.00) Dollars in March, 1985 and asked Patient A to loan the Respondent Five Thousand (\$5000.00) Dollars in September 1985, for the Respondent's personal use. The Committee also found that the Respondent discussed his personal and financial problems during therapy, conducted therapy sessions in restaurants and coffee shops and failed to maintain an adequate record for Patient A.

The Committee concluded that the relationship between therapist and patient is rooted in trust and the therapist must maintain control over the boundaries of the relationship. The Committee stated that it is a deviation from accepted standards of medical practice for the therapist to have physical

contact of a sexual nature with a patient, for a therapist to discuss his own problems or relationships with a patient, for a therapist to socialize with his patients, for a therapist to conduct therapeutic sessions in restaurants and for a therapist to borrow money from a patient for the therapist's own personal use.

The Hearing Committee found that Patient A's credibility was put to test in a lengthy cross-examination lasting several days. The Committee determined that no persuasive evidence was presented to seriously question Patient A's testimony. The Committee noted that the Respondent was the only other fact witness to the sexual allegations and that the Respondent's failure to take the stand and testify resulted in an adverse conclusion by the Committee. The Committee found the documentary evidence in the record supported Patient A's veracity. The Committee concluded that the Respondent had engaged in sexual contact with Patient A for the Respondent's self-serving benefit, and that such sexual contact was an egregious abuse of the trust between a therapist and a patient. The Committee found that the Respondent's sexual contact with Patient A, ostensibly as part of treatment, and the Respondent's inducements to the Patient to lend the Respondent money for the Respondent's use constituted fraud in the practice of medicine. The Hearing Committee voted to revoke the Respondent's license to practice medicine in New York State.

REQUESTS FOR REVIEW

The Respondent asks the Review Board to reverse the Hearing Committee's Determination because the Determination was made in violation of the Respondent's essential rights of due process. The Respondent alleges that the Petitioner's attorney improperly requested and the Hearing Committee improperly drew an adverse conclusion due to the Respondent's failure to testify. The Respondent notes that the Respondent was not called to testify and it was an error to draw an adverse inference against the Respondent for failure to take the stand. The Respondent contends that in an administrative proceeding, unlike a civil case, a Respondent has a constitutional right to due process of law and the Respondent's due process protections were clearly violated. The Respondent also contends that the evidence from Patient A's testimony is unreliable as Patient A was an unstable,

unemployed, psychologically disturbed individual suffering from a condition which caused him to invent allegations against the Respondent. The Respondent contends that drawing an adverse inference from the Respondent's failure to testify, permitted the Committee to credit testimony by Patient A, when the Committee would not have done so otherwise. The Respondent contends that when a license is revoked based upon a denial of due process, that the Determination must be reversed.

The Petitioner argues that the law allows the strongest negative inference to be drawn from an accused party's failure to testify in his or her own behalf in a medical misconduct proceeding. The Petitioner argues that the Hearing Committee's Determination in this matter was, therefore, appropriate and in accordance with applicable law. The Petitioner requests that the Review Board sustain the Determination and Order of the Hearing Committee in its totality.

REVIEW BOARD DETERMINATION

The Review Board has considered the 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 gross negligence, negligence on more than one occasion, fraud in the practice of medicine, willfully harassing, abusing or intimidating a patient either physically or verbally, having sexual contact between psychiatrist and patient, exercising undue influence on a patient for financial gain, engaging in conduct in the practice of medicine which evidences moral unfitness and failure to maintain accurate records. The Committee's Determination is consistent with their findings that the Respondent engaged in multiple instances of both sexual contact and fellatio with Patient A, ostensibly as a part of treatment and/or therapy, that the Respondent induced Patient A to lend him money on two separate occasions and requested a loan on a third occasion, that the Respondent conducted therapy sessions with Patient A in restaurants and coffee shops without any treatment

protocol or rationale, that the Respondent discussed his own personal and financial problems with Patient A in the course of therapy sessions and that the Respondent failed to maintain a record for Patient A that met even minimal standards.

The Respondent has challenged the Hearing Committee's Determination alleging that the Committee improperly drew an adverse inference from the Respondents failure to testify and that the Hearing Committee erred in crediting the testimony by Patient A. The Review Board finds no merit in either of the Respondent's arguments. The Hearing Committee as the finder of fact is the proper party to judge a witnesses' credibility. The Committee found Patient A to be credible after what they noted to be a lengthy and probing cross examination and the Committee found no persuasive evidence to seriously question Patient A's testimony. The Review Board finds that Patient A's credible testimony and the documents in evidence that support Patient A's testimony constitute sufficient evidence to prove misconduct by the Respondent, even without drawing the adverse inference from the Respondent's failure to take the stand.

The Review Board votes unanimously to sustain the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State. The Review Board agrees with the Hearing Committee that the sexual contact between the Respondent and Patient A was for the self serving benefit of the Respondent and that the conduct was an egregious abuse of Patient A's trust in the Respondent. The Respondent exploited that trust further by borrowing money from Patient on two occasions and requesting a third loan. Considering the findings of misconduct in this case, revocation is the only appropriate penalty.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee on Professional Medical Conduct's August 17, 1995 Determination finding the Respondent Dr. Jerome Steiner guilty of Professional Misconduct.

2. The Review Board **SUSTAINS** the Hearing Committee's Determination revoking 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 JEROME STEINER, 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. Steiner.

DATED: Roslyn, New York

November 16, 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 JEROME STEINER, 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. Steiner.

DATED: Brooklyn, New York

11/9, 1995



WINSTON S. PRICE, M.D.

NEW YORK STATE DEPARTMENT OF HEALTH

IN THE MATTER OF JEROME STEINER, 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. Steiner.

DATED: Roslyn, New York

_____, 1995

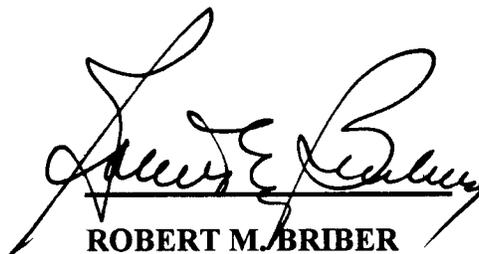
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF JEROME STEINER, 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. Steiner.

DATED: Albany, New York

11/10, 1995



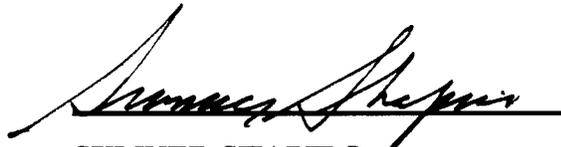
ROBERT M. BRIBER

IN THE MATTER OF JEROME STEINER, 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. Steiner.

DATED: Delmar, New York

Nov. 10, 1995


SUMNER SHAPIRO

IN THE MATTER OF JEROME STEINER, 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. Steiner.

DATED: Syracuse, New York

10 Nov., 1995

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in black ink and is positioned above a solid horizontal line.

WILLIAM A. STEWART, M.D.