



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

January 30, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Neal Stephen Simon, Esq.
460 West 34th Street- 12th Floor
New York, New York 10001

Boris Barry Benson, M.D.
75 Hopper Farm Road
Upper Saddle River, New Jersey

Kevin C. Roe, Esq.
Rm. 2429 Corning Tower
Empire State Plaza
Albany, New York 12237-0032

RE: In the Matter of Boris Barry Benson, M.D.

Effective Date: 2/6/95

Dear Dr. Benson, Mr. Simon and Mr. Roe:

Enclosed please find the Determination and Order (No. 94-224) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

RECEIVED
JAN 31 1995
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

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" followed by a stylized flourish or initials.

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

BORIS BARRY BENSON, M.D.

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
BPMC 94-224**

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 by teleconference on December 30, 1994 to review the Hearing Committee on Professional Medical Conduct's October 25, 1994 Determination finding Dr. Boris Barry Benson (Respondent) guilty of violating probation and revoking Dr. Benson's license to practice medicine in New York State. The Respondent requested the review through a Notice which the Board received on November 7, 1994. James F. Horan served as Administrative Officer to the Review Board. Neal S. Simon, Esq., submitted a brief for the Respondent which the Review Board received on December 5, 1994. Kevin C. Roe submitted a reply brief for the Office of Professional Medical Conduct on December 9, 1994.

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 with violating the terms from a previous probation. The previous probation resulted from an April 16, 1992 Consent Order with the New York State Board for Professional Medical Conduct.

The Hearing Committee found that, as part of the 1992 Consent Order, the Respondent had admitted that the State of New Jersey had suspended the Respondent's license to practice medicine for three years. The New Jersey suspension followed findings that the Respondent had diverted and improperly used controlled substances and had tested positive for cocaine and barbituites. The New Jersey Board for Medicine imposed requirements upon the Respondent for the period following his suspension which included provisions that the Respondent not dispense nor possess controlled substances and not consume or administer to himself or possess controlled substances.

Pursuant to the 1992 New York Consent Order, the Respondent was on probation for three years. The terms of New York probation required that the Respondent comply with all restrictions which the New Jersey 1991 Order imposed.

The Hearing Committee Determined that the Respondent had violated his New York probation by failing to comply with the restrictions under the New Jersey Order. The Committee based their Determination on the New Jersey Board's own October 22, 1993 finding that the Respondent had materially violated the prior order by possessing an ampule of Sublimaze. The Committee found the Respondent had violated the New Jersey Order and, thereby, his New York probation because

Sublimaze is a controlled substance.

The Hearing Committee voted to revoke the Respondent's license to practice medicine in New York State. The Committee found that Dr. Benson's testimony at the hearing was generally questionable and at times implausible. The Committee found that the Respondent's past drug abuse, his positive urine samples, his failure to cooperate with New Jersey representatives and his testimony before the Committee demonstrated a lack of integrity, character and moral fitness.

REQUESTS FOR REVIEW

RESPONDENT: The Respondent asks that the Review Board reject the Hearing Committee's Determination because the evidence from the Respondent's hearing does not support the finding of guilt and because the Committee's Penalty is unduly harsh and inconsistent.

The Respondent contends that the Hearing Committee had the authority to make an independent determination whether the Respondent violated the New Jersey restrictions and that the Committee was not bound by the New Jersey Board's findings on the issue. The Respondent argues that there was no evidence that the Respondent possessed Sublimaze and that the Review Board should overturn the Hearing Committee's finding on that charge.

The Respondent also argues that the Hearing Committee's Penalty of revocation is shocking, since the only charge against the Respondent was the possession of Sublimaze.

PETITIONER: The Petitioner argues that the question of whether the Hearing Committee's Determination is supported by a preponderance of the evidence is not within the Review Board's jurisdiction. The Petitioner argues further, that regardless of the Review Board's authority on the question, the Hearing Committee's Determination was supported by the Record.

The Petitioner contends that the Hearing Committee's Penalty is appropriate due to the Respondent's long history of drug addiction and professional misconduct as set out in the Hearing Committee's Report.

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 violating his probation. The Determination was consistent with the Committee's findings and conclusions that the New Jersey Board had found that the Respondent violated the restrictions on his New Jersey license.

The Review Board votes to sustain the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State. The Determination is consistent with the Committee's Finding that the Respondent had violated his probation and is appropriate in light of the Respondent's history of drug abuse, his failure to cooperate with New Jersey representatives, his questionable testimony at the hearing and his demonstrated lack of character, integrity and moral fitness.

The Respondent was allowed to continue practicing medicine in New York, despite his past history and lack of character, only on the condition that he abide by conditions of probation designed to protect the public and to ensure that the Respondent would not return to his past pattern of abuse. The violation of those terms of probation and the Respondent's testimony at the hearing demonstrate that the Respondent can not be trusted. There was no legitimate medical reason for the Respondent to have Sublimaze in his office. If the Respondent will not abide by the conditions of the probation which is necessary to protect the public, then there is no alternative but to revoke 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 on Professional Medical Conduct's October 25, 1994 Determination finding Dr. Boris Barry Benson guilty of violating the terms of a prior probation.
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.

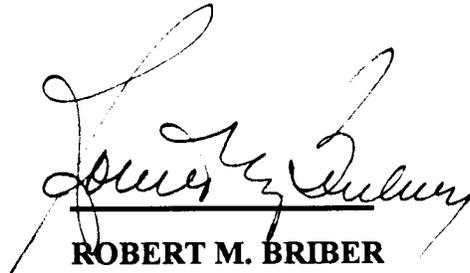
WILLIAM B. STEWART, M.D.

IN THE MATTER OF BORIS BARRY BENSON, 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. Benson.

DATED: Albany, New York

1/9, 1995



ROBERT M. BRIBER

IN THE MATTER OF BORIS BARRY BENSON, 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. Benson.

DATED: Delmar, New York

January 7, 1995

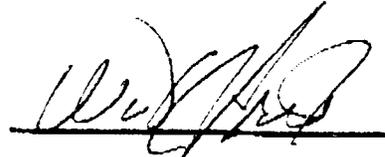

SUMNER SHAPIRO

IN THE MATTER OF BORIS BARRY BENSON, 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. Benson.

DATED: Brooklyn, New York

_____, 1995

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

WINSTON S. PRICE, M.D.

IN THE MATTER OF BORIS BARRY BENSON, 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. Benson.

DATED: Roslyn, New York

July 5, 1995

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

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF BORIS BARRY BENSON, 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. Benson.

DATED: Syracuse, New York

 , 1995

A handwritten signature in cursive script, appearing to read "William A. Stewart", written over a horizontal line.

WILLIAM A. STEWART, M.D.