



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*

July 22, 1996

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Paul Stein, Esq.  
NYS Department of Health  
5 Penn Plaza-Sixth Floor  
New York, New York 10001

Henry Joseph Beckwitt, M.D.  
4770 East Princeton Avenue  
Englewood, California 80110

**RE: In the Matter of Henry Joseph Beckwitt, M.D.**

Effective Date:07/29/96

Dear Mr. Stein and Dr. Beckwitt:

Enclosed please find the Determination and Order (No.96-42) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:rlw

Enclosure

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

COPY

IN THE MATTER  
OF

HENRY JOSEPH BECKWITT, M.D.

ADMINISTRATIVE  
REVIEW BOARD  
DECISION AND  
ORDER NUMBER  
ARB-96-42

The Respondent Henry Joseph Beckwitt, M.D., (Respondent), challenges a Hearing Committee on Professional Medical Conduct's (Hearing Committee) Determination that the Respondent committed misconduct in a sister state and that the Respondent must serve two years probation, with monitoring, if the Respondent moves to New York to practice medicine. After reviewing this case, the Administrative Review Board for Professional Medical Conduct (Review Board) sustains the Hearing Committee's Determination that the Respondent's sub-standard care for six patients in Colorado would constitute misconduct in New York pursuant to Education Law §6530(a)(d) (McKinney Supp. 1996). The Board also sustains the Committee's Determination that the public's protection requires an additional probation period if the Respondent wishes to start a medical practice in New York.

**PROCEDURAL HISTORY**

Hearing Committee members Randolph Manning, Chair, Adrain Edwards, M.D. and Richard Pierson, Jr., M.D. rendered their Determination in the Respondent's case on March 6, 1996. Administrative Law Judge Jeffrey Armon served as the Committee's Administrative Officer. The Respondent commenced this review by filing a Review Notice, which the Board received on March 18, 1996. The Respondent submitted a review brief on his own behalf, which the Board received on April 29, 1996. Paul Stein, Esq. submitted a brief for the Bureau of Professional Medical Conduct (Petitioner), which the Review Board received on April 22, 1996. The Review Notice stayed the Committee's penalty automatically, pending a final Determination on the review [N.Y. Public Health Law §230-c (4)(a) (McKinney Supp 1996)].

Review Board Members Robert M. Briber, Winston S. Price, M.D., Edward C. Sinnott, M.D., Sumner Shapiro and William H. Stewart, M.D. held deliberations for this review on May 3, 1996. Administrative Law Judge James F. Horan served as the Review Board's Administrative Officer. The Board reached this Determination after reviewing the hearing record, the Committee's Determination and the parties' briefs.

### **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)(d), which provide an expedited hearing in cases in which professional misconduct charges against a Respondent are based upon an action by another state, which results in disciplinary action, for conduct which would amount to misconduct if committed in New York State. The Petitioner alleged that Colorado disciplined the Respondent for conduct which would constitute practicing with negligence on more than one occasion and gross negligence if committed in New York. 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 Colorado State Board of Medical Examiners (Colorado Board) had issued a Stipulation and Final Agency Order in December 1993, following a formal complaint by the Colorado

Attorney General in April, 1993. The Formal Complaint alleged that the Respondent's treatment for six patients constituted grossly negligent medical practice and/or two or more acts or omissions which failed to meet generally accepted standards of medical practice. The Stipulation placed the Respondent's medical license on probationary status for five years. The Stipulation allowed the Respondent to apply to reduce the penalty to two years probation, upon showing that he performed acceptably while under restriction. The Colorado Board reduced the Respondent's probation to two years on December 21, 1995, which terminated the Respondent's probation immediately and restored his Colorado license to unrestricted status.

The Committee concluded that the Respondent's conduct, if committed in New York, would amount to practicing medicine with negligence on more than one occasion and gross negligence (N.Y. Education Law §§6530(3) & (4)). The Committee voted to suspend the Respondent's New York license for two years, stayed the suspension and placed the Respondent on two years probation. The Committee provided that the probation should commence when the Respondent advises the Director of the Office of Professional Medical Conduct that the Respondent intends to practice in New York.

In discussing their penalty determination, the Committee stated that the Respondent practiced in a hospital based setting in Colorado. The Committee expressed concern over the Respondent's testimony that he was reducing his Colorado hospital practice and that any practice in New York would likely be office-based. The Committee concluded that public protection in New York necessitated probation with practice monitoring, due to the Respondent's proven substandard practice in Colorado and his intent to practice in an unsupervised setting in New York.

#### **REQUESTS FOR REVIEW**

The Respondent's brief contends that:

- the Respondent's six years in practice without further problems eliminate the need for further action against him in New York;
- there was no basis to monitor his non-hospital practice, because Colorado made no references to the Respondent's non-hospital Colorado practice;

- since New York accepted Colorado's findings about his guilt on the negligence counts, New York should also accept the Colorado penalty and its satisfaction; and
- that the monitoring on his practice has been sufficient enough to protect the public in any State.

The Petitioner opposes any modification in the Committee's penalty because:

- a private office setting lacks the oversight and quality control that a hospital setting offers;
- a comprehensive monitoring program, including random office visits, will ensure that the Respondent can practice safely in the unstructured office setting; and
- the Respondent's substandard care for six patients in Colorado warrants a stayed suspension with monitoring.

#### **REVIEW BOARD DETERMINATION**

The Review Board votes to sustain the Hearing Committee's Determination finding that the Respondent was guilty of professional misconduct in violation of Education Law §6530(9)(d). Preponderant evidence demonstrated that the Colorado Board disciplined the Respondent for conduct which would constitute gross negligence and negligence on more than one occasion, if the Respondent had committed such conduct in New York.

The Board votes to sustain the Hearing Committee Determination suspending the Respondent's New York's license, staying the suspension and placing the Respondent on two years probation, under the probation terms that appear in Appendix II following the Committee's Determination. The sanction for such repeated, substandard patient care must assure that the Respondent has corrected his deficient past practices. The Review Board finds that the Respondent's two year probation in Colorado failed to offer a sufficient monitoring period to correct the Respondent's deficiencies. Public protection necessitates a further monitoring period because the Respondent indicated that he would probably conduct an office-based practice in New York. Monitoring would provide the supervision

and oversight over the Respondent that would be otherwise absent in an office-based practice. The monitoring would assure that the Respondent practices pursuant to accepted medical standards

The Review Board rejects the Respondent's argument that New York must accept the Colorado penalty and its satisfaction because New York had accepted the Colorado determination on guilt. Our duty to protect New York's citizens obligates the Hearing Committee and the Board to impose a penalty that will assure our citizens' protection. The Board has concluded that the Colorado probation term failed to provide a sufficient monitoring period to correct the Respondent's sub-standard practice. The Board and the Committee have concluded that the Respondent's possible office-based New York practice will require monitoring to provide the oversight that an office-based setting lacks.

We also reject the Respondent's contention that the Committee's penalty affects a practice aspect in which no problem existed in Colorado. The Board concludes that the Respondent's Colorado deficiencies involved sub-standard patient care. The Board can not allow the Respondent to practice in New York without a safe-guard in place to assure that the Respondent has corrected those deficiencies. The Committee's probation terms require a practice monitor, who will provide the safe-guard to protect the public and to allow the Respondent to commence a practice in New York

**ORDER**

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

1. The Review Board **SUSTAINS** the March 6, 1996 Determination finding the Respondent guilty of professional misconduct.
2. The Review Board **SUSTAINS** the Hearing Committee's Determination, suspending the Respondent's New York license, staying the suspension and placing the Respondent on two years probation. The probation shall commence at the time the Respondent begins practice in New York State.

**ROBERT M. BRIBER**

**SUMNER SHAPIRO**

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

**EDWARD SINNOTT, M.D.**

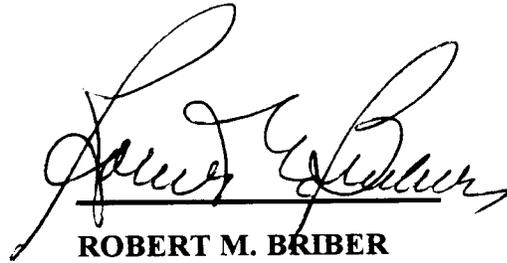
**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF HENRY JOSEPH BECKWITT, 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

**DATED:** Albany, New York

*July 19*, 199~~8~~

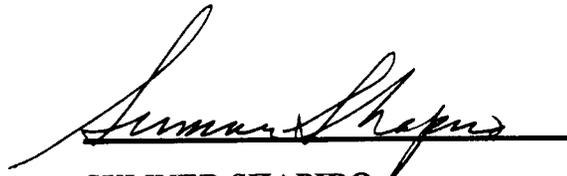
  
**ROBERT M. BRIBER**

**IN THE MATTER OF HENRY JOSEPH BECKWITT, 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

**DATED: Delmar, New York**

*July 19, 1996*

  
**SUMNER SHAPIRO**

**IN THE MATTER OF HENRY JOSEPH BECKWITT, 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.

**DATED: Brooklyn, New York**

JULY 19, 1996  
WSP

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

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

IN THE MATTER OF HENRY JOSEPH BECKWITT, 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

DATED: Roslyn, New York

July 8, 1996

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", written over a horizontal line. There is a small mark resembling the number "24" to the right of the signature.

EDWARD C. SINNOTT, M.D.

**IN THE MATTER OF HENRY JOSEPH BECKWITT, 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

**DATED: Syracuse, New York**

*19 July, 1996*

*William A. Stewart*

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