



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

September 14, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel Guenzburger, Esq.
NYS Dept. of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Anthony Z. Scher, Esq.
Wood & Scher
The Harwood Building
Scarsdale, New York 10583

George Colvin, D.O.
224 N. Wellwood Avenue
Lindenhurst, New York 11757

RECEIVED
SEP 14 1995

PROFESSIONAL
MEDICAL CONDUCT

RE: In the Matter of George Colvin, D.O.

Dear Mr. Guenzburger, Mr. Scher and Dr. Colvin :

EFFECTIVE DATE 09/21/95

Enclosed please find the corrected Determination and Order (No. 93-195R) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This corrected copy is being sent to you due to an error in the first document sent to you on September 13, 1995. 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.

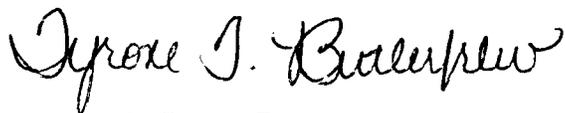
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Enclosure

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

IN THE MATTER
OF
GEORGE COLVIN, D.O.

ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 93-195R

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 August 18, 1995 to reconsider the appropriate penalty for professional misconduct in the case of Dr. George Colvin (Respondent). The Board held the deliberations pursuant to the April 21, 1995 Order from the Appellate Division for the Third Judicial Department.¹ James F. Horan served as Administrative Officer to the Review Board. Following the Appellate Division's Decision, Anthony Z. Scher, Esq. submitted a brief for Dr. Colvin, which the Board received on August 4, 1995. Daniel Guenzburger, Esq. submitted a brief for the Office of Professional Medical Conduct (Petitioner), which the Board received on August 14, 1995. Each party in this case had an opportunity to submit briefs to the Board concerning the proper penalty.

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

¹Matter of Colvin v. Chassin,--AD2d--, 265 NYS 2d 351, 1995 New York Appellate Division Lexis 4402 (Third Dept. 1995).

- 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 Office of Professional Medical Conduct charged the Respondent with negligence on more than one occasion, incompetence on more than one occasion and failing to maintain adequate records. The charges involved the Respondent's practice as a radiologist and the services which the Respondent provided in connection with the treatment of five persons, Patients A through E.

The Hearing Committee determined that the Respondent was guilty of negligence on more than one occasion and incompetence on more than one occasion in the cases of Patient's A, B, D and E. The Committee found that the Respondent had failed to maintain adequate records for Patients A and D. The Hearing Committee made no findings in the case of Patient C. The Committee noted that the Respondent practices both Radiology and general medicine, but that all of their findings as to negligence, incompetence and inadequate record keeping came in relation to the Respondent's practice as a Radiologist.

The Hearing Committee found that the Respondent had deviated from acceptable medical practice; that he had failed to adequately supervise the production of the X-rays for Patients A, B, D and E; and that he had used an out-of-date technique in diagnosing the condition of Patient A, which had no practical diagnostic value. The Committee voted to revoke the Respondent's license to practice medicine in the State of New York. The Committee felt there was no way to limit the Respondent from practicing Radiology but allow the Respondent to continue the general practice of medicine.

Following the Committee's Determination, the Respondent filed a Notice of Review. In the brief to the Review Board, the Respondent argued that the Hearing Committee's penalty was too severe and that the Hearing Committee erred in concluding that they could not impose a penalty less severe than revocation. The Respondent argued that because there were no findings of misconduct concerning the Respondent's general practice and that the Committee could have limited the Respondent's license only to forbid the Respondent from practicing Radiology. The Respondent argued further that the Hearing Committee explored issues in the hearing beyond those raised by the Statement of Charges. In response to the Respondent's appeal, the Petitioner urged the Review Board to sustain the Hearing Committee's Determination and Penalty.

THE REVIEW BOARD'S INITIAL DETERMINATION

The Review Board voted to sustain the Hearing Committee's Determination and Order finding Dr. Colvin guilty of negligence and incompetence on more than one occasion and of failure to maintain adequate records and voted to sustain the Hearing Committee's Determination to revoke Dr. Colvin's license to practice medicine in New York. The Board found that the penalty was consistent with the Committee's findings and conclusions that the Respondent was guilty of repeated acts of negligence and incompetence and the penalty was appropriate in view of the Committee's findings and conclusions that the Respondent was guilty of repeated acts of negligence and incompetence. The Review Board voted further to sustain the Hearing Committee's Determination to fine Dr. Colvin Forty Thousand (\$40, 000.00) Dollars.

THE APPELLATE DIVISION REMAND

The Appellate Division found that the penalty, which the Hearing Committee imposed and which the review Board sustained, was unduly harsh. The Court found that, although the deficiencies in the Respondent's practice as a radiologist were well documented, the Court found that the record

does not demonstrate a lack of skill or knowledge that would implicate the Respondent's general competence to practice medicine. The Court stated that although the record would support limiting the Respondent's license to practice medicine, the record did not support the determination to revoke the Respondent's license. The Court found that the Committee's revocation penalty was based in part on the Committee's erroneous belief that the Committee could not limit a license. Further, the Court found that the Review Board and the Hearing Committee had committed an error of law by assessing a Forty Thousand (\$40,000.00) Dollar civil penalty against the Respondent. In that instance, the Court found that two Ten Thousand (\$10,000.00) Dollar penalties for two sustained specifications were based on the same underlying conduct.

The Court annulled the Board's Determination revoking the Respondent's license and remitted the case to the Board for reconsideration of the penalty in accordance with the Court's decision. The Court also reduced the civil penalty to Thirty Thousand (\$30,000.00) Dollars.

THE PARTIES' RECOMMENDATIONS

The Respondent contends that there would be no basis on the record for any penalty addressing the Respondent's general practice. The Respondent contends further that the Review Board should consider the fact that the Respondent lost seven months from practice from the time the Review Board revoked his license to the time the Appellate Division vacated the revocation. The Respondent also contends that the Board should also consider the fact that the Appellate Division's decision vacated the revocation, and that the Respondent has been penalized further due to the Thirty Thousand (\$30,000.00) Dollar civil penalty. The Respondent argues that the sustained specifications relate only to the Respondent's consulting work for Dr. Kurk, that there was no patient harm and that the substantive charges relating to X-rays involved only three patients. The Respondent argues that the Board need not limit the Respondent from practicing radiology. The Respondent recommends that the Respondent be limited to practicing radiology in his own office and or a supervised setting, while the Respondent undergoes continuing medical education during a probationary period.

The Petitioner has asked that the Respondent's license be limited from the practice of radiology, and that the Respondent's general practice be limited to a supervised setting. The Petitioner also recommends that the Review Board impose the Thirty Thousand (\$30,000.00) Dollar civil penalty which the Appellate Division authorized. The Petitioner argued that the Respondent was aware of continuing problems in producing X-rays which he interpreted without taking steps to correct problems with machinery or to find a more qualified technician to position patients and operate the machines. The Petitioner argues that the failure to respond adequately to these problems reveals inept management and organizational skills, which would pose a threat to patients in a family practice setting. The Petitioner argues that the Review Board would be remiss in allowing the Respondent to pursue a family practice without restriction.

REVIEW BOARD DETERMINATION

The Review Board has considered the record below, the Parties' recommendations and the Appellate Division's Order.

The Review Board votes to limit the Respondent's license to prohibit him from practicing radiology. This limitation includes a ban on the Respondent taking X-rays in his general practice. The Board votes further to limit the Respondent's license to prohibit the Respondent from owning X-ray equipment and Diagnostic and Ultrasound Equipment while the Respondent retains his license to practice medicine. The Board also votes to lower the civil penalty in this case to Twenty Thousand (\$20,00.00) Dollars.

First, as to the Civil Penalty, we note that one of the sustained specifications against the Respondent, the Fourth Specification involved misdating an X-ray by one day. (Hearing Committee Finding of Fact 32) The Board has reconsidered the penalty relating to the Specification and we find that a one day error in the date, standing alone, does not justify a Ten Thousand (\$10,000.00) Dollar penalty. The Respondent also received a Ten Thousand (\$10,000.00) Dollar penalty for poor record keeping sustained under the Third Specification and the Board finds that this penalty is a sufficient sanction against the Respondent for his poor record keeping.

The Board votes to limit the Respondent from practicing radiology because the Determination by the Committee that the Respondent committed repeated acts of negligence and incompetence demonstrate that the Respondent should be limited from practicing radiology. We disagree with the contention in the Respondent's brief that the sustained specifications in this case do not relate to serious misconduct. The Hearing Committee found that the Respondent was aware of continuing problems with X-rays produced in Dr. Kurk's office, due to faulty equipment and to poor performance by a technician whom the Respondent employed and supervised. The Hearing Committee found that the Respondent was responsible for the films involved and that the films involved demonstrated a pattern of neglect with respect to labelling, positioning, processing and exposure techniques. The Committee found that when there is a pattern of poor quality films, a radiologist should refuse to interpret the films, should fix this problem, or if the radiologist must render a report on a poor film, the Radiologist should indicate to the referring physician that there was an incomplete evaluation and that additional film is necessary. The Committee found that the Respondent had rendered diagnoses on films of unacceptable quality, that the Respondent had failed to document that the films were substandard and additional films were necessary and that the Respondent had failed to supervise adequately an X-ray technician in the Respondent's employment and under the Respondent's supervision.

The Respondent clearly failed to follow the accepted medical standards in the practice of radiology in the cases of several patients over an extended period of time. The Review Board agrees with the Hearing Committee that the Respondent should no longer practice radiology. We find nothing in the record that would indicate that the Respondent's deficiencies in radiology could be corrected through re-education. The Respondent knew there were problems with the films produced at Dr. Kurk's practice and the Respondent continued to evaluate those films and continued to bill patients for diagnoses on these unacceptable films.

The Review Board votes further to limit the Respondent's license to prohibit him from owning X-ray, diagnostic or ultrasound equipment while the Respondent retains his license to practice medicine. The Review Board feels that this restriction is necessary to assure that the Respondent will not practice radiology in his private practice. The Board feels that by imposing this restriction we can

allow the Respondent to continue his family practice in a private setting and that it will not be necessary to limit the Respondent to a supervised setting. We believe that the Hearing Committee imposed revocation as a penalty initially, not because the Committee did not know they could limit a license, but because the Committee felt that a limitation banning radiology in a private practice could not be enforced as long as the physician could own X-ray equipment. The Board believes that the ownership limitation will assure that the limitation on the Respondent's license can be enforced.

ORDER

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

1. The Respondent's license to practice medicine in New York is **LIMITED** to prohibit the Respondent from practicing radiology and this limitation will include a ban on taking X-rays as part of the Respondent's private practice.
2. The Respondent's license to practice medicine is **LIMITED** to prohibit the Respondent from owning X-ray, diagnostic or ultrasound equipment for so long as the Respondent continues to hold his license to practice medicine in New York State.
3. The Respondent shall pay a civil penalty of Twenty-Thousand(\$20,000.00) Dollars.
4. The Respondent shall pay the civil penalty within thirty days from the effective date of this Order.
5. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of laws relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees; and non-renewal of permits or licenses (Tax Law, Section 171(27); State Finance Law, Section 18; CPLR, Section 5001; Executive Law, Section 32)

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF GEORGE COLVIN, 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. Colvin.

DATED: Albany, New York

Sept 8, 1995



ROBERT M. BRIBER

IN THE MATTER OF GEORGE COLVIN, 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. Colvin.

DATED: Delmar, New York

Sept 8, 1995

A handwritten signature in cursive script, appearing to read "Sumner Shapiro", is written over a solid horizontal line.

SUMNER SHAPIRO

IN THE MATTER OF GEORGE COLVIN, 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. Colvin.

DATED: Brooklyn, New York

9/8, 1995



WINSTON S. PRICE, M.D.

IN THE MATTER OF GEORGE COLVIN, 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. Colvin.

DATED: Roslyn, New York

Sept 8, 1995

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", with a horizontal line underneath it.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF GEORGE COLVIN, 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. Colvin.

DATED: Syracuse, New York

8 Sept, 1995

William A Stewart

WILLIAM A. STEWART, M.D.