



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

May 5, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Karen Eileen Carlson, Esq.
NYS Department of Health
Corning Tower Room 2438
Empire State Plaza
Albany, New York 12237

Thomas Stephenson Holmes, M.D.
31431 NE 108th Street
Carnation, WA 98014

RE: In the Matter of Thomas Stephenson Holmes, M.D.

Dear Ms. Carlson and Dr. Holmes:

Enclosed please find the Determination and Order (No.97-06) 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.

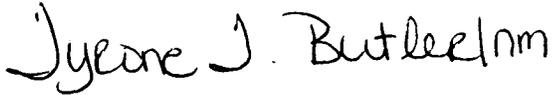
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street-Fourth Floor
Troy, New York 12180

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/nm". The signature is written in a cursive style with a large initial 'T' and 'B'. The letters 'nm' are written at the end of the signature.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

COPY

IN THE MATTER
OF

THOMAS STEPHENSON HOLMES, M.D.

Administrative Review from a Determination by a Hearing
Committee on Professional Medical Conduct

ADMINISTRATIVE
REVIEW BOARD
DETERMINATION
ARB NO. 97-06

Before: **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D., and WILLIAM A. STEWART, M.D.,** Board Members.

After a hearing into charges that the Respondent **DR. T. STEPHENSON HOLMES** (Respondent) committed conduct in Washington State that would constitute professional misconduct under New York Law, a Hearing Committee on Professional Medical Conduct (Committee) sustained the charges, suspended the Respondent's license to practice medicine in New York State (License), stayed the suspension and placed the Respondent on three years probation. In this proceeding pursuant to N. Y. Pub. Health Law §230-c(4)(a) (McKinney's Supp. 1997), the Respondent asks the Administrative Review Board for Professional Medical Conduct (Board) to modify the Committee's January 10, 1997 Determination, arguing that the suspension and additional probation create a more severe penalty than he must serve in the state where he committed the misconduct. After reviewing the record in this case and conducting Deliberations by telephone conference on April 18, 1997, the Board votes to sustain the Committee's Determination suspending the Respondent's License, staying the suspension upon the Respondent's return to New York, and placing the Respondent on probation in New York, for a period in addition to any probation the Respondent serves in Washington. The Board does modify certain probation conditions.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination. The Respondent represented himself in this proceeding. **KAREN EILEEN CARLSON, ESQ.** (Assistant Counsel) represented the New York State Department of Health (Petitioner).

COMMITTEE DETERMINATION ON THE CHARGES

Under N.Y. Pub. Health Law §230(7)(McKinney's Supp. 1997), three member Committees from the State Board for Professional Medical Conduct (BPMC) conduct disciplinary proceedings to determine whether physicians have committed professional misconduct. The Petitioner filed charges with BPMC alleging that the Respondent violated N.Y. Educ. Law §6530(9)(d)(McKinney's Supp. 1997), because a sister state's disciplinary authority took disciplinary action against the Respondent for conduct that would constitute negligence on more than one occasion, a violation under N.Y. Educ. Law §6530(3)(McKinney's Supp. 1997), if the Respondent had committed such conduct in New York. In addition to the Respondent's New York License, the Respondent holds a License in Washington State, where the conduct at issue in this proceeding occurred. The Petitioner brought the case pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney's Supp. 1997), which authorizes BPMC to refer cases, dealing with administrative violations from other forums, to a Committee as an expedited proceeding (Direct Referral). The statute limits such proceeding strictly to receiving evidence to determine the nature and severity of the penalty which the Committee will impose for the administrative violation.

Three BPMC Members, **ARSENIO G. AGOPOVICH, M.D. (Chair)**, **ALBERT L. BARTOLETTI, M.D.** and **NANCY J. MACINTYRE, R.N., Ph.D** comprised the Committee who conducted the hearing in the matter and who rendered the Determination which the Board now reviews. Administrative Law Judge **JONATHAN M. BRANDES** served as the Committee's Administrative Officer. The Respondent testified at the hearing and both parties introduced documents into the record. The Committee determined that the State of Washington, Medical Quality Assurance Committee (Washington Commission) disciplined the Respondent in October, 1995 for prescribing medications negligently for three separate psychiatric patients. The Respondent stipulated that he failed to exercise the requisite care standard to the three patients and created an unreasonable risk for harm to the patients. The Washington Commission placed the Respondent on five years probation, that included provisions:

- banning the Respondent from solo practice;
- assigning the Respondent a proctor for monthly case review;

- ordering the Respondent to complete continuing medical education (CME) courses; and ,
- ordering the Respondent to use triplicate prescription forms and submit copies to the Commission each month.

The Committee determined that the Respondent's Washington conduct would amount to practicing medicine with negligence on more than one occasion under New York Law.

In considering a penalty, the Committee drew a favorable impression from the Respondent's testimony and from the Washington Commission's May 1, 1996 Order, modifying certain conditions in the Washington Probation [see Respondent's Exhibit B]. The Committee also found that the Respondent engaged in extremely challenging and important work, treating serious psychiatric cases in a difficult setting. The Committee concluded from these factors that the Respondent posed a low likelihood for repeating his misconduct. The Committee found no basis to revoke the Respondent's New York License, but, they also found that public protection required that the Respondent should undergo further probation, under terms similar to the Washington probation, if the Respondent ever resumes a practice in New York. The Committee's Penalty suspends the Respondent's License , stays the suspension upon the Respondent's return to practice in New York and places the Respondent on probation for three years, with different conditions on the suspension stay and the probation, depending on whether the Respondent fulfills the Washington obligations before he returns to New York.

REVIEW HISTORY AND ISSUES

The Respondent filed a Notice and Brief requesting this review, which the Board received on January 31, 1997. The Record for review contained the Committee's Determination, the hearing transcripts and exhibits, the Respondent's January 31, 1997 Notice/Brief and a Reply Brief from the Petitioner, that the Board received on February 28, 1997.

The Respondent requests that the Board overrule the Committee's Determination to suspend the Respondent's New York License and that the Board rewrite the probation terms to provide for only five years total probation between New York and Washington State combined. The Respondent

argues that the Committee imposed a more severe penalty than Washington State, even though the Committee found mitigating factors in the Respondent's case, and that the Committee's three year New York probation would increase substantially his penalty time, even if he has fulfilled the Washington State probation.

The Petitioner, contending that the stayed suspension and probation constitute an appropriate penalty that provides adequate protection, contests the Respondent's statement characterizing the penalty as excessively punitive and argues that the Committee acted within their authority in requiring monitoring in New York.

THE BOARD'S REVIEW AUTHORITY

In reviewing a Committee's Determination, the Board determines: whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law, and whether the Penalty is appropriate and within the scope of penalties which the law permits [N.Y. Pub Health Law §230(10)(i), §230-c(1) & 230-c(4)(b)(McKinney's Supp. 1997)]. The Board may remand a case to the Committee for further consideration [N.Y. Pub. Health Law §230-c(4)(b)(McKinney's Supp. 1997)]. The Board's Determinations result from a majority concurrence among the Board's Members [N.Y. Pub. Health Law §230-c(4)(c)(McKinney's Supp. 1997)].

The Review Board may substitute our judgement for that of the Committee, in deciding upon a penalty **Matter of Bogdan v. Med. Conduct Bd.** 195 AD 2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, **Matter of Spartalis v. State Bd. for Prof. Med. Conduct** 205 AD 2d 940, 613 NYS 2d 759 (Third Dept. 1994), and in determining credibility **Matter of Minielly v. Comm. of Health** 222 AD 2d 750, 634 NYS 2d 856 (Third Dept. 1995).

THE BOARD'S DETERMINATION

The Board has considered the record below and the parties' briefs. The Board sustains the Committee's Determination finding that the Respondent committed conduct in Washington State that qualifies as misconduct in New York under N.Y. Educ. Law §§ 6530(9)(d) and 6530(3) (McKinney's Supp. 1997). Neither party contested the Committee's findings on the charges.

The Board further sustains the Committee's Determination to impose a stayed suspension against the Respondent's License and to order the Respondent to undergo an additional period on probation, if he chooses to return to practice in New York. We find nothing harsh or inappropriate about the penalty. In assessing what penalty to impose against a Respondent currently serving a disciplinary penalty in a sister state, the Board has expressed our concern previously about imposing any penalty that would encourage a Respondent to move to New York in order to escape a penalty or retraining/monitoring program in the sister state. We have felt special concern in cases in which the other state's penalty included an ongoing retraining or treatment program that we found essential to correcting or improving the problem that resulted in the Respondent's misconduct. To address those concerns the Board has approved penalties that 1.) suspended a Respondent's New York License totally, until the Respondent completes satisfactorily the entire sister state penalty, and 2.) imposed an additional probation term if the Respondent chose to return to New York to practice. The Board found the additional probation as essential to assure that the Respondent has corrected or addressed his prior problems sufficiently, so that the Respondent can practice under acceptable standards here in New York.

In the Respondent's case, the Hearing Committee found sufficient mitigating factors to convince them that the Respondent posed a low likelihood for repeating his misconduct and the Committee crafted a penalty that would allow the Respondent to return to New York practice without fulfilling his entire penalty in Washington State. The Board accepts the Committee's assessment about the Respondent and we agree further that the Respondent's past misconduct still requires that the Respondent serve probation here in New York, to assure that he will practice acceptably under this State's standards. The Board modifies certain provisions in the Committee's Probation Terms, to assure that the terms follow more closely the terms that the Washington Commission imposed against the Respondent.

PENALTY

The Board votes 5-0 to suspend the Respondent's License until such time as the Respondent returns to practice in New York State. The Respondent's return shall stay the suspension, provided

that the Respondent complies with the following conditions and terms:

- The Respondent shall provide the Director for the Office of Professional Medical Conduct (Director) with at least thirty days notice that he intends to return.
- If the Respondent has completed his probation obligations in Washington State, the Respondent shall provide the Director with proof that he maintains a license in good standing in that state.
- If the Respondent returns to New York before fulfilling the Washington probation, he shall provide the Director with proof that he has committed no probation violation in Washington, by leaving the State without completing the probation.
- The Respondent shall serve three years probation in New York under the terms that the Director orders, pursuant to N.Y. Pub. Health Law §230(18)(a)(McKinney's Supp. 1997).
- Those terms shall include the terms which the Committee enumerated at Paragraphs 6.b to 6.d, at pages 4-5, in their Determination, and those terms shall include a requirements that the Respondent comply with all statutes and regulations pertaining to prescribing controlled substances. Those terms may include the requirement that the Respondent complete CME courses.

ORDER

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

1. The Board the **SUSTAINS** the Hearing Committee's January 10, 1997 Determination finding the Respondent guilty for professional misconduct.
2. The Board **SUSTAINS** the Hearing Committee's penalty, suspending the Respondent's License, staying the suspension and placing the Respondent on three years probation upon his return to practice in New York.
3. The Board **MODIFIES** the Committee's probation terms, in part, as we discuss in our Determination.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF THOMAS STEPHENSON HOLMES, 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. Holmes.

DATED: Syracuse, New York

22 April, 1997

William A Stewart

WILLIAM A. STEWART, M.D.

IN THE MATTER OF THOMAS STEPHENSON HOLMES, 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. Holmes.

DATED: Delmar, New York
April 22, 1997


SUMNER SHAPIRO

IN THE MATTER OF THOMAS STEPHENSON HOLMES, 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. Holmes.

DATED: Roslyn, New York

April 24, 1997

A handwritten signature in black ink, appearing to read "Ed C. Sinnott", written over a horizontal line.

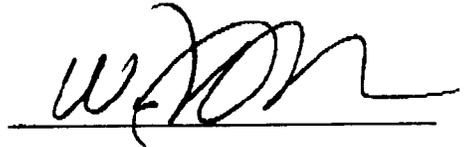
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF THOMAS STEPHENSON HOLMES, 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. Holmes.

DATED: Brooklyn, New York

APRIL, 29 1997

A handwritten signature in black ink, appearing to read 'WSP', is written over a horizontal line.

WINSTON S. PRICE, M.D.

IN THE MATTER OF THOMAS STEPHENSON HOLMES, 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. Holmes.

DATED: Schenectady, New York

May 1, 1997



ROBERT M. BRIBER