



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson E. Rockefeller Empire State Plaza

Albany, New York 12237

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

*Commissioner*

April 27, 1995

## FAX AND REGULAR MAIL

Gregory Naclerio, Esq.  
Ruskin, Moscou, Evans &  
Faltischek, P.C.  
170 Old Country Road  
Mineola, New York

Henry V. Chace, D.O.  
87-24 Jamaica Avenue  
Woodhaven, New York 11421

Roy Nemerson, Esq.  
NYS Department of Health  
5 Penn Plaza-6th Floor  
New York, New York 10001

RE: Henry V. Chace, D.O.

Dear Mr. Naclerio, Dr. Chace and Mr. Nemerson:

The Administrative Review Board for Professional Medical Conduct had denied Dr. Chace's motion to reopen this proceeding. The Board's Determination is attached.

Very truly yours,

A handwritten signature in cursive script that reads "Tyrone T. Butler/plw".

Tyrone T. Butler, Director  
Bureau of Adjudication

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

**IN THE MATTER  
OF  
HENRY V. CHACE, D.O.**

**ADMINISTRATIVE  
REVIEW BOARD  
DENIAL OF  
MOTION**

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 March 10, 1995<sup>1</sup>, at which time the Review Board considered Dr. Henry Chace's March 6, 1995 motion asking that the Board reconsider its Determination revoking the Respondent's license to practice medicine in New York State. The motion is denied.

By Order No. 94-204 (January 30, 1995), the Administrative Review Board sustained the Hearing Committee's Determination finding the Respondent guilty of negligence on more than one occasion and failure to maintain adequate records, but found that the Respondent was guilty on additional counts of negligence, based on the Hearing Committee's findings. The Review Board overruled the Hearing Committee's Penalty, which placed the Respondent on probation, ordered that the Respondent undergo retraining in controlled substances and suspended the Respondent's controlled substance prescription issuing authority for three (3) months. The Review Board voted to revoke the Respondent's license to practice medicine in New York. The Board concluded that the Hearing Committee's findings demonstrated that the Respondent's continued pattern of substandard practice and his inappropriate prescribing of addictive substances constituted a danger to his patients.

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<sup>1</sup>Dr. Stewart participated in the deliberations by telephone.

They also concluded that the Committee's findings on the record indicated that the Respondent could not learn from his mistakes or change his pattern of practice.

By letter dated March 6, 1995, the Respondent requested that the Review Board reopen Dr. Chace's case, citing four reasons.

1. Dr. Chace was not represented by counsel before the Review Board;
2. The disparity between the Committee's and the Board's decisions indicates that Dr. Chace's position was not fully communicated to the Board;
3. Petitioner's Counsel's statement about the Respondent's ability to change his practice at the Respondent's age smacked of age discrimination; and
4. Dr. Chace will fulfill the obligations under the Hearing Committee Penalty.

The Respondent has also asked, in the interest of fairness, that the motion be ruled on by panel members other than the individuals who sat on the ARB and issued the decision in Dr. Chace's case.

The Petitioner opposed the Respondent's motion because Dr. Chace had full opportunity to participate in the proceeding before the Review Board; there is no legal authority to reopen the matter; and because the Review Board revoked the Respondent's license based upon the facts and the magnitude of the Respondent's misconduct.

After considering each party's submissions, the Review Board denies the motion to reopen this case. The Respondent had an opportunity to have counsel represent him in the hearing and before the Review Board and he had the opportunity to submit a brief and a reply to the Review Board. The Respondent's failure to appear by counsel or submit a brief was his own choice. The Respondent was on notice that his license's revocation was a possible outcome from the proceeding (Notice of Hearing, Petitioner Hearing Exhibit I) and the Respondent was aware from the Petitioner's Review Board brief that the Petitioner sought revocation.

The Review Board did not make their Determination in Dr. Chace's case because the Respondent filed no brief, because of the Petitioner's statement about the Respondent's age or because the Respondent had not expressed his willingness to accept the Hearing Committee's penalty as an alternative to revocation. The Review Board concluded, based on the Committee's findings, that the Respondent posed a danger to his patients and that the Respondent's deficiencies in practice did not

result from lack of training and could not be improved through retraining. The Board based our conclusion on the Hearing Committee finding that the Respondent's deviations from accepted medical standards were more than errors in judgement, but were instead intentional and negligent and that the Respondent had no insight into his own practice deficiencies (Review Board Determination pages 5 and 6).

Finally, there is no other panel of the Review Board to consider the Respondent's motion. The Review Board consists of only five members and all five members participated in this case (Public Health Law §230-c (2)).

**ROBERT M. BRIBER**

**SUMNER SHAPIRO**

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

**EDWARD SINNOTT, M.D.**

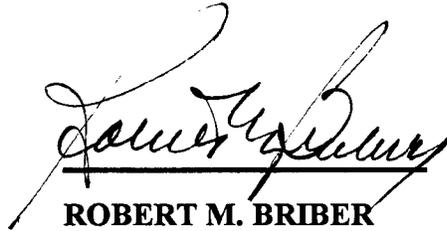
**WILLIAM A. STEWART, M.D.**

**DENIAL OF MOTION**

**ROBERT M. BRIBER**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the denial of Dr. Chace's Motion.

**DATED: Albany, New York**

March 24, 1995

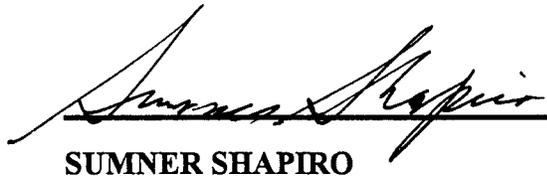
  
**ROBERT M. BRIBER**

**DENIAL OF MOTION**

**SUMNER SHAPIRO**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the denial of Dr. Chace's Motion.

**DATED: Delmar, New York**

April 21, 1995

  
**SUMNER SHAPIRO**

**DENIAL OF MOTION**

**WINSTON S. PRICE, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the denial of Dr. Chace's Motion.

**DATED: Brooklyn, New York**

\_\_\_\_\_, 1995

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

**DENIAL OF MOTION**

**EDWARD C. SINNOTT, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the denial of Dr. Chace's Motion.

**DATED: Roslyn, New York**

March 30, 1995

A handwritten signature in cursive script, appearing to read "Ed C. Sinnott", is written over a solid horizontal line.

**EDWARD C. SINNOTT, M.D.**

**DENIAL OF MOTION**

**WILLIAM A. STEWART, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the denial of Dr. Chace's Motion.

**DATED: Syracuse, New York**

*24 May*, 1995



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