

DOH 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

July 15, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kevin P. Donovan, Esq.
NYS Department of Health
Corning Tower Room 2438
Empire State Plaza
Albany, New York 12237

John E. Maye, M.D.
4317 Route 92
Cazenovia, New York 13035

Edward Z. Menkin, Esq.
Suite 909 State Tower Building
109 South Warren Street
Syracuse, New York 13202

RE: In the Matter of John E. Maye, M.D.

Dear Mr. Donovan, Dr. Maye and Mr. Menkin:

Enclosed please find the Determination and Order (No.97-81) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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". The signature is written in a cursive style with a large initial "T" and "B".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

COPY

IN THE MATTER

OF

JOHN E. MAYE, M.D. (Respondent)

Administrative review from a Determination by a Hearing
Committee (Committee) from the Board for Professional
Medical Conduct (BPMC)

ADMINISTRATIVE
REVIEW BOARD
DETERMINATION
ARB NO. 97-81

**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 committed professional misconduct arising from a Federal criminal conviction, a BPMC Committee sustained the charge and suspended the Respondent's license to practice medicine in New York State (License). In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1997), the New York State Department of Health (Petitioner) asks the Board to overturn the Committee's Penalty Determination because it provides an inadequate sanction and fails to deter future misconduct or provide public protection. After reviewing the record in this case and the parties' submissions the Board votes to sustain the Committee's Penalty.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination.

EDWARD Z. MENKIN, ESQ. represented the Respondent.

KEVIN P. DONOVAN, ESQ. (Associate Counsel, NYS Department of Health) represented the 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)(a)(i), because a Court convicted the Respondent for committing a crime under Federal Law. 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 criminal convictions or 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 that the Committee will impose for the criminal conduct or administrative violation.

Three BPMC Members, **PAUL WEINBAUM, M.D. (Chair)**, **JOSEPH G. CHANATRY, M.D.** and **MARYCLAIRE SHERWIN** comprised the Committee who conducted the hearing in the matter and who rendered the Determination which the Board now reviews. Administrative Law Judge **JEFFREY W. KIMMER** served as the Committee's Administrative Officer. The Committee determined that the Respondent entered a guilty plea in the United States District Court for the Northern District of New York to knowingly and willingly causing another to maliciously damage a building by fire. At the time the Committee rendered their penalty, the Respondent was awaiting sentencing, that would likely include incarceration. The Committee voted to suspend the Respondent's license during the time the Respondent spends in prison on the Federal conviction, or, for six months, whichever period is longer. The Committee voted further to place the Respondent on three years probation following the suspension. The Committee considered, but rejected, revocation as the Penalty, due to the Respondent's youth and his potential for contributing to society.

REVIEW HISTORY AND ISSUES

The Committee rendered their Determination on April 9, 1997 and the Petitioner then commenced this proceeding by filing a Review Notice, that the Board received on April 14, 1997. The Record for review contained the Committee's Determination, the hearing transcripts and exhibits, the Petitioner's brief, the Respondent's brief and the Respondent's reply brief. The Board received the Petitioner's brief on May 22, 1997, the Respondent's brief on May 20, 1997 and the Respondent's reply brief on May 28, 1997.

The Petitioner contends that the Committee's penalty will apply only while the Respondent serves his prison sentence, when the Respondent would not be practicing anyway. The Petitioner argues that such a Penalty would demonstrate to the public that New York State maintains low moral standards for medical practice and that the Penalty would fail to deter other wrongdoing. The Petitioner asks that the Board revoke the Respondent's license, because the Respondent committed a serious felony, arson, in order to defraud an insurance company, to obtain insurance proceeds, to help the Respondent through a minor financial setback. The Petitioner notes that in a previous case (Matter of Dowback, ARB 93-141), the Board sustained a Hearing Committee Determination revoking a physician's license, following an arson conviction from Mississippi.

The Respondent contends that the Committee imposed a reasonable sanction that considered several mitigating factors. The Respondent also notes that the Petitioner's brief raised allegations about insurance fraud and Medicaid fraud that appear nowhere in the statement of charges. In response to the Petitioner's comments about the Board's Determination in the Dowback case, the Respondent notes that the Hearing Committee in Dowback gave full faith and credit to a Mississippi Determination revoking the Respondent's license in that state, and that the Committee found that Dr. Dowback lacked credibility in his testimony before the Committee.

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(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 judgment 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 held deliberations on this matter on May 30, 1997. Dr. Price and Dr. Stewart participated in the Deliberations by telephone. Dr. Stewart, who lives in the Syracuse Area, indicated that he had heard about the Respondent's criminal plea through the Syracuse newspapers and television news. He indicated further that the news stories would in no way influence his ability to render a fair determination in this case.

The Board sustains the Committee's Determination that the Respondent's criminal conviction constitutes professional misconduct under N.Y. Educ. Law § 6530(9)(a)(i)(McKinney's Supp. 1997). Neither party challenged the Committee's Determination on the charges. The Board votes 5-0 to reject the Petitioner's request that we overturn the Hearing Committee and revoke the Respondent's license. We vote 3-2 to sustain the Hearing Committee's Penalty in full.

In a previous case involving a physician who committed arson (Matter of Dave, 96-165), the Board sustained a Hearing Committee Determination that imposed a sanction less severe than revocation, because the Respondent demonstrated remorse, had fulfilled Federal and other States' sanctions and posed no further threat to society. In a prior case dealing with a criminal conviction for Medicaid fraud (Matter of Koenig, 93-19), the Board upheld a Committee Penalty that imposed a suspension coterminous with a Respondent's incarceration, finding that the criminal sanction against the Respondent would deter the Respondent from future misconduct.

The Board finds the facts in the Respondent's case more similar to the situations in the Dave and Koenig cases than to the situation in Dowback. The Respondent faces incarceration, supervised release and a civil penalty from the Federal Courts. The Respondent will also face a BPMC probation penalty following his License suspension. The Board also finds mitigating factors in the Respondent's remorse and in his work in a medically underserved area. The Board, therefore, votes unanimously to reject the Petitioner's request that we revoke the Respondent's license. The Board's majority votes to sustain the Committee's Penalty suspending the Respondent's license during his incarceration or for six months, whichever period would be longer, and to place the Respondent on three years probation following the suspension. The dissenting Members would impose an additional suspension period following the Respondent's incarceration. The majority rejected that idea, because they felt that the Respondent's incarceration will provide an adequate sanction and will deter further misconduct.

ORDER

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

1. The Board **SUSTAINS** the Hearing Committee's April 9, 1997 Determination finding the Respondent guilty for professional misconduct.

2. The Board **SUSTAINS** the Hearing Committee's Determination to suspend the Respondent's License and place him on three years probation following the suspension.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF JOHN E. MAYE, 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. Maye.

DATED: Brooklyn, New York

JULY 9, 1997



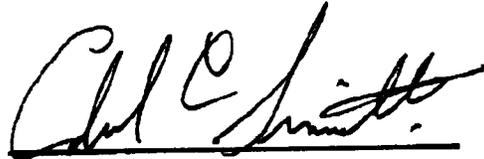
WINSTON S. PRICE, M.D.

IN THE MATTER OF JOHN E. MAYE, 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. Maye.

DATED: Roslyn, New York

July 9, 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 JOHN E. MAYE, 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. Maye.

DATED: Delmar, New York
July 8, 1997



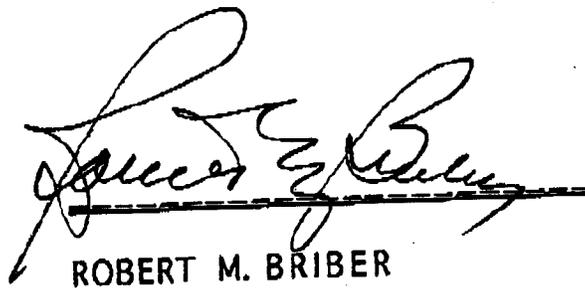
SUMNER SHAPIRO

IN THE MATTER OF JOHN E. MAYE, M.D.

ROBERT M. BRIBER, a member of the Administrative Review Board for Professional Medical Conduct, affirms that this Determination reflects the majority's Determination in the Matter of Dr. Maye.

DATED: Schenectady, New York

July 10, 1997


ROBERT M. BRIBER