



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

December 16, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Jerome Verdell, M.D.
346 St. Marks Avenue
Freeport, New York 11520

Christopher J. Butler, Esq.
Giaino & Vreeburg
80-02 Kew Gardens Road
Kew Gardens, New York 11415

RE: In the Matter of Jerome Verdell, M.D.

Dear Ms. Lepicier, Dr. Verdell and Mr. Butler:

Enclosed please find the Determination and Order (No.97-224) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH (Petitioner)

COPY

IN THE MATTER

OF

JEROME VERDELL, M.D. (Respondent)

A Proceeding to review a Determination by a Hearing Committee
(Committee) from Board for Professional Medical Conduct (BPMC)

**ADMINISTRATIVE
REVIEW BOARD
(Board)
DETERMINATION
AND ORDER
ARB 97-224**

**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, due to his conviction for tax evasion and his exclusion from participation in the Medicaid Program, a BPMC Committee sustained the charges and revoked the Respondent's New York Medical License (License). In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1997), the Respondent asks the Board to vacate the Committee's Determination and order a new hearing, because the Respondent received no notice concerning the original hearing. The New York State Department of Health (Petitioner) opposes the Respondent's request, asserting that the Respondent should raise the issue in court rather than before the Board. After considering the hearing record and the parties' briefs, the Board rejects the Respondent's request for a remand and we sustain the Committee's Determination. We agree with the Petitioner that the Respondent raises a legal issue for the Courts to resolve.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination. **GIAIMO & VREEBURG, P.C.** represented the Respondent. **DENISE LEPICIER, ESQ.** represented the Petitioner.

COMMITTEE DETERMINATION ON CHARGES

The Petitioner filed charges with BPMC alleging that the Respondent violated N.Y. Educ. Law §§ 6530(9)(a)(ii) & 6530(9)(c) by committing professional misconduct under the following categories:

- having been convicted for committing an act constituting a crime under federal law,

- and,
- having been found guilty in an adjudicatory proceeding for violating a state or federal statute or regulation.

The charge concerning a federal conviction related to the Respondent's January, 1997 conviction, in the United States District Court for the Eastern District of New York, for failing to file tax returns in 1989, 1990 and 1991. The charge concerning violating a statute or regulation related to the Respondent's 1993 exclusion from participating, for two years, as a provider in the Medicaid Program, following a Determination by the New York State Department of Social Services, that the Respondent submitted false claims, failed to maintain necessary records and failed to meet professionally recognized standards, in treating twenty-five patients.

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 prior administrative adjudications as an expedited proceeding (Direct Referral). The statute limits such proceeding strictly to receiving evidence to determine the nature and severity for the penalty that the Committee will impose for the criminal conduct or regulatory violations.

Three BPMC Members, **STEPHEN GETTINGER, M.D., Chair, DAVID SIBULKIN, M.D. and EUGENIA HERBST** comprised the Committee who conducted the hearing in this matter, pursuant to N.Y. Pub. Health Law § 230(7)(McKinney's Supp. 1997), and who rendered the Determination which the Board now reviews. Administrative Law Judge **LARRY G. STORCH** served as the Board's Administrative Officer and drafted the Determination. The record from the hearing includes the Committee's Determination, the transcript and several exhibits from the Petitioner. The Respondent failed to appear at the hearing, after receiving personal service of the Notice of Hearing and Statement of Charges [see Petitioner's Exhibit 2, transcript pages 7-8 and Hearing Committee Determination page 1]. The Committee's Administrative Officer also ruled that the Respondent failed to file an answer [see transcript page 9].

The Committee sustained the charges and voted to revoke the Respondent's License. The Committee concluded that the Respondent's criminal conviction and his false billings to Medicaid demonstrated his moral unfitness to practice medicine.

REVIEW HISTORY AND ISSUES

The Committee rendered their Determination on September 16, 1997. The Respondent then commenced this proceeding on October 3, 1997 when the Board received the Notice requesting a Review pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1997). The Board received the Respondent's brief on November 5, 1997, and the Petitioner's reply on November 13, 1997.

The Respondent alleges that he never received notice about the hearing in this matter and promises to swear to that at a subsequent hearing. The Respondent notes that he has sought orders staying the enforcement of the Committee's Order in New York State Supreme Court in Nassau and New York Counties unsuccessfully and that he is seeking the same relief currently from the Appellate Division for the Second Department. The Respondent's cover letter forwarding his brief to the Board also requested the opportunity to argue the matter before the Board.

The Petitioner argues that the Respondent's issue on review falls outside the Board's jurisdiction and that the evidence from the hearing supports the Committee's Determination to revoke the Respondent's License.

REVIEW BOARD 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).

REVIEW BOARD DETERMINATION

The Board has considered the record and the parties' briefs. We conducted deliberations in this case on December 5, 1997.

We reject the Respondent's request for an opportunity to argue before the Board. The Board conducts all our reviews on papers only, reviewing the hearing record and the parties' briefs.

We reject the Respondent's request that we vacate the Committee's Determination and remand for a new hearing. Petitioner's Exhibit 2 indicates that the Respondent received personal service of the Hearing Notice. We conclude that the Courts provide the appropriate forum to determine whether such service occurred and to determine whether the Respondent received appropriate notice.

We sustain the Committee's Determination revoking the Respondent's License. The Respondent's criminal conviction and his exclusion from Medicaid, for submitting false claims, demonstrates that the Respondent lacks the necessary integrity to practice medicine in New York State. The Committee acted appropriately and consistently with their findings and conclusions in revoking the Respondent's License.

ORDER

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

1. The Board **REJECTS** the Respondent's request that we remand this case for a new hearing.
2. The Board **SUSTAINS** the Committee's Determination finding that the Respondent committed professional misconduct.
3. The Board **SUSTAINS** the Committee's Determination revoking the Respondent's License to practice medicine in New York State.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

_____, 1997

IN THE MATTER OF JEROME VERDELL, 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. Verdell.

DATED: Roslyn, New York

Dec 10, 1997



EDWARD C. SINNOTT, M.D.

IN THE MATTER OF JEROME VERDELL, 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. Verdell.

DATED: Delmar, New York
December 10, 1997


SUMNER SHAPIRO

IN THE MATTER OF JEROME VERDELL, 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. Verdell.

DATED: Schenectady, New York

12/10/97


ROBERT M. BRIBER

IN THE MATTER OF JEROME VERDELL, 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. Verdell.

DATED: Brooklyn, New York

12/13, 1997



WINSTON S. PRICE, M.D.

IN THE MATTER OF JEROME VERDELL, 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. Verdeli.

DATED: Syracuse, New York

16 Dec, 1997

William A. Stewart

WILLIAM A. STEWART, M.D.