



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower    The Governor Nelson A. Rockefeller Empire State Plaza    Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.  
*Commissioner*

Paula Wilson  
*Executive Deputy Commissioner*

August 9, 1993

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael Clements, M.D.  
c/o Jon C. Botula, Esq.  
810 Grant Building  
Pittsburgh, PA 15219

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

**RE: In the Matter of Harry Clements, M.D.**

Dear Dr. Clements and Mr. Donovan:

Enclosed please find the Determination and Order (No. ARB No. 93-59) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
Corning Tower - Fourth Floor (Room 438)  
Empire State Plaza  
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 than 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)].

Very truly yours,

*Tyrone T. Butler/nam*

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nam  
Enclosure

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

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IN THE MATTER	:	<u>ADMINISTRATIVE</u>
	:	<u>REVIEW BOARD</u>
OF	:	<u>DETERMINATION</u>
	:	<u>AND ORDER</u>
HARRY CLEMENTS, M.D.	:	<u>ARB NO.93-59</u>

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The Administrative Review Board for Professional Medical Conduct (Review Board), consisting of **ROBERT M. BRIBER, MARYCLAIRE B. SHERWIN, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** held deliberations on June 22, 1993 at 5 Penn Plaza in New York, New York<sup>1</sup> to review the Professional Medical Conduct Hearing Committee's (Committee) April 16, 1993 Determination finding Dr. Harry Clements guilty of professional misconduct and revoking his license to practice medicine in New York State. Dr. Clements requested the review through a Notice which the Review Board received on May 6, 1993. James F. Horan served as Administrative Officer to the Review Board. Kevin P. Donovan, Esq. submitted a brief for OPMC on May 24, 1993. Dr Clements submitted a brief on his own behalf on May 24, 1993.

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<sup>1</sup> Dr. Stewart was not present at the deliberations in New York City, but participated by telephone.

### 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
- 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 brought this proceeding against Dr. Clements pursuant to PHL 230(10)(p) and Education Law 6530(9), which provide an expedited hearing in cases in which professional misconduct charges against a physician are based upon a prior criminal conviction in New York State or another jurisdiction or upon a prior administrative adjudication which would amount to misconduct if committed in New York State. The expedited hearing determines the nature and severity of the penalty which the Hearing Committee will impose based upon the criminal conviction or prior administrative adjudication.

The Hearing Committee in this matter found that OPMC had

met its burden of proof in establishing that the Respondent was convicted of one hundred fifty-one counts of distributing Oxycodone, a Schedule II Narcotic Drug, in violation 21 United States Code 841(a)(1) and (b)(1)(c). The United States District Court for the Western District of Pennsylvania sentenced the Respondent to eight years imprisonment for the violations. The Committee found that the violations would constitute professional misconduct if committed in New York. The Hearing Committee found that despite mitigating circumstances, that the acts by the Respondent were so egregious that they evidenced the Respondent's unfitness to practice medicine in New York State. The Committee voted unanimously to revoke the Respondent's license to practice in New York State.

#### **REQUESTS FOR REVIEW**

The Office of Professional Medical Conduct urges the Review Board to uphold the Hearing Committee's Determination and Penalty.

The Respondent asks the Review Board for forgiveness and mercy because he is deeply remorseful for his actions. The Respondent offers to serve in a medically underserved area if he is allowed to practice in New York State.

#### **REVIEW BOARD DETERMINATION**

The Review Board has considered the entire record below and the briefs which counsel have submitted.

The Review Board votes to sustain the Hearing Committee's Determination that the Respondent was guilty of professional misconduct due to his conviction on one hundred fifty-one counts of distributing a Schedule II Narcotic Drug.

The Review Board sustains the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State. The Review Board feels this penalty is consistent with the Review Board's findings and conclusions about the nature of the Respondent's actions and we feel that the penalty is appropriate due to the extent and the serious nature of the misconduct in this case.

**ORDER**

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

1. The Review Board sustains the Professional Medical Conduct Hearing Committee's April 16, 1993 Determination finding Dr. Harry Clements guilty of professional misconduct.
2. The Review Board sustains the Hearing Committee's Determination to revoke the license of Harry Clements, M.D. to practice medicine in New York State.

**ROBERT M. BRIBER**

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

**MARYCLAIRE B. SHERWIN**

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

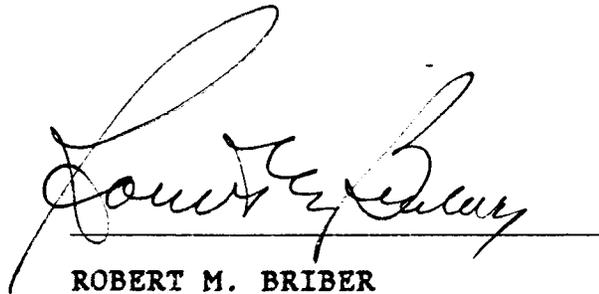
**WILLIAM A. STEWART, M.D.**

IN THE MATTER OF HARRY CLEMENTS, 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. Clements.

DATED: Albany, New York

*July 8*, 1993



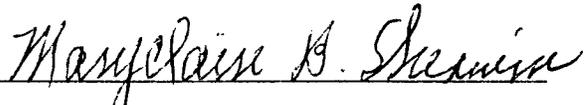
Handwritten signature of Robert M. Briber in cursive script, written over a horizontal line.

ROBERT M. BRIBER

IN THE MATTER OF HARRY CLEMENTS, M.D.

MARYCLAIRE B. SHERWIN, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Clements.

DATED: Albany, New York  
August 3, 1993

  
MARYCLAIRE B. SHERWIN

IN THE MATTER OF HARRY CLEMENTS, 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. Clements.

DATED: Brooklyn, New York

*JULY 27<sup>th</sup>*, 1993

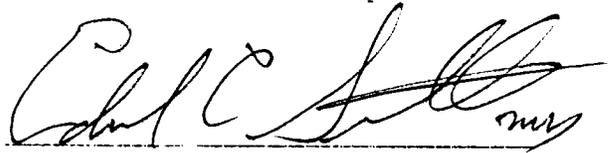
  
\_\_\_\_\_, M.D.  
**WINSTON S. PRICE**

IN THE MATTER OF HARRY CLEMENTS, 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. Clements.

DATED: Albany, New York

July 26 , 1993

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

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF HARRY CLEMENTS, 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. Clements.

DATED: Albany, New York

August 4, 1993

*William A. Stewart*

WILLIAM A. STEWART, M.D.



Mark R. Chassin, M.D., M.P.P., M.P.H.  
Commissioner

C. Maynard Guest, M.D.  
Executive Secretary

April 23, 1993

Mr. Robert Bentley  
Director  
Division of Professional Licensing Services  
New York State Education Department  
Empire State Plaza-Cultural Education Center  
Albany, New York 12230

RE: License No. 106328

Dear Mr. Bentley:

Enclosed please find Order #BPMC 93-59 of the New York State Board for Professional Medical Conduct concerning Dr. Harry Clements.

Please be advised that this determination by the hearing committee may be appealed to the Administrative Review Board by either side within fourteen (14) days of the service of this order. We will notify you if any such appeal is taken.

Sincerely,

C. Maynard Guest, M.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Daniel Kelleher

bcc: Chris Hyman  
Peter Van Buren  
Tyrone Butler  
Kenneth Spooner  
Vincent Martiniano  
Anne Bohenek