



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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

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

Karen Schimke  
*Executive Deputy Commissioner*

October 6, 1995

RECEIVED

OCT 10 1995

PROFESIONAL  
MEDICAL CONDUCT

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Peter VanBuren, Esq.  
NYS Department of Health  
Corning Tower-Room 2429  
Empire State Plaza  
Albany, New York 12237

Robert Mitchell Scovner, M.D.  
208 Raleigh Road  
Walkersville, Maryland 21793

**RE: In the Matter of Robert Scovner, M.D.**

Dear Mr. VanBuren and Dr. Scovner:

Enclosed please find the Remand Order (No. 95-149R) of the Administrative Review Board in the above referenced matter. The Review Board has remanded this matter to the Hearing Committee for additional proceedings.

This Office will contact you concerning the date for an additional hearing day. The Review Board's attached Determination sets out the conditions for the remand.

Sincerely,

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm

Enclosure

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

IN THE MATTER  
OF  
ROBERT M. SCOVNER, M.D.

ADMINISTRATIVE  
REVIEW BOARD  
REMAND  
ORDER  
ARB. NO 95-149R

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.**<sup>1</sup> held deliberations on September 22, 1995 to review the Hearing Committee on Professional Medical Conduct's July 17, 1995 Determination finding Dr. Robert Scovner (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice, which the Board received on August 7, 1995. James F. Horan served as Administrative Officer to the Review Board. The Respondent filed a brief in his own behalf, which the Board received on September 5, 1995.

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.

---

<sup>1</sup>Dr. Winston Price was unable to attend the Deliberations.  
Dr. William Stewart participated in the Deliberations by telephone.

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 Petitioner brought this case pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9)(a)(i). In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or a criminal conviction. The scope of this expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee. In this case, the Respondent is charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and 6530(9)(d). These sections define misconduct as having been found guilty of improper professional practice or professional misconduct by the authorized disciplinary agency of another state where the conduct resulting in the discipline would amount to misconduct in New York State, and, having disciplinary action taken by the authorized disciplinary agency of another state, where the conduct resulting in the discipline would amount to misconduct in this state. The charges in this case arose from a Consent Order which the Respondent entered into with the Maryland Board of Physician Quality Assurance (Maryland Board) on March 22, 1993.

The Hearing Committee adopted the Factual Statements set out on pages 1-3 of the Statement of Charges as the Hearing Committee's Findings of Fact. The Committee determined that on or about March 9, 1994 the Maryland Board found that the Respondent had failed to meet appropriate standards of quality care in Maryland. The Maryland Board found that based upon the Respondent's Consent Order the Respondent's medical records did not contain adequate information for another health professional to assume the patient's medical care. The Maryland Board also found that the Respondent's medical records contained insufficient information regarding injections of Stadol given by the Respondent to some patients. The Committee found that the Maryland Board placed the

Respondent on probation for a two year period. As part of that probation the Respondent was expected to cooperate with the MED-CHI Peer Review Committee. The cooperation with the MED-CHI Peer Review Committee involved having a specialist in the area of pain management review any of the Respondent's records for chronic pain patients. The Maryland Board also directed that the Respondent complete a course in medical record keeping and that the Respondent not use injectable narcotics or injectable Stadol in treatment unless the use of such injectable narcotics or injectable Stadol had been approved for the use in the treatment of such patient, by a physician who was a specialist in pain management.

In the section of their Report under the heading Conclusions, the Committee stated that the Respondent had not appeared at the hearing. The Committee concluded that another state had found that the Respondent failed to meet accepted standards of medical care. The Committee stated that the Respondent's misconduct involved inappropriate prescriptions for potent analgesics. The Committee found that these were significant charges and warranted a significant penalty. The Committee concluded that given the above findings and the Respondent's failure to make any effort to participate in the proceeding, that revocation was the only appropriate remedy in this case.

**REQUESTS FOR REVIEW**

The Respondent has submitted a letter in which he contends that the Hearing Committee's decision was overly harsh and not based on the actual charges in the Maryland Consent Order. The Respondent contends that the original charges by the Maryland Board involved treating drug addicts and below standard records. Respondent contends that the charge of inappropriate drug use was later dropped and not included in his second Consent Order due to an evaluation by the Director of the John Hopkins Pain Clinic, which concluded that the Respondent's treatment of patients in dispute was proper. The Respondent argues that it is incorrect for the Committee to find that the Respondent's conduct in Maryland involved the inappropriate prescriptions for potent analgesics and also contends that revocation is not the only appropriate remedy in his case. The Respondent argues that the state of New Jersey reviewed information on his case and decided to take no further action in the

Respondent's case if he complied with the Maryland Consent Order. The Respondent also notes that Maryland put the Respondent on probation, which is less severe than revocation. The Respondent challenges the Committee's conclusion that the Respondent made no effort to participate in the New York hearing. The Respondent contends that he sent copies of four letters in his defense for the New York hearing. The Respondent asks that the Board review two letters submitted with his brief and asks that the Review Board not stigmatize his record with such a severe penalty as revocation.

The Petitioner did not submit a brief or a response brief.

### REVIEW BOARD DETERMINATION

The Review Board has considered the record below and the Respondent's brief.

The Review Board votes to remand this case to the Hearing Committee for additional proceedings so that the Committee can clarify their Determination and review additional evidence which the Respondent submitted at the time of the original hearing.

The Review Board believes that there is a contradiction within the text of the Hearing Committee's Determination. The Hearing Committee adopted as their Findings of Fact the Factual Allegations contained in the Petitioner's Exhibit 1, the Statement of Charges. The adopted Findings of Fact determined that the State of Maryland had found the Respondent's medical records did not contain adequate information for another health professional to assume the patient's care and the medical records contained insufficient information regarding injections of Stadol given by the Respondent to some patients. In their conclusions, however, the Committee stated that the Respondent's misconduct involved inappropriate prescriptions for potent analgesics. There is no statement in the Statement of Charges, adopted as the Committee's Findings of Fact, involving inappropriate prescriptions for potent analgesics. The Review Board asks that the Committee clarify what was the basis of their finding concerning prescribing potent analgesics.

The Review Board is unsure whether the Committee reviewed certain papers which the Respondent alleges he submitted prior to the hearing. In their conclusions, the Committee stated that the Respondent in this action did not appear. In his brief, however, the Respondent alleges that he

provided copies of documents to the Hearing Committee. A copy of the Notice of Referral Proceeding in this case states on page 2, that a Respondent may file a written answer, a brief and affidavits with the Committee, with six copies of all papers to be submitted to the Bureau of Adjudication in Albany. The Bureau of Adjudication's file in this case contains a June 12, 1995 letter answering the Petitioner's April 18, 1995 Notice of Referral Proceeding in this case, and this letter attached other letters concerning the Respondent's case. The letter apparently, however, was mailed to the Petitioner's counsel and not to the Bureau of Adjudication. The transcript from the hearing does not indicate whether the letter was offered into evidence. The Review Board directs that the Respondent's letter should be offered in evidence before the Hearing Committee. The Petitioner will have an opportunity at that time of the additional hearing day to object to the admission of the letter into evidence, if the Petitioner so wishes. The Petitioner will also have the opportunity to make any arguments the Petitioner wishes concerning the contents of the Respondent's reply and the attached letters.

At the conclusion of the additional hearing date, the Committee will hold deliberations and issue a Supplemental Determination. That Supplemental Determination shall be served upon both the Respondent and the Petitioner. Both the Respondent and the Petitioner shall have 14 days from receipt of the Supplemental Determination to request an additional review of that Determination by the Review Board. If the Hearing Committee has any questions concerning the scope of this remand or the procedures to follow, the Committee may communicate those questions to the Review Board in writing through a letter from the Hearing Committee's Administrative Officer to our Administrative Officer. Copies of any correspondence between the Review Board and the Hearing Committee shall be sent to the parties. The penalty against the Respondent's license shall remain stayed during the period of the remand and until a final determination in this case.

**ORDER**

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

1. This proceeding is **REMANDED** to the Hearing Committee for additional proceedings as provided for in the Review Board Determination.

**ROBERT M. BRIBER**

**SUMNER SHAPIRO**

**EDWARD SINNOTT, M.D.**

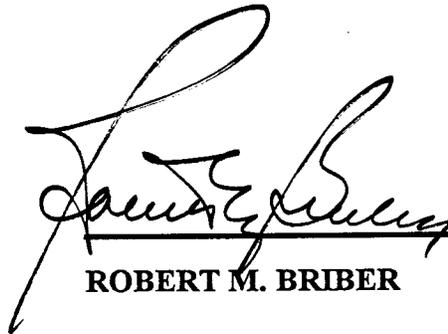
**WILLIAM A. STEWART, M.D.**

IN THE MATTER OF ROBERT MITCHELL SCOVNER, 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. Scovner.

DATED: Albany, New York

10/4, 1995



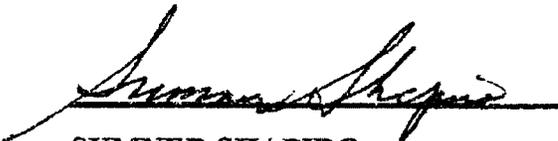
ROBERT M. BRIBER

IN THE MATTER OF ROBERT MITCHELL SCOVNER, 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. Scovner.

DATED: Delmar, New York

Sept 28, 1995

  
SUMNER SHAPIRO

IN THE MATTER OF ROBERT MITCHELL SCOVNER, 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. Scovner.

DATED: Roslyn, New York

Sept 29, 1995

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", written over a horizontal line. There is a small mark resembling the number "24" at the end of the signature.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF ROBERT MITCHELL SCOVNER, 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. Scovner.

DATED: Syracuse, New York

2 Oct, 1995



WILLIAM A. STEWART, M.D.