



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

January 29, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nelson F. Leone, M.D.
8154 La Mesa Boulevard
La Mesa, California 91941

Cindy Fascia, Esq.
NYS Department of Health
Corning Tower Room 2438
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Nelson F. Leone, M.D.

Dear Dr. Leone and Ms. Fascia:

Enclosed please find the Determination and Order (No.96-212) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

COPY

IN THE MATTER
OF
NELSON LEONE, M.D.

ADMINISTRATIVE
REVIEW BOARD
DETERMINATION
ARB NO. 96-212

Administrative Review from a Determination by a Hearing
Committee on Professional Medical Conduct

After a hearing into charges that the Medical Board for California (California Board) found **DR. NELSON LEONE** (Respondent) guilty for conduct that would constitute professional misconduct in New York, a Hearing Committee on Professional Medical Conduct (Committee) sustained the charges and revoked the Respondent's license to practice medicine in New York State (License). In this proceeding pursuant to New York Public Health Law (PHL) §230-c(4)(a) (McKinney's Supp 1996)¹, the Respondent asks the Administrative Review Board for Professional Medical Conduct (Board) to overturn the Committee's October 9, 1996 Determination. The Respondent contends that the Committee based their Determination on distorted and unreliable facts and that the Committee imposed an arbitrary Penalty. After reviewing the record in this case and conducting Deliberations on December 13, 1996², Board Members **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** vote to sustain the Committee's Determination that the Respondent's California conduct constituted professional misconduct under N.Y. Education Law (E L) §6530(McKinney's Supp. 1996)³ and the Board sustains the Committee's Determination revoking the Respondent's License.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer

¹ All subsequent PHL citations refer to the 1996 McKinney's Supplement.

² Dr. Price, Dr. Stewart and Mr. Shapiro participated in the Deliberations by telephone.

³ All subsequent EL citations refer to the 1996 McKinney's Supplement.

and drafted this Determination.

The Respondent represented himself in this proceeding.

CINDY M. FASCIA, ESQ. (Associate Counsel, NYS Department of Health) represented the
Petitioner

COMMITTEE DETERMINATION ON THE CHARGES

Under PHL §230(7), three member Committees from the State Board for Professional Medical Conduct (BPMC) conduct disciplinary proceedings to determine whether physicians have committed professional misconduct by violating E L §6530. The Petitioner filed charges with BPMC alleging that the Respondent violated EL §6530(9(b), because a sister state found the Respondent guilty for conduct that would constitute misconduct if the Respondent had committed the conduct in New York. The Respondent holds a New York License, but had practiced in California. The charges alleged that the California Board found the Respondent committed conduct in that state that would constitute misconduct in New York under the following categories:

- practicing with gross negligence [EL §6530(4)];
- practicing with negligence on more than one occasion [EL §6530(3)];
- engaging in conduct that evidences moral unfitness [EL §6530(20)];
- practicing the profession fraudulently [EL §6530(2)];
- aiding an unlicensed person to perform activities that require licensure [EL §6530(11)]; and,
- exercising undue influence on a patient [EL §6530(17)].

The Petitioner brought the case pursuant to PHL §230(10)(p), 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 which the Committee will impose for the criminal conduct or administrative violation.

Three BPMC Members **WILLIAM P. DILLON, M.D. (Chair), WILLIAM W. FALOON,**

M.D. and **REV. EDWARD J. HAYES** comprised the Committee who conducted the hearing in the matter and rendered the Determination that the Board now reviews. Administrative Law Judge **JEFFREY ARMON** served as the Committee's Administrative Officer. The Committee determined that the California Board found that, in treating four psychiatric patients, the Respondent;

- committed grossly negligent conduct,
- committed acts of dishonesty or corruption;
- aided another person in practicing psychology unlawfully;
- breached many medical rules and ethical codes; and,
- prescribed benzodiazepines excessively.

The California Board revoked the Respondent's license to practice in that state. The Committee concluded that the Respondent's conduct in California would constitute misconduct in New York under all categories that the Petitioner charged and the Committee voted to revoke the Respondent's License. The Committee noted that the Respondent raised several issues concerning determinations by the California Board's Administrative Law Judge(California Board ALJ), which the Committee felt to be beyond their authority to review. The Committee concluded that the California findings proved that the Respondent committed serious professional misconduct and exercised poor medical judgement in treating four vulnerable psychiatric patients. The Committee concluded further that the Respondent showed nothing to suggest that he realized that he conducted himself improperly and the Committee found nothing to show that the Respondent could conform to accepted practice standards, either as a result from retraining or by practicing under a supervisor.

REVIEW HISTORY AND ISSUES

The Respondent filed a Notice requesting this review, which the Board received on October 28, 1996. The Record for review contained the Committee's Determination, the hearing transcripts and exhibits, the Respondent's brief, the Respondent's reply brief, the Petitioner's brief and the Petitioner's reply brief. The Board received the Respondent's brief on December 3, 1996, the Respondent's reply brief on December 10, 1996, the Petitioner's brief on November 29, 1996 and the

Petitioner's reply brief on December 9, 1996.

The Respondent contends that the Hearing Committee erred in accepting the findings by the California Board ALJ. The Respondent alleges that the California Board ALJ based the findings on evidence from unreliable witnesses who filed complaints against the Respondent for their own monetary gain. The Respondent alleges further that the California ALJ and the California Board judged the Respondent by inappropriate professional standards. The Respondent contends that the Committee erred further by concluding that the Respondent would obtain no benefit from retraining. The Respondent asks the Board to review the data and set their own standards. The Respondent states that he never harmed a patient and he states that he would seek rehabilitation willingly in any format that the Board prescribes.

The Petitioner contends that:

- the Respondent filed an untimely request for review;
- the Board should sustain the Committee's Determination because the Respondent is guilty as charged; and
- the Board should sustain the Committee's Determination to revoke the Respondent's License.

THE BOARD'S REVIEW AUTHORITY

In reviewing a Committee's Determination, the Board decides:

- 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 PHL §230-a allows [PHL §230(10)(i), §230-c(1) and §230-c(4)(b)] .

The Board may remand a case to the Committee for further consideration [PHL §230-c(4)(b)].

The Board's Determinations result from a majority concurrence among the Board's Members [PHL §230-c(4)(c)].

The Review Board may substitute our judgement 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 rejects the Petitioner's request that we dismiss the Respondent's Review Notice as untimely. The parties received the Committee's Determination with a corrected cover letter dated October 9, 1996. That letter advised the parties they could serve review notices within fourteen days from receiving the letter. The Respondent sent his Review Notice to the Board by certified mail dated October 23, 1996, within the time frame that the cover letter established.

The Board rejects the Respondent's request that we overrule the Committee's Determination that the Respondent's California conduct would constitute misconduct if the Respondent committed such conduct in New York. In proceedings to determine whether the Respondent committed misconduct that would violate EL §6530(9)(b), the Committee and the Board determine whether a sister state found a Respondent guilty for conduct that would constitute misconduct in New York, if the Respondent committed the conduct here. Neither the Board nor the Committee may invalidate or change the other state's findings on guilt, as the Respondent asks the Board to do in this Review. A Committee may clearly rely on factual findings by a California Board ALJ in determining that a Respondent committed acts in California, which would constitute misconduct in New York, **Matter of Ricci v. Chassin**, 220 AD2d 828, 632 NYS2d 303 (Third Dept. 1995). The Board sustains the Committee's Determination that the California findings demonstrate that the Respondent's California conduct would constitute gross negligence, negligence on more than one occasion, moral unfitness, fraud, aiding unlicensed practice, and exercising undue influence on a patient, if the Respondent had committed such conduct in New York. After the Committee determined that the Petitioner satisfied their burden to prove guilt under EL §6530(9)(b), the Committee then decided that the Respondent's

conduct warranted a penalty in New York in addition to the penalty that California imposed.

The Board rejects the Respondent's request that we modify the Committee's Penalty and order that the Respondent undergo rehabilitation in some form. The Board agrees with the Committee that the Respondent committed serious professional misconduct and repeatedly exercised poor judgement in treating four vulnerable psychiatric patients. The Board agrees further with the Committee's conclusion that the Respondent's refusal to recognize that he acted improperly demonstrated that neither retraining nor supervision would lead the Respondent to conform to accepted practice standards. The Respondent's refusal to accept culpability for his conduct provides a sufficient basis for the Committee and the Board to conclude that no rehabilitation or retraining would succeed in improving the Respondent's conduct, Matter of Jadoo v. DeBuono, Index No. 74822, 1997 WL 7098 (Third Dept. Jan 9, 1997). The Board sustains the Committee's Determination to revoke the Respondent's License.

ORDER

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

1. The Board **SUSTAINS** the Hearing Committee's October 9, 1996 Determination finding the Respondent guilty for professional misconduct.

2. The Board **SUSTAINS** the Hearing Committee's penalty revoking the Respondent's License.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF NELSON LEONE, 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. Leone.

DATED: Syracuse, New York

15 Jan., 1997

William A. Stewart

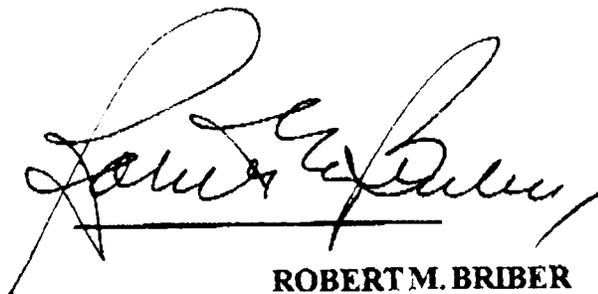
WILLIAM A. STEWART, M.D.

IN THE MATTER OF NELSON LEONE, 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. Leone

DATED: Schenectady, New York

Jan 16, 1997

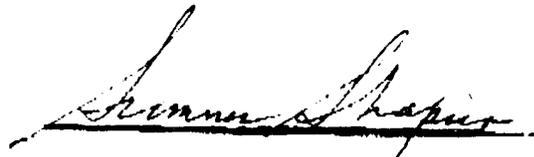

ROBERT M. BRIBER

IN THE MATTER OF NELSON LEONE, 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. Leone.

DATED: Delmar, New York

JAN 16, 1997



SUMNER SHAPIRO

IN THE MATTER OF NELSON LEONE , 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 Leone.

DATED: Roslyn, New York

Jan 16, 1997



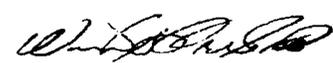
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF NELSON LEONE, 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. Leone.

DATED: Brooklyn, New York

_____, 1997



WINSTON S. PRICE, M.D.