



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

April 23, 1997

Dennis P. Whalen
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marcia Kaplan, Esq.
NYS Department of Health
5 Penn Plaza-6th Floor
New York, New York 10001

John Milici, M.D.
880 Fifth Avenue
New York, New York 10021

Robert S. Fink, Esq.
Kostelanetz & Fink, LLP
230 Park Avenue
New York, New York 10021

RE: In the Matter of John Milici, M.D.

Dear Ms. Kaplan, Dr. Milici and Mr. Fink:

Enclosed please find the Determination and Order (No.96-287) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:jh

Enclosure

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

IN THE MATTER
 OF
 JOHN MILICI, M.D.

ADMINISTRATIVE
 REVIEW BOARD
 DETERMINATION
 ARB NO. 96-287

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

Before: **ROBERT M. BRIBER, SUMNER SHAPIRO, EDWARD C. SINNOTT, M.D., WILLIAM A. STEWART, M.D. and WINSTON S. PRICE, M.D.,¹ Board Members.**

After a hearing into charges that the Respondent **DR. JOHN MILICI** (Respondent) committed professional misconduct by violating a Federal statute, a Hearing Committee on Professional Medical Conduct (Committee) sustained the charges, suspended the Respondent's license to practice medicine in New York State (License), stayed the suspension and placed the Respondent on three years probation. 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 Administrative Review Board for Professional Medical Conduct (Board) to overturn the Committee's penalty and to revoke the Respondent's License, because the Federal conviction for conspiracy and tax evasion demonstrates that the Respondent lacks the character and integrity to practice medicine. After reviewing the record in this case and conducting Deliberations on February 28 & March 21, 1997, the Board overturns the Committee's penalty, but we reject the Petitioner's request that we revoke the Respondent's License. The Board votes to suspend the Respondent License for four months, under the conditions we will discuss below, after we summarize the Committee's Determination on the charges, the issues for review and the Board's review authority.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination. **STEVEN R. DONZIGER & ROBERT S. FINK, ESQS.** (Kostelanetz & Fink, LLP) represented the Respondent. **MARCIA E. KAPLAN, ESQ.** (Associate Counsel, NYS Department of Health) represented the Petitioner.

¹ Dr. Winston Price was unable to participate in the Deliberations on February 28, 1997.

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, a psychiatrist, violated N.Y. Educ. Law §6530(9)(a)(ii), because the Respondent entered a guilty plea in the United States Court for the Southern District of New York for committing crimes 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, **STANLEY GITLOW, M.D. (Chair)**, **JOHN H. S. HOLLOMAN, JR., M.D.** and **DENNIS HARRIGAN** comprised the Committee who conducted the hearing in the matter and who rendered the December 3, 1996 Determination that the Board now reviews. Administrative Law Judge **CHRISTINE C. TRASKOS** served as the Committee's Administrative Officer. The Committee determined that the Respondent entered guilty pleas to Conspiracy to Defraud the Internal Revenue Service and Personal Income Tax Evasion, both Federal crimes. The Committee found further that the United States District Court sentenced the Respondent to probation for three years, six months home confinement, Three Hundred Hours (300) Community Service and a Ten Thousand Dollar (\$10,000.00) Fine. The Committee found that the conspiracy involved creating false deductions, through payments to sham accounts, with names that appeared as bona fide charities, business associations and business organizations, when the money in the sham accounts actually went to pay the Respondent's personal expenses. The Committee concluded that the Respondent's Federal convictions constitute professional misconduct under N.Y. Educ. Law §6530(9)(a)(ii).

In assessing a penalty in this case, the Committee considered that the Respondent acknowledged his wrongdoing and the Committee considered the work at a community clinic, the Center for Community Alternatives (CCA), that the Respondent performs as the community service

under his Federal probation. The Committee concluded that, if CCA lost the Respondent's services, many patients could relapse in their mental condition , or end up in jail or on the street. The Committee concluded that the Respondent had learned a lesson from his criminal experience. The Committee noted that the Respondent harmed no patients, that the Respondent now performs valuable community service and that the Federal Court has already fined the Respondent and placed him on probation. The Committee voted to suspend the Respondent's license for three years, to stay the suspension and to place the Respondent on probation. Among other terms, the probation requires quarterly patient record and chart reviews and quarterly reviews with a practice monitor.

REVIEW HISTORY AND ISSUES

The Petitioner filed a Notice requesting this review, which the Board received on December 6, 1996. The Notice stayed the Committee's penalty automatically, pending this Determination from the Board [see N.Y. Pub. Health Law §230-c(4)(a)]. The Record for review contained the Committee's Determination, the hearing transcripts and exhibits, the Petitioner's brief and reply brief and the Respondent's brief and reply. The Board received the Petitioner's brief on January 10, 1997, the Respondent's brief on January 10, 1997, the Petitioner's reply brief on January 21, 1997 and the Respondent's reply brief on January 31, 1997. Over the Petitioner's strong objection, the Board's Administrative Officer granted the Respondent a brief extension to file the Respondent's reply brief. The Board authorizes our Administrative Officer to grant such extensions over the other party's objections, if the extension causes no delay in the date when the Board will deliberate on the case and causes no extension in the statutory stay during the Administrative Review. In this case, the extension for mailing the Respondent's reply brief until January 28, 1997 caused no delay in the Board's scheduled, initial Deliberation in this case on February 28, 1997.

The Petitioner asks that the Board overturn the Committee's Penalty and revoke the Respondent's License. The Petitioner argues that the Respondent's decade long participation in a conspiracy, that involved deliberate and calculated deceit, dishonesty and indifference to other's rights, demonstrates that the Respondent lacks the appropriate character, integrity and sound judgement to practice medicine. The Petitioner notes that the Federal Court's severe sentence proves

the Respondent committed a serious offense and the Petitioner notes that the conspiracy's decade long duration demonstrated that the Respondent's conduct resulted from no momentary lapse in judgement.

The Respondent contends that the evidence from the record supports firmly the Penalty that the Committee imposed. The Respondent's brief assures the Board that the criminal proceeding taught the Respondent a lesson and the brief contends that the Committee's devastating rebuke provides a sufficient sanction for the Respondent's misconduct. The Respondent argues that his conduct involved no patient harm, that he has provided good patient care over a distinguished career which included public service, that he provides much needed psychiatric services currently at CCA and that revoking his license would cause potential harm to the women he serves at CCA.

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 that the law permits [N.Y. Pub. Health Law §§230(10)(i), 230-c(1) & 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 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 and reply briefs. The Board sustains the Committee's Determination that the Respondent's Federal criminal violations constitute professional misconduct under N.Y. Educ. Law § 6530(9)(a)(ii)(McKinney Supp. 1997). Neither

party challenged the Committee's findings on the charges. The issue on review centered on whether the Committee imposed an appropriate sanction for the Respondent's misconduct. The Board finds the Committee's Penalty inappropriate for the Respondent's misconduct, but we reject the Respondent's request that we revoke the Respondent's License, because we find that sanction too harsh in this case. The Board concludes that an actual suspension period, with exceptions to allow the Respondent to continue his service at CCA, will provide a sufficient sanction for the Respondent's serious misconduct, without interrupting the valuable work that the Respondent performs at CCA.

The Committee's stayed suspension/probation Penalty included terms requiring a practice monitor and quarterly record reviews. The Board finds that Penalty inappropriate because chart review and a practice monitor offer remediation and supervision for physicians who maintain inadequate records or who provide poor patient care. The Committee made no findings, however, concerning poor patient care or inadequate record keeping and the Committee provided no explanation as to how their Penalty relates to the Respondent's misconduct.

The Board agrees with the Committee that the Respondent's conduct warrants a Penalty less severe than revocation. The Board has held in past cases that a tax evasion conviction alone provides insufficient grounds to revoke a physician's License when, as in this case, the crime has no connection to the Respondent's medical practice and involves no conduct in which the physician used his License to further his crime. The Board also finds mitigating factors in the Respondent's long, distinguished career and in his valuable service at CCA.

The Respondent's decade long participation in an intentional scheme to evade Federal taxes, however, causes the Board great concern, because integrity plays an essential role in medical practice. A physician must deal truthfully with many parties, including the government as regulator and third party insurer. The Respondent argued that the record contained no evidence that indicated that the Respondent lacked good character. The Board disagrees. The Respondent's conviction for participating in a long term scheme to cheat the government over taxes demonstrates poor character and warrants a severe sanction to teach the Respondent and others that such conduct, even apart from a physician's practice, can lead to serious consequences and interfere with a physician's ability to continue in practice. The Board also disagrees with the Respondent's contention that he has learned

from his criminal experience. Although the Respondent's hearing testimony and written submissions mentioned briefly his remorse for his misconduct, the Respondent's testimony and argument, to a great extent, concentrated on blaming others for the Respondent's conduct. The Board concludes that the blame for the Respondent's conduct lies with the Respondent alone and the Board concludes that we must impose a strict sanction against the Respondent to assure that we will deter him and others from such misconduct in the future.

After much discussion, the Board votes 5 - 0 to suspend the Respondent's License to practice in New York for four months from this Determination's effective date. The Board will stay no portion from this penalty and we find no reason to impose any probation period to follow the suspension. The Board realizes that the Respondent must be able to practice to complete his Federal community service sentence and we realize that the Respondent performs valuable work at CCA. The Board votes, therefore, to suspend the Respondent's License, with the exception that the Respondent may continue to provide psychiatric services at CCA, as a community service for no remuneration, to complete his Federal sentence and thereafter, for the entire four month suspension period, if the Respondent wishes to continue at CCA as a volunteer after he satisfies the Federal sentence. The Board discussed, but voted against, imposing further community service as a condition under this Penalty.

ORDER

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

1. The Board the **SUSTAINS** the Hearing Committee's December 3, 1996 Determination finding the Respondent guilty for professional misconduct.
2. The Board **OVERTURNS** the Hearing Committee's penalty.
3. The Board **SUSPENDS** the Respondent's License for four months, except that the Respondent may continue to provide psychiatric services at the CCA community clinic, to complete the community service he must perform under his Federal Court Sentence, and as a volunteer thereafter for the entire four month suspension.

ROBERT M. BRIBER

SUMNER SHAPIRO

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

WINSTON S. PRICE, M.D.

IN THE MATTER OF JOHN MILICI, 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. Milici.

DATED: Syracuse, New York

21 April, 1996 7

William A Stewart

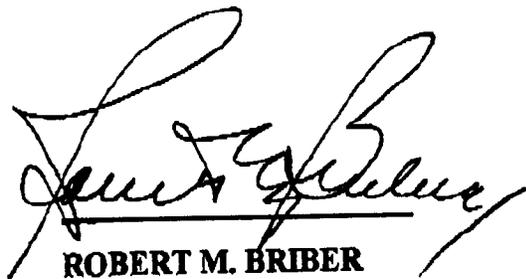
WILLIAM A. STEWART, M.D.

IN THE MATTER OF JOHN MILICI, 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. Milici.

DATED: Schenectady, New York

April 15, 1996



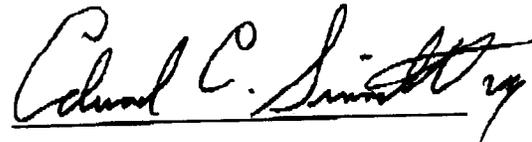
ROBERT M. BRIBER

IN THE MATTER OF JOHN MILICI, 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. Milici.

DATED: Roslyn, New York

March 26, 1996

A handwritten signature in black ink, reading "Edward C. Sinnott, M.D.", written in a cursive style. The signature is positioned above a horizontal line.

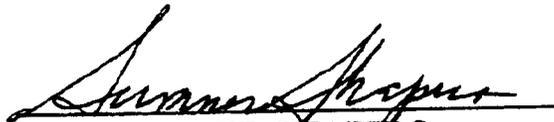
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF JOHN MILICI, 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. Milici

DATED: **Delmar, New York**
MARCH 26, 1997


SUMNER SHAPIRO