



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

March 23, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Norman M. Canter, M.D.
920 Redding Road
Fairfield, Connecticut 06430

Terrence Sheehan, Esq.
New York State Department of Health
Bureau of Professional
Medical Conduct
5 Penn Plaza - 6th Floor
New York, New York 1001-1810

RE: In the Matter of Norman Canter, M.D.

EFFECTIVE DATE MARCH 30, 1993

Dear Dr. Canter and Mr. Sheehan:

Enclosed please find the Determination and Order (No. ARB-92-120) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

A handwritten signature in cursive script that reads "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 : ADMINISTRATIVE
OF : REVIEW BOARD
NORMAN CANTER, M.D. : DETERMINATION
: AND ORDER
: ORDER NO. ARB-92-102

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A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of ROBERT M. BRIBER, MARYCLAIRE B. SHERWIN, EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.¹ held deliberations on February 23, 1993 and March 8, 1993² to review the Professional Medical Conduct Hearing Committee's (hereinafter the "Hearing Committee") December 23, 1993 Determination and Order placing Dr. Norman Canter's medical license on two years probation. The Department of Health requested the review through a Notice of Review which the Review Board received on January 8, 1993. JAMES F. HORAN, ESQ. served as Administrative Officer to the Review Board. Norman Canter, M.D. filed a brief and a response on his own behalf on February 8 and 18, 1993 respectively, and Terrence Sheehan, Esq. filed a brief on behalf of the Office of Professional Medical Conduct (OPMC) on February 5, 1993.

¹ At the time at which the Administrative Review Board met to deliberate this case, the New York State Senate had confirmed only four members of the five member Administrative Review Board that was created pursuant to Chapter 606 of the Laws of 1991.

² Dr. Sinnott was not present for the February 23, 1993 deliberations.

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. Canter pursuant to Public Health Law Section 230(10)(p) and Education Law Section 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 or another jurisdiction or upon a prior administrative adjudication which would amount to misconduct if committed in New York. 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 the Department had met its burden of proof in establishing that the Connecticut Medical Examining Board had found the Respondent guilty of practicing medicine while impaired by a psychiatric disorder. The Hearing Committee Determination stated that the Connecticut Board found that Dr. Canter had suffered since 1982 from a bipolar disorder with an acute paranoid reaction and that the condition is incurable. The Hearing Committee determined that the Respondent's conduct, if committed in New York, would amount to practicing medicine while impaired by a psychiatric disorder and being impaired by a psychiatric disorder. The Hearing Committee voted to suspend the Respondent's license to practice in New York for two years, but stayed the suspension and placed the Respondent on two years probation, with the terms of the probation set out in Appendix II of the Hearing Committee Determination.

The Hearing Committee found that the Respondent's psychiatric condition does not present a risk to patients or himself if the Respondent remains in therapy, refrains from practicing surgery and refrains from writing prescriptions or laboratory orders for himself. The Hearing Committee's probationary terms contain those restrictions. The Hearing Committee found that the Respondent does not practice medicine currently and does not plan to return to practice. The Respondent works currently as a medical malpractice consultant and the Hearing Committee found that the Respondent's employment as a

consultant hinges on maintaining a New York license.

REQUESTS FOR REVIEW

The Department of Health has objected to the Hearing Committee's penalty as inappropriate because the Determination and Order relies on the Respondent's assertion that he will not practice in New York. The Department urges that the Review Board revoke the Respondent's license or limit his license indefinitely to medical consulting because his mental condition renders him unfit to render treatment of any kind. In the alternative, the Department requests that the Review Board remand the case to the Hearing Committee on the question of whether the Respondent intends to practice in New York in the immediate future.

In his Brief, the Respondent requests that the Review Board not place any further restrictions on his license, asks the Review Board to change the wording of the Hearing Committee's Determination and Order to remove reference to any suspension, and questions the probation provisions relating to controlled substances.

In his response, the Respondent asserts that there are inconsistencies between the Specification of Charges and the Connecticut Final Determination. The Respondent also asks the Review Board to allow him to submit minutes from a Connecticut Board of Medicine proceeding into the record.

On February 22, 1993, the Respondent asked that the Review Board delay its consideration of this case so that the

Respondent could obtain additional material to submit on this appeal.

REVIEW BOARD DETERMINATION

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

Additional Evidence

Both the Respondent and the Department have submitted factual information to the Review Board that was not part of the record from the hearing. The Department's Brief at pages 5 and 6 contains information about the Respondent's plans for future medical practice. The Respondent's Response contains a request that the Review Board add minutes from the Connecticut Medical Board to the record in this case and that the Review Board consider the minutes in their review.

Public Health Law Section 230-c(4)(a) provides that the Review Board shall review the record below and the submitted briefs only. The Review Board interprets this provision to mean that the parties may not submit additional evidence to the Review Board that is not already contained in the hearing record. Additional evidence would include new factual information from outside the hearing record which the parties include in their briefs. In rendering this Determination, therefore, the Review Board did not consider any new information or any additional exhibits offered by the parties. Further, the Review Board denies the Respondent's request to add minutes of the Connecticut

Medical Board to the record from the hearing .

Respondent's Request for Additional Time

On the day before the Review Board's initial deliberations in this case, the Respondent requested that the Board delay deliberations in order to provide him time to obtain information from the Connecticut Medical Board to submit to the Review Board. The request for an adjournment was denied.

First, as noted above, the Board will not review evidence in addition to the evidence from the record below. Second, the Respondent has already filed all documents with the Review Board which he is entitled to submit for an Administrative Review. Public Health Law Section 230-c(4)(a) provides that the parties shall have 30 (thirty) days from the Notice of Review to submit briefs and 7 (seven) days from the receipt of their adversary's brief to file a response with the Review Board. The statute does not allow any further submissions nor does the statute require the Review Board to delay its deliberations if the parties ask to submit additional arguments to the Review Board. The Respondent has already served a brief and a response upon the Review Board, and these are the only submissions which the statute entitles him to file in this review. The Board will not accept further submissions from the Respondent, and we will not delay our Deliberations in this case.

Hearing Committee Findings

The Review Board votes unanimously to sustain the Hearing Committee's Determination and Order finding Dr. Canter

guilty of practicing while impaired by a psychiatric disorder and of being impaired by a psychiatric disorder.

Penalty

The Review Board votes unanimously to overturn the Hearing Committee's penalty placing Dr. Canter on two years probation, because we find that this time limited penalty is inconsistent with the Hearing Committee's finding that the Respondent suffers from an ongoing and incurable psychiatric condition which impairs his ability to practice medicine. We vote to revoke the Respondent's license to practice medicine in New York State.

The Review Board finds that three conclusions underlying the Hearing Committee's penalty are inconsistent or inappropriate considering the Hearing Committee's finding concerning the Respondent's psychiatric impairment.

1. The Hearing Committee's Determination concluded that the Respondent suffered from a psychiatric impairment which was ongoing and incurable, yet the Hearing Committee placed the Respondent on probation for only two years.
2. The Committee relied on the Respondent's statements that he did not intend to return to practice in New York.
3. The Committee restricted the Respondent's medical practice in only those areas in which the Respondent's psychiatric impairment had manifested

itself already.

The Hearing Committee found in effect that the Respondent's impairment is permanent, which means that the Respondent's impairment presents a permanent risk to himself and others. A penalty which lifts the restrictions on the Respondent's practice automatically by ending the Respondent's probation after two years is inadequate to protect the public or the Respondent. The Connecticut Medical Board placed permanent restrictions on the Respondent's license. By limiting the Respondent's New York license for only two years, the Hearing Committee may be encouraging the Respondent to move his practice to New York and escape the permanent restrictions in Connecticut.

In determining their penalty, the Hearing Committee appeared to rely in part on the Respondent's assurance that he had no intention to practice medicine in New York. The Review Board feels that an appropriate penalty for an impaired physician must assure, by the terms of the penalty itself, that the physician and the public will be protected. The penalty should not rely, in part, upon assurances from the mentally impaired physician about his future intentions, since those assurances are neither legally nor professionally binding.

The Hearing Committee concluded that the Respondent did not present a risk to himself or the public if he remained in therapy and did not perform surgery, prescribe drugs for himself or order laboratory tests for himself. The Hearing Committee apparently made the finding that the Respondent posed a risk

professionally only in performing surgery, self-prescribing drugs and ordering tests for himself because those were the areas of the Respondent's practice in which his mental impairment manifested itself previously. The evidence from the hearing indicates that the Respondent's mental impairment is ongoing and incurable, but there is no indication that the impairment may not manifest itself in the future in areas of medical practice other than surgery, self-prescribing or ordering lab tests for himself. The Review Board believes that a finding that the Respondent's psychiatric condition had in the past impaired him in providing patient care (during surgery) and in prescribing drugs and ordering laboratory tests (for himself) indicates at least that the Respondent's condition creates a risk in any situation in which he provides patient care, prescribes drugs or orders laboratory tests. Since the Hearing Committee found that the Respondent was impaired in the practice of medicine, the restrictions imposed to protect the public and the Respondent should consider all areas of practice in which the Respondent's condition could cause a danger to the Respondent or other persons.

After much consideration, the Review Board has determined that the only appropriate penalty in this case is to revoke Dr. Canter's license to practice medicine in New York. The Review Board feels the penalty in this case must be permanent and must bar the Respondent from providing patient care, prescribing drugs or ordering diagnostic tests. That penalty amounts to a revocation since the penalty would bar the Respondent from

diagnosing and treating disease, which is the practice of medicine. The Respondent does not need a medical license to review medical charts or provide consultations in malpractice cases, so the penalty will not prevent the Respondent from continuing his current work in that field.

ORDER

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

1. The December 24, 1992 Determination and Order by the Hearing Committee on Professional Medical Conduct finding Norman Canter, M.D. guilty of professional misconduct is hereby **sustained**.
2. The Hearing Committee's Determination and Order placing Dr. Canter's license to practice medicine in the State of New York on probation is hereby **overruled**. The Respondent's license to practice medicine in New York State is **revoked**.
3. The Respondent's requests to delay the initial deliberations in this review and to add additional evidence to the hearing record are **denied**.

ROBERT M. BRIBER

MARYCLAIRE B. SHERWIN

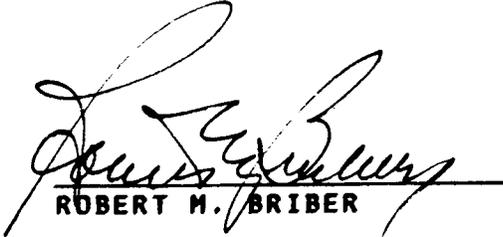
EDWARD C. SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF NORMAN CANTER, 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. Canter.

DATED: Albany, New York
March 8, 1993


ROBERT M. BRIBER

IN THE MATTER OF NORMAN CANTER, 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. Canter.

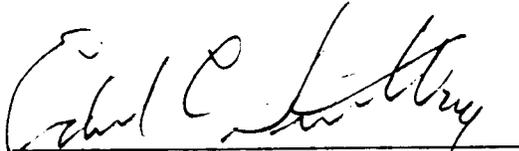
DATED: Malone, New York
March , 1993

Maryclaire B. Sherwin
MARYCLAIRE B. SHERWIN

IN THE MATTER OF NORMAN CANTER, 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. Canter.

DATED: Roslyn, New York
March 8, 1993



EDWARD C. SINNOTT, M.D.

IN THE MATTER OF NORMAN CANTER, M.D.

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the result in the Determination and Order in the Matter of Dr. Canter.

DATED: Syracuse, New York
March 8, 1993


WILLIAM A. STEWART, M.D.