



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

August 21, 1995

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jean Bresler, Esq.
NYS Dept. of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

S. Rod Acchiardo, Esq.
359 Calvert Street
Baltimore, Maryland 21202

Leroy J. Amar, M.D.
218 North Charles Street
Baltimore, Maryland 21201

RE: In the Matter of Leroy Amar, M.D.

Effective Date: 08/28/95

Dear Ms. Bresler, Mr. Acchiardo and Dr. Amar :

Enclosed please find the Determination and Order (No. 95-101) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

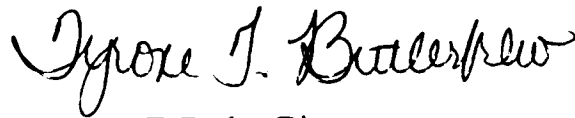
Office of Professional Medical Conduct
New York State Department of Health
Empire State Plaza
Corning Tower, Room 438
Albany, New York 12237

AUG 22 1995

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, stylized initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:

Enclosure

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

**IN THE MATTER
OF
LEROY AMAR, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
BPMC 95-101**

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.**¹ held deliberations on July 14, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) May 10, 1995 Determination finding Dr. Leroy Amar guilty of professional misconduct. Both the Office of Professional Medical Conduct (Petitioner) and **DR. LEROY AMAR, M.D.** (Respondent) requested the Review through Notices which the Board received on May 19 and May 24, 1995. **JAMES F. HORAN, ESQ.** served as Administrative Officer to the Review Board. **JEAN BRESLER, ESQ.** filed a brief for the Petitioner, which the Board received on June 22, 1995. **S. ROD ACCHIARDO, ESQ.** filed a brief for the Respondent, which the Board received on June 22, 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

¹Robert Briber did not participate in the deliberations in this case.

- 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 Petitioner brought this case pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9)(a)(i), which provide an expedited hearing in cases which professional misconduct charges against a Respondent 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 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.

In this proceeding, the Petitioner charged the Respondent had committed misconduct by being convicted of a crime under Federal Law and by being found guilty of misconduct by a duly authorized disciplinary agency of another state. Specifically, the Petitioner charged that the Respondent had been convicted upon a guilty plea to income tax evasion and was disciplined by the Maryland State Board of Physician Quality Assurance (Maryland Board) based upon the Respondent's Federal Income Tax Conviction.

The Hearing Committee found that the Petitioner had met its burden of proof in establishing that the Respondent had committed misconduct by reason of his conviction for violating Federal Law and for being disciplined by Maryland for a crime that would constitute misconduct in New York. The Committee found that the Respondent pled guilty to one (1) count of Income Tax Evasion for deliberately and intentionally seeking a deduction for Seventy-Six Thousand, Seven Hundred and Seventy-Eight (\$76,778.00) Dollars, while knowing that he was not entitled to that deduction. As a

result, the United States District Court for the District of Maryland sentenced the Respondent to supervised probation for eighteen months and to reside in a community residence for sixty days. The Court also ordered the Respondent to pay back taxes plus a Five Thousand (\$5,000.00) fine.

The Committee also found that the Respondent had entered into a Consent Order in which the Respondent's Maryland license was revoked, the Revocation stayed, and the Respondent placed on five (5) years probation. The Consent Order arose from the Respondent's income tax conviction. The July, 1992 Consent Order required that the Respondent perform One Thousand (1,000) hours of Community Service within two (2) years and to surrender his Maryland license in 1994. The Committee found further that the Respondent entered a Supplemental Consent Order in December, 1993 which found that the Respondent violated the prior Order's Probation Terms, for failing to comply with the community service requirements for July through November 1992. In May, 1994 the Respondent surrendered his Maryland license pursuant to the first Consent Order. In September, 1994 the Maryland Board issued a Modification Order, providing that the Respondent Maryland's license would be reinstated upon receiving proof that the Respondent had completed successfully the remaining community service hours. The Committee found further that the Maryland Board's Modification Order placed the Respondent on three (3) more years probation, including a ban on the practice of surgery and periodic peer review. The Committee found that the Respondent completed the One Thousand (1,000) hours of Community Service requirement set by the Maryland Board.

The Committee concluded that the Petitioner had shown by a preponderance of the evidence that the Respondent had been convicted of a crime under Federal Law and that the Respondent had been found guilty of misconduct by the disciplinary agency in the State of Maryland. The Committee found that the Respondent's acts, if committed in New York, would constitute misconduct, for practicing the profession fraudulently and practice which evidences moral unfitness.

The Committee voted to suspend the Respondent's license in New York for three (3) years, or until the Respondent had successfully completed his Maryland probation and the Committee voted to censure and reprimand the Respondent. The Committee noted that the Respondent had been

convicted of intentionally and knowingly evading income taxes. The Committee also noted that the Respondent's compliance with the Maryland probation Order was somewhat suspect. The Committee found the Respondent's misconduct to be serious.

REQUESTS FOR REVIEW

The Petitioner has requested that the Board modify the Hearing Committee's penalty because the penalty is inappropriate. The Petitioner notes that the Hearing Committee found that the Maryland Board restricted the Respondent from practicing surgery and that the Committee found further that the Respondent had been placed on ten (10) years probation in California and restricted from performing surgery as part of that probation. The Petitioner argues that in light of that information, which appears in the Respondent's testimony at pages 25 and 26 from the Hearing Transcript, the Review Board should place a limitation on the Respondent's license prohibiting him from practicing surgery in New York. The Petitioner argues that the Committee had authority to consider evidence outside the charges when determining the penalty to impose, Fuhrer v. Sobol 177 AD2d 865, 576 NYS 2d 632 (3rd Dept. 1991)

The Respondent has requested that the Review Board overturn the Hearing Committee's penalty because the penalty is disproportionate to the Respondent's offense. The Respondent asks that the Review Board modify the penalty to impose a censure and reprimand consistent with the determination in Wolf v. Ambash, 95 AD2d 877, 464 NYS 2d 244 (3rd Det. 1983), or, in the alternative, to stay the Hearing Committee's suspension and place the Respondent on probation. The Respondent contends that a suspension for, in effect, two and one-half (2 1/2) years is disproportionate and has no relation to the health and welfare of the people of New York. The Respondent has not practiced in New York for thirty years and the Respondent contends he has been thoroughly and effectively disciplined by the State of Maryland.

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 finding the Respondent guilty of professional misconduct. The Committee's Determination is consistent with the Committee's Determination that the Respondent was convicted of a crime under Federal Law, income tax evasion, and that the Respondent was disciplined by the State of Maryland for professional misconduct, based upon his Federal Conviction. The Committee's finding is also consistent with their Determination that the State of Maryland found the Respondent guilty subsequently of violating the probation which Maryland had imposed as part of the penalty following Maryland's original disciplinary proceeding against the Respondent.

The Review Board votes to sustain the Hearing Committee's penalty suspending the Respondent's New York license for three (3) years or until such time as the Respondent completes his Maryland probation. The Review Board also votes to sustain the Hearing Committee's penalty censuring and reprimanding the Respondent. The Review Board finds that the Committee's penalty is appropriate in view of the serious nature of the Respondent's fraudulent conduct, and due to the Respondent's failure to abide by the probation terms imposed following the initial Maryland disciplinary proceeding. The Board feels that the suspension will assure that the Respondent will comply fully with his Maryland probation.

We reject the Respondent's suggestion that a censure and reprimand would be an appropriate penalty for the Respondent's conduct. The Review Board does not wish to encourage physicians who have committed misconduct in other states to come to New York because the penalty they would face in New York is less strict than the penalty against the physicians in the state where the physicians committed their misconduct.

The Board also rejects the Petitioner's request that we limit the Respondent's license to prohibit practicing surgery. The Respondent's hearing testimony did indicate that the Respondent had been restricted from performing surgery in California, and that there had been a restriction in Maryland due to negligence. The charges against the Respondent, however, did not include any negligence charges nor charges that other states had found the Respondent guilty of negligence. The charges against the Respondent were restricted to the actions arising from tax evasion and from the Maryland probation violation. If the Petitioner wishes the Respondent's license to be restricted based upon another state's negligence findings against the Respondent, then the Petitioner will have to commence a proceeding against the Respondent on such charges.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee on Professional Medical Conduct's May 10, 1995 determination finding Dr. Leroy Amar guilty of professional misconduct.

2. The Review Board **SUSTAINS** the penalty which the Hearing Committee imposed against the Respondent in the Committee's Determination.

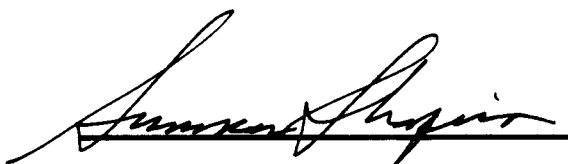
SUMNER SHAPIRO
WINSTON S. PRICE, M.D.
EDWARD SINNOTT, M.D.
WILLIAM A. STEWART, M.D.

IN THE MATTER OF LEROY AMAR, 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. Leroy Amar.

DATED: Delmar, New York

July 28, 1995

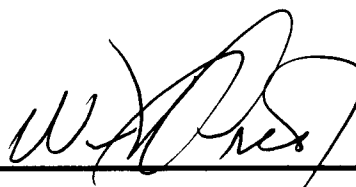

SUMNER SHAPIRO

IN THE MATTER OF LEROY AMAR, 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. Amar

DATED: Brooklyn, New York

8/18/, 1995

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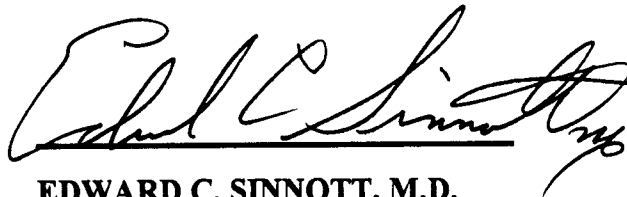
WINSTON S. PRICE, M.D.

IN THE MATTER OF LEROY AMAR, 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. Amar.

DATED: Roslyn, New York

July 28, 1995

A handwritten signature in cursive script, reading "Edward C. Sinnott", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF LEROY AMAR, 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. Amar.

DATED: Syracuse, New York

28 July, 1995



WILLIAM A. STEWART, M.D.