



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

November 25, 1998

Dennis P. Whalen
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
Corning Tower - Room 2509
Empire State Plaza
Albany, NY 12237

Earl J. Rawlings, Esq.
2090 Adam Clayton Powell Jr. Blvd.
New York, NY 10027

Edward Jackson Henderson, M.D.
232 Mamaroneck Avenue, Apt. 1A
Mamaroneck, NY 10543

RE: In the Matter of Edward Jackson Henderson, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.98-203) 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.

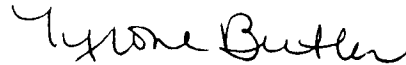
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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 cursive script that reads "Tyrone Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH (Petitioner)

COPY

**In The Matter Of
Edward Jackson Henderson, M.D. (Respondent)**

**Administrative Review
Board (ARB)
Determination and
Order 98 - 203**

**Proceeding to review a Determination by a Hearing Committee (Committee)
from the Board for Professional Medical Conduct (BPMC)**

**Before Board Members : Briber, Grossman, Lynch, Price & Shapiro.
Administrative Law Judge James F. Horan served as the Board's Administrative Officer.**

**For the Respondent: Earl A. Rawlins, Esq.
For the Petitioner: Robert Bogan, Esq.**

In this proceeding, pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1998), we consider the penalty to impose against the Respondent's New York medical license, following his separate criminal convictions for assault and for attempted criminal possession of a weapon. After a hearing on charges that the Respondent's criminal conduct constituted professional misconduct for a New York physician, a BPMC Committee sustained the charges, voted to revoke the Respondent's License and placed a condition on any attempt the Respondent makes to regain his license. The Respondent now asks the ARB to review and overturn that penalty as excessive, alleging error by the Committee and prejudicial statements at the hearing by the Petitioner's counsel. After reviewing the record and the submissions from the parties, we vote unanimously to sustain the Committee's Determination revoking the Respondent's License, but we modify the condition the Committee attempted to place on any reinstatement application.

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law §§ 6530(9)(a)(i) & 6530(9)(a)(iii) (McKinney Supp. 1998), by engaging in conduct that resulted in a criminal conviction:

- in New York State, and,
- in another state (Massachusetts) for conduct that would constitute a crime in New York, if the Respondent had committed such conduct in this state.

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law § 230(10)(p)(McKinney Supp. 1998), before a BPMC Committee, who then rendered the Determination

which the ARB now reviews. In such a Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). At the hearing, the Petitioner offered documentary evidence concerning the Respondent's criminal convictions and the Respondent offered testimony by a psychologist concerning the Respondent's mental state. The Respondent declined to testify, even though the Committee had questions concerning the Respondent's medical practice.

The Committee found that the Respondent entered a guilty plea to conspiracy to possess a weapon in the fourth degree, a misdemeanor, in the New York City Criminal Court for Bronx County, on April 9, 1993. The Committee found further that the Respondent entered a guilty plea to assault and or assault and battery, in the Trial Court of Massachusetts, Brighton, Massachusetts, on May 20, 1996. The Committee determined that the Respondent's Massachusetts conduct, if committed in New York, would have amounted to assault in the third degree, a misdemeanor. The Committee sustained both specifications charging the Respondent with professional misconduct. The Committee voted to revoke the Respondent's License, upon concluding that the Respondent's crimes evidenced unstable violent behavior, inconsistent with the Respondent's chosen subspecialty, psychiatry. The Committee noted that they considered suspending the Respondent's License, but rejected that alternative due to their unease over the Respondent's reinstatement, without an assessment regarding his fitness to resume medical practice. The Committee provided that, should the Respondent apply for reinstatement as a physician, he must accompany the application with a complete psychiatric evaluation by a psychiatrist familiar with the Respondent's history.

Review History and Issues

The Committee rendered their Determination on September 2, 1998. This proceeding commenced on September 11, 1998, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's reply brief. The record closed when the Petitioner submitted the reply brief on November 2, 1998.

The Respondent asks that the ARB overturn the Committee's Determination because the Committee gave inappropriate weight to the New York weapon conviction, ignored undisputed testimony on the Respondent's behalf and erred in calling the Respondent a psychiatrist. The Respondent also challenges statements by the Petitioner's counsel, during summation, as prejudicial and argues that case law supports revocation as a penalty only for offenses that occur during medical practice. In his reply brief, the Petitioner's counsel argues that the Committee imposed an appropriate and legal penalty and denies that any statement counsel made resulted in prejudice to the Respondent. The Petitioner argues that the Committee acted reasonably in rejecting testimony by the Respondent's psychologist witness, Dr. Rotkin, and in revoking the Respondent's License, due to his violent unstable conduct.

Determination

All ARB Members participated in this case, considered the record and considered the parties' briefs. We sustain the Committee's Determination that the Respondent's two criminal convictions constituted professional misconduct under N. Y. Educ. Law §§ 6530(9)(a)(i) & 6530(9)(a)(iii) (McKinney Supp. 1998). The Respondent argued at the hearing that the criminal convictions must involve medical practice, but the statute contains no such requirement. We also sustain the Committee's Determination revoking the Respondent's License, although we modify the Committee's reasoning and the condition the Committee attached to any subsequent application the Respondent may make for License Restoration.

We see no evidence in the record that the Committee placed any weight in their Determination on statements the Petitioner's counsel made during final summations and see no prejudice to the Respondent due to the remarks, Matter of Balmir v. DeBuono, 237 A.D.2d 648, 655 N.Y.S. 2d 113 (Third Dept. 1997). We also reject the Respondent's argument that the Committee imposed an excessive penalty as compared to penalties in other cases. In Matter of Bezar v. De Buono, 240 A.D.2d 978, 659 N.Y.S.2d 547 (Third Dept. 1997), the Appellate Division for the Third Department rejected that argument as a ground for overturning an ARB penalty, holding that penalties

imposed in other cases lack relevance, because we must judge each case on its own particular circumstances. We also reject the Respondent's assertion that the Committee ignored unrefuted testimony by Dr. Rotkin that the Respondent "did not have a violent character". Dr. Rotkin never gave such testimony. He testified instead that the Respondent's psychological test results fell within normal ranges (Hearing Transcript page 21). Further, the Respondent's assault conviction in Massachusetts clearly would refute any assessment that the Respondent lacked a violent character, even if Dr. Rotkin had actually given such testimony. The Respondent also alleged error because the Committee referred to the Respondent as a psychiatrist. The Committee called psychiatry the Respondent's "chosen subspecialty". The Committee apparently made that conclusion from evidence in the record that indicated that the Respondent performed a residency in psychiatry (Petitioner's Exhibit 3; Hearing Transcript page 47) and spent a summer working as a volunteer psychiatrist at Queens Psychiatric Clinic (Hearing Transcript page 46). We hold that evidence in the record gave the Committee a reasonable basis for making the conclusion about psychiatry as the Respondent's chosen specialty.

We do modify the statement in the Committee's Determination that the Respondent committed violent acts. The Respondent committed a violent act by choking his wife, which formed the basis for the Massachusetts assault conviction. The New York criminal conviction involved conspiracy to possess a hand gun.

The ARB holds that the Respondent's violent conduct in Massachusetts constituted sufficient ground to prove the Respondent's unfitness to practice medicine in New York. The Respondent had the opportunity at the hearing to introduce mitigating information and demonstrate that his value to the profession outweighs his violent conduct. At the hearing, however, the Respondent refused to take the stand and answer the Committee's questions. The Respondent also introduced Dr. Rotkin's testimony, which resulted in aggravating rather than mitigating evidence. Dr. Rotkin's testimony indicated that the Respondent never revealed his criminal conduct during his first interview with Dr. Rotkin (Hearing Transcript page 18), never mentioned during his two visits with Dr. Rotkin, that his Massachusetts conviction involved violating a protective order (Hearing Transcript page 27) and denied his guilt for the criminal convictions that the Respondent admitted during his guilty pleas

(Hearing Transcript page 25). The testimony by Dr. Rotkin totally discredited his examination findings about the Respondent and demonstrated the Respondent's untruthfulness and his refusal to accept responsibility for his past conduct. The Respondent's refusal to testify denied the Committee an opportunity to test his potential for rehabilitation and his possible value to the medical profession. With this record as their basis, the Committee acted appropriately in voting to revoke the Respondent's License.

The ARB modifies the provision in the Committee's Order that attempted to place conditions on any application the Respondent may submit for reinstatement. Nothing in the penalty provisions in N. Y. Pub. Health Law § 230-a (McKinney Supp. 1998) provides the Committee the authority to place conditions on reinstatement applications and we note that the State Board of Regents, rather than BPMC, controls the reinstatement process. We modify the Committee's Determination to provide that, if the Respondent applies for License Reinstatement, the Committee recommends that the Regents require the Respondent to submit a psychiatric evaluation by a psychiatrist familiar with the Respondent's violent history.

ORDER

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

1. The ARB **SUSTAINS** the Committee's Determination that the Respondent's criminal convictions constitute professional misconduct by a physician.

2. The ARB **SUSTAINS** the Committee's Determination revoking the Respondent's New York Medical License.

Robert M. Briber

Sumner Shapiro

Winston S. Price, M.D.


Stanley L. Grossman, M.D.

Therese G. Lynch, M.D.

In The Matter Of Edward Jackson Henderson, 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. Henderson.

Dated: 11/24, 1998

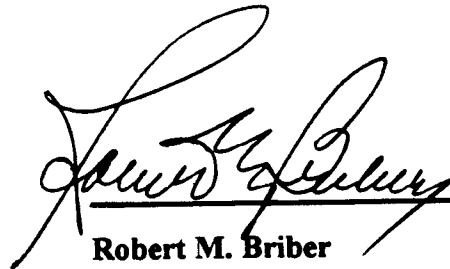
A handwritten signature in black ink, appearing to read "W. S. Price", is written over a solid horizontal line.

Winston S. Price, M.D.

In The Matter Of Edward Jackson Henderson, 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. Henderson.

Dated : November 24, 1998



Robert M. Briber

In The Matter Of Edward Jackson Henderson, M.D.

Therese G. Lynch, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Henderson.

Dated : Nov 24, 1998



Therese G. Lynch, M.D.

In The Matter Of Edward Jackson Henderson, M.D.

Stanley L. Grossman, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Henderson.

Dated : 11/23, 1998

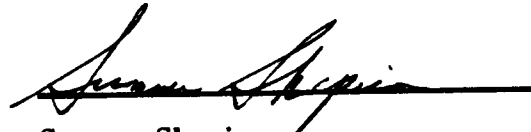
Stanley L. Grossman M.D.

Stanley L. Grossman, M.D.

In The Matter Of Edward Jackson Henderson, 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. Henderson.

DATED: Nov. 24, 1998


Sumner Shapiro