



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

Karen Schimke
Executive Deputy Commissioner

May 7, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Frederick Zimmer, Esq.
NYS Dept. of Health
Corning Tower-Room 2438
Albany, New York 12237

Mios Klvana, M.D.
E 47395
4b-7b-105u, POB 1902B
CCI
Tehachapi, California 93581

RECEIVED
MAY 07 1996
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

Milos Klvana, M.D.
E 43795
PO Box 1031
Tehachapi, California 93501

Milos Klvana, M.D.
E 43795
California Men's Colony
St. Prior Room 1313
PO Box 8108
San Luis Obispo, California 93409-8108

Milos Klvana, M.D.
E 47395
PO Box 8101, 1313X
CMC-East
San Luis Obispo, California 93409-8101

RE: In the Matter of Milos Klvana, M.D.

Dear Mr. Zimmer and Dr. Klvana:

Enclosed please find the Determination and Order (No. 95-315) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. The 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.

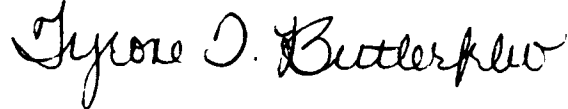
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

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" followed by a stylized flourish.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw

Enclosure

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

COPY

**IN THE MATTER
OF
MILOS KLVANA, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 95-315**

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.** held deliberations on March 15, 1996 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) January 2, 1996 Determination finding Dr. Milos Klvana (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on January 22, 1996. James F. Horan served as Administrative Officer to the Review Board. The Respondent filed a brief on his own behalf, which the Review Board received on February 21, 1996. The Office of Professional Medical Conduct (Petitioner) filed a reply brief which the Board received on February 28, 1996.

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 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 in 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 case, the Petitioner charged that the Respondent had been convicted of several criminal acts by the State of California. The Petitioner alleged that the Respondent's criminal actions would constitute professional misconduct if the acts had been committed in New York.

The Hearing Committee in this case found that the Petitioner had met its burden of proof in establishing that the Respondent had been convicted in Los Angeles County Superior Court for second degree murder (nine counts), aiding and abetting the unlicensed practice of medicine (five counts), conspiring to practice medicine without a license (one count), preparing fraudulent insurance claims (nineteen counts), presenting fraudulent insurance claims (ten counts), grand theft (two counts), and perjury (two counts).

The Committee also found that the California Board of Medical Quality Assurance (California Board) had revoked the Respondent's license to practice medicine in California, arising from his criminal convictions. The California Board found that the Respondent's criminal acts were substantially related to his medical practice and amounted to gross negligence and repeated negligent acts. The California Board took official notice of the California appellate court ruling sustaining the

Respondent's criminal convictions, People v. Klvana, 11 Cal. App 4th 1679 (1992). That court ruling discussed details of the Respondent's nine murder convictions. The Committee found that the Appellate Court's discussion indicated that the Respondent had maliciously caused the deaths of nine infants he had delivered by:

- ignoring obvious basic indicia of high risk pregnancies and failing to monitor the risks properly;
- disregarding repeatedly warnings from peers about inadequacies in his practice;
- omitting or misrepresenting material information about his professional standing, sophistication of his practice and patient options; and,
- repeatedly administering the drug pitocin improperly and failing to manage the risks which the drug posed.

The Hearing Committee concluded that the Respondent's conduct, if committed in New York, would constitute professional misconduct. The Committee sustained the Specifications from the Statement of Charges (DOH Ex. 1) that alleged that the Respondent's conduct, if committed in New York would amount to practicing fraudulently, practicing with gross negligence and negligence on more than one occasion, being convicted of a crime in another jurisdiction, aiding unlicensed practice, failing to comply with state laws governing medicine, moral unfitness, and, delegating professional responsibilities to a person not qualified by training, experience or licensure.

The Committee determined that the Respondent's mishandling of his obstetric cases was egregious. The Committee concluded that the Respondent should never have the opportunity to practice in New York and that revocation is the only appropriate sanction in this case.

REQUESTS FOR REVIEW

The Respondent has requested that the Review Board appoint an attorney to represent him in this proceeding. The Respondent has also requested that the Review Board suspend his license until there is a final disposition of his criminal appeals and sentence in California.

The Respondent's brief challenges the fairness of his California trial and alleges that his state appointed attorney was not competent. The Respondent contests the findings that he was responsible for the deaths of the nine infants whose cases formed the basis for the Respondent's second degree murder conviction.

The Respondent argues that his California convictions were unfair and unconstitutional and that he would not have been convicted in a trial in New York. The Respondent contends that his conduct would not constitute professional misconduct in New York. The Respondent contends that his California convictions are still on appeal and he requests leniency from the Review Board.

The Petitioner urges the Board to sustain the Hearing Committee's Determination because the Department's evidence demonstrates that revocation is the only possible penalty for the Respondent's acts. The Petitioner contends that there is no legal requirement that this disciplinary action should be delayed due to the Respondent's pending criminal appeal in California.

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 that the Respondent was guilty of professional misconduct in New York based on his criminal conviction in California and the California Board's disciplinary action. We reject the Respondent's statement that the Respondent's California conduct would not constitute misconduct in New York. The Respondent's California conduct would amount to negligence on more than one occasion, gross negligence, fraud, being convicted of a crime, aiding unlicensed practice, willful failure to comply with state legislation governing medical practice, moral unfitness and delegating professional responsibilities to an unlicensed person.

The Board rejects the Respondent's request that we provide the Respondent with assigned counsel for this appeal. The Board has no authority to assign counsel to a Respondent.

The Board rejects the Respondent's request that the Board limit action against the Respondent to a license suspension until the Respondent's appeals on his California conviction are final. The case that the Respondent cited in his brief, Arthurs V. Stern, 560 F2d 477 (1977), does not provide that disciplinary actions must await the outcome of criminal appeals in a case arising on the same facts.

The Board finds that the Respondent's argument, that he was not responsible for the deaths that provided the basis for the California murder convictions, is an impermissible attempt to relitigate his California case before the Review Board. The Review Board can not overrule the California Superior Court or the California Board.

The Review Board sustains the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State. The Board agrees with the Hearing Committee that the Respondent's repeated, extensive and egregious misconduct in California demonstrates that the Respondent's practice of medicine constitutes a danger to the public. The only appropriate penalty in this case is to revoke the Respondent's license to practice medicine in New York.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's January 2, 1996 Determination finding the Respondent guilty of professional misconduct.

2. The Review Board **SUSTAINS** the Hearing Committee's Determination revoking the Respondent's license to practice medicine in New York State.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

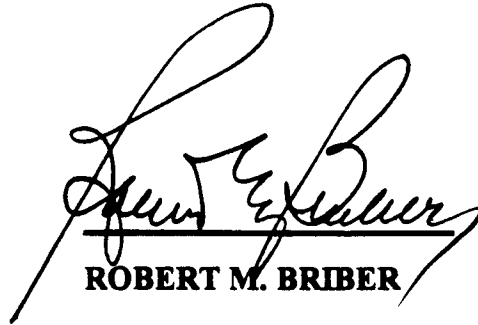
WILLIAM A. STEWART, M.D.

IN THE MATTER OF MILOS KLVANA, 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. Klvana.

DATED: Schenectady, New York

Apr 18, 1996


ROBERT M. BRIBER

IN THE MATTER OF MILOS KLVANA, 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. Klvana.

DATED: Delmar, New York

April 18, 1996



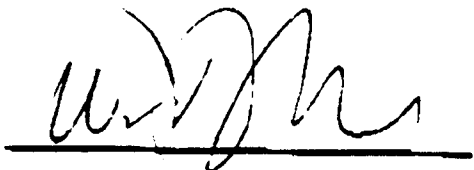
SUMNER SHAPIRO

IN THE MATTER OF MILOS KLVANA, 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. Klvana.

DATED: Brooklyn, New York

4/19/96, 1996



WINSTON S. PRICE, M.D.

IN THE MATTER OF MILES KLVANA, 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. Klvana.

DATED: Roslyn, New York

April 16, 1996

A handwritten signature in cursive script, appearing to read "Ed C. Sinnott", with the year "1996" written in the bottom right corner of the signature. The signature is written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF MILOS KLVANA, 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. Klvana.

DATED: Syracuse, New York

16 April, 1996

William A. Stewart

WILLIAM A. STEWART, M.D.