

DOH 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

March 13, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Larry Roy Leichter, M.D.
3419 North 31 Terrace
Hollywood, Florida 33021

Elizabeth C. Hogan, Esq.
NYS Dept. of Health
Rm. 2438 Corning Tower
Empire State Plaza
Albany, New York 12237

RECEIVED
MAR 13 1995
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

RE: In the Matter of Larry Roy Leichter, M.D.

Effective Date: 03/20/95

Dear Ms. Hogan and Dr. Leichter :

Enclosed please find the Determination and Order (No. 94-251) 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.

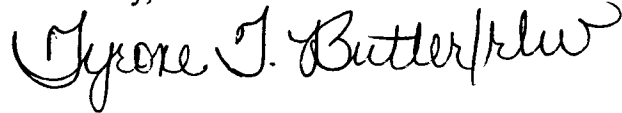
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

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:

Enclosure

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

IN THE MATTER

OF

LARRY ROY LEICHTER, M.D.

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 94-251**

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.**¹ held deliberations on February 3, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) December 1, 1995 Determination finding Dr. Larry Roy Leichter (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on December 13, 1994. James F. Horan served as Administrative Officer to the Review Board. Elizabeth C. Hogan, Esq. filed a brief for the Office of Professional Medical Conduct (Petitioner) on January 6, 1995. Dr. Leichter filed a brief on his own behalf on January 20, 1994.

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.

¹Sumner Shapiro did not participate in the deliberations. Dr. Sinnott participated by conference call.

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 upon the criminal conviction or prior administrative adjudication.

The Hearing Committee in this case found that the Petitioner had met its burden of proof in establishing that the Respondent had committed professional misconduct based upon an administrative adjudication in another state for conduct which would constitute misconduct in New York. The Committee found that the Respondent had entered a Consent Agreement with the Florida Department of Professional Regulation (Florida Board) in 1992. The Florida action involved charges that the Respondent had prescribed morphine on multiple occasions to a patient (Patient A) in such quantities as to make Patient A become addicted, failed to keep written medical records justifying Patient A's treatment, failed to document hospital prognosis for a three week period, continued to prescribe morphine despite the fact that the records reflected the Respondent's awareness of Patient A's addiction and failed to examine Patient A to document her condition prior to discharge on October 2, 1988. Patient A died on October 4, 1988. The Florida Board suspended the Respondent's license indefinitely pending successful completion of a program with the Physician's Recovery Network.

The Committee found that the Respondent's conduct in Florida would amount to negligence on more than one occasion, gross negligence and failing to maintain adequate records, if the conduct had occurred in New York.

The Hearing Committee voted to suspend the Respondent's New York license until the Respondent successfully completes his Florida suspension and probation and imposed a civil penalty of Two Thousand Five Hundred (\$2,500) Dollars. The Committee concluded that the Respondent had seriously mismanaged Patient A's use of morphine, but found that the record was too sparse to justify revocation of the Respondent's New York license.

REQUESTS FOR REVIEW

The Petitioner has asked the Review Board to revoke the Respondent's license to practice medicine in New York because of the egregious conduct underlying the Florida disciplinary action. In the alternative, the Petitioner urges the Review Board to at least retain the Hearing Committee's sanction.

The Respondent has submitted a letter in which he asserts that he signed the Florida Consent Decree due to suicidal depression. He alleges that he submitted evidence for the New York referral proceeding which would clear him of the false charges from Florida and he asserts that the failure of the Hearing Committee to evaluate that evidence denied him due process. The Respondent notes that he no longer practices, that he is still undergoing psychotherapy and that Patient A's death occurred independent of the Respondent's care. The Respondent characterizes the Hearing Committee's penalty and its conclusions as unconscionable behavior which is tortious.

REVIEW BOARD DETERMINATION

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

The Review Board votes 4-0 to sustain the Hearing Committee's Determination finding the

Respondent guilty of professional misconduct. The Determination was consistent with the Committee's finding that the Respondent had entered a Consent Decree with the State of Florida arising from the Respondent's inappropriate and excessive prescribing of morphine to a patient. The Respondent may not now repudiate that consent agreement, as he attempts through the letter he has submitted.

The Review Board votes 3-1 to sustain the Hearing Committee's Determination to suspend the Respondent's license to practice medicine in New York State, until such time as the Respondent completes his suspension and probation in Florida. The Review Board majority feels that this Penalty is appropriate to assure that the Respondent will not be able to practice medicine in New York until he has completed the terms of the Florida penalty, especially the requirement that the Respondent successfully complete a program with the Physician's Recovery Network. The majority feels further that the civil penalty which the Hearing Committee imposed is appropriate in the light of the Respondent's egregious misconduct in prescribing morphine to Patient A in quantities sufficient to cause addiction and after the Respondent was aware of Patient A's addiction.

The Review Board's dissenting member would overturn the Hearing Committee and 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 votes 4-0 to **sustain** the Hearing Committee on Professional Medical Conduct's December 1, 1994 Determination finding Dr. Larry Roy Leichter guilty of professional misconduct.

2. The Review Board votes 3-1 to **sustain** the Hearing Committee's Determination to suspend the Respondent's New York license under the conditions which the Hearing Committee set out in their Determination.

3. The Review Board votes 3-1 to **sustain** the Hearing Committee's Determination to impose a civil penalty of Two Thousand Five Hundred (\$2,500) Dollars.

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

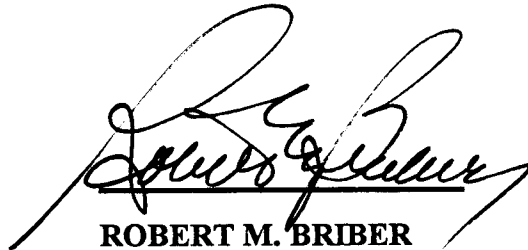
EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF LARRY ROY LEICHTER, 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. Leichter.

DATED: Albany, New York
March, 1995

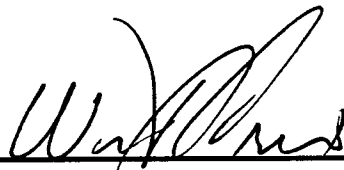


ROBERT M. BRIBER

IN THE MATTER OF LARRY ROY LEICHTER, 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. Leichter.

DATED: Brooklyn, New York
_____, 1995

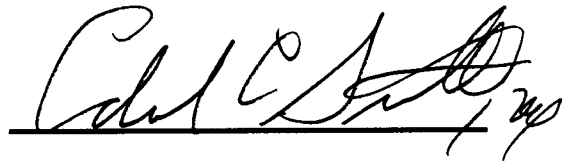


WINSTON S. PRICE, M.D.

IN THE MATTER OF LARRY ROY LEICHTER, 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. Leichter.

DATED: Roslyn, New York
February 13, 1995

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott, M.D.", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF LARRY ROY LEICHTER, M.D.

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board for Professional Medical Conduct, affirming that he participated in the deliberations in the Matter of Dr. Leichter and that the attached Determination reflects the decision by the majority of the Administrative Review Board.

DATED: Syracuse, New York
13 Feb, 1995

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in black ink and is positioned above a solid horizontal line.

WILLIAM A. STEWART, M.D.