



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

May 19, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Claudia Bloch, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Floyd Wesley White, Jr., M.D.
508 Rutland Street
Westbury, New York 11590

RE: In the Matter of Floyd Wesley White, Jr., M.D.

Dear Ms. Bloch and Dr. White:

Enclosed please find the Determination and Order (No.96-118A) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T" and "B".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH (Petitioner)

In The Matter Of

Floyd Wesley White, M.D. (Respondent)

**Administrative Review
Board (ARB)
Determination and
Order 96 - 118A**

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

COPY

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

**For the Respondent: The Respondent represented himself in the proceeding
For the Petitioner: Claudia Bloch, Esq.**

After a hearing into charges that the Respondent violated probation terms on his New York medical license (License), a BPMC Committee sustained the charges and voted to revoke the Respondent's License, upon finding that the Respondent had failed drug screens and had disregarded other probation conditions. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney Supp. 1998), the Respondent asks the ARB to overturn the Committee's Determination and lessen the penalty. After considering the hearing record and the parties' briefs, the ARB sustains the Committee's Determination that the Respondent violated probation and we sustain the Committee's Determination revoking the Respondent's License.

COMMITTEE DETERMINATION ON CHARGES

The Respondent entered into a Consent Application with BPMC in February, 1997, to settle a disciplinary proceeding that BPMC brought against the Respondent (Prior Proceeding). In the Prior Proceeding, a Hearing Committee had voted to revoke the Respondent's License, but after administrative review, the ARB had remanded for further proceedings (ARB 96-118). Evidence in the Prior Proceeding demonstrated that the Respondent suffered from substance abuse. The Respondent entered into the Consent Application prior to the further proceedings before the original Committee. In the Consent Application, the Respondent agreed to abide by probation terms including requirements that the Respondent undergo random screens for alcohol/drugs and to practice medicine only under supervision by a practice supervisor, sobriety monitor and therapy monitor, who the Respondent would designate and the Office for Professional Medical Conduct (OPMC) would approve. In May, 1997, the OPMC Director determined that the Respondent had violated the

probation terms due to:

1. two opoid positive urine screens;
2. failure to respond timely to an OPMC letter requesting that the Respondent submit for approval the identity of the required practice supervisor, sobriety monitor and therapy monitor;
3. practicing without an approved practice supervisor, sobriety monitor or therapy monitor; and,
4. failing to comply with an OPMC directive to submit a chemical dependency evaluation report.

The Respondent then elected to contest the probation violation findings in a hearing pursuant to N. Y. Pub. Health Law § 230(19)(McKinney Supp. 1998).

A hearing ensued before a BPMC Committee, who then rendered the Determination which the ARB now reviews. The Committee sustained the charges against the Respondent upon finding that the Respondent had:

- tested positive for morphine in urine screens on March 1 and March 20, 1997 (Committee Finding of Facts 3,5),
- failed to notify OPMC about either positive screen (Finding 6),
- continued to practice without approved supervisors in place (Findings 4, 7, 10, 14, 15), and
- failed to report to the site for urine screens within the required four hour time period (Finding 12).

In reaching their findings, the Committee found the Respondent to lack credibility, in claiming at the hearing that he had remained drug free. The Committee also found evidence in the record to support the drug screens' accuracy. The Committee concluded that the Respondent had shown poor judgement by violating probation terms, even though he knew and understood that his actions constituted serious violations and even though he knew the violations placed his license in jeopardy. The Committee concluded that the circumstances in the case and the concern for public safety warranted license revocation as a penalty.

REVIEW HISTORY AND ISSUES

The Committee rendered their Determination on January 27, 1998. The Respondent then commenced this proceeding on February 17, 1998, when the ARB received the 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 ARB received the Petitioner's reply on March 26, 1998. The ARB also received a letter from the Respondent on March 19, 1998, through which the Respondent attempted to submit evidence to the ARB from outside the hearing record, and a letter from the Respondent on April 2, 1998, in which the Respondent repeated the arguments from his earlier brief.

The Respondent contests all the findings by the Hearing Committee. As to the positive urine screens, the Respondent denies drug use and contends that the positive screens resulted from using poppy seed products. As to the charges involving failure to notify OPMC and practicing without approved supervisors, the Respondent contends that he completely forgot about the probation terms due to his concern over disproving the positive urine screens. As to the charge that the Respondent failed to submit to urine screens within four hours, the Respondent contends that he complied with all requirements to undergo screens, but was unable to leave his job to go for screens at mid-day. The Respondent appeals the Committee's penalty as too harsh and notes that his past impairment never affected his job performance.

In reply to the Respondent's statements about the positive urine screens, the Petitioner contends that:

- the Respondent's brief misstated facts from the record,
- the brief merely reasserts the defense the Respondent presented before the Committee,
- the Respondent's denials focus on the March 20th urine screen and fail to explain the positive screen on March 1st, and,
- the Respondent fails to understand that the urine screens play only a part in determining whether the Respondent actually used drugs on those occasions.

In reply to the Respondent's contentions concerning the other charges, the Petitioner characterizes

those contentions as reiterations from the Respondent's defense at the hearing, that the Committee rejected. The Petitioner asks that the ARB deny the Respondent's request for a less severe sanction and sustain the Committee's Determination revoking the Respondent's License.

REVIEW BOARD DETERMINATION

The ARB has considered the record and the parties' briefs. All ARB members participated in the case. Dr. Stewart and Mr. Briber took part in the May 1, 1998 Deliberations by telephone. The ARB votes to reject the Respondent's attempt to submit evidence from outside the hearing record, to sustain the Committee's Determination that the Respondent violated probation and to sustain the Committee's Determination revoking the Respondent's License.

The ARB refuses to consider the evidence from outside the Hearing Record that the Respondent attempted to submit in the letter the ARB received on March 19, 1998. In reviewing a Committee Determination, the ARB may consider only the record below and the parties' briefs, see N. Y. Pub. Health Law § 230-c(4)(a)(Mckinney Supp. 1998). That statute also limits the parties to submitting only a brief and a reply. The ARB, therefore, also refuses to consider the additional letter from the Respondent, that we received on April 2, 1998.

We conclude that the hearing record supports the Committee's Determination sustaining the probation violation charges. The Respondent himself admitted the violations, other than positive urine screens. The evidence that the Respondent introduced to challenge the positive screens, including his denials, merely created a factual issue for the Committee to resolve. The Committee found the evidence the Petitioner offered to prove the charges more credible and the Committee stated clearly their reasons for finding that the Respondent's testimony lacked credibility. The Board owes the Committee deference for their conclusions on credibility and we see no reason to overturn their conclusions in this instance.

We also sustain the Committee's penalty, because we agree that the public's protection requires that we revoke a physician's license, when that physician refuses to abide by probation terms in place

to protect patients, see Matter of Kite v. DeBuono, 233 A.D.2d 783, 650 N.Y.S.2d 384 (Third Dept. 1996). The Prior Proceeding against the Respondent resulted in a Hearing Committee Determination revoking the Respondent's License. The Respondent entered into the Consent Application, and agreed to the probation terms at issue here, while the prior Hearing Committee prepared to conduct further proceedings under an ARB Remand Order. Entering into the Consent Application allowed the Respondent to return to practice and provided the Respondent with a second chance in life, that many other people never receive. The Respondent failed the second chance. Almost immediately after the Respondent received that second chance, he reneged on his agreement to abide by the probation terms and he violated the probation, in several ways. The Respondent knew from the Hearing Committee penalty in the Prior Proceeding how severe a penalty he could face if BPMC brought new charges against. The Respondent also knew that he had been able to regain his License only by agreeing to abide by the probation terms.

The ARB can find no grounds in this record on which to grant the lesser penalty that the Respondent has requested. An impaired physician presents a danger to his patients. Although the Respondent asserts that he never harmed a patient while impaired, nothing in the law requires a Committee or the ARB to wait until a physician causes actual harm to a patient, before taking action to protect the public. We could allow a physician with an impairment history to return to practice, only under terms that will ensure that the physician no longer suffers from an impairment and that will ensure protection for the physician's patients. For the ARB to overturn the Committee's penalty and impose a lesser penalty that would allow the Respondent to continue practicing, the ARB would have to be able to trust the Respondent to comply with probation terms similar to those that he has already violated. The Respondent's history and his non-credible testimony at the hearing prove him to be untrustworthy. The ARB can see no reason to believe that the Respondent will perform any better under probation that we would impose, than the Respondent performed under the terms to which he agreed in the Consent Application. The Respondent's brush with a license revocation penalty from the Prior Proceeding failed to deter his probation violations. The ARB can only conclude that a penalty from this proceeding less severe than revocation would provide no deterrent to the Respondent either. The ARB agrees with the Committee that no penalty other than revocation would

provide sufficient protection for the public in this case.

ORDER

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

1. The ARB **SUSTAINS** the Committee's Determination finding that the Respondent violated probation.
2. The ARB **SUSTAINS** the Committee's Determination to revoke the Respondent's License.

Robert M. Briber

Sumner Shapiro

Winston S. Price, M.D.

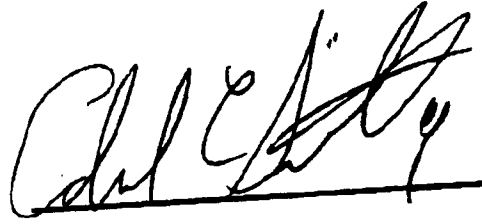
Edward C. Sinnott, M.D.

William A. Stewart, M.D.

In The Matter Of Floyd Wesley White, 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. White.

Dated: May 8, 1998

A handwritten signature in black ink, appearing to read "Ed C. Sinnott", written over a horizontal line.

Edward C. Sinnott, M.D.

In The Matter Of Floyd Wesley White, 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. White.

Dated: 8 May, 1998



William A. Stewart, M.D.

In The Matter Of Floyd Wesley White, 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. White

DATED: May 8, 1998

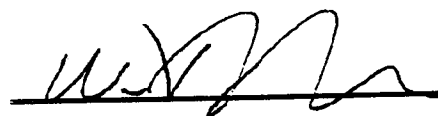


Sumner Shapiro

In The Matter Of Floyd Wesley White, 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. White.

Dated: 5/10/98, 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.