



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

July 20, 1995

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

William L. Wood, Esq.
Wood & Scher
The Harwood Building
14 Harwood Court
Scarsdale, New York 10583

Joseph M. Piacentile, M.D.
1604 Haight Avenue
Bronx, New York 10469

RECEIVED
JUL 21 1995
PROFESSIONAL MEDICAL CONDUCT

RE: In the Matter of Joseph M. Piacentile, M.D.

Effective Date: 07/27/95

Dear Mr. Sheehan, Mr. Wood and Dr. Piacentile :

Enclosed please find the Determination and Order (No. 95-84) 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.

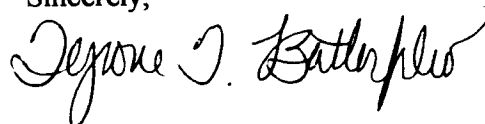
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large, sweeping 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
JOSEPH M. PIACENTILE, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 95-84**

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D.¹, EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** held deliberations on June 13, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) April 11, 1995 Determination finding Dr. Joseph M. Piacentile (Respondent) guilty of professional misconduct. The Office of Professional Medical Conduct (Petitioner) requested the Review through a Notice which the Board received on April 27, 1995. James F. Horan served as Administrative Officer to the Review Board. Terrence Sheehan, Esq. filed a brief for the Petitioner on May 30, 1995. William L. Wood, Jr., Esq. filed a brief for the Respondent on June 7, 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
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL §230-a.

¹Dr. Winston Price participated in the deliberations by telephone.

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 alleged that the Respondent had committed misconduct arising from his conviction for a crime under Federal Law.

The Hearing Committee in this case found that the Petitioner had met its burden of proof in establishing that the Respondent was convicted of crimes under Federal law. The Committee found that the Respondent had entered guilty pleas in United State District Court in the Southern District of New York, to one count of conspiracy to submit a false Medicare claim and to one count of income tax evasion. The Court sentenced the Respondent to incarceration for sixty consecutive weekends, followed by thirty three months probation, six hundred hours of community service divided evenly over three years and entered a consent judgement against the Respondent requiring the Respondent to pay Nine Hundred Thousand (\$900,000.00) Dollars.

The Hearing Committee voted to place the Respondent on three years probation and ordered that the Respondent perform five hundred (500) hours community service in addition to the service he must perform under his Federal sentence. The Committee found that the Respondent's conduct indicated deficient moral character and judgement. The Committee noted that there was no issue or complaint of patient care and found that other aspects of the Respondent's life have been more

forthright, as indicated by various individuals who appeared on the Respondent's behalf. The Committee found that Community Service, with emphasis on homeless and/or AIDS patients will benefit society more than a revocation of the Respondent's license.

REQUESTS FOR REVIEW

The Petitioner alleges that the Hearing Committee's penalty is inappropriate and shockingly lenient. The Petitioner contends that there is an utter absence of any findings by the Committee to support such a lenient penalty and no description of extenuating circumstances. The Petitioner also finds the penalty inconsistent with the Committee's findings that the Respondent was convicted of significant crimes and that the Respondent's conduct indicated deficient moral character. The Petitioner notes that the absence of patient harm in this case is irrelevant.

The Petitioner asks that the Review Board revoke the Respondent's license to practice medicine in New York State and impose a civil penalty of twenty thousand (\$20,000.00) Dollars.

The Respondent contends that the Petitioner's brief mischaracterizes the Respondent's offenses. The Respondent argues that the Medicare Count resulted from acts by his business partners in changing dates on billing forms to obtain reimbursement and that the Tax Evasion Count resulted from reporting personal income incorrectly as income of a corporation controlled by the Respondent. The Petitioner also contends that the Respondent did not steal Nine Hundred Thousand (\$900,000.00) Dollars from Medicare, but that figure represents a civil settlement between the Respondent and the United States Government. The Petitioner also argues that the Federal court's sentence was lenient in the Respondent's case and that the Hearing Committee's penalty was not disproportionately lenient when compared with the Court's sentence.

The Respondent asks the Review Board to consider that the underlying the criminal convictions occurred between 1984 and 1987, that the Respondent has overcome tremendous adversity in the intervening years, that the Respondent has entered into a strong and loving marriage,

and that the Respondent has recognized the spiritual side of his life. The Respondent acknowledges his criminal conduct was wrong, but contends that he has been severely punished for it. The Respondent calls the Board's attention to his memorandum to the Hearing Committee and to hearing testimony in which several persons wrote or appeared on the Respondent's behalf.

The Respondent contends that the record does not support the Revocation of the Respondent's license because there was no issue with the care the Respondent provided, that the Respondent's involvement in the Medicare Count was peripheral at worst, that tax evasion is not a crime warranting revocation and that the underlying conduct took place eleven years ago.

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 was consistent with their finding that the Respondent had been convicted of conspiracy to submit a false Medicare claim and of tax evasion.

The Review Board votes unanimously to overturn the hearing Committee's penalty. The Board finds that probation and community service are not an appropriate penalty in view of the serious nature of the Respondent's misconduct. The Review Board votes unanimously to revoke the Respondent's license to practice medicine in New York State.

The Respondent's submission of false claims to the Medicaid program violates the public's trust in the medical profession and standing alone would justify the revocation of the Respondent's license to practice medicine in New York. The Respondent compounded that misconduct by evading taxes on income from the same venture which submitted the Medicare billings. Those offenses together offer a compelling reason why the Respondent's license to practice in New York should be revoked.

The Review Board considered the Respondent's explanation for his misconduct. We find the Respondent's hearing testimony to be discongenious and to be an attempt to relitigate the Respondent's criminal case. Further, we find no reason to impose a less stringent penalty against the Respondent because the Respondent's misconduct occurred in the mid 1980's. We note that the criminal case against the Respondent on which this proceeding is based, only concluded on September 23, 1994, when the Respondent was sentenced. Finally, as the Hearing Committee concluded, the Respondent's conduct demonstrated deficient moral character and judgement. The Review Board does not believe that deficient moral character can be improved or corrected through retraining, supervision or community service.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's Determination finding the Respondent guilty of professional misconduct.
2. The Review Board **OVERTURNS** the penalty which the Hearing Committee imposed in their April 11, 1995 Determination.
3. The Review Board **VOTES** 5-0 to **REVOKE** 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.

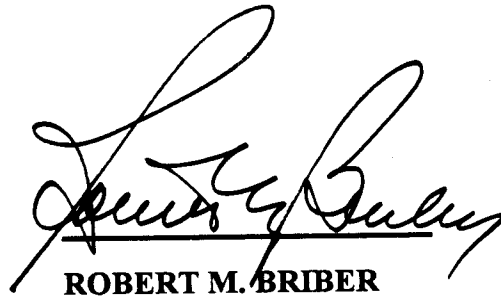
WILLIAM A. STEWART, M.D.

IN THE MATTER OF JOSEPH M. PIACENTILE, 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. Piacentile.

DATED: Albany, New York

7/18, 1995



ROBERT M. BRIBER

IN THE MATTER OF JOSEPH M. PIACENTILE, 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. Piacentile

DATED: Delmar, New York

July 14, 1995



SUMNER SHAPIRO

IN THE MATTER OF JOSEPH M. PIACENTILE, 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. Piacentile

DATED: Brooklyn, New York

_____, 1995

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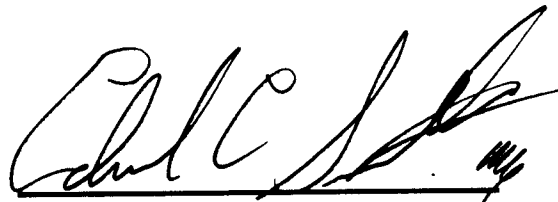
WINSTON S. PRICE, M.D.

IN THE MATTER OF JOSEPH M. PIACENTILE, 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. Piacentile

DATED: Roslyn, New York

June 29, 1995

A handwritten signature in black ink, appearing to read "Edward C. Sinnott", with a horizontal line drawn underneath it.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF JOSEPH M. PIACENTILE, 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. Piacentile

DATED: Syracuse, New York

30 June, 1995

Handwritten signature of William A. Stewart in cursive script, underlined.

WILLIAM A. STEWART, M.D.