



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

September 11, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jean Bresler, Esq.
NYS Dept. of Health
Room 2438 Corning Tower
Empire State Plaza
Albany, New York 12237

Barbara Ryan, Esq.
Aaronson, Rappaport, Feinstein & Deutsch
757 Third Avenue
New York, New York 10017

Vincent A. Piccone, M.D.
245 North Gannon Avenue
Staten Island, New York 10314

RECEIVED
SEP 12 1995
MEDICAL CONDUCT

RE: In the Matter of Vincent . Piccone, M.D.

Effective Date: 09/18/95

Dear Ms. Bresler, Ms. Ryan and Dr. Piccone :

Enclosed please find the Determination and Order (No. 95-119) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

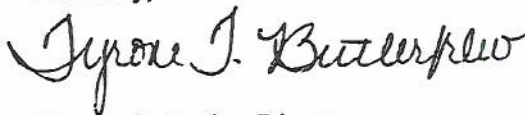
License # 161419
Date of License: 2/11/1985
Year of birth: 1957

NEW YORK STATE DEPARTMENT OF HEALTH

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 T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:

Enclosure

License # 161419
Date of License: 2/11/1985
Year of birth: 1957

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

IN THE MATTER
OF
VINCENT A. PICCONE, M.D.

ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 95-119

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 August 18, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) June 22, 1995 Determination finding Dr. Vincent Piccone (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on June 14, 1995. James F. Horan served as Administrative Officer to the Review Board. Barbara A. Ryan, Esq. filed a brief for the Respondent which the Review Board received on August 2, 1995. Jean Bresler, Esq. filed a brief for the Office of Professional Medical Conduct (Petitioner) which the Review Board received on August 14, 1995. The Respondent then submitted additional papers as a "reply" to the Petitioner's Reply, that the Board received on August 21, 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.

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 charged the Respondent with practicing medicine while impaired by mental disease or disability, from approximately 1986 through 1994, and with having a psychiatric condition which impairs his ability to practice medicine. The Hearing Committee heard evidence in the case on March 3, 1995. Dr. Howard Hess provided expert testimony on behalf of the Petitioner. The Department also offered several documents into evidence. Dr. Santapuri Rao testified for the Respondent and the Respondent testified on his own behalf. The Respondent appeared at the hearing pro se.

The Committee sustained both the charges against the Respondent, based upon evidence of the Respondent's conduct from 1986 to 1994. The Committee found that in September, 1986, the Respondent had been suspended from his duties at the Brooklyn Hospital's Surgical Intensive Care Unit after severe altercations, during which the Respondent was disobedient to orders, was verbally abusive to another physician in the presence of patients and was physically threatening to other physicians. In a 1989 application for a staff appointment at the Community Hospital of Brooklyn, Respondent answered "no" to a question concerning whether the Respondent's employment at a hospital had ever been suspended. The Committee found that the Respondent had taken copies of records from one hospital which he had never returned and had tried to obtain copies of records for his patients at a New Jersey hospital, but that the hospital refused to provide copies. At the time that hospital's employee, S. Barthovich, informed the Respondent he could not have the copies, the Respondent stated "I hope your daughter is alive next week." The Committee found further that the Respondent in March, 1994, was hospitalized at St. Vincent's Medical Center, involuntarily, following a complaint to police that the Respondent was stalking two women at a mall. The Committee found

that the admitting diagnosis at that time was "Schizophrenic paranoid type chronic and Acute Exacerbation". The Respondent was hospitalized from March 26 to May 13, 1994 and the discharge diagnosis was "SchizoAffective Disorder." The Committee also found that the Respondent had written letters to a Philadelphia psychiatrist, Dr. J. Stinnett, including a letter in which he had threatened to use "deadly force" against Dr. Stinnett. The Committee found that the Respondent had written letters to government officials concerning the Kennedy assassination, concerning the Respondent's diagnosis for Presidents Bush and Clinton, and concerning three women who refused to date the Respondent.

The Committee concluded that the evidence presented by the Petitioner and the testimony by Dr. Hess, the Petitioner's expert, supported the allegations in the Statement of Charges. The Committee found Dr. Hess to be a more credible witness than Dr. Rao, but the Committee noted that, Dr. Rao also found that the Respondent's condition would affect his practice of medicine. The Committee agreed with an assessment by Dr. Hess that the Respondent should not practice medicine and that the Respondent's continual practice represented a threat to the patient population and to the Respondent's medical colleagues. The Committee voted to revoke the Respondent's license to practice medicine in New York State.

REQUESTS FOR REVIEW

The Respondent's brief asks that the Review Board vacate the Hearing Committee's Determination and that no further action be taken against the Respondent's medical license; or that the Respondent receive a de novo hearing with the assistance of counsel; or that the Committee's Order be vacated and that the Respondent be permitted a psychiatric evaluation and if indicated, a voluntary surrender of the Respondent's license.

The Respondent argues that the Department failed to prove either charge against the Respondent, based upon the evidence presented at the hearing. The Respondent also argues that he was denied due process both by the Hearing Committee and during the Petitioner's investigation into the Respondent's case. The Respondent contends further that due to the Respondent's disability he

did not represent himself at the hearing effectively, and is entitled to a new hearing. In the alternative, the Respondent contends that the Hearing Committee's penalty was unduly harsh and unwarranted by the evidence presented.

The Petitioner urges the Board to sustain the Hearing Committee's Determination and penalty. The Petitioner contends that abundant evidence supported the Committee's Determination and that the Committee's penalty is appropriate, considering the Respondent's long standing inability to function appropriately in prior employment, his threatening behavior, his history of delusional thinking and the concurring testimony of both experts that the Respondent should not treat patients. The Petitioner objects to two affidavits, which were not part of the hearing record, being submitted with the Respondent's brief and argues that the Respondent's due process claims seek relief outside the scope of the Review Board's authority.

REVIEW BOARD DETERMINATION

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

First, Public Health Law §230-c(4)(a) provides that the Review Board will consider the stipulated record and the parties' briefs. At the time our Administrative Officer acknowledges receipt of a Notice of Review, he advises the parties that briefs may not include matters which were not in evidence before the Hearing Committee. The Review Board, therefore, did not consider two affidavits which the Respondent submitted with his brief, since these affidavits were not in evidence before the Committee. The Review Board also did not consider the Respondent's response to the Petitioner's reply brief. Public Health Law §230-c(4)(a) permits the parties to submit a brief and a reply to their adversary's brief, if the adversary submits a brief. When the other party submits only a reply to the appealing party's brief, the appealing party is not allowed a response. The Board has noted in the past that we will not consider additional submissions from parties and will not delay the consideration of a case because parties continue to submit documentation beyond what is permitted under the statute.

The Respondent has requested, as one form of relief, that the Review Board order a hearing de novo in this matter. The Review Board lacks the authority to grant a new hearing before a new committee. Public Health Law §230-c(4)(b) allows the Review Board only to remand a case to the original Hearing Committee for further proceedings.

The Review Board finds no grounds based on the Respondent's due process claims on which to remand this matter to the Hearing Committee. The Committee's Determination is clear as to what the Committee found and concluded and is clear as to how the Committee arrived at their penalty. Further we see no error by the Committee or their Administrative Officer in their conduct of the hearing. Ms. Snipe and Mr. Gaer both advised the Respondent that he should obtain counsel. Mr. Gaer offered the Respondent an additional hearing day to obtain counsel and offered to issue subpoenas, on the Respondent's behalf, to witnesses who would be within the State's jurisdiction. The Respondent had the opportunity to cross-examine the Petitioner's only witness and had the opportunity to present testimony from his own expert and to testify himself. The Respondent refused to obtain counsel. Neither the Committee nor Mr. Gaer could force the Respondent to obtain an attorney. Further, the Public Health Law does not require that the Hearing Committee order a psychiatric examination for a Respondent and the Committee in this case had no need to order such an examination, since there was already extensive testimony and evidence concerning the Respondent's condition.

The Review Board votes 5-0 to sustain the Committee's Determination finding that the Respondent practiced medicine while impaired and that the Respondent suffers from a condition that impairs his ability to practice medicine. The testimony by Dr. Hess and the records in evidence support the Committee's findings and conclusions, that the Respondent suffered from paranoid schizophrenia, that the Respondent has been delusional, that the Respondent made physical threats to several people, verbally and in writing, that the Respondent had difficulty functioning and that the Respondent demonstrated a marked lack of judgement.

execute such a surrender. Public Health Law §230-a(2)(c) allows the Board to suspend a license, pending a course of therapy. The Board finds that such a suspension would not be appropriate in this case, as both experts have testified that the Respondent's illness can recur. The Board also finds that a limitation of the Respondent's license to prohibit clinical practice would not be appropriate. The Board believes that the nature of the Respondent's impairment would preclude him from working in other areas which require a medical license. The Respondent's threatening behavior toward other physicians and employees at a health facility indicate that the Respondent would not be suitable to work as an administrator or as an educator. The Respondent's delusions and his lack of perspective concerning the proper role of government demonstrate that he would not be capable of working in the field of public health.

The Review Board regrets that such a severe sanction is necessary in the case of such a young physician, but the Board is certain, due to the severe nature of the Respondent's condition, that revocation is the necessary penalty in this case. If the Respondent is to practice in this State again at some point, he will have to prove to a Regents Review Committee that he can practice safely and that he merits reinstatement of his license.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee on Professional Medical Conduct's June 22, 1995 Determination finding Dr. Vincent A. Piccone guilty of professional misconduct.
2. The Review Board **SUSTAINS** the Hearing Committee's Determination 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 VINCENT A. PICCONE, 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. Piccone.

DATED: Delmar, New York

Sept 4, 1995



SUMNER SHAPIRO

IN THE MATTER OF VINCENT A. PICCONE, 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. Piccone.

DATED: Brooklyn, New York

Aug 31, 1995



WINSTON S. PRICE, M.D.

IN THE MATTER OF VINCENT A. PICCONE, 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. Piccone.

DATED: Roslyn, New York

Sept. 1, 1995

A handwritten signature in cursive script, reading "Edward C. Sinnott", with a horizontal line underneath. There is a small mark resembling "10/2" at the end of the signature.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF VINCENT A. PICCONE, 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. Piccone.

DATED: Syracuse, New York

4 Sept, 1995



WILLIAM A. STEWART, M.D.