



# 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*

November 13, 1996

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

William Wood, Esq.  
Wood & Scher  
14 Harwood Court-Suite 512  
Scarsdale, New York 10583

Shawn D. McPartland, M.D.  
Suite 40  
333 Route 25A  
Rocky Point, New York 11778-8809

EFFECTIVE DATE NOVEMBER 20, 1996

**RE: In the Matter of Shawn D. McPartland, M.D.**

Dear Ms. Gayle, Mr. Wood and Dr. McPartland:

Enclosed please find the Determination and Order (No.96-179) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Handwritten signature of Tyrone T. Butler in black ink, including the initials 'nm' at the end.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm

Enclosure

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

**IN THE MATTER**

**OF**

**SHAWN D. MCPARTLAND, M.D.**

**Administrative Review from a Determination by a Hearing  
Committee on Professional Medical Conduct**

**ADMINISTRATIVE  
REVIEW BOARD  
DETERMINATION  
ARB NO. 96-179**

The Respondent requests pursuant to New York Public Health Law (PUB.H.L.) §230-c(4)(a) (McKinney's Supp 1996), that the Administrative Review Board for Professional Medical Conduct (Board) review and modify a July 30, 1996 Determination by a Hearing Committee on Professional Medical Conduct (Committee), which found the Respondent Dr. Shawn D. McPartland (Respondent) guilty for professional misconduct and revoked the Respondent's New York medical license. After reviewing the record in this case and conducting Deliberations on September 20, 1996, Board Members **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.** vote to sustain the Committee's Determination that the Respondent committed professional misconduct in violation of N.Y. Education Law (EDUC. L.) §6530 (McKinney's Supp 1996), by practicing medicine with incompetence and negligence on more than one occasion, by practicing while impaired by alcohol, by abusing alcohol habitually, by practicing with moral unfitness, by committing fraud and by willfully abusing two patients, except that we modify one portion of the Determination. The Board also sustains the Committee's Determination to revoke the Respondent's license.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination.

**WILLIAM J. WOOD, ESQ.** (Wood & Scher) represented the Respondent.

**ANNE GAYLE, ESQ.** (Associate Counsel, NYS Department of Health) represented the New York State Department of Health (Petitioner).

## COMMITTEE DETERMINATION ON THE CHARGES

Pub.H.L. §230(7) authorizes three member panels from the State Board for Professional Medical Conduct (BPMC) to conduct disciplinary proceedings to determine whether physicians have committed professional misconduct in violation of EDUC. L. §6530. The Petitioner filed charges with BPMC alleging that the Respondent committed misconduct under the following categories:

- practicing with negligence on more than one occasion, in violation of EDUC.L. § 6530(3);
- practicing the profession with incompetence on more than one occasion, in violation of EDUC.L. § 6530(5);
- practicing medicine fraudulently, in violation of EDUC.L. § 6530(2);
- practicing with moral unfitness, in violation of EDUC.L. § 6530(20);
- willfully abusing, harassing or intimidating a patient in violation of EDUC.L § 6530(31);
- practicing while impaired by alcohol, in violation of EDUC.L. § 6530(7); and,
- being a habitual alcohol user that impairs practice, in violation of EDUC.L. §6530(8).

The charges arose from the Respondent's care for five persons, whom the record refers to as Patients A through E, to protect their privacy.

Three BPMC Members, **DANIEL MORRISEY O.P. (Chair), MARGARET MCALLOON M.D., and RALPH LEVY, M.D.**, comprised the Committee who conducted the hearing in the matter and who rendered the Determination which the Board now reviews. Administrative Law Judge Mary Noe served as the Committee's Administrative Officer. The Committee determined that the preponderant evidence in the record demonstrated the Respondent's guilt on all the charges. The Committee found that the Respondent treated Patients A,B,C and E while he was under the influence of alcohol, that he sexually abused Patients D and E, that he failed to treat Patients C and E under acceptable medical standards and that he demonstrated a lack of competence or skill in treating Patients C and E.

The Committee voted to revoke the Respondent's New York Medical License. The Committee concluded that the Respondent's sexually abusive conduct toward two Patients, his habitual impairment, his practice while impaired and his repeated sub-standard medical care demonstrated that it was unsafe to permit the Respondent to continue practicing in New York State.

### **REVIEW HISTORY AND ISSUES**

The Respondent filed a Notice requesting this review, which the Board received on August 5, 1996. Pursuant to the then effective provisions from PUB.H.L. § 230-c(4)(a), the Notice stayed the Committee's penalty automatically, pending this Determination from the Board. The Record for review contained the Committee's Determination, the hearing transcripts and exhibits, the Respondent's brief and the Petitioner's reply brief. The Board received the Respondent's brief on September 9, 1996 and the Petitioner's reply on September 18, 1996.

The Respondent raised three points for review, which we summarize below.

- I. The Board should exclude Patient E's testimony as a matter of law, because Patient E was a mentally impaired person, prone to delusions.
- II. The Committee failed to consider the Respondent's alcoholism in mitigation for the Respondent's treatment for Patients A, B and C. The Respondent argues that the misconduct occurred only due to the Respondent's impairment.
- III. The penalty was unduly harsh. The Respondent argues that he is now in recovery and no longer poses a danger to his patients. The Respondent recommends monitoring and community service as an appropriate penalty.

The Petitioner opposes any modification in the Hearing Committee's Determination and argues that:

- the Respondent made no case for excluding Patient E's testimony;
- the Respondent's impairment does not mitigate his conduct; and
- the Respondent's varied and serious misconduct warrants the severe sanction which the Hearing Committee imposed.

## **THE BOARD'S REVIEW AUTHORITY**

PUB.H.L.) §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 PUB.H.L. §230-a.

PUB. H. L. §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration. PUB. H. L. §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

The Review Board may substitute our judgement for that of the Hearing Committee, in deciding upon a penalty Matter of Bogdan 195 AD 2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, Matter of Spartalis 205 AD 2d 940, 613 NYS 2d 759 (Third Dept. 1994), and on issues of credibility Matter of Minielly \_\_AD 2d \_\_, 634 NYS 2d 856, 1995 N.Y. App. Div LEXIS 12692 (Third Dept. 1995).

## **THE BOARD'S DETERMINATION**

The Board has considered the record below and the parties' briefs. The Board Votes to sustain the Committee's findings and conclusions, except we amend the Committee's conclusions at one point which we will discuss below. The Board sustains the Committee's Determination to revoke the Respondent's New York License. We find that the penalty is the appropriate sanction for the Respondent's serious and extensive misconduct.

At Point I in his brief, the Respondent asked that the Board ignore the findings concerning sexual abuse, moral unfitness, fraud, impairment, negligence and incompetence concerning the Respondent's conduct toward Patient E, because the Patient's past mental and physical history made the Patient's testimony incompetent as a matter of law. The Board finds that this argument by the

Respondent raises legal issues which are beyond the Board authority and we leave the Respondent to raise those issues with the courts. The Hearing Committee found Patient E to be a credible witness and the Committee found the Respondent's testimony was contradictory, inconsistent and self-serving. The Committee as fact finder had the authority to weigh the evidence and determine which witnesses were credible. The evidence which the Committee found credible in this case supported the Committee's Determination that the Respondent's conduct toward Patient E constituted negligence, abuse, moral unfitness and practicing while impaired.

The Board amends the Committee's Determination regarding two conclusions on charges involving the Respondent's care for Patient E. The Petitioner's Statement of Charges( Hearing Committee Determination Attachment) alleged at the Second Specification that the Respondent had practiced with incompetence on more than one occasion in treating Patients C and E. The Committee's conclusion on that Specification sustained the charge, without mentioning the Patients specifically. The Board finds that the evidence demonstrated that the Respondent practiced with incompetence in treating both Patients. The Petitioner's Third and Fourth Specifications charged that the Respondent practiced fraudulently by representing to Patients D and E that the Respondent was engaged in proper professional conduct when he was in fact engaged in activity for his own sexual gratification. The Committee's conclusions on those Specifications sustained both Specifications, but mentioned only Patient D. The Board finds that the evidence in this case clearly supports the Specification concerning Patient E and we amend the Determination's conclusion on the Third and Fourth Specification to reflect that the record also supports the charge relating to Patient E.

In the Respondent's Point II, he argued that the Committee failed to consider the Respondent's alcoholism as a mitigating factor. The Board rejects this argument. Habitual impairment is misconduct standing alone and is my no means mitigation against other charges. In treating Patient's C and E, the Respondent committed errors that placed both Patients at risk, by prescribing contraindicated medication for Patient C and by failing to do a work up for Patient E after he suspected angina. If the Respondent's impairment resulted in placing Patients at risk, then such impairment is an aggravating rather than a mitigating factor.

The Board rejects the Respondent's contention, at Point III in his brief, that the Penalty in this case was unduly harsh. The Board concludes that the Respondent's sexual misconduct toward Patient D standing alone would have provided the Committee with sufficient grounds to revoke the Respondent's license. The Respondent argued that Patient D's case was ten years old, but the Board finds no mitigation in the passage of time. A physician who abuses a patient sexually abuses the trust he/she receives from the public in general and from the patient in particular. Such physician forfeits his/her license to practice in New York State. The Board concludes further that the Respondent's conduct toward Patient E standing alone would warrant license revocation. The Respondent abused the Patient sexually, treated the Patient while impaired by alcohol and failed to treat the Patient according to acceptable medical standards. The Committee, in considering all the evidence in this case together, concluded correctly that the Respondent constitutes a danger to the public health.



**ORDER**

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

1. The Board **SUSTAINS** Hearing Committee's July 30, 1996 Determination finding the Respondent guilty for professional misconduct, except that we amend the Committee's Determination as we discussed in our Determination.
2. The Board **SUSTAINS** the Hearing Committee's penalty 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.**

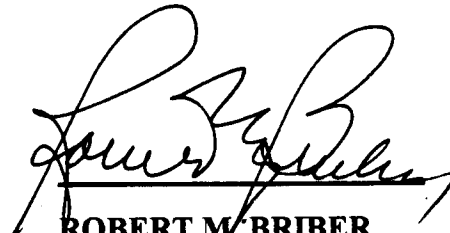
**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF SHAWN D. MCPARTLAND, 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. McPartland.

**DATED: Schenectady, New York**

10/31 , 1996



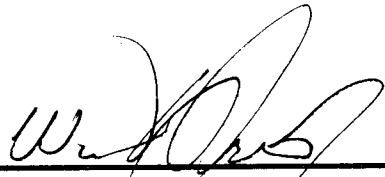
**ROBERT M. BRIBER**

**IN THE MATTER OF SHAWN D. MCPARTLAND, 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. McPartland .

**DATED: Brooklyn, New York**

11/2, 1996

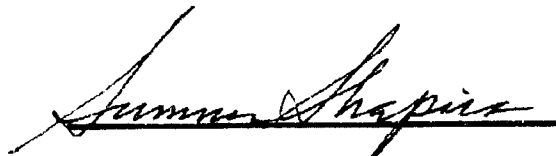
  
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**WINSTON S. PRICE, M.D.**

**IN THE MATTER OF SHAWN D. MCPARTLAND, 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. McPartland.

**DATED: Delmar, New York**

Oct. 31, 1996

  
**SUMNER SHAPIRO**

**IN THE MATTER OF SHAWN D. MCPARTLAND, 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. McPartland.

**DATED: Roslyn, New York**

Oct 31, 1996

A handwritten signature in cursive script, appearing to read "Ed. C. Sinnott", with a horizontal line underneath and a small flourish to the right.

**EDWARD C. SINNOTT, M.D.**

**IN THE MATTER OF SHAWN D. MCPARTLAND, 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 McPartland.

**DATED: Syracuse, New York**

31 Oct, 1996

*William A Stewart*

**WILLIAM A. STEWART, M.D.**