



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.  
Commissioner

January 22, 1993

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Seward Boyd, Jr., D.O.  
71 The Circle  
Glen Head, New York 11545

David A. Zarett, Esq.  
Garfunkel, Wild & Travis, P.C.  
175 Great Neck Road  
Great Neck, New York 11021-3324

Marcia E. Kaplan, Esq.  
New York State Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza - Sixth Floor  
New York, New York 10001-1810

**RE: In the Matter of Seward Boyd, Jr., D.O.**

Dear Dr. Boyd, Mr. Zarett and Ms. Kaplan:

Enclosed please find the Determination and Order (No. ARB-92-87) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
Corning Tower - Fourth Floor (Room 438)  
Empire State Plaza  
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 than 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)].

Very truly yours,

*Tyrone T. Butler, man*

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nam  
Enclosure

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

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IN THE MATTER : ADMINISTRATIVE  
OF : REVIEW BOARD  
SEWARD BOYD, M.D. : DETERMINATION  
: AND ORDER  
: ORDER NO. ARB-92-87

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A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of ROBERT M. BRIBER, MARYCLAIRE B. SHERWIN, EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.<sup>1</sup> held deliberations on December 19, 1992 to review the Professional Medical Conduct Hearing Committee's (hereinafter the "Hearing Committee") October 19, 1992 Determination revoking Dr. Seward Boyd's license to practice medicine in New York State. Dr. Boyd requested the Administrative Review through a Notice of Review which the Board received on October 30, 1992. JAMES F. HORAN, ESQ. served as Administrative Officer to the Review Board. Norton Travis, Esq. filed a brief on behalf of Dr. Boyd on December 4, 1992 and Marcia Kaplan, Esq. filed a brief and response on behalf of the Office of Professional Medical Conduct (hereinafter "OPMC") on November 18, 1992 and December 19, 1992.

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<sup>1</sup> At the time at which the Administrative Review Board met to deliberate this case, the New York State Senate had confirmed only four members of the five member Administrative Review Board that was created pursuant to Chapter 606 of the Laws of 1991.

### 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 Office of Professional Medical Conduct brought this proceeding against Dr. Boyd pursuant to PHL §230(10)(p) and Education Law §6530(9) which provide an expedited hearing in cases in which professional misconduct charges against a physician are based upon a prior criminal conviction in New York State 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.

The Hearing Committee in this matter found that the Department had met its burden of proof in establishing that the Respondent was:

- 1) disciplined by the Hawaii Board of Osteopathic Examiners for falsifying his application for licensure in Hawaii; and
- 2) that the Respondent surrendered his license in the State of Maryland after he was informed that he faced summary license suspension in that State.

The Hearing Committee found that the Respondent failed to inform those jurisdictions regarding a prior criminal conviction in Ohio and a prior disciplinary proceeding in New York State. The Committee concluded this conduct would constitute violations of Education Law §6530(1) (obtaining the license fraudulently) and §6530(21) (willfully making a false report).

The Hearing Committee voted unanimously to revoke Dr. Boyd's license to practice medicine in New York State. The Hearing Committee found that Dr. Boyd had demonstrated repeatedly that he lacks the moral integrity to practice medicine due to his prior criminal conviction for practicing medicine without a license in Ohio, and his activities obtaining a license fraudulently in the States of Hawaii and Maryland while on probation for professional misconduct in New York State. The Hearing Committee felt that Dr. Boyd could not be rehabilitated and that revocation was the only realistic sanction in this case.

### REQUESTS FOR REVIEW

The Respondent asked the Board to remand this case to the Hearing Committee to enable the Respondent to present evidence in mitigation of the penalty against Dr. Boyd. The Respondent's brief contained affidavits from Dr. Boyd, his former attorney and another physician. The affidavits stated that Dr. Boyd had failed to appear on the original hearing date because his former attorney was not admitted to practice in New York State, engaged in trial at the time of the first hearing and had failed to secure an adjournment. The brief asserted that the Review Board had the authority to remand the case on the basis that the Respondent had been denied the effective assistance of counsel at the hearing.

In the alternative, the Respondent asked that the Review Board overturn the revocation penalty which the Hearing Committee imposed. The Respondent argued that the penalty is excessively harsh and the Committee's conclusion that Dr. Boyd engaged in a pattern of deceptive behavior is unsupported by the evidence.

### THE PARTIES' SUBMISSIONS

Both parties submitted briefs to the Review Board and the Department filed a response. The Respondent asked to submit an additional letter to the Board replying to the Department's response. The Review Board refused to accept the additional submission and we directed our administrative officer to return

the letter to the Respondent's attorney.

Public Health Law §230-c(4) allows each party to submit a brief and to file a response within seven days from receiving their adversary's brief. The statute does not authorize the parties to file any additional documentation and the Board will not delay our deliberations in these cases in order to consider endless submissions of documents from the parties.

#### **REVIEW BOARD DETERMINATION**

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

#### **A. THE REMAND**

The Review Board will not remand to the Hearing Committee for a new hearing. The Respondent's failure to appear for the original hearing constituted a waiver of the Respondent's right to a hearing. The Review Board does not accept the explanation that the Respondent's default resulted solely from his attorney's failure to obtain an adjournment.

The Respondent was personally served with the Statement of Charges in this case (see Affidavit of Service attached to the Hearing Committee Determination and Order). The Respondent was responsible to obtain counsel to represent him on that date. The Respondent's only attempt to secure counsel was to mail a copy of the charges to an attorney in Washington, D.C. Nothing in any affidavit included with the Respondent's brief indicates that Dr.

Boyd ever confirmed that the attorney was admitted to practice in New York, or that between August 26, 1992 and mid-October 1992 that the Respondent ever contacted the attorney's office to confirm that the October 1, 1992 hearing was adjourned, to learn the new date, or to discuss the defense which they would present against the charges.

**B. THE CHARGES**

The Review Board votes unanimously to sustain the Hearing Committee's Determination that Dr. Boyd was guilty of professional misconduct for obtaining a license fraudulently and willfully filing a false report. The Determination was consistent with the Committee's findings and conclusions that Dr. Boyd failed to inform Hawaii and Maryland on his licensure applications to those States about his prior criminal conviction in Ohio and the prior disciplinary proceeding in New York State.

**C. THE PENALTY**

The Review Board votes unanimously to sustain the Hearing Committee's decision to revoke Dr. Boyd's license to practice medicine. The penalty is appropriate under Public Health Law §230-a and is consistent with the Hearing Committee's findings and conclusions that the Respondent lacks the moral integrity to practice medicine. The Review Board agrees that revocation is the only realistic sanction and that the Respondent's consistent pattern of lies and misrepresentations and his continuing fraudulent conduct demonstrates that he cannot be rehabilitated.



**ORDER**

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

1. The October 19, 1992 Determination by the Hearing Committee on Professional Medical Conduct finding Seward Boyd, M.D. guilty of obtaining a license fraudulently and willfully filing a false report is hereby **sustained**.
2. The Hearing Committee's Determination revoking Dr. Boyd's license to practice medicine in the State of New York is hereby **sustained**.

**ROBERT M. BRIBER**

**MARYCLAIRE B. SHERWIN**

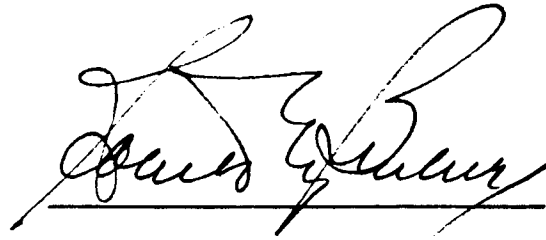
**EDWARD C. SINNOTT, M.D.**

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

**IN THE MATTER OF SEWARD BOYD, 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 Seward Boyd, M.D.

**DATED: Albany, New York**  
**January 8, 1993**

A handwritten signature in cursive script, appearing to read "Robert M. Briber", written over a horizontal line.

**ROBERT M. BRIBER**

IN THE MATTER OF SEWARD BOYD, M.D.

MARYCLAIRE B. SHERWIN, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Seward Boyd, M.D.

DATED: Albany, New York

January 7, 1993

Maryclaire B. Sherwin

MARYCLAIRE B. SHERWIN

**IN THE MATTER OF SEWARD BOYD, 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 Seward Boyd, M.D.

**DATED: Albany, New York**  
**January 18, 1993**

A handwritten signature in cursive script, reading "Edward C. Sinnott", written over a horizontal line.


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

**IN THE MATTER OF SEWARD BOYD, 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 Seward Boyd, M.D.

**DATED: Albany, New York**

**January 7, 1993**

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in dark ink and is positioned above the printed name.

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



STATE OF NEW YORK  
DEPARTMENT OF LAW  
120 BROADWAY  
NEW YORK, NY 10271

ROBERT ABRAMS  
Attorney General

HOWARD L. ZWICKEL  
Assistant Attorney General in Charge  
Litigation Bureau

(212) 416-8565

May 5, 1993

Garfunkel, Wild & Travis, P.C.  
175 Great Neck Road  
Great Neck, NY 11021

Attn: David Zarett, Esq.

Re: Matter of Boyd v. New York State  
Department of Health  
#67851

Dear Mr. Zarett:

Enclosed find an order of the Appellate Division, Third Department dated and entered April 29, 1993. The stay of the revocation of petitioner's license imposed by the respondents will be vacated on May 15, 1993. We have informed the Education and Health Departments of the date that the revocation becomes effective.

Very truly yours

RAYMOND J. FOLEY  
Assistant Attorney General

RJF:hb  
Encl.

cc: Gus Martine, Supervising Investigator  
Hal Rosenthal, Assistant Counsel

RECEIVED

MAY 10 1993

OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

RECEIVED

MAY 06 1993

NYS DEPT. OF HEALTH  
DIVISION OF LEGAL AFFAIRS

At a Motion Term of the Appellate Division of the Supreme Court of the State of New York, in and for the Third Judicial Department, held at the Justice Building in the City of Albany, New York, on the 29th day of March, 1993.

P R E S E N T :

HON. LEONARD A. WEISS  
Presiding Justice,

HON. ANN T. MIKOLL  
HON. PAUL J. YESAWICH, JR.  
HON. HOWARD A. LEVINE  
HON. THOMAS E. MERCURE  
Associate Justices

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In the Matter of SEWARD BOYD, JR.,

Petitioner,

ORDER

-against-

67851

NEW YORK STATE DEPARTMENT OF HEALTH,  
THE NEW YORK STATE ADMINISTRATIVE  
REVIEW BOARD FOR PROFESSIONAL  
MEDICAL CONDUCT and THE NEW YORK  
STATE BOARD FOR PROFESSIONAL MEDICAL  
CONDUCT,

Respondents.

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A motion having been made by the petitioner at this term of Court in the above-entitled proceeding for an order staying enforcement of an order of the respondents which revoked petitioner's license to practice as a physician, pending the review proceeding herein:

NOW, after reading and filing proof of due service of the Order to Show Cause signed February 10, 1993, the verified

petition of Seward Boyd, Jr. verified on February 9, 1993, the affidavit of Seward Boyd, Jr., sworn to February 9, 1993, Petitioner's memorandum of law in support of motion for temporary restraining order and stay dated February 9, 1993 and the reply affirmation of Norton L. Travis, Esq., affirmed March 26, 1993 and all the exhibits annexed to such documents in support of the motion and the affidavit of John J. O'Grady, Assistant Attorney General, sworn to the 16th day of March, 1993, in opposition to the motion, and the Court having rendered a decision on the 14th day of April, 1993, it is hereby

ORDERED that the motion for a stay pending determination of the review proceeding be denied, without costs.

E N T E R

*/s/ Michael J. Novack*

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Clerk

DATED AND ENTERED: APR 29 1993

TRUE COPY

*Michael J. Novack*  
CLERK