

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

-----X
IN THE MATTER : SUPPLEMENTAL
OF : DETERMINATION
CHARLES R. LEPLEY, M.D. : AND ORDER
-----X

BPMC-94-71

Effective Date: 03/01/95

Jerry Waisman, M.D., Chairperson, Eugenia Herbst, and Walter M. Farkas, M.D. duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Sections 230 (1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230(10)(e) and 230(12) of the Public Health Law. Jane B. Levin, Esq., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submitted its Determination and Order on May 24, 1994. By Order dated September 17, 1994, the Administrative Review Board for Professional Medical Conduct sustained the Hearing Committee's findings that Dr. Lepley was guilty of Professional Misconduct for failing to comply with an Order that he submit to a Psychiatric Examination, and that he was not guilty of practicing while impaired in the past.

The Review Board also sustained the Hearing Committee's Order that the Respondent undergo a Psychiatric Examination, under the terms set out in the Determination, and remanded this case to the Hearing Committee for further deliberations on the charge of

current mental impairment, and for a determination as to what penalty to impose if the Respondent failed to submit to the Examination.

By letter dated January 3, 1995, David W. Smith, Esq. Associate Counsel for the Bureau of Professional Medical Conduct, notified the Chairperson of the Hearing Committee that Dr. Lepley had not submitted to the ordered Psychiatric Examination, nor communicated in any way with the Office of Professional Medical Conduct or the Hearing Committee concerning any such examination.

The Hearing Committee held supplemental deliberations on this matter on January 30, 1995.

As the Hearing Committee noted in its original Determination and Order, we found the Respondent's behavior during the lengthy hearing process indicative of significant impairment. In addition, we find that the Respondent failed to submit to a twice ordered Psychiatric Examination, and offered no final commentary to this Hearing Committee. By unanimous vote, the Hearing Committee therefore votes to sustain the First Specification of the Charges (having a psychiatric condition which impairs the ability to practice), and we find that the Respondent is currently mentally impaired.

DETERMINATION OF THE HEARING COMMITTEE AS TO PENALTY


The Hearing Committee unanimously determines that Respondent's license to practice medicine in the State of New York shall be revoked.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT

1. Respondent's license to practice medicine in the State of New York is revoked.

Dated: New York, New York
February 1995


JERRY WAISMAN, M.D.
Chairperson

EUGENIA HERBST
WALTER M. FARKAS, M.D.



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

Paula Wilson
Executive Deputy Commissioner

September 20, 1994

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Charles R. Lepley, M.D.
210 Kings Bridge Road
Mount Kisco, New York 10549

David W. Smith, Esq.
N.Y.S. Dept. of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

RE: IN THE MATTER OF CHARLES R. LEPLEY, M.D.

Dear Parties:

The Administrative Review Board for Professional Medical Conduct has issued the enclosed Determination and Order remanding this case to the Original Hearing Committee, for the reasons stated in the Determination.

The Procedures for the Remand are set out in the Determination.

Sincerely,

Tyrone T. Butler
Director
Bureau of Adjudication

Enclosure

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

**IN THE MATTER
OF
CHARLES R. LEPLEY, M.D.**

**ADMINISTRATIVE
REVIEW BOARD**

ARB # 94-71R

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 12, 1994 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) May 24, 1994 Determination ordering Dr. Charles Lepley (Respondent) to undergo a psychiatric examination. The Office of Professional Medical Conduct (Petitioner) requested the review through a Notice which the Review Board received on June 7, 1994. James F. Horan served as Administrative Officer to the Review Board. David W. Smith, Esq. filed a brief for the Petitioner on July 7, 1994. Dr. Lepley filed a reply brief on his own behalf on July 14, 1994. Dr. Lepley also submitted letters in addition to his brief.

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 that the Respondent had practiced medicine while impaired by reason of mental disability, that the Respondent was currently impaired by mental disability and that the Respondent had failed to submit to a psychiatric examination ordered by the State Board for Professional Medical Conduct.

The Hearing Committee determined that the Petitioner had failed to prove that the Respondent had practiced medicine while impaired. The Committee found that the Respondent had been impaired in 1990 and 1991, but they found that the Respondent had not practiced medicine during the time of the impairment. The Committee also found that the Respondent's registration to practice medicine in New York expired on December 31, 1992 and the Respondent did not renew the registration. The Committee concluded that they could not make a Determination on the charge that the Respondent is impaired to practice currently, because the Respondent has not submitted to a psychiatric examination, which the Office of Professional Medical Conduct ordered that the Respondent undergo. The Hearing Committee did sustain the charge that the Respondent did not comply with an order from the State Board of Professional Medical Conduct to submit to a psychiatric examination. The Committee found that the Respondent had met with the Psychiatrist designated to conduct the examination, but that the Psychiatrist had terminated the session after ten minutes because the Respondent was uncooperative.

In addition to their findings about the Respondent's prior impairment, the Committee's Determination, at pages 8 and 9 included the Committee's observations concerning the Respondent's behavior during the six month hearing in this case. The Committee stated that the Respondent had exhibited outbursts of anger, rapid mood swings, continual interruptions, constant attempts to control the procedure, specific and pointed hostile comments, rambling unfocused answers, refusal to follow instructions concerning the conduct of the proceedings and filing of submissions and inappropriate mannerisms, tone of voice and a suspicious accusatory manner.

The Hearing Committee ordered that the Respondent submit to an unrestricted psychiatric examination within ninety (90) days from the date of the Committee's Order, after which the matter would be remanded to the Hearing Committee to reconsider the charge that the Respondent is currently impaired mentally. The Committee provided that the Respondent's license to practice medicine in New York State would be suspended until the Committee made their Determination concerning the impairment charge. The Committee provided further that if the Respondent failed to submit to the psychiatric examination within ninety (90) days from the Committee's Order, the Respondent's license to practice medicine in New York State would be revoked automatically.

REQUESTS FOR REVIEW

The Petitioner has asked that the Review Board overrule the Hearing Committee's penalty and revoke the Respondent's license to practice medicine in New York State. The Petitioner argues that the penalty is not permitted under the statute and that the suspension with the order to undergo an examination is in effect a totally improper extension of the hearing. The Petitioner argues that the Respondent has created the situation that has made the Hearing Committee unable to make a Determination about the charge that the Respondent is currently impaired. The Petitioner argues that the Committee's listing of the traits which the Respondent displayed during the Hearing constituted a sufficient finding to support a finding of impairment. The Petitioner argues that a revocation of the Respondent's license would be the only proper sanction.

The Respondent submitted a reply brief in which he opposed the Petitioner's appeal and addressed the Petitioner's brief point by point. The Respondent argued that the Review Board should not review those parts of the Hearing Committee's Determination that listed the Committee's observations concerning the behavior the Respondent displayed at the hearing. The Respondent argues that the list is prejudicial, is evidence of bias and has no clear factual context. The Respondent argues that he did submit to the ordered examination and that the examining Psychiatrist terminated the examination. The Respondent argues that he has established his psychiatric well being for the practice of medicine.

The Respondent also submitted several requests to our Administrative Officer, Mr.

Horan. The Respondent requested that Mr. Horan recuse himself, that Mr. Horan withhold from the Review Board the section of the Hearing Committee Determination concerning the Respondent's behavior during the hearing and that Mr. Horan provide him with information on how to submit motions concerning the review. The Respondent also indicated that he did not object to request by his former attorney to submit an *amicus curiae* brief to the Review Board.

Mr. Horan did not recuse himself and did not withhold any portion of the Hearing Committee's Determination to the Review Board. Mr. Horan informed the Respondent's former counsel by letter dated June 9, 1994 as to the time frames for filing briefs with the Review Board. Mr. Horan forwarded a copy of that letter to the Respondent on June 23, 1994, after learning that the Respondent's prior attorney no longer represented Dr. Lepley. Mr. Horan informed the Respondent's former attorney by letter dated July 1, 1994 that the Review Board did not accept *amicus* briefs.

REVIEW BOARD DETERMINATION

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

First, as to the Respondent's motions, the motion to recuse our Administrative Officer is denied. The motion to permit the filing of an *amicus* brief was properly denied. The Review Board does not accept any submissions other than the briefs and reply briefs from the parties. The motion to withhold a portion of the Hearing Committee's Determination from the Review Board was properly denied. Public Health Law Section 230-c(4)(b) provides that the Review Board shall review the Hearing Committee's Determination. The statute does not give our Administrative Officer or either party the authority to delete or request deletion of portions of the Determination before consideration by the Review Board. Finally, our Administrative Officer provided the Respondent with information about procedures for filing briefs with the Review Board. There is no separate motion practice in addition to motions the parties may include as part of their briefs.

The Review Board votes to sustain the Hearing Committee's Determination that the

Respondent was guilty of failing to comply with the Order of the Board of Professional Medical Conduct requiring him to undergo a psychiatric examination. The Determination was consistent with the Committee's findings that the Respondent had not cooperated with the examining Psychiatrist, Dr. Winston, at the time of the examination. The Review Board also sustains the Hearing Committee's Determination finding Dr. Lepley not guilty of practicing the profession while impaired in the past. The Determination is consistent with the Committee's findings that the Respondent did not practice medicine during the period of his impairment in 1990 and 1991.

The Review Board remands this matter to the Hearing Committee for further deliberations, under the terms set out in the Hearing Committee's Determination, on the charge that the Respondent is impaired currently. The Board accepts the Committee's conclusion that the Respondent's refusal to cooperate with the psychiatric examination has prevented the Committee from making a Determination on that charge. The Review Board agrees that a physician can not hinder a proceeding against him by refusing to cooperate in an examination that the Board of Professional Medical Conduct ordered that the physician undergo.

The Review Board sustains the Order of the Hearing Committee that the Respondent must undergo a psychiatric examination. The Review Board finds that the Respondent's past psychiatric impairment coupled with the Respondent's troubling behavior during the course of the hearing, as described by the Committee in its findings on pages 8 and 9 of their Determination, provided the Committee with sufficient grounds to order the examination. The Review Board does not find that the Committee's findings about the Respondent's behavior were improper. A Hearing Committee, as a finder of fact, has authority to make findings based on their observations of parties or witnesses at a Hearing and to use those findings as a basis for conclusions or penalties. The Committee can use those observations in assessing whether witnesses are credible, in assessing the weight to assign the testimony of experts and in assessing whether a Respondent is remorseful for misconduct or is a suitable candidate for retraining or reeducation. In a case involving charges that a physician is impaired from practicing due to mental illness, the finder of fact can certainly consider what they find to be the Respondent's troubling behavior during a hearing in determining whether a Respondent is impaired or whether a Respondent should undergo an examination to determine

whether the Respondent is impaired.

The Respondent shall submit to the examination, by a Psychiatrist approved by the Office of Professional Medical, within ninety days of the effective date of this Determination. The Hearing Committee and both parties shall receive a copy of the Psychiatrist's Report. The Hearing Committee shall convene for the supplemental deliberations approximately one hundred twenty (120) days from the date of this Determination, to allow time for the Psychiatrist to submit his Report. Each party may also submit written comments on the Report to the Committee, by mail, to the Hearing Committee's Administrative Officer.

The Review Board overrules the Hearing Committee's Order suspending the Respondent's license during the period of the Remand. Since the Respondent is not currently registered to practice medicine in New York State, the suspension has no practical effect during the Remand period.

The Review Board overrules the Hearing Committee's Determination to revoke the Respondent's license automatically, if the Respondent does not submit to the psychiatric examination. The Review Board does not find an automatic revocation to be appropriate, because it leaves a party other than the Hearing Committee to determine whether the Respondent has complied with the Hearing Committee's Order. If the Respondent does not comply with the Hearing Committee's Order, the Committee can assess the penalty which they feel is appropriate at the time of the supplemental deliberations one hundred twenty (120) days from the date of this Order.

Following their additional deliberations, the Committee shall render a Supplemental Determination, which they shall serve on the parties. Either parties shall have fourteen (14) days from the receipt of the Supplemental Determination to request a review of the Supplemental Determination by the Review Board.

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 May 24, 1994 Determination finding Dr. Charles R. Lepley guilty of Professional Misconduct for failing to comply with an Order that the Respondent submit to a Psychiatric Examination, and, the Review Board **sustains** the Hearing Committee's Determination finding Dr. Lepley not guilty of practicing in the past while impaired.

2. The Review Board **remands** this case to the Hearing Committee for further deliberations on the charge that the Respondent is currently impaired mentally.

3. The Review Board **sustains** the Hearing Committee's Order that the Respondent undergo a Psychiatric Examination, under the terms set out in the Hearing Committee's Order and this Determination.

4. The Review Board **overrules** the Hearing Committee's Determination suspending the Respondent's license during the Remand period, for the reasons stated in this Determination.

5. The Review Board **overrules** the Hearing Committee's Determination that would automatically revoke the Respondent's license if he fails to submit to the Psychiatric Examination which the Hearing Committee ordered and **remands** to the Hearing Committee the Determination as to what penalty to impose if the Respondent fails to submit to the Examination.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

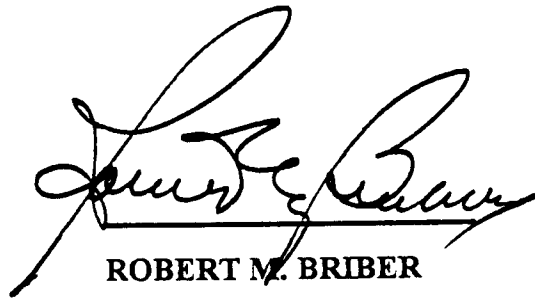
WILLIAM A. STEWART, M.D.

IN THE MATTER OF CHARLES R. LEPLEY, 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. Lepley,

DATED: Albany, New York

Apr 16, 1994



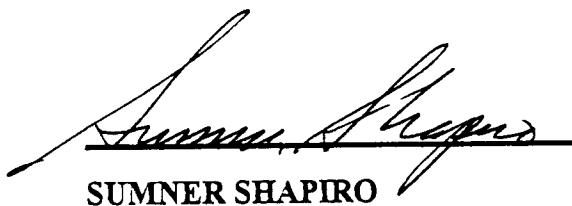
ROBERT M. BRIBER

IN THE MATTER OF CHARLES R. LEPLEY, 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. Lepley.

DATED: Delmar, New York

September 15, 1994

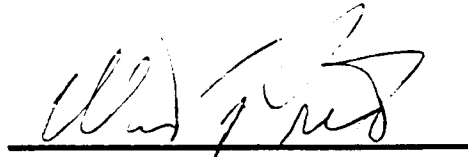

SUMNER SHAPIRO

IN THE MATTER OF CHARLES R. LEPLEY, 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. Lepley.

DATED: Brooklyn, New York

_____, 1994

A handwritten signature in cursive script, appearing to read "Winston S. Price", is written over a solid horizontal line.

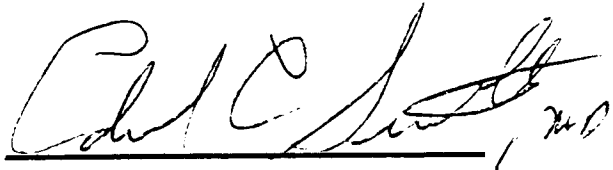
WINSTON S. PRICE, M.D.

IN THE MATTER OF CHARLES R. LEPLEY, 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. Lepley,

DATED: Roslyn, New York

September 13, 1994

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott, M.D.", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF CHARLES R. LEPLEY, 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. Lepley.

DATED: Syracuse, New York

15 Sept, 1994

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

WILLIAM A. STEWART, M.D.



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

Paula Wilson
Executive Deputy Commissioner

May 24, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David W. Smith, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001

Richard Barbuto, Esq.
45 Radnor Avenue
Croton-on-Hudson, New York 10520

Charles R. Lepley, M.D.
210 Seven Bridges Road
Mount Kisco, New York 10549

RE: In the Matter of Charles R. Lepley, M.D.

Dear Mr. Smith, Dr. Lepley and Mr. Barbuto :

Enclosed please find the Determination and Order (No. 94-71) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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 then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

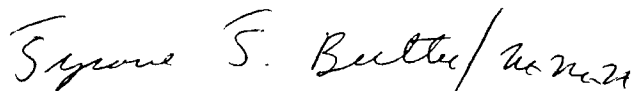
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

-----X
IN THE MATTER :

OF :

CHARLES R. LEPLEY, M.D. :
-----X

DETERMINATION

AND

ORDER

NO. BPMC-94-71

Jerry Waisman, M.D., Chairperson, Eugenia Herbst, and Walter M. Farkas, M.D. duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Sections 230 (1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230(10)(e) and 230(12) of the Public Health Law. Jane B. Levin, Esq., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this determination.

SUMMARY OF THE PROCEEDINGS

Notice of Hearing dated:	June 29, 1993
Statement of Charges dated:	June 29, 1993
Pre-hearing conference:	September 24, 1993
Intra-hearing conference:	October 19, 1993
Hearing dates:	September 29, 1993 October 2, 1993 October 21, 1993 November 15, 1993 November 16, 1993 November 18, 1993 December 6, 1993

December 7, 1993
December 20, 1993
January 10, 1994
January 19, 1994
January 25, 1994
February 1, 1994
February 7, 1994
February 14, 1994
March 2, 1994

Deliberation dates: April 6, 1994

Place of Hearing: NYS Department of Health
5 Penn Plaza
New York, N.Y.

Petitioner appeared by: Peter J. Millock, Esq.
General Counsel
NYS Department of Health
By: David W. Smith, Esq.
Assistant Counsel

Respondent appeared by: Ellen Zweig, Esq.
1464 Hammersley Avenue
Bronx, N.Y. 10469

Richard Barbuto, Esq.
45 Radnor Avenue
Croton-on-Hudson, N.Y. 10520
(substituted as counsel on
consent, December 20, 1993)

Motions: September 24, 1993 - Pre-hearing motion by Respondent to
recuse Administrative Law Judge - DENIED.

September 24, 1993 - Pre-hearing motion by Petitioner to
preclude testimony of Respondent's assistant if she
remained in the room during the hearings - GRANTED.

September 29, 1993 - Motion by Respondent to recuse the
hearing committee - DENIED.

September 29, 1993 - Motion by Respondent to change the
seating arrangement of room - DENIED.

October 19, 1993 - Motion by Respondent to disqualify
Petitioner's counsel - DENIED.

WITNESSES

For the Petitioner:

- 1) Arnold Winston, M.D.
- 2) Edward R. Herman, M.D.
- 3) Justin Schechter, M.D.
- 4) Hrair M. Babikian, M.D.

For the Respondent:

- 1) Stewart Schwartz, M.D.
- 2) Isabella Sichel
- 3) Willie Evans
- 4) Charles Lepley, M.D.
- 5) Vladmir Sekulich, M.D.
- 6) Edward Volkman, M.D.
- 7) David Halperin, M.D.
- 8) Robert Spitzer, M.D.
- 8) Hattice Alpticon, R.N.

STATEMENT OF CHARGES

The Statement of Charges essentially charges the Respondent with professional misconduct in that he had been impaired in the past by reason of mental disability from the practice of medicine, that he was currently impaired by reason of mental disability, and that he failed to submit to a psychiatric examination ordered by the State Board for Professional Medical Conduct.

The charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto and made a part hereof.

FINDINGS OF FACT

Numbers in parentheses refer to transcript page numbers of exhibits. These citations represent evidence found persuasive by

the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

GENERAL FINDINGS

1. Charles R. Lepley, M.D., the Respondent, was licensed to practice medicine in the State of New York on February 24, 1988, by the issuance of license #173681.

2. In 1988, Dr. Lepley entered the psychiatric residency program at New York Medical College (T. 1107; Pet.'s Ex. 3,4).

3. In January 1990 Dr. Lepley began to take 60 mg. of Prozac daily (T. 1429, 2603).

4. From November 14, 1990 until November 19, 1990, Dr. Lepley was admitted as a patient to New York Hospital Cornell Westchester Division, a psychiatric hospital (T. 1494; Resp.'s Ex. 2).

5. Dr. Lepley stated that prior to entering the hospital he was afraid that he might die, and that he might hang himself (T. 2336-38, 2579).

6. During his in-patient hospitalization in November of 1990, Dr. Lepley was mentally impaired (T. 1938).

7. On February 12, 1991 Dr. Lepley was placed on a medical leave of absence from his residency program because of a "continued and progressive deterioration since July 1990" (Pet.'s Ex. 4, p. 52). This medical leave was reported to the Office of Professional Medical Conduct on March 4, 1991 (Pet.'s Ex. 3, p. 71).

8. Dr. Lepley returned to his residency program on April 15, 1991 (Pet.'s Ex. 3, p. 38) after several mental health professionals indicated that he could resume work (Pet.'s Ex. 3, p. 45-48).

9. After his return to work, Dr. Lepley satisfactorily completed his residency in psychiatry and was awarded a certificate of satisfactory service from Westchester County Medical Center on June 30, 1991 (Resp.'s Ex. J).

10. On May 12, 1992, a committee of the State Board of Professional Medical Conduct, having "found reason to believe" that Dr. Lepley "may be impaired by mental disability" directed him to "submit to a psychiatric examination by Dr. Arnold Winston to begin no later than June 1, 1992 (Pet.'s Ex. 5).

11. Dr. Lepley's registration to practice medicine in the State of New York expired December 31, 1992 and he did not renew it (Pet.'s Ex. 2).

12. Dr. Lepley challenged the order to submit to a psychiatric examination, and by decision dated February 1, 1993 the Appellate Division upheld the Supreme Court decision that Dr. Lepley would be required to submit to "an unrestricted psychiatric examination" (Pet.'s Ex. 7).

13. Dr. Lepley met with Dr. Winston in Dr. Winston's office on May 12, 1993 (T. 20; Resp.'s Ex. X).

14. The meeting lasted approximately ten minutes (T. 20, 43, 2513; Resp.'s Ex. X).

15. Dr. Winston asked Dr. Lepley direct questions,

such as "Why are you here?" and "What kind of doctor are you?". Dr. Lepley answered by saying "I don't know how to respond to your inquiry" (T. 20, 2585; Resp.'s Exs. D and X).

16. For the last several minutes of their meeting, Dr. Lepley asked questions of Dr. Winston (t. 20, 2513; Resp.'s Exs. D and X).

17. Dr. Winston terminated the examination after ten minutes because he felt Dr. Lepley was uncooperative (T. 21, Resp.'s Exs. D and X).

CONCLUSIONS

1. At this time, the Hearing Committee is unable to reach a conclusion on the First Specification of the Charges, having a psychiatric condition which impairs the ability to practice. Because of Dr. Lepley's failure to submit to a psychiatric examination, the Committee has been precluded from hearing the necessary evidence on this issue.

2. Both Dr. Lepley and others admit that he was impaired during the period of his hospitalization in November 1990, however he did not see any patients during that time.

3. After that hospitalization, he returned to work, and saw patients, with the approval of his therapist and the supervisors of the residency program.

4. He was placed on medical leave in February 1991 and did not practice medicine until he received medical clearance and returned to work in April, 1991.

5. Dr. Lepley did not practice the profession while impaired by a mental disability during 1990 and 1991 as is charged in the Second Specification.

6. The Third Specification of the charges is failure to comply with an order. Although Dr. Lepley met with Dr. Winston, he did not submit (T.41, 319, 1500-01, 1927-29) to the unrestricted psychiatric examination that was ordered.

7. Based on all of the foregoing, Dr. Lepley did not comply with the order issued in May 1992 by the State Board of Professional Medical Conduct (Pet.'s Ex. 5) requiring him to submit to a psychiatric examination pursuant to Section 230 (7) of the N.Y. Public Health Law.

VOTE OF THE HEARING COMMITTEE

(All votes were unanimous.)

FIRST SPECIFICATIONS:

(Having a psychiatric condition which impairs the ability to practice)

The Committee is unable to reach a conclusion on this specification as indicated above.

SECOND SPECIFICATION:

(Practicing while impaired)

SUSTAINED as to Paragraph B.

NOT SUSTAINED as to Paragraph B-1.

THIRD SPECIFICATION:

(Failure to comply with an order)

SUSTAINED as to Paragraph C and C-1.

DETERMINATION OF THE HEARING COMMITTEE AS TO PENALTY

The Hearing Committee unanimously determines that Respondent's license to practice medicine in the State of New York shall be suspended until such time as a final determination can be made by the Committee on the First Specification of the Charges. Respondent is to submit to an unrestricted psychiatric examination by a State appointed psychiatrist within ninety days (90) of the date of this Order, and the matter shall then be remanded to this Committee for consideration of the First Specification of the Charges. Respondent's failure to submit to said examination within said time period shall result in permanent revocation of his license to practice medicine in the State of New York, without the need for this matter to be remanded to the Hearing Committee.

In addition to the Findings of Fact and Conclusions of Law herein, the Committee wishes to note its own observations of Dr. Lepley during the six month hearing process, which included some sixteen days of hearings. During this time, the Committee was troubled by the following characteristics exhibited by Dr. Lepley:

- Outbursts of anger
- Rapid mood swings
- Continual interruptions
- Constant attempts to control the procedure and proceedings
- Specific and pointed hostile comments directed at committee members, and at named members of the Office of Professional Medical Conduct
- Rambling unfocused answers with tangential ruminations, verbosity and grandiosity

- Refusal to follow the instructions of the Chairperson and the Administrative Law Judge concerning his conduct during the proceedings
- Inappropriate mannerisms, tone of voice and a suspicious accusatory manner
- Total disregard for the specific instructions directing that the Hearing Committee's copies of the final written submissions be sent to the Office of Professional Medical Conduct in Albany. Instead, Dr. Lepley inappropriately had his daughter, who identified herself on at least one occasion as being from the Office of Professional Medical Conduct, personally deliver the submission to either the home or office of each committee member, in an envelope bearing the return address of the Office of Professional Medical Conduct. In addition, the submission envelope also contained non-evidentiary materials, at least a portion of which had been ruled inadmissible during the hearing.


ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT

1. Respondent is to submit within ninety (90) days of the date of this Order to an unrestricted psychiatric examination by a State appointed psychiatrist, and the results of that examination shall be presented to this Hearing Committee so that it can make a final determination on the First Specification of the Charges. Until said determination is made, Respondent's license to practice medicine in the State of New York is suspended.
2. Respondent's failure to submit to a psychiatric examination by a State appointed psychiatrist within ninety (90) days of the date hereof shall result in automatic permanent revocation of his license to practice medicine in the State of New

York.

Dated: New York, New York
May 17, 1994


JERRY WAISMAN, M.D.
Chairperson

EUGENIA HERBST
WALTER M. FARKAS, M.D.