

**DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH**

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

January 16, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Frederick Zimmer, Esq.
NYS Department of Health
Corning Tower Room 2438
Empire State Plaza
Albany, New York 12237

Delroy Brooks, M.D.
PO Box 898
332 Mechanic Street
Orange, New Jersey 07051

Delroy Brooks, M.D.
Interfaith Hospital
Parkway Family Health Center
391 Eastern Parkway
Brooklyn, New York 11238

Allen C. Rolle, Esq.
Michelle Ingram-Davis, Esq.
Brooklyn Navy Yard
Building 58 Unit 2B
Brooklyn, New York 11205

RE: In the Matter of Delroy Brooks, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.96-223) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Hedley Park Place
433 River Street-Fourth Floor
Troy, New York 12180

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.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

COPY

IN THE MATTER
OF
DELROY BROOKS, M.D.

ADMINISTRATIVE
REVIEW BOARD
DETERMINATION
ARB NO. 96-223

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

After a hearing into charges that the Respondent **DR. DELROY BROOKS** (Respondent) committed professional misconduct, a Hearing Committee on Professional Medical Conduct (Committee) sustained the charges and revoked the Respondent's license to practice medicine in New York State. In this proceeding pursuant to New York Public Health Law (PHL) §230-c(4)(a) (McKinney's Supp 1996), the Respondent asks the Administrative Review Board for Professional Medical Conduct (Board) to overturn and remand the Committees's October 9, 1996 Determination, because the Respondent was unable to present a defense to the charges and because the Committee imposed an excessive Penalty. After reviewing the record in this case and conducting Deliberations on December 13, 1996¹, 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 (E L) §6530. We reject the Respondent's request that we remand to the Committee, because we conclude that the Respondent had adequate notice and opportunity to present a defense. We vote to sustain the Committee's Penalty, because we conclude that the Respondent's fraudulent and irresponsible conduct warrant license revocation.

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

ALLEN C. ROLLE & MICHELLE INGRAM-DAVIS, ESQS. represented the Respondent.

¹Dr. Price, Dr. Stewart and Mr. Shapiro participated in the Deliberation by telephone.

FREDERICK ZIMMER, ESQ. (Assoc. Counsel, NYS Dept. of Health) represented the Petitioner.

COMMITTEE DETERMINATION ON THE CHARGES

PHL §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 EL §6530. The Petitioner filed charges with BPMC alleging that the Respondent violated:

- EL §6530(2) by practicing medicine fraudulently;
- EL §6530(9)(a)(ii) following his conviction for committing a crime under Federal Law; and,
- EL §6530(42) by failing to comply with an agreement he made to aid his medical education.

At the hearing into the charges, the Petitioner's counsel appeared and presented certain documents into evidence (Petitioner's Exhibits 1-5). An attorney appeared on the Respondent's behalf, informed the Committee that he had been unable to speak to the Respondent and received permission from the Committee's Administrative Officer to withdraw from the hearing (Hearing Transcript pages 6-8). The hearing proceeded in the Respondent's absence

Three BPMC Members, **BENJAMIN WAINFELD, M.D. (Chair), ANDREW CONTI, M.D.** and **LUIS OSORIO** comprised the Committee who conducted the hearing in the matter and who rendered the Determination which the Board now reviews. Administrative Law Judge **ELLEN SIMON** served as the Committee's Administrative Officer. The Committee determined that:

- the United States District Court for New Jersey found the Respondent guilty in 1976 for knowingly and willfully obstructing the mail;
- the United States District Court for New Jersey entered a default judgement against the Respondent in 1995 for his default on a service obligation which he incurred when he received a medical scholarship; and
- the Respondent filed applications for limited permits or licensure with the New York

Education Department in 1988, 1990 and 1993 on which the Respondent answered no to questions asking whether the Respondent had ever been charged with and convicted for a crime.

The Committee concluded that:

- the Respondent's criminal conviction constituted misconduct under EL §6530(9)(a)(ii);
- the Respondent's statements on his applications amounted to knowing and willful lies and constituted practicing fraudulently in violation of EL §6530(2);and,
- the Respondent's default on the loan agreement violates EL §6530(42), for failing to comply with an agreement into which the Respondent entered to aid his medical education.

The Committee voted to revoke the Respondent's license to practice medicine in New York State. The Committee determined that the Respondent failed to perform his service obligation or repay his medical scholarship debt, failed to appear in court to answer the action resulting from the failure to perform or repay and failed to appear at the hearing to refute the Petitioner's charges. The Committee stated that, although no charges related to the Respondent's medical practice, the Respondent exhibited poor judgement, irresponsibility and poor character which caused the Committee genuine concern about whether the Respondent could care for patients responsibly and adequately. The Committee stated that they could determine no penalty to force the Respondent to fulfill his obligations.

REVIEW HISTORY AND ISSUES

The Respondent filed a Notice requesting this review, which the Board received on October 18, 1996. 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 November 25, 1996 and the Petitioner's reply brief on December 2, 1996.

The Respondent requests that the Board overturn the Committee's Determination and provide the Respondent with a new hearing because:

- the Committee imposed a disproportionate penalty;
- the Committee erred in imposing a penalty without all the facts;
- the Committee made findings of fraud concerning the default on the scholarship loan agreement without knowing that the Respondent could still fulfill his obligations under the agreement;
- the Committee erred in finding the Respondent committed fraud by denying his prior criminal conviction, because the Respondent believed the conviction record had been expunged; and,
- suspension would constitute a more appropriate penalty than revocation.

The Petitioner argues that the Board should sustain the Committee's Determination because the record supports the Committee's conclusion that the Respondent exhibited a pattern of irresponsibility, poor judgement and poor character. The Petitioner argues that the Respondent's failure to appear at the hearing reinforces that pattern and provides no justification for a new hearing.

THE BOARD'S REVIEW AUTHORITY

In a Review, the Board determines:

- whether a Committee determination and penalty are consistent with the committee's findings of fact and conclusions of law; and
- whether the penalty is appropriate and within the scope of penalties which PHL §230-a permits [PHL §230(10)(i), §230-c(1) and §230-c(4)(b)] .

The Review Board may remand a case to the Hearing Committee for further consideration [PHL §230-c(4)(b)]. The Review Board's Determinations result from a majority concurrence among the Board's Members [PHL §230-c(4)(c)].

The Review Board may substitute our judgement for that of the Hearing Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 AD 2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 AD 2d 940, 613 NYS 2d 759 (Third Dept. 1994), and in determining credibility

THE BOARD'S DETERMINATION

The Board has considered the record below and the parties' briefs. The Board 1.) rejects the Respondent's request for a remand because we find that the Respondent had adequate notice about his hearing, 2.) sustains the Committee's Determination on all three misconduct specifications, and , 3.) sustains the Committee's Determination revoking the Respondent's New York Medical License.

1.) Remand Request: The Board rejects the Respondent's request that we remand this case for a new hearing. The Respondent had adequate notice concerning his hearing. The Respondent failed through his own fault to appear for the hearing or to assist his first attorney in preparing a defense. The Respondent's failures provide no ground for a new hearing, but rather provide further examples showing the Respondent's poor judgement and irresponsibility. Considering the pattern that the Respondent established in defaulting on his scholarship loan obligations and in defaulting to appear in the court proceeding to enforce the loan obligations, the Board rejects the Respondent's explanation that he failed to appear at the hearing or to contact his attorney because he confused the dates.

2.) Guilt for Misconduct: The Board sustains the Committee's Determination finding the Respondent guilty for violating EL § 6530(2), practicing medicine fraudulently. On three applications to the Education Department, the Respondent denied any prior criminal convictions and denied ever facing criminal charges, when in fact the Federal District Court in New Jersey found the Respondent guilty for obstructing the mail. We reject the Respondent's contention that the fraudulent statements provide no grounds for a finding that the Respondent committed fraud and we reject the Respondent's excuse that he made the statements on the application because he thought the criminal charges had been expunged. The Board presumes from the evidence in the record that the Respondent made false statements on the license applications knowingly to mislead the Education Department about his criminal conviction.

The Board concludes that the Respondent's criminal conviction also constitutes misconduct under EL § 6530(9)(a)(ii) and we sustain the Committees Determination finding the Respondent guilty

under that charge.

The Board concludes that the Respondent's defaults on his obligations under his scholarship loan agreement constitute a failure to comply with an agreement into which the Respondent entered to aid his medical education. We sustain the Committee's Determination that the Respondent violated EL § 6530(42). We note that the Respondent's brief states incorrectly that the Committee found that the Respondent committed fraud for failing to meet his loan obligations (Respondent's brief page 7, Point III). The fraud charge (Statement of Charges, Pet 1) and the Committee's guilt determination on that charge (Committee Report, Conclusions, page 4) arose from the Respondent's false statements on the applications to the Education Department.

3.) Penalty: The Board sustains the Committee's Determination revoking the Respondent's license. The Respondent made false statements on his applications for permits and then for a medical license. Those fraudulent statements alone provide sufficient reason to revoke the Respondent's license. Those fraudulent statements demonstrate that the Respondent lacks the necessary integrity to practice medicine in this State. In addition, the Respondent assumed certain obligations in order to obtain aid in receiving his medical degree and then reneged on those obligations. The Respondent then failed to appear in the civil proceeding to enforce those obligations and he failed to appear at the hearing into charges that could result in license revocation. The Board agrees with the Committee that this pattern showing irresponsible behavior and poor judgement raises legitimate concerns over whether the Respondent would act responsibly in providing patient care. The behavior pattern also leads the Board to doubt any statement that the Respondent may offer in mitigation to explain his statements on the applications or his failures to appear at the hearing or to satisfy his obligations.

The Committee stated that they could recognize no penalty to force the Respondent to fulfill his obligations. The Respondent argues that the Committee should have considered restitution as an alternative penalty. The Board concludes that forcing the Respondent to fulfill his obligations merits the least consideration in determining the appropriate penalty in this case. The Respondent's fraudulent conduct warrants the revocation penalty which the Committee imposed.

The Respondent argued that a lesser sanction such as suspension would provide a more appropriate remedy in this case. The Board concludes that the Respondent's behavior pattern

demonstrates that no lesser sanction deserves consideration. The Respondent's prior experience with the criminal courts provided no deterrence from his subsequent misconduct. The Respondent's criminal conviction and the civil default judgement provided the Respondent with no further insight when he faced a disciplinary proceeding that could result in license revocation. The Board finds that no penalty less severe than revocation will provide a penalty sufficient to deter the Respondent from future misconduct.

ORDER

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

1. The Board sustains the Hearing Committee's October 9, 1996 Determination finding the Respondent guilty for professional misconduct.
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.

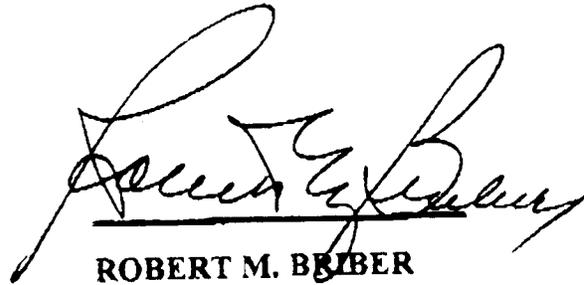
WILLIAM A. STEWART, M.D.

IN THE MATTER OF DELROY BROOKS, 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. Brooks

DATED: Schenectady, New York

Jan 9, 1996



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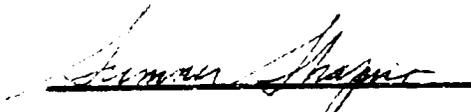
ROBERT M. BRIBER

IN THE MATTER OF DELROY BROOKS, 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. Brooks.

DATED: Delmar, New York

Jan 9, 1997


SUMNER SHAPIRO

IN THE MATTER OF DELROY BROOKS, 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. Brooks.

DATED: Brooklyn, New York

JAN 9, 1997



WINSTON S. PRICE, M.D.

IN THE MATTER OF DELROY BROOKS, 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. Brooks

DATED: Roslyn, New York

Jan. 9, 1996

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 DELROY BROOKS, 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. Brooks

DATED: Syracuse, New York

9 Jan, 1997

William A. Stewart

WILLIAM A. STEWART, M.D.