

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

December 9, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Carol C. Bosholm, M.D.
511 Sixth Avenue West
Hendersonville, North Carolina 28739

Timothy J. Mahar, Esq.
NYS Department of Health
Corning Tower Room 2503
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Carol C. Bosholm, M.D.

Dear Dr. Bosholm and Mr. Mahar:

Enclosed please find the Determination and Order (No.97-203) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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, 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 (BOARD)

COPY

IN THE MATTER

OF

CAROL C. BOSHOLM, M.D. (Respondent)

Proceeding to review a Determination by a Hearing Committee
(Committee) from Board for Professional Medical Conduct
(BPMC)

ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 97-203

**BEFORE: ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D.,
EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.**

After a hearing into charges that the Respondent committed professional misconduct, a BPMC Committee sustained charges that a sister state disciplined the Respondent for misrepresentations on a licensure application (South Carolina Application) and dismissed charges that the Respondent made intentional misrepresentations on a license application in New York State (New York Application). After finding mitigating circumstances in the record, the Committee voted to impose no penalty against the Respondent's New York License for her misconduct. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1997), the New York State Department of Health (Petitioner) asks the Board to overturn the Committee's Determination on the New York Application, to find the Respondent made fraudulent misrepresentations on the Application and to revoke the Respondent's New York License. After considering the hearing record and the parties' briefs, the Board modifies the Committee's Determination on the charges, and we conclude that the Committee's findings demonstrate that the Respondent made intentional misrepresentations in obtaining a license in New York. Due to mitigating evidence in the record, however, the Board rejects the Petitioner's request that we revoke the Respondent's License. The Board votes 4-1 to place the Respondent on five years probation, at such time as the Respondent begins to practice in New York State.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination. The Respondent represented herself in this proceeding. **TIMOTHY J. MAHAR, ESQ.** represented the Petitioner.

COMMITTEE DETERMINATION ON CHARGES

The Petitioner filed charges with BPMC alleging that the Respondent had violated N. Y. Educ. Law §§ 6530(1-2), 6530(9)(b&d) and 6530(20-21). The charges related to applications by the Respondent for licensure in New York and South Carolina and for staff privileges at a South Carolina hospital. In addition to her New York Medical License, the Respondent holds a License in South Carolina and North Carolina. The Respondent practices currently in North Carolina. The charges alleged that the Respondent misrepresented her status on the New York Application and thus committed professional misconduct under the following categories:

- obtaining a license fraudulently,
- practicing medicine fraudulently,
- committing conduct that evidences moral unfitness in practicing medicine, and,
- filing a false report.

The Petitioner also charged that South Carolina found the Respondent guilty for and disciplined the Respondent for conduct, while she practiced in that state, that would constitute misconduct under New York Law, if she had committed such conduct in New York. The charges allege further, that the Respondent's South Carolina conduct, if committed in New York, would constitute:

- obtaining a license fraudulently,
- practicing medicine fraudulently,
- committing conduct that evidences moral unfitness in practicing medicine, and,
- filing a false report.

Three BPMC Members, **OLIVE M. JACOB, Chair, RAVINDER MAMTANI, M.D. and MARGERY W. SMITH, M.D.** comprised the Committee who conducted the hearing in this matter, pursuant to N.Y. Pub. Health Law § 230(7)(McKinney's Supp. 1997), and who rendered the Determination which the Board now reviews. Administrative Law Judge **JEFFREY ARMON** served as the Board's Administrative Officer and drafted the Determination. The Committee sustained the charge that South Carolina disciplined the Respondent and found the Respondent guilty for misrepresenting facts on South Carolina Applications and dismissed the charge that the Respondent

misrepresented facts on his New York application.

As to the South Carolina Applications, the Committee found that the State Board of Medical Examiners of South Carolina (South Carolina Board) determined that the Respondent submitted an October 24, 1994 application for a South Carolina License, that denied that the Respondent had undergone hospitalization in the previous five years or that the Respondent had ever discontinued medical practice for more than one month, when the Respondent had in fact undergone hospitalization within the previous five years and had in fact ceased medical practice for a period longer than one month. The South Carolina Board also determined that the Respondent had submitted an October 26, 1994 application for hospital privileges in South Carolina, that denied that the Respondent had undergone hospitalization within the previous five years, when in fact, the Respondent had undergone hospitalization within that time period. The South Carolina Board censured and reprimanded the Respondent and suspended her license indefinitely, with reinstatement when she paid a Five Thousand Dollar (\$5000.00) Fine.

As to the New York Application, the Committee determined that the Respondent submitted a May 23, 1994 application for licensure, denying that any hospital ever terminated the Respondent's training or employment. The Committee found that the Respondent had enrolled in a three year Residency Program with a New Jersey Hospital, but that the Respondent had completed only one year. The Committee found that the Hospital had mandated that the Respondent enter outpatient psychotherapy, as a condition to continue in the program, and that the psychotherapist found the Respondent untreatable, because she denied any problem. The Hospital then advised the Respondent that she would receive no credit for the one year residency and the Hospital refused to allow her to continue the Program. The Committee found no misconduct due to the Respondent's answer on the New York Application, because there was no termination, resignation or withdrawal from the Residency Program.

The Committee imposed no penalty, because they found the Respondent's answers on the South Carolina Applications minor. As to the answers on both applications about hospitalization within five years, the Committee found that the Respondent's hospitalization occurred four years and eleven months prior to the Applications, and that if she had submitted the Applications only a few

days later, she would have been making accurate responses. The Committee found the case differed from instances when other Respondents provided false information on applications, to conceal criminal conduct or anti-social behavior. The Committee also found mitigating factors, in evidence showing the Respondent suffers no impairment and in the Respondent's testimony that her difficulties during the New Jersey Residency resulted from her marriage to an abusive spouse and from a parent's sudden death.

REVIEW HISTORY AND ISSUES

The Committee rendered their Determination on August 22, 1997. The Petitioner then commenced this proceeding on August 29, 1997, when the Board received the Notice requesting a Review pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1997). The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and reply brief and the Petitioner's brief and reply brief. The Board received the Respondent's brief on October 2, 1997, the Petitioner's brief on September 22, 1997, the Respondent's reply on October 14, 1997 and the Petitioner's reply on October 7, 1997.

The Petitioner contends that the Respondent answered falsely on her New York Application and asks the Board to overturn the Committee and find that the Respondent filed a false report and obtained her New York License fraudulently. The Petitioner also asks that the Board overturn the Committee and revoke the Respondent's New York License, due to the Respondent's repeated untruthful answers on applications.

The Respondent contends that, if she loses her New York License, the revocation would have consequences outside New York State, because the Respondent would lose her Medicaid/Medicaid provider status and become unable to serve her current patients.

REVIEW BOARD AUTHORITY

In reviewing a Committee's Determination, the Board determines: whether the 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 the law permits [N.Y. Pub. Health Law § 230(10)(i), § 230-c(4)(b)(McKinney's Supp. 1997)]. The Board may remand a case to the Committee for further consideration [N.Y. Pub. Health Law § 230-c(4)(b)(McKinney's Supp. 1997)]. The Board's Determinations result from a majority concurrence among the Board's Members [N.Y. Pub. Health Law § 230-c(4)(c)(McKinney's Supp. 1997)].

The Review Board may substitute our judgment for that of the 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 Matter of Minielly v. Comm. of Health 222 AD 2d 750, 634 NYS 2d 856 (Third Dept. 1995).

REVIEW BOARD DETERMINATION

The Board has considered the record and the parties' briefs. We conducted deliberations in this case on October 17, 1997. The Board sustains the Committee's Determination that South Carolina Board disciplined the Respondent for conduct that would constitute New York misconduct under N.Y. Educ. Law §§ 6530(1-2), 6530(9)(b&d) and 6530(20-21). Neither party challenged the Committee's Determination on those charges. The Board overturns the Committee's Determination dismissing the charges that the Respondent's New York Application constituted misconduct under N.Y. Educ. Law §§ 6530(1-2 and 20-21). The Board sustains those charges. The Board also overturns the Committee's Determination to impose no penalty against the Respondent. The Board votes 4-1 to place the Respondent on probation for five years, at such time as the Respondent begins to practice in New York.

The Board concludes that the Respondent's answers on the New York Application constituted a deliberate misrepresentation, to prevent New York from learning about the Respondent's problems in the New Jersey Residency Program. The Respondent's attempts to explain the reasons for leaving the New Jersey Program as other than a termination constituted semantics. The Program mandated

that the Respondent undergo psychotherapy as a condition to remain in the Program, the Respondent's psychotherapist discontinued treatment because the Respondent refused to concede she required treatment, the Program informed the Respondent that she would receive no credit for the first year and the Program refused to allow the Respondent to return for another year. The Board concludes that this constituted a termination.

The Board agrees with the Committee that the Respondent's statements on the South Carolina Applications represented minor misconduct and that the South Carolina Board's penalty provided a sufficient sanction for such conduct. The Board concludes, however, that the Respondent's misrepresentation on her New York Application warrants a sanction. We vote 4-1 to place the Respondent on five years probation at such time as the Respondent begins practice in New York. Although misrepresenting facts on applications represents serious misconduct that can justify license revocation as a sanction, the Board's majority agrees with the Committee that several mitigating factors in the record convince us, that a less severe penalty than revocation will punish the Respondent sufficiently. The Respondent's problems in New Jersey resulted from her abusive spouse rather than from any mental disorder and the majority believes the Respondent poses no threat to her patients. The Board's dissenting member votes to revoke the Respondent's License.

The Board places a condition on the Respondent's License that requires her to inform the Office for Professional Medical Conduct (OPMC) at least thirty days previously, that the Respondent plans to begin medical practice in New York State. Further, the Respondent must then prove to the OPMC Director that the Respondent's License is in good standing in any other jurisdiction in which the Respondent holds a License. Upon beginning practice in New York, the Respondent shall be on probation for five years, under the terms the Board sets out in the Appendix to this Determination.

ORDER

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

1. The Board **SUSTAINS** the Hearing Committee's Determination that the Respondent committed professional misconduct in South Carolina, arising from actions that would constitute misconduct in New York.
2. The Board **OVERTURNS** the Committee's Determination dismissing charges that the Respondent committed misconduct by misrepresenting facts on an application for Licensure in New York.
3. The Board **SUSTAINS** the charges that the Respondent misrepresented facts on an application for Licensure in New York.
4. The Board **PLACES A CONDITION ON THE RESPONDENT'S NEW YORK LICENSE** as we explain in this Determination.
5. The Board **PLACES THE RESPONDENT ON PROBATION FOR FIVE YEARS** to begin at the time we indicate in our Determination, under terms we set out in the Appendix to this Determination.

ROBERT M. BRIBER
SUMNER SHAPIRO
WINSTON S. PRICE, M.D.
EDWARD SINNOTT, M.D.
WILLIAM A. STEWART, M.D.

APPENDIX

Terms of Probation

1. Respondent shall conduct herself in all ways in a manner befitting her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by her profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Corning Tower Building, 4th Floor, Empire State Plaza, Albany, New York 12237; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records

and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.

6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

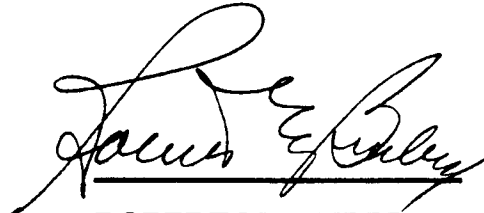
7. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

IN THE MATTER OF CAROL BOSHOLM, 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. Bosholm.

DATED: Schenectady, New York

Dec 5, 1997



ROBERT M. BRIBER

IN THE MATTER OF CAROL BOSHOLM, 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. Bosholm.

DATED: Delmar, New York

Dec. 5, 1997



SUMNER SHAPIRO

IN THE MATTER OF CAROL BOSHOLM, M.D.

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board for Professional Medical Conduct, affirms that the Determination and Order in the Matter of Dr. Bosholm represents the decision by the Board's majority in this case.

DATED: Syracuse, New York

5 Dec, 1997



WILLIAM A. STEWART, M.D.

IN THE MATTER OF CAROL BOSHOLM, 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. Bosholm.

DATED: Roslyn, New York

Dec 9, 1997



EDWARD C. SINNOTT, M.D.