



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

August 21, 1995

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel Guenzburger, Esq.
NYS Dept. of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Robert S. Asher, Esq.
295 Madison Avenue - Suite 700
New York, New York 10010

Teresita Esquivel Earley, M.D.
3 Peter Cooper Road, Apt. 1B
New York, New York 10017

RE: In the Matter of Tersita Esquivel Earley, M.D.

Effective Date: 08/28/95

Dear Mr. Guenzburger, Mr. Asher and Dr. Earley :

Enclosed please find the Determination and Order (No. 95-104) 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.

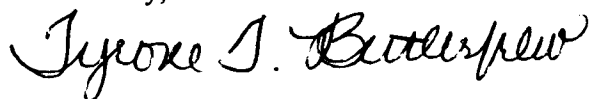
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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,

A handwritten signature in black ink, reading "Tyrone T. Butler". The signature is written in a cursive, flowing style.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:

Enclosure

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

**IN THE MATTER
OF
TERESITA ESQUIVEL EARLEY, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 95-104**

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.**¹ held deliberations on July 14, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) May 16, 1995 Determination finding Dr. Teresita Esquivel Earley (Respondent) guilty of professional misconduct. The Office of Professional Medical Conduct (Petitioner) requested the Review through a Notice which the Board received on May 26, 1995. James F. Horan served as Administrative Officer to the Review Board. Daniel Guenzburger, Esq. filed a brief for the Petitioner which the Board received on July 3, 1995. Robert S. Asher, Esq. filed a brief for the Respondent which the Board received on July 10, 1995.

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.

¹Robert Briber did not participate in the deliberations in this case.

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 brought this case pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9)(a)(i), which provide an expedited hearing in cases in which professional misconduct charges against a Respondent are based upon a prior criminal conviction in New York 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 case found that the Petitioner had met its burden of proof in establishing that the Respondent was convicted, upon a guilty plea in New York State Supreme Court, for New York County, for Grand Larceny in the Second Degree, a Class C Felony. The Committee found further that the Respondent also entered a guilty plea to one count of falsifying business records in the first degree. The Court sentenced the Respondent to five years probation and ordered that she pay Four Hundred Thousand (\$400,000.00) Dollars in restitution. The convictions arose from fraudulent billings which the Respondent submitted for reimbursement to the Medicaid program.

The Hearing Committee voted to suspend the Respondent's license to practice medicine for two years, to stay the suspension and to place the Respondent on two years probation. The Committee voted to restrict the Respondent from private practice and limit her to a structured, supervised setting. The Committee found that the Respondent is performing a valuable service currently at the Manhattan Children's Psychiatric Center, where she is supervised by a psychiatrist and where she does not bill for individual services.

REQUESTS FOR REVIEW

The Petitioner has asked the Review Board to overturn the Hearing Committee's penalty and to revoke the Respondent's license to practice medicine in New York State. The Petitioner contends that revocation of the Respondent's license is the appropriate sanction for the theft of Four Hundred Thousand (\$400,000.00) Dollars from the Medicaid Program. The Petitioner argues that between 1987 and 1992 the Petitioner rendered group therapy to homeless families and billed the Medicaid program for individual therapy sessions, rather than at the group therapy rate, and thereby received three times the fee per patient to which she was legally entitled. The Petitioner contends that the Respondent has failed to show remorse for her crimes. The Petitioner contends further that the Committee's action in restricting the Respondent to a supervised setting is little more than a slap on the wrist, because the Respondent's Medicaid convictions will result in her being barred from Medicaid, Medicare and private insurance, thus curtailing the Respondent's private practice options.

The Respondent contends that the Committee's penalty is appropriate and within the scope of the penalties permitted by law. The Respondent contends that the Petitioner takes the incorrect view that all Medicaid fraud must result in revocation. The Respondent contends that there is no statute which makes revocation automatic upon a Medicaid Fraud conviction and that, therefore, each case must be considered individually. The Respondent argues that when Dr. Earley learned that her billings were improper, she accepted responsibility for them. The Respondent also argues that all testimony from the witnesses at the hearing indicated that the Respondent did her current job at the Manhattan Children's Psychiatric Clinic very well and that she was considered highly effective. The Respondent argues that Dr. Earley has suffered greatly already and that other physicians are unlikely to repeat the Respondent's conduct based upon the Respondent's experience.

REVIEW BOARD DETERMINATION

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

The Review Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty of professional misconduct. The Determination was consistent with the Committee's finding that the Respondent had entered a guilty plea to Grand Larceny for fraudulently billing for reimbursement from the Medicaid Program.

The Review Board votes to overturn the Hearing Committee's penalty because the penalty, stayed suspension with probation and a limited license, is not appropriate in view of the serious nature of the Respondent's misconduct. The Review Board votes to revoke the Respondent's license to practice medicine in New York State.

The Review Board has considered the specific circumstances in this case and we find that the Respondent's criminal activity to be so serious in nature as to justify our determination to revoke the Respondent's license. The Respondent used her medical license to defraud the Medicaid Program for the Respondent's own financial gain. The Respondent's criminal activity spanned five years from 1987 to 1992. The Respondent's conduct was intentional. (DOH Exhibit 5, Plea Minutes, page 12) The Review Board does not accept the Respondent's argument that her fraudulent billings resulted from carelessness. The Respondent was a high managerial agent of Teresita Early, M.D., P.C. (DOH Ex. 5, pages 11-12) and not someone who was duped or coerced into submitting fraudulent billings as part of some other party or parties' scheme to defraud the Medicaid Program. The Respondent's crime involved a substantial amount of money and amounted to five years of substantial abuse of the system. The Respondent's current work does not excuse her prior crimes. The Respondent has demonstrated that she lacks the integrity that is essential to the practice of medicine in New York State.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's May 16, 1995 Determination finding Dr. Teresita Earley guilty of professional misconduct.
2. The Review Board **OVERTURNS** the Hearing penalty which the Hearing Committee imposed in their Determination.
3. The Review Board **VOTES** to **REVOKE** the Respondent's license to practice medicine in New York State.

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF TERESITA ESQUIVEL EARLEY, 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. Earley.

DATED: Delmar, New York

July 28, 1995


SUMNER SHAPIRO

IN THE MATTER OF TERESITA ESQUIVEL EARLEY, 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. Earley.

DATED: Brooklyn, New York

8/18, 1995


WINSTON S. PRICE, M.D.

IN THE MATTER OF TERESITA ESQUITVEL EARLEY, 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. Earley.

DATED: Roslyn, New York

July 21, 1995

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", with a horizontal line drawn underneath it.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF TERESITA ESQUIVEL EARLEY, 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. Earley.

DATED: Syracuse, New York

24 July, 1995

William A. Stewart

WILLIAM A. STEWART, M.D.