



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*

October 21, 1998

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Charles Lynnwood Johnson, M.D.  
503 N. Oakland Avenue  
Pasadena, California 91101

Jean Bresler, Esq.  
NYS Department of Health  
5 Penn Plaza-Sixth Floor  
New York, New York 10001

**RE: In the Matter of Charles Lynnwood Johnson, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 98-121) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

A handwritten signature in black ink that reads "Tyrone T. Butler/nm". The signature is written in a cursive style with a vertical line at the end.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm

Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH (Petitioner)**

**COPY**

**In The Matter Of  
Charles Lynwood Johnson, M.D. (Respondent)**

**Administrative Review  
Board (ARB)  
Determination and  
Order 98 - 121**

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

**Before Board Members : Briber, Grossman, Lynch, Price & Shapiro.  
Administrative Law Judge James F. Horan served as the Board's Administrative Officer.**

**For the Respondent:           The Respondent represented himself.  
For the Petitioner:           Jean Bresler, Esq.**

In this proceeding, we review whether the Respondent's misconduct in medical practice in California warrants revoking his License to practice medicine in New York (License). After a hearing before a BPMC Committee, the Committee sustained charges that California disciplined the Respondent for providing seriously deficient medical care to six patients and the Committee voted to revoke the Respondent's License. The Respondent now challenges that Determination pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1998), arguing that BPMC lacks jurisdiction to discipline the Respondent, because California has yet to issue a final decision in his case, and that the California findings provide insufficient grounds to revoke his license. After reviewing the record and submissions from both parties, the ARB sustains the Committee's Determination.

**Committee Determination on the Charges**

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law § 6530(9)(b) (McKinney Supp. 1998), because:

- the duly authorized professional disciplinary agency from another state made a finding that the Respondent committed improper professional conduct in the state, and,
- the conduct which formed the basis for the other state's finding would constitute professional misconduct in New York, if the Respondent had committed such conduct in this state.

The Respondent held medical licenses in both New York and California and had practiced medicine in California. The action arose from findings about the Respondent's California practice, in a disciplinary decision by the Medical Board for California (California Board). The Petitioner's

Statement of Charges [Petitioner Exhibit 1] alleged that the Respondent's misconduct, would constitute misconduct in New York, under the following categories:

- practicing with negligence on more than one occasion, a violation under N. Y. Educ. Law § 6530(3) (McKinney Supp. 1998),
- practicing with gross negligence, a violation under N. Y. Educ. Law § 6530(4) (McKinney Supp. 1998),
- practicing with incompetence on more than one occasion, a violation under N. Y. Educ. Law § 6530(5) (McKinney Supp. 1998), and,
- ordering excessive tests or treatments unwarranted by the patient's condition, a violation under N. Y. Educ. Law § 6530(35) (McKinney Supp. 1998).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law § 230(10)(p)(McKinney Supp. 1998), before a BPMC Committee, who then rendered the Determination which the ARB now reviews. In such a Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). At the hearing, the Respondent argued that BPMC lacks jurisdiction to take disciplinary action him, because the California Board issued quasi-legislative, non-final findings, which the Respondent has challenged in the California courts.

The Committee determined that California's professional disciplinary agency, the California Board, disciplined the Respondent for misconduct, after an eleven day hearing before an Administrative Law Judge (ALJ), at which the Respondent appeared and represented himself. The ALJ issued a recommended decision, that the California Board adopted, finding that the Respondent had practiced with negligence, gross negligence and incompetence. The California Board found the Respondent committed:

- repeated acts of clearly excessive prescribing or administering of drugs or treatment;
- repeated acts of clearly excessive use of diagnostic procedures; and,
- repeated acts of clearly excessive use of diagnostic or treatment facilities.

The California Board revoked the Respondent's California License, stayed the revocation and placed the Respondent on probation for seven years under numerous terms and conditions. The probation

restricted the Respondent's medical practice to a clinical training program that the Respondent must complete and provided that if the Respondent completed the program successfully, he could practice under physician supervision and under surveillance by the California Board. The clinical training program contained a requirement that the Respondent complete a physical and psychological evaluation.

The Committee rejected the Respondent's arguments that BPMC lacked jurisdiction to proceed with the California Board's Decision as their basis. The Committee concluded that, under N. Y. Educ. Law § 6530(9)(b) (McKinney Supp. 1998), the Committee could act if the proof indicated that:

- the duly authorized professional disciplinary agency from another state made a finding that the Respondent committed improper professional conduct in the state, and,
- the conduct which formed the basis for the other state's finding would constitute professional misconduct if the Respondent had committed such conduct in New York.

The Committee concluded that the California Board constituted California's duly authorized professional disciplinary agency and that the California Board findings provided the Committee sufficient proof to conclude that the Respondent's misconduct in California would amount to practicing with negligence, practicing with gross negligence and ordering excessive tests, treatment or use of treatment facilities, if the Respondent had committed such conduct in New York.

Although the Committee adopted the California Board's findings, they found the California Board's penalty inappropriate and lacking in an explanation for the California Board's lenient sanction. The Committee found that the Respondent lacked insight and understanding into his gross errors and refused to acknowledge such errors. The Committee concluded that the Respondent had submitted no evidence in mitigation and found insufficient evidence in the record to demonstrate that the Respondent could provide medically acceptable care and treatment to patients. The Committee voted to revoke the Respondent's License.

### **Review History and Issues**

This proceeding commenced on July 6, 1998 when the ARB received the Petitioner's Notice

requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's reply brief. The record closed when the Petitioner submitted their reply brief on August 28, 1998. On September 4, 1998, the Respondent requested an opportunity to file a response to the Petitioner's reply brief. Our Administrative Officer refused permission for the Respondent to file the response, because N. Y. Pub. Health Law § 230-c(4)(a) (McKinney Supp. 1998) permits the parties no further submissions following reply briefs, see Matter of Neuman (ARB # 97-34, pages 6-7).

The Respondent argues that BPMC lacks jurisdiction to proceed against his License, because California Board's Determination lacks status as either a judicial or quasi-judicial administrative decision. The Respondent contends that BPMC can rely on another jurisdiction's factual determinations in a BPMC proceeding only from a final and binding decision by the other jurisdiction. The Respondent argues that the California Board makes only non-final quasi-legislative findings, that provide no findings on which BPMC may rely. In their reply brief, the Petitioner argues that the Respondent's brief raises legal issues beyond the ARB's review authority. The Petitioner contends that BPMC acted within their jurisdiction in this proceeding and asks the ARB to sustain the Committee's Determination.

### **Determination**

All ARB members participated in this case and reviewed the record in the proceeding and the parties' submissions. We sustain the Committee's Determination that the Respondent's California conduct constitutes professional misconduct under N. Y. Educ. Law § 6530(9)(b) (McKinney Supp. 1998) and we sustain the Committee's Determination revoking the Respondent's License.

**Professional Misconduct:** We agree with the Committee, that under N. Y. Educ. Law § 6530(9)(b) (McKinney Supp. 1998), the Committee could act if preponderant evidence proved that:

- the duly authorized professional disciplinary agency from another state made a finding that the Respondent committed improper professional conduct in that state, and,
- the conduct which formed the basis for the other state's finding would constitute

professional misconduct if the Respondent had committed such conduct in New York. The California Board's Order, in evidence as Petitioner Exhibit 4, demonstrates clearly that California disciplined the Respondent for professional misconduct. Nothing in the statute requires a final judicial determination from the California courts in order for the Committee to act. Further, the New York Courts have sustained prior determinations by a BPMC Committee or the Review Board that relied on findings by the California Board or a California Board ALJ, as the basis for a disciplinary action against a physician's New York License. In Matter of Ricci v. Chassin, 220 A.D.2d 828, 632 N.Y.S.2d 303 (1995), a case that involved a proceeding under N. Y. Educ. Law § 6530(9)(d) (McKinney Supp. 1998), the Supreme Court Appellate Division for the Third Department sustained a Hearing Committee's Determination that relied on a California ALJ's recommendation to the California Board, as proof that California had disciplined a physician. In Matter of Wolkoff v. Chassin, (supra), the New York Court of Appeals sustained the ARB's Determination, pursuant to N. Y. Educ. Law § 6530(9)(b) (McKinney Supp. 1998), revoking a physician's license after a California Board disciplinary action.

In challenging the Committee's Determination, the Respondent's brief cites to Matter of Becker v. DeBuono, 239 A.D.2d 664, 657 N.Y.S.2d 471 ( Third Dept. 1997), in which the Appellate Division annulled a Determination that the ARB based on a New Jersey Consent Order, between a physician and New Jersey's duly authorized disciplinary body. Unlike the present case, in Becker (supra) the New Jersey Board made no findings in the case and the Consent Order provided that "no findings of liability or wrongdoing are being made against [the physician]". In the Respondent's case, the California Board adopted the California ALJ's extensive findings, that followed an eleven day hearing, at which the Respondent had an opportunity to represent himself. Those extensive findings indicated that the Respondent committed:

- repeated acts of clearly excessive prescribing or administering of drugs or treatment;
- repeated acts of clearly excessive use of diagnostic procedures; and,
- repeated acts of clearly excessive use of diagnostic or treatment facilities.

We hold that the California Board's Decision, in evidence as Petitioner Exhibit 4, provided the Committee with preponderant evidence that the Respondent's conduct in California would constitute practicing with gross negligence, practicing with negligence on more than one occasion and ordering

excessive or unwarranted tests, treatments or use of treatment facilities.

The Respondent also challenges the California Board's Determination, arguing that the California Board failed to find credible any evidence that the Respondent offered at the California hearing. The ARB concludes that such criticism merely amounts to an impermissible attempt to relitigate the California proceeding.

The Respondent argues further that no evidence proves his California conduct would constitute misconduct in New York, because the Respondent caused no harm to any patients in California. We find no merit in that argument. Although the California Board's Decision found no evidence that the Respondent's mistakes caused serious patient injury [Petitioner Exhibit 4, page 30, paragraph XXXV], New York Courts have ruled previously that BPMC can discipline physicians merely on a showing that the physician provided substandard care or practiced with insufficient skill or knowledge, without any showing that actual patient injury resulted from the poor care or insufficient skills, Matter of Bogdan v. New York State Bd. for Professional Medical Conduct, 195 A.D.2d 86, 606 N.Y.S.2d 381 (Third Dept. 1993); Matter of Binenfeld v. New York State Dept. of Health, 226 A.D.2d 935, 640 N.Y.S.2d 924 (Third Dept. 1996). In physician disciplinary proceedings in New York, BPMC seeks to protect the public health in general, by disciplining physicians who provide substandard care and who will assuredly cause patient injury if left to continue that substandard practice, Matter of Bogdan v. New York State Bd. for Professional Medical Conduct, (supra).

**Penalty:** We conclude that the Committee acted appropriately in revoking the Respondent's License, because the record demonstrates that the Respondent poses a danger to the public health, with no prospect for rehabilitation that would correct his seriously substandard practice. Although the Committee adopted the California Board's factual findings in full, the Committee found the California Board's penalty totally inappropriate for New York and found the California Board's Decision lacked reasoning to explain the lenient sanction the Board imposed. The Committee concluded that the Respondent endangered his patients' lives. To allow such a physician to return to practice to New York, a Committee or the ARB would have to impose a penalty that would correct the Respondent's deficiencies through retraining or provide protection to the public through monitoring or license



limitation.

We agree with the Committee that sanctions less severe than revocation will provide inadequate remedies to protect the public. Retraining would provide an inappropriate remedy for the Respondent's deficiencies, because the Respondent lacked insight into his deficiencies, lacked willingness to admit he made mistakes and lacked ability to learn from his mistakes. We note further that retraining will correct only focal or limited deficiencies in skill and knowledge. The Respondent displayed global problems. In the six patient cases at issue, the Respondent misdiagnosed conditions, he prescribed the wrong medication, he prescribed medication in improper amounts, he ordered inappropriate treatments or inappropriate uses of treatment facilities and he failed to treat a patient's condition or order proper tests. Monitoring or close supervision may aid a physician to practice by acceptable standards, but a physician who refuses to learn from or acknowledge his mistakes will likely revert to his careless practice pattern after the monitoring period ends. A permanent practice restriction could provide public protection from a physician who demonstrates carelessness in limited circumstances. The Respondent, however, demonstrated carelessness in so many areas that practice limitations would prove an insufficient remedy in this case.

The ARB votes unanimously to revoke the Respondent's License to practice medicine in New York. We note that the Respondent indicated at hearing that he has failed to comply with any provisions from the California Board's penalty and that he refuses to undergo the physical and psychological evaluations that must precede the California retraining program. The Respondent also indicated at the hearing that he intended to return to New York in two years. If the Respondent should ever petition the Board of Regents of the State of New York to reinstate his New York License, the ARB urges that the Regents assure that the Respondent has submitted to the physical and psychological evaluations under the California Board's Decision or that the Regents order the Respondent to undergo such evaluations here in New York.

**ORDER**

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

1. The ARB **SUSTAINS** the Committee's Determination that the Respondent committed professional misconduct.
  
2. The ARB **SUSTAINS** the Committee's Determination revoking the Respondent's License to practice medicine in New York State.

**Robert M. Briber**

**Sumner Shapiro**

**Winston S. Price, M.D.**

**Stanley L. Grossman, M.D.**

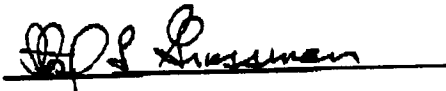
**Therese G. Lynch, M.D.**

JOHNSON.DOC

In The Matter Of Charles Lynwood Johnson, M.D.

Stanley L. Grossman, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Johnson.

Dated: 10/15, 1998



Stanley L. Grossman, M.D.

**In The Matter Of Charles Lynwood Johnson, M.D.**

**Therese G. Lynch, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Johnson.

Dated : Oct. 15, 1998

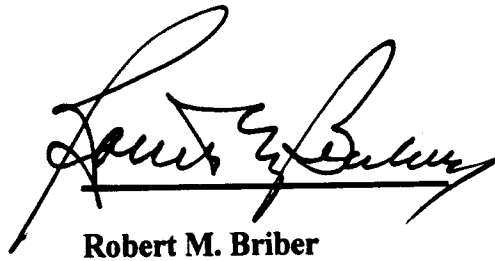


**Therese G. Lynch, M.D.**

**In The Matter Of Charles Lynwood Johnson, 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. Johnson.

Dated : Oct 16 , 1998

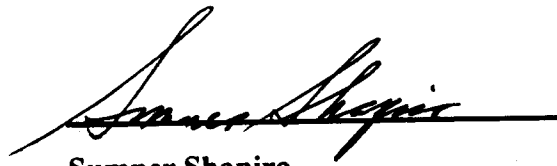


**Robert M. Briber**

**In The Matter Of Charles Lynwood Johnson, 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. Johnson.

**DATED:** October 16, 1998



**Sumner Shapiro**

**In The Matter Of Charles Lynwood Johnson, 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. Johnson.

Dated: 10/14, 1998

A handwritten signature in black ink, appearing to read 'W.S. Price', is written over a horizontal line.

**Winston S. Price, M.D.**