



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

February 18, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Tone Johnson, Jr., M.D.
7029 Brandon Street
Corpus Christi, Texas 78413

Tone Johnson, Jr., M.D.
3138 South Alameda
Suite A
Corpus Christi, Texas 78404

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place
433 River Street – Fourth Floor
Troy, New York 12180

RE: In the Matter of Tone Johnson, Jr., M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 99-289) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

In the Matter of

Tone Johnson, Jr., MD. (Respondent)

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

COPY

Administrative Review Board (ARB)

Determination and Order No. 99-289

**Before ARB Members Grossman, Lynch, Shapiro, Price and Briber
Administrative Law Judge James F. Horan drafted the Determination**

**For the Department of Health (Petitioner): Robert Bogan, Esq.
For the Respondent: Pro Se**

In this proceeding, we consider whether to impose a sanction against the Respondent's New York Medical License, after a sister state, Texas, reprimanded the Respondent for professional misconduct in that state. A BPMC Committee held a hearing below on that issue and decided to impose no penalty against the Petitioner's New York License. The Petitioner now moves pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 1999) for an order by the ARB nullifying the Committee's Determination and imposing a censure and reprimand against the Respondent. After considering the hearing record and each party's submissions on review, the ARB votes unanimously to affirm 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)(d) (McKinney Supp. 1999-2000) by committing professional misconduct, because:

- the duly authorized professional disciplinary agency from a sister state, Texas, took action against the Respondent's License in that state, for,
- conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York.

The Texas action resulted from an Agreed Order that the Respondent entered into with the Texas State Board of Medical Examiners (Texas Board). The Petitioner contended that the Respondent's misconduct in Texas would constitute misconduct if committed in New York, under the following categories:

- practicing medicine with negligence on more than one occasion, a violation under N. Y. Educ. Law § 6530(3)(McKinney Supp. 1999-2000);
- permitting, aiding or abetting an unlicensed person to perform activities requiring a license, a violation under N. Y. Educ. Law § 6530(11) (McKinney Supp. 1999-2000);
- failing to comply with substantial provisions of federal, state or local laws, rules or regulations governing the practice of medicine, a violation under N. Y. Educ. Law § 6530(16) (McKinney Supp. 1999-2000); and,
- failing to exercise appropriate supervision over persons who are authorized to practice only under supervision of a licensee, a violation under N. Y. Educ. Law § 6530(33) (McKinney Supp. 1999-2000).

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 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, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The Committee determined that the Texas Board issued the Agreed Order, that constituted a Public Reprimand to the Respondent, to settle allegations that the Respondent mismanaged a Methadone Treatment Center in which the Respondent owned 55% and in which the Respondent served as medical director and sponsor. The Committee concluded that the

Respondent's conduct in Texas would constitute misconduct in New York, if the Respondent had committed such conduct here. The Committee sustained the charge that the Respondent's conduct violated N. Y. Educ. Law § 6530(9)(d)(McKinney Supp. 2000). The Committee found the following mitigating factors to consider in determining a penalty:

- the Respondent practiced without any other blemishes on his record and he served admirably in Viet Nam,
- the Texas conduct involved administrative and management shortcomings rather than the Respondent's competence as a practicing physician,
- no evidence indicated patient harm,
- no evidence indicated that the Texas violations resulted in any financial gain to the Respondent,
- the Texas Board imposed a minimal penalty and the Respondent continues to practice family medicine in Texas, and,
- the Committee determined that the Respondent presents no risk to repeat the misconduct.

The Committee voted unanimously to take no action against the Respondent's License to practice medicine in New York.

Review History and Issues

The Committee rendered their Determination on November 22, 1999. This proceeding commenced on December 3, 1999 when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the

Petitioner's brief and the Respondent's response briefs. The record closed when the Petitioner filed the response briefs on or about January 11, 2000.

The Petitioner requested that the ARB overrule the Committee and impose an appropriate penalty against the Respondent's New York License. The Petitioner asked that the ARB impose a censure and reprimand to protect the public health and to ensure that the Respondent recognizes the conduct he committed.

In response, the Respondent raised challenges to the underlying action in Texas. He also noted that:

- his family has undergone psychological trauma,
- he has suffered monetary loss and been subject to newspaper and television reports concerning the Texas reprimand, and,
- the National Practitioner Data Bank has received a report concerning the Texas action.

The Respondent requested that the ARB reject the Petitioner's brief and affirm the Committee's Determination.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent's Texas misconduct amounted to misconduct in New York. Although the Respondent's response brief challenged the Texas action, neither the Committee nor the ARB can overturn the underlying Texas Order. The ARB votes unanimously to affirm the Committee's Determination to impose no penalty.

As one argument to support the request for a penalty, the Petitioner referred to the need to protect the public health. The ARB sees no threat to the public health from the facts in this case.

The Committee found specifically that the Texas conduct bore no reflection on the Respondent's competence as a physician and found no evidence showing any patient harm [Hearing Committee Determination page 5].

As the other argument for a penalty, the Petitioner cited the need to ensure that the Respondent recognizes his misconduct. The ARB holds that the evidence demonstrates that the Respondent has recognized his misconduct. The Respondent's response brief notes that the Respondent has suffered monetary loss, psychological trauma and public scrutiny due to media reports about the reprimand in Texas. The report to the National Data Bank will also follow the Respondent throughout his career and require the Respondent to confront the Texas Reprimand continually in applying for employment, staff privileges and participation in health plans.

The ARB sees no need for any sanction against the Respondent's New York License.

ORDER

NOW, with this Determination as our basis, the ARB renders the following **ORDER**:

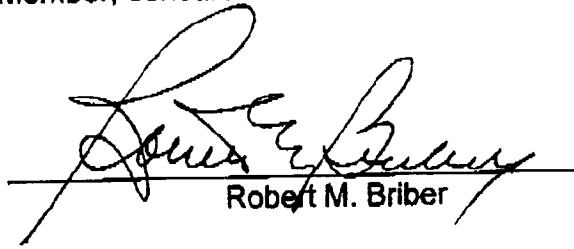
1. The ARB **SUSTAINS** the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB the **SUSTAINS** the Committee's Determination to impose no penalty against the Respondent's New York medical license.

**Robert M. Briber
Sumner Shapiro
Winston S. Price, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.**

In the Matter of Tone Johnson, Jr., M.D.

Robert M. Briber, an ARB Member, concurs in the Determination and Order in the Matter of Dr. Johnson.

Dated: February 10, 2000

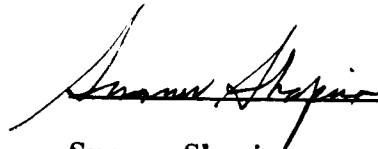


Robert M. Briber

In the Matter of Tone Johnson, Jr., M.D.

Sumner Shapiro, an ARB Member concurs in the Determination and Order in the Matter of Dr. Johnson.

Dated: FEB. 16, 2000

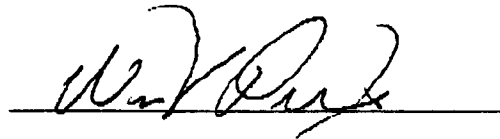


Sumner Shapiro

In the Matter of Tone Johnson, Jr., M.D.

Winston S. Price, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Johnson.

Dated: 2/11, 2000

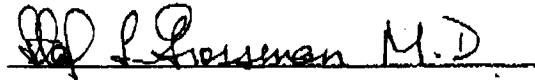
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Winston S. Price, M.D.

In the Matter of Tone Johnson, Jr., M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the Matter of Dr. Johnson.

Dated: February 11, 2000

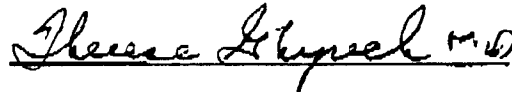
Handwritten signature of Stanley L. Grossman, M.D. in cursive script, underlined.

Stanley L Grossman, M.D.

In the Matter of Tone Johnson, Jr., M.D.

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in
the Matter of Dr. Johnson.

Dated: Feb 12 2000



Therese G. Lynch, M.D.