



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 20, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joseph Huberty, Esq.
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2503
Albany, New York 12237

Vincent Maddi, M.D.
44 Broad St.
Johnson City, New York 13790

Carlton F. Thompson, Esq.
Levene, Gouldin & Thompson, LLP
PO Box F 1706
Binghamton, New York 13902-0106

RE: In the Matter of Vincent Maddi, M.D.

Dear Mr. Huberty, Mr. Thompson and Dr. Maddi:

Enclosed please find the Determination and Order (No.97-155) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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". The signature is written in a cursive style with a large initial 'T' and a stylized 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc

Enclosure

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

COPY

**IN THE MATTER
OF**

VINCENT I. MADDI, 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. 97-155**

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

After a hearing into charges that the Respondent, committed professional misconduct, a BPMC Committee sustained charges that the Respondent prescribed controlled substances improperly and the Committee revoked the Respondent's New York Medical License (License). In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1997), the Respondent asks the Board to overturn the Committee's Determination, arguing that the Committee made findings on issues outside the Statement of Charges and that the Determination and penalty resulted from the Committee's bias against and dislike for the Respondent. After considering the hearing record and the parties' briefs, the Board sustains the Committee's Determination on the charges and on the penalty. We conclude that the Respondent engaged in a pattern of prescribing controlled substances, without performing adequate patient examinations, that placed patients at risk and we conclude that the Respondent's continued medical practice would constitute a menace to the public health.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination. **PHILIP J. KRAMER, ESQ.**, represented the Respondent. **PETER D. VAN BUREN, ESQ.** represented the Petitioner.

COMMITTEE DETERMINATION ON CHARGES

The Petitioner filed charges with BPMC alleging that the Respondent violated N. Y. Educ. Law §§ 6530 (3), (4), (5), (6) & (32) (McKinney Supp. 1997), by committing professional misconduct

under the following categories:

- practicing medicine with negligence on more than one occasion;
- practicing medicine with incompetence on more than one occasion;
- practicing medicine with gross negligence;
- practicing medicine with gross incompetence; and,
- failing to maintain accurate patient records.

The negligence and incompetence charges arose from the Respondent's treatment for eight patients, to whom the record refers as Patients A through H, to protect their privacy. At the hearing on the charges, the Committee's Administrative Officer limited the evidence on those charges to only the Respondent's treatment to Patients A to E. The charges also alleged that the Commissioner of Health of the State of New York (Commissioner) found that the Respondent violated N. Y. Pub. Health Law Article 33 (McKinney Supp. 1997), relating to prescribing and keeping records involving controlled substances. Such a finding by the Commissioner would constitute a professional misconduct violation under N. Y. Educ. Law § 6530(9)(e) (McKinney Supp. 1997). The charges concerning the Article 33 violations allege that the Respondent signed stipulations with the Commissioner admitting to such violations.

Three BPMC Members, **DENISE BOLAN, R.P.A.-C., Chair, ARSENIO G. ARGOPOVICH, M.D. and ALBERT ELLMAN, 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 **JONATHAN M. BRANDES** served as the Board's Administrative Officer and drafted the Determination. The Committee sustained the charge that the Respondent violated Article 33, after finding that the Respondent had signed Stipulations in 1993 and in 1995, admitting to:

- prescribing controlled substances, on at least three occasions, to a patient the Respondent had never seen;
- issuing prescriptions for controlled substances to eight patients prior to the time the patients exhausted their previous prescription for all but a seven day supply; and,
- failing to maintain records concerning the purchase, administration and/or dispensing

of One Thousand Nine Hundred Fifty (1950) Vicodin or Vicodin Extra Strength tablets. The Committee also sustained the charges that the Respondent failed to maintain adequate records, that he practiced medicine with negligence on more than one occasion and incompetence on more than one occasion in treating all Patients A-F, that the Respondent practiced with gross negligence in treating Patients A, C and D, and that the Respondent practiced with gross incompetence in treating C, D and E.

As to the treatment for Patient A, the Committee found that the Respondent performed no urinary or prostate examination, despite the Patient's advanced age and a specific complaint about difficulty with urinary flow and the Committee found that the Respondent prescribed the drug Mellaril, even though that drug can cause urinary problems or mask other possibly serious conditions. The Committee found that the Respondent prescribed Mellaril inappropriately, no matter what dosage the Respondent prescribed. As to Patient B, the Committee found that the Respondent prescribed Valium, Dilaudid and Percocet, without an adequate or with no physical examination and without adequate documentary justification for the prescriptions. As to Patient C, the Committee found that the Respondent prescribed Meperidine, a Schedule II Controlled Substance, without performing or recording an adequate medical examination and without documenting his reasons for drug use or quantity. The Committee found further that the Respondent prescribed the Schedule II Controlled Substances Demerol and Percocet to the Patient at the same office visit and that the Respondent failed to conduct comprehensive examinations on that Patient during six years of treatment. As to Patient D, the Committee found that the Respondent prescribed Tylenol with Codeine, Percocet and Percodan to the Patient, on various dates and in various combinations, without performing or recording comprehensive evaluations. As to Patient E, the Committee found that the Respondent prescribed Tylenol with Codeine, Xanax, Halcion and Prosom, in various combinations, without recording the basis for the prescriptions and without giving or recording warnings to the Patient about using the drug. As to Patient F, the Committee found that the Respondent failed to perform or record examinations, to evaluate the patient and to record adequate notes concerning the prescribed drugs.

The Committee concluded that revocation constituted the only appropriate sanction for the Respondent's misconduct. The Committee noted that the Respondent prescribed medications:

- which are contra-indicated under the circumstances;
- for no discernable reason;
- in huge amounts;
- with no attention to the possibility for abuse, addiction or habituation; and,
- in violation against the regulations, despite two prior citations by the Commissioner.

The Committee concluded that the record demonstrated a consistent and unmitigated pattern of distinctly and grossly substandard practice, and that the record showed no remorse on the Respondent's part and no grasp by the Respondent that he has problems with his practice technique. The Committee saw no possibility for rehabilitation.

REVIEW HISTORY AND ISSUES

The Committee rendered their Determination on June 23, 1997. The Respondent then commenced this proceeding on July 8, 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 the Petitioner's reply brief. The Board received the Respondent's brief on August 8, 1997, and the Petitioner's reply brief on August 18, 1997.

The Respondent requests that the Review Board vacate the Committee's findings and dismiss all charges against the Respondent. The Respondent raises three issues on review:

- I. Preponderant credible evidence from the record provides no basis for the standards that the Committee applied in reaching their conclusions.
- II. The Board must vacate and reverse the Committee, due to the Committee's findings concerning uncharged conduct, the Committee's bias against the Respondent, the Administrative Officer's failure to perform his duties properly and the prosecutor's improper conduct.
- III. The Committee imposed an excessively harsh penalty against the Respondent for conduct that amounts to record keeping violations.

In response to the Respondent's brief, the Petitioner urges the Board to sustain the Committee's determination and contends that the Respondent's brief essentially raises again the same arguments that the Committee rejected when they made their Determination.

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 September 5, 1997. We sustain the Committee's Determination on all the charges and we find that the Committee acted appropriately and legally in revoking the Respondent's License. The Respondent bases his defense in this action and his issues for review on the contention that the charges against him involved record keeping only, that the Respondent committed no patient harm and that a biased Hearing Committee made findings and imposed a penalty from matters outside the charges at issue in the case. We disagree.

First, the Board sustains the Committee's Determination that the Respondent's Stipulations with the Commissioner demonstrate that the Commissioner found that the Respondent violated Public Health Law Article 33. In Attachment D to his brief, the Respondent argued that he had no intention to violate any laws when he prescribed controlled substances to a patient he had never seen or when he gave prescriptions for controlled substances to persons before they had exhausted their previous prescriptions for all but an seven day supply. That argument provides no defense against the charge. The Respondent admitted to the violations and the violations go beyond record keeping only. The admissions demonstrate carelessness by the Respondent in prescribing potentially addictive medications.

Next, the Board sustains the Committee's Findings that the Respondent practiced medicine with gross and repeated negligence and incompetence and failed to maintain adequate records. The record demonstrated that the Respondent prescribed controlled substances over long time periods to six patients without adequate or any evaluations or examinations. Such evidence establishes a dangerous and egregious pattern of substandard care and such evidence proves the negligence, incompetence and record keeping charges, Matter of Binenfeld v. New York State Dept. of Health, 226 A.D.2d 935, 640 N.Y.S. 2d (Third Dept. 1996). To prove such substandard and egregious conduct, the Petitioner had no need to show actual injury to a patient, Matter of Abdelmessih v Board of Regents of Univ. of State of N.Y., 205 A.D.2d 983, 985, 613 N.Y.S.2d 971 (Third Dept. 1994); Matter of Loffredo v Sobol, 195 A.D.2d 757, 760, 600 N.Y.S.2d 507 (Third Dept. 1993), lv denied 82 N.Y.2d 658. In his brief, the Respondent argued that other physicians provided primary care to the patients at issue in this case and that he, therefore, had no duty to conduct detailed examinations. The Board rejects that argument. In order to prescribe controlled substances to Patients A to F, the standards for acceptable care required the Respondent to perform a sufficient examination, to determine whether contraindications existed due to the Patients' conditions or addiction history, to determine whether the Patients had prescriptions from other treating physicians for the same medications or for medications that would cause an interaction and to provide the Patients with warnings about the controlled substances. The record demonstrated that the Respondent failed to comply with these standards and that such failure placed the Respondent's patients at risk.

Further, the Board rejects the Respondent's argument that, even if the Board finds support in the record for the Committee's findings and conclusions, the Board must annul the Committee's Determination, because the Determination resulted from the Committee's bias and from improper conduct by the prosecutor and the Committee's Administrative Officer. Asserting bias alone provides an insufficient basis to set aside a Committee's Determination, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (Third Dept. 1996); instead the Respondent must show that the challenged outcome flowed from the alleged bias Matter of Chace v. DeBuono, 223 A.D.2d 961, 636 N.Y.S.2d 905 (Third Dept. 1996). As the Board has found that the Committee's Determination resulted from the evidence in the record, we reject the Respondent's assertion that the Committee made the Determination due to their bias against the Respondent. In addition, we reject the Respondent's allegation that the Petitioner's prosecutor acted improperly by making arguments about issues outside the Statement of Charges. Statements by the prosecutor constituted only argument by counsel rather than evidence and such statements formed no basis for any findings by the Committee, Matter of Balmir v. De Buono, __ A.D.2d __, 655 N.Y.S.2d 113 (Third Dept. 1997). The Board also rejects the Respondent's argument that the Committee's Administrative Officer failed to give the Committee proper instructions about restricting the Committee's findings only to issues raised in the Statement of Charges. The Respondent's bases this argument again on his contention that the charges involved issues other than patient care [see Respondent's Brief pages 9-10 and Attachment C]. As the Board has noted already, the charges did involve patient care and the Committee based their findings on those charges and on evidence from the record.

Finally, the Board sustains the Committee's Determination revoking the Respondent's License. We reject the Respondent's argument that the Committee imposed an excessive penalty. The menace to the public health from controlled substance abuse justifies revoking a License when the physician has repeatedly prescribed controlled substances in a careless and egregiously substandard manner, Matter of Binenfeld v. Dept. of Health, (supra); Matter of Chace v. DeBuono, (supra). We also reject the Respondent's contention that, because the Respondent has learned from the proceeding about the need for proper record keeping and about the need to follow regulations, the Committee could have imposed a less onerous penalty. The Committee noted in their Determination, that at the time the

Respondent testified at the hearing, he still showed no sign of remorse and he still had no inkling that a problem existed with his practice technique [Committee Determination page 47]. The Board notes that by the time the Respondent testified at the hearing, he had already signed two Stipulations with the Commissioner admitting to Article 33 violations. The Board concludes that if the Respondent still lacked remorse and refused to acknowledge a problem with his technique after the two Stipulations, no reason exists to believe that the Respondent will change due to this proceeding. The Board also rejects the Respondent's contention that the Committee revoked the Respondent's License due to personal dislike for the Respondent [see the Respondent's Brief page 17]. The Respondent based that contention on the Committee's statement, at page 47 in their Determination, that the Committee saw no possibility for rehabilitation. The Board finds nothing in that statement by the Committee to demonstrate a dislike for the Respondent and we find nothing in the record to support the Respondent's contention that the Committee based their penalty on the Respondent's failure to assume a deferential demeanor, rather than on the Committee's honest assessment from the record, Matter of Chace v. DeBuono, (supra). The Committee, in considering the penalty against the Respondent for his misconduct, may assess whether the Respondent shows the potential to change a dangerous practice pattern, either through retraining or some other process. In this case, the Committee acted properly in relying on the Respondent's testimony, that we discussed above, in determining that the Respondent showed no potential for rehabilitation. The record also provided other evidence, such as the prior Stipulations, that the Respondent presented as a poor candidate to change his dangerous practice pattern. The Board concludes that the Committee acted appropriately and legally in revoking the Respondent's License.

ORDER

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

1. The Board **SUSTAINS** the Committee's June 23, 1997 Determination finding that the Respondent committed professional misconduct.
2. The Board **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.

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF VINCENT I. MADDI, 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. Maddi.

DATED: Delmar, New York
October 15, 1997

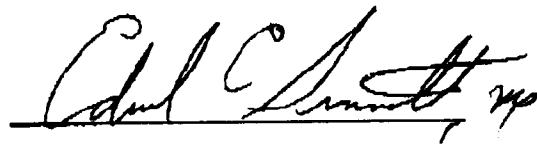

SUMNER SHAPIRO

IN THE MATTER OF VINCENT I. MADDI, 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. Maddi

DATED: Roslyn, New York

Oct. 16, 1997

A handwritten signature in cursive script, reading "Edward C. Sinnott, M.D.", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF VINCENT L. MADDI, 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. Maddi.

DATED: Syracuse, New York

16 Oct, 1997

William A. Stewart

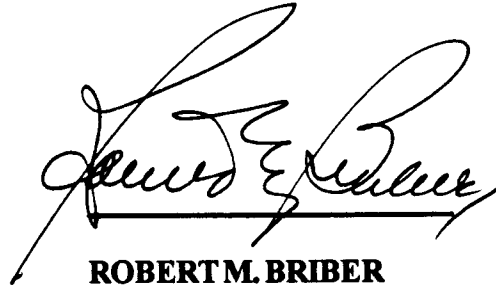
WILLIAM A. STEWART, M.D.

IN THE MATTER OF VINCENT L. MADDI, 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. Maddi.

DATED: Schenectady, New York

10/16, 1997



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ROBERT M. BRIBER

IN THE MATTER OF VINCENT I. MADDI, 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. Maddi.

DATED: Brooklyn, New York

Oct 17, 1997

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

WINSTON S. PRICE, M.D.