



STATE OF NEW YORK DEPARTMENT OF HEALTH

Coming Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

August 18, 1994

RECEIVED

AUG 19 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

OFFICE OF
MEDICAL CONDUCT

Raymond Nadell, M.D.
53 Marlborough Road
Brooklyn, New York 11226

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

David W. Lindley, Esq.
224 Atlantic Avenue
Brooklyn, New York 11201

RE: In the Matter of Raymond Nadell, M.D. EFFECTIVE DATE AUGUST 25, 1994

Dear Dr. Nadell, Mr. Lindley and Mr. Sheehan :

Enclosed please find the Determination and Order (No. 94-54) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Coming 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 cursive script that reads "Tyrone T. Butler / TTB".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn

Enclosure

A large, dark, circular ink smudge or stamp is located in the lower-left quadrant of the page.

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

**IN THE MATTER
OF
RAYMOND NADELL, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER
ARB 94-54**

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, MARYCLAIRE B. SHERWIN, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.** held deliberations on June 24, 1994 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) April 25, 1994 Determination finding Dr. Raymond Nadell guilty of professional misconduct. Dr. Nadell (Respondent) requested the Review through a Notice which the Board received on May 13, 1994. James F. Horan served as Administrative Officer to the Review Board. David W. Windley submitted a brief on the Respondent's behalf on June 15, 1994. Terrence Sheehan submitted a reply brief on behalf of the Office for Professional Medical Conduct (Petitioner) on June 20, 1994.

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.

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 charged the Respondent with twenty-six specifications of professional misconduct, alleging fraud in the practice of medicine, gross negligence, negligence on more than one occasion, failure to maintain adequate records, and moral unfitness in the practice of medicine. The charges involved the Respondent's actions in connection with eight patients, A through H. The proceeding began when the Commissioner of Health ordered summarily that the Respondent suspend his practice of medicine because the Respondent constituted an imminent danger to the public health. By an interim order on December 28, 1993, the Hearing Committee recommended that the summary suspension remain in effect. On January 13, 1994, the Commissioner continued the summary order.

In their April 25, 1994 Determination, the Hearing Committee found the Respondent guilty of practicing fraudulently in the cases of Patients A through H, practicing with gross negligence and with negligence on more than one occasion in the cases of Patients A through H, failing to maintain adequate records for Patients A through H and moral unfitness in the practice of medicine in the cases of Patients A through H.

As to the patient records, the Committee found that the records for Patients A through H were woefully inadequate, contained little or no relevant information and contained no medical indications of any of the medication which the Respondent prescribed for the eight patients involved in this proceeding. As to the fraudulent practice charge, the Committee found the Respondent repeatedly prescribed controlled substances for Patients A through H for other than a good faith medical purpose. The Respondent did not perform adequate examinations on the Patients, prescribed the substances without medical indications, and ignored indicators of drug seeking behavior by the patients, such as continuing requests for replacement prescriptions. As to the gross negligence charge, the Committee found that in addition to the practice deficiencies noted above, that the

Respondent indiscriminately prescribed controlled substances to Patients E, G and H, despite those Patients' past history of drug addiction. The Committee found that the Respondent prescribed psychotropic drugs for Patient D, who had suffered a brain tumor and skull fracture, despite the fact that such drugs may have masked any neurological deficits of the Patient. The Committee found that the Respondent prescribed controlled substances to maintain the comfort of addicts or those at substantial risk for becoming addicts of those substances. The Committee found negligence on more than one occasion as a result of the repeated findings of gross negligence. As to the moral unfitness charge, the Committee found that the Respondent's above noted conduct demonstrated a violation of his professional trust and the ethical standards of the medical community.

The Committee voted unanimously to revoke the Respondent's license to practice medicine in New York State. The Committee found that the Respondent repeatedly created or exacerbated his patients' addiction to drugs and that he sold his right to the public trust by selling prescriptions to anyone with the money to pay for an office visit. The Committee determined that no sanction short of revocation would protect the public adequately. The Committee also fined the Respondent Ten Thousand (\$10,000.00) Dollars.

REQUESTS FOR REVIEW

The Respondent raised several points in his brief.

1. The summary and plenary portions of the proceeding against the Respondent should have been conducted separately to allow the Respondent a better opportunity to present a defense.
2. The Petitioner took liberties with the Public Health Law improperly.
3. The Hearing Committee and their administrative officer should have functioned as a judge and jury.
4. The Committee should not have been allowed to know that the Respondent had been found guilty of misconduct previously.
5. There was no definition before the Committee for the terms "imminent danger" or "moral unfitness".

6. There was not sufficient evidence before the Committee to provide a proper review of the Respondent's practice.

7. The Revocation of the Respondent's license was an extreme and undeserved penalty.

The Petitioner argues that the Hearing Committee Report is detailed as to findings and conclusions and amply supported by the record. The Petitioner asks that the Review Board sustain the Hearing Committee's Determination and Penalty.

REVIEW BOARD DETERMINATION

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

First, the Respondent's Points 1 through 5 are procedural issues which do not address whether the Committee's findings are consistent with the Committee's determination or penalty or whether that penalty is appropriate. The Review Board finds no merit in any of those allegations and no ground to remand this matter to the Hearing Committee for further proceedings. The proceedings before the Board for Professional Medical Conduct are administrative and not criminal and any arguments that the Hearing Committees or their administrative officers should conduct these hearings as if these were criminal trials before a judge and jury are without any basis.

The Review Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty of gross negligence, negligence on more than one occasion, practicing the profession fraudulently, moral unfitness in the practice of medicine and failing to maintain adequate records. The Committee's extensive findings concerning the Respondent's pattern of practice in which he issued prescriptions for controlled substances to persons with a history of drug addiction or who were at risk of drug addiction, without medical indication and often without regard to obvious drug seeking behavior support the Committee's Determination that the Respondent was guilty of gross negligence, negligence on more than one occasion and moral unfitness in the practice of medicine. Those findings, in combination with the testimony of Patient H that the Respondent was known as

a script doctor, support the Committee's finding that the Respondent was guilty of fraud in the practice of medicine. The Committee's finding as to the record keeping for all eight patients support the Committee's finding that the Respondent failed to maintain adequate records.

The eight patient cases that were at issue in this proceeding, in which the Respondent prescribed controlled substances to addicts or those at risk of addiction, under similar circumstances in each case, demonstrate a clear and dangerous pattern of practice and demonstrate fraudulent intent. It was not necessary to present a statistically significant sample or to parade eyewitnesses or experts to prove that such misconduct was common in the Respondent's practice. The weight of eyewitness or expert testimony does not necessarily depend on the number of eyewitnesses or experts, but on the credibility of the eyewitness and the credibility and extent of the expertise of the expert witness. In this case, the Committee found Patient H and the Petitioner's expert witness credible and rejected the explanations and excuses offered by the Respondent.

The Review Board sustains the Hearing Committee's Determination to revoke the Respondent's license to practice medicine. The penalty is appropriate in light of the Respondent's dangerous pattern of practice and the Respondent's disregard for his patients' health. The penalty is consistent with the Committee's extensive findings concerning the Respondent's repeated and serious misconduct.

The Respondent has asked that he be allowed to continue practicing psychiatry. The Hearing Committee's findings demonstrate clearly that the Respondent has not been practicing psychiatry, he has been providing controlled substance prescriptions to drug addicts and those at risk of becoming drug addicts, who can pay the Respondent's fee for an office visit. The penalty in this case is appropriate. The Respondent's misconduct is extreme and the misconduct merits the most severe penalty.

Finally, the Review Board sustains the Hearing Committee's Determination to fine the Respondent Ten Thousand (\$10,000.00) Dollars. The Hearing Committee has authority to impose a fine as part of its penalty, up to Ten Thousand (\$10,000.00) Dollars for each instance of misconduct. In this case, the Committee could have fined the Respondent substantially more. A fine is certainly appropriate in a case in which a Respondent has committed fraud in his treatment of patients.

ORDER

NOW, based upon this Determination, the Review Board issues the following

ORDER:

1. The Review Board **SUSTAINS** the Hearing Committee's April 25, 1994 Determination finding Raymond Nadell guilty of Professional Misconduct.
2. The Review Board **SUSTAINS** the Hearing Committee's Determination to **REVOKE** Dr. Nadell's license to practice medicine in New York State.
3. The Review Board **SUSTAINS** the Hearing Committee's Determination to impose a civil penalty of Ten Thousand (\$10,000.00) Dollars.

ROBERT M. BRIBER

MARYCLAIRE B. SHERWIN

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

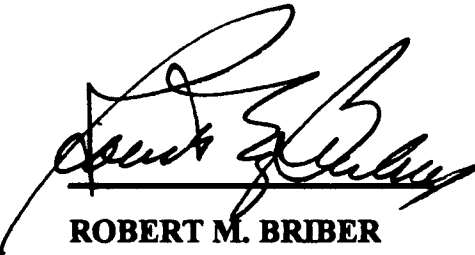
WILLIAM A. STEWART, M.D.

IN THE MATTER OF RAYMOND NADELL

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. Nadell.

DATED: Albany, New York

7/27, 1994



ROBERT M. BRIBER

IN THE MATTER OF RAYMOND NADELL, M.D.

MARYCLAIRE B. SHERWIN, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Nadell.

DATED: Malone, New York

July 15, 1994

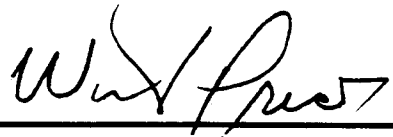
Maryclaire B. Sherwin
MARYCLAIRE B. SHERWIN

IN THE MATTER OF RAYMOND NADELL, 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. Nadell,

DATED: Brooklyn, New York

_____, 1994



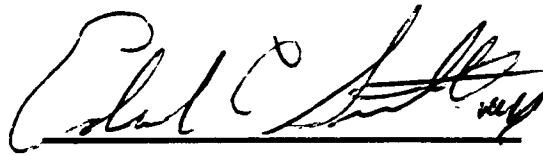
WINSTON S. PRICE, M.D.

IN THE MATTER OF RAYMOND NADELL, 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. Nadell.

DATED: Roslyn, New York

July 21, 1994

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF RAYMOND NADELL, 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. Nadell.

DATED: Syracuse, New York

26 July, 1994

William A. Stewart

WILLIAM A. STEWART, M.D.