



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

December 17, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Bradley C. Mohr, Esq.
NYS Department of Health
Corning Tower Room 2503
Empire State Plaza
Albany, New York 12237

Avtandil Papiasvili, M.D.
351 Victory Boulevard
New Rochelle, New York 10804

Ellyn I. Bank, Esq.
34 East 69th Street
New York, New York 10021

RE: In the Matter of Avtandil Papiasvili, M.D.

Dear Mr. Mohr, Dr. Papiasvili and Ms. Bank:

Enclosed please find the Determination and Order (No.97-236) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 large initial "T" and a distinct "nm" at the end.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

IN THE MATTER

OF

AVTANDIL PAPIASVILI, M.D. (Respondent)

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

**ADMINISTRATIVE
REVIEW BOARD
(Board)
DECISION AND
ORDER
ARB 97-236**

**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 due to the Respondent's conviction for Grand Larceny, a BPMC Committee sustained the charge, suspended the Respondent's New York Medical License (License) for three years, stayed the last thirty months and placed the Respondent on probation for those thirty months. In this proceeding pursuant to N. Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1997), the New York State Department of Health (Petitioner) asks the Board to overturn the Committee's sanction and to revoke the Respondent's License, while the Respondent asks the Board to sustain the Committee's Determination. After considering the hearing record and the parties' briefs, the Board votes 5-0 to overturn the Committee and to revoke the Respondent's License, because we conclude that the Respondent's criminal conduct, submitting false billings to the Medicaid Program, violated the public trust in the medical profession and because we find no mitigating factors in this case to merit a sanction less severe than revocation.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination. **ELLYN I. BANK, Esq.** represented the Respondent. **BRADLEY MOHR, Esq.** represented the Petitioner.

COMMITTEE DETERMINATION ON CHARGES

The Petitioner filed charges with BPMC alleging that the Respondent committed professional misconduct under N. Y. Educ. Law § 6530(9)(a)(i)(McKinney's Supp. 1997), due to his conviction for committing a crime under New York State Law. The charges alleged that the Respondent entered

a guilty plea, on October 25, 1996, in New York State Supreme Court for New York County, to committing Grand Larceny in the Third Degree, by submitting false claims to the New York Medical Assistance Program (Medicaid). A hearing then proceeded pursuant to N.Y. Pub. Health Law §230(10)(p) (McKinney's Supp. 1997), a statute that provides for an expedited hearing when the case against a licensee arises from a prior criminal conviction in New York or another jurisdiction. In such an expedited hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, Matter of Wolkoff v. Chassin, 89 NY2d 250 (1996).

Three BPMC Members, **STEPHEN A. GETTINGER, Chair, DAVID SIBULKIN, M.D. and EUGENIA HERBST** 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 **LARRY G. STORCH** served as the Board's Administrative Officer and drafted the Determination. The Committee sustained the charge that the Respondent entered a guilty plea to Grand Larceny, for submitting claims to the Medicaid Program that represented falsely that the Respondent had provided Individual Medical Psychotherapy to various Medicaid recipients, when the Respondent had in fact provided no such services. The Committee found further that New York County Supreme Court sentenced the Respondent to a conditional discharge and ordered that he pay One Hundred Seventeen Thousand Dollars (\$117,000.00) in restitution.

The Committee's Penalty Determination indicated that the Respondent conducted a fraudulent scheme on a magnitude that would warrant revocation normally, absent strong mitigating factors. The Committee found mitigating factors in the Respondent's case. A psychotherapist who treated the Respondent testified at the hearing that the Respondent began the fraudulent conduct while under severe financial and emotional pressure and when he was self-medicating with psychotropic drugs. The witness testified that, after treatment, the Respondent addressed his feelings, took steps to get his life on track, turned himself in to the Special Prosecutor, entered a guilty plea and agreed to make restitution. The Committee stated that they placed great weight on the Respondent coming forward to seek clinical help and to admit his guilt.

The Committee did conclude that the Respondent's actions warranted a significant sanction.

The Committee suspended the Respondent's License for three years, with thirty months stayed and with thirty months probation. The Committee also concluded that the Respondent would benefit from further psychotherapy and imposed a probation term that required the Respondent to resume psychotherapy.

REVIEW HISTORY AND ISSUES

The Committee rendered their Determination on September 30, 1997. The Petitioner then commenced this proceeding on October 9, 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 Petitioner's brief and the Respondent's reply brief. The Board received the Petitioner's brief on November 7, 1997 and the Respondent's reply on November 21, 1997.

The Petitioner contends that the Committee imposed an inappropriate penalty for a long term scheme, to defraud the government of money for people too poor to pay for their own medical care. The Petitioner also contends that the Respondent's cooperation with the Special Prosecutor provided insufficient mitigation. The Petitioner alleges that the Respondent's expert had no basis for testifying that the Respondent turned himself in voluntarily, that the Respondent's testimony indicated that the Respondent came forward only after his Medicaid exclusion hearings began and that the Respondent's testimony indicated that he began to deal with the Special Prosecutor only after he received a Grand Jury subpoena. The Petitioner asks that the Board revoke the Respondent's License, or in the alternative, that the Board impose a longer suspension period, increase the period for continuing psychotherapy and impose a fine.

The Respondent's reply brief contends that the Committee provided an adequate penalty for the Respondent's misconduct, after considering that the Respondent:

- committed the fraudulent conduct under severe emotional and financial pressure;
- sought professional help; and,
- approached the Special Prosecutor voluntarily, admitted his guilt and made restitution.

The Respondent alleges that the Petitioner asserted incorrectly that the monetary amount at issue in this case mandates revocation. The Respondent also asserts that the Petitioner attempted to usurp the Committee's authority, by asking the Board to overturn the Committee's factual findings.

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 December 5, 1997. We sustain the Committee's Determination that the Respondent committed professional misconduct under the definition in N. Y. Educ. Law §6530(9)(a)(i) (McKinney's Supp. 1997). Neither party challenged the Committee's Determination on the charge. The Board overturns the Committee's Determination as to the Penalty, because we find a six month suspension and thirty months probation to be an inappropriate sanction for the Respondent's extensive criminal activity. We vote 5-0 to revoke the Respondent's License. The Respondent engaged in an

ongoing scheme to defraud the Medicaid Program. Such conduct demonstrates that the Respondent betrayed the public trust in the medical profession and used his medical license to defraud the Medicaid Program. The Board concludes that the Respondent conduct warrants License revocation and that the Respondent's conduct overcomes the allegedly mitigating factors that the Respondent raised at the hearing.

The Committee found a mitigating factor in the Respondent's cooperation with the Special Prosecutor. In Matter of Kabnick v. Chassin, 223 AD2d 935, 636 NYS2d 920 (Third Dept. 1996), *aff'd*, 89 NY2d 828, 652 NYS2d 920 (1996), the Board revoked a Respondent's License following the Respondent's criminal conviction for submitting Seventy-Five Thousand Dollars (\$75,000.00) in billings to the Medicaid Program, including some billings for services the Respondent never performed. In that case also, the Board overturned a less severe sanction by a Committee, that found a mitigating factor in the Respondent's cooperation with the authorities investigating the Medicaid fraud scheme in which the Respondent had participated. In the Respondent's case, the record indicates that the Respondent cooperated with authorities only after the Medicaid exclusion hearings began and after the Respondent received a Grand Jury subpoena. Although the Respondent's psychotherapist indicated that the Respondent came forth voluntarily, the psychotherapist admitted his knowledge about whether the Respondent turned himself voluntarily came solely from a statement by the Respondent.

A second allegedly mitigating factor in this case involved testimony that the Respondent committed his fraudulent conduct while self-medicating on psychotropic drugs. The Board concludes that the Respondent's proof, that he continued to practice medicine while self-prescribing psychotropic drugs, fails to place the Respondent in any more sympathetic light and instead provides more aggravating than mitigating evidence concerning the Respondent's character.

The Board finds the Committee's Determination inconsistent with the Committee's findings that the Respondent participated in a scheme to use his medical license to defraud the Medicaid Program, by submitting billings for psychiatric services the Respondent never provided. The Board finds the Committee's penalty inappropriate and we vote unanimously to overturn the Committee and revoke the Respondent's New York License.

ORDER

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

1. The Board **SUSTAINS** the Committee's Determination that the Respondent committed professional misconduct.

2. The Board **OVERTURNS** the Committee's Determination to suspend the Respondent's License for three years, stay the suspension and place the Respondent on probation for three years.

3. The Board **REVOKES** the Respondent's License to practice medicine in New York State.

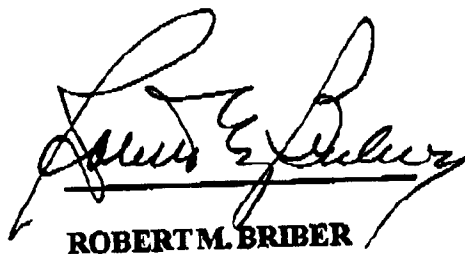
• **ROBERT M. BRIBER**
SUMNER SHAPIRO
WINSTON S. PRICE, M.D.
EDWARD SINNOTT, M.D.
WILLIAM A. STEWART, M.D.

IN THE MATTER OF AVTANDIL PAPIASVILI, 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. Papiasvili.

DATED: Schenectady, New York

December 17, 1997

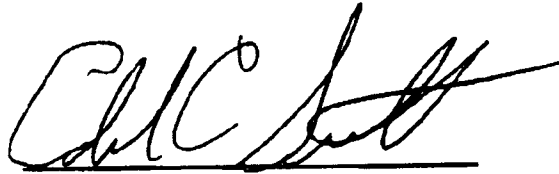

ROBERT M. BRIBER

IN THE MATTER OF AVTANDIL PAPIASVILI, 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. Papiasvili.

DATED: Roslyn, New York

Dec 16, 1997

A handwritten signature in black ink, appearing to read 'E.C. Sinnott', written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF AVTANDIL PAPIASVILI, 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. Papiasvili.

**DATED: Delmar, New York
December 16, 1997**


SUMNER SHAPIRO

IN THE MATTER OF AVTANDIL PAPIASVILI, 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. Papiasvili.

DATED: Brooklyn, New York

12/15/, 1997



WINSTON S. PRICE, M.D.