



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

January 7, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jijibhoy Patel, M.D.
2427 North California Street Suite 12
Stockton, California 95204-5507

Kevin P. Donovan, Esq.
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Jijibhoy Patel, M.D.

Dear Dr. Patel and Mr. Donovan:

Enclosed please find the Determination and Order (No.96-231) 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.

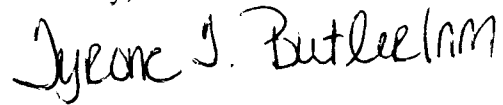
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

COPY

IN THE MATTER
OF
JIJIBHOY PATEL, M.D.

ADMINISTRATIVE
REVIEW BOARD
DETERMINATION
ARB NO. 96-231

Administrative Review from a Determination by a Hearing
Committee on Professional Medical Conduct

The New York State Department of Health requests pursuant to New York Public Health Law (PHL) §230-c(4)(a) (McKinney's Supp 1996), that the Administrative Review Board for Professional Medical Conduct (Board) review and modify a September 30, 1996 Determination by a Hearing Committee on Professional Medical Conduct (Committee), which suspended **DR. JIJIBHOY PATEL'S** (Respondent) New York Medical License, until such time as the Respondent completes a disciplinary penalty against his Medical License in California. The Petitioner asks that the Board revoke the Respondent's New York License. After reviewing the record in this case and conducting Deliberations on November 22 and December 13, 1996¹, Board Members **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** vote to sustain the Committee's Determination that the Respondent committed professional misconduct in violation of N.Y. Education Law (E L) §6530 and we vote to modify the Committee's Penalty Determination, to add a condition to the Respondent's license in the event that he chooses to return to practice in New York. The Board rejects the Petitioner's request that we revoke the Respondent's license, because we find that the Respondent's misconduct, attempting to evade Federal income taxes, warrants a penalty less severe than license revocation.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer

¹ Dr. Price did not participate in the Deliberations on November 22nd. Dr. Stewart and Dr. Sinnott participated in the November 22nd Deliberations by telephone conference. Dr. Stewart and Mr. Shapiro participated in the December 13th Deliberations by telephone Conference.

and drafted this Determination.

The Respondent represented himself in this case.

KEVIN P. DONOVAN, ESQ. (Associate Counsel, NYS Department of Health) represented the Petitioner.

COMMITTEE DETERMINATION ON THE CHARGES

Under PHL §230(7), three member Committees from the State Board for Professional Medical Conduct (BPMC) conduct disciplinary proceedings to determine whether physicians have committed professional misconduct in violation of E L §6530. The Petitioner filed charges with BPMC alleging that the Respondent violated EL §6530(9)(a)(i), because a Court convicted the Respondent for committing a crime under Federal Law. The Petitioner brought the case pursuant to PHL §230(10)(p), which authorizes BPMC to refer cases, dealing with criminal convictions or administrative violations from other forums, to a Committee as an expedited proceeding (Direct Referral). The statute limits such proceeding strictly to receiving evidence to determine the nature and severity of the penalty which the Committee will impose for the criminal conduct or administrative violation.

Three BPMC Members, **JOSEPH G. CHANATRY, M.D. (Chair)**, **AARON STEVENS, M.D. and ANTHONY C. BIONDI** comprised the Committee who conducted the hearing in the matter and who rendered the Determination which the Board now reviews. Administrative Law Judge **MICHAEL P. MCDERMOTT** served as the Committee's Administrative Officer. The Committee determined that the United States District Court for the Eastern District in California convicted the Respondent on two felony counts for attempting to evade income tax. The Court's sentence included imprisonment, probation, restitution and community service. The Committee found further that the Respondent signed a Stipulation settling a disciplinary action which the California Medical Board brought against the Respondent's California License, arising from the Respondent's Federal conviction. The California Penalty included a stayed revocation, probation and an order to pay the California Medical Board for its investigative costs.

The Committee determined that the Respondent's Federal conviction constitutes professional misconduct under EL § 6530(9)(a)(i). The Committee voted to suspend the Respondent's license to practice medicine in New York State until the Respondent 1.) satisfies the probation which the California Medical Board imposed against the Respondent's California License and 2.) submits evidence to BPMC that he has satisfied the California Probation and regained fully his California License.

REVIEW HISTORY AND ISSUES

The Petitioner filed a Notice requesting this review, which the Board received on October 3, 1996. The Record for review contained the Committee's Determination, the hearing transcripts, the hearing exhibits, the Petitioner's October 8, 1996 brief and a letter from the Respondent which the Board received on October 16, 1996.

The Petitioner asks that the Review Board revoke the Respondent's New York Medical License. The Petitioner contends that, due to the date on the California Medical Board's Stipulation with the Respondent, the Respondent's California Penalty will end in October, 1997 and, therefore, the Respondent's License suspension in New York will end at the same time. The Petitioner argues that a one year suspension constitutes an inadequate penalty for two felony convictions that involve dishonesty. The Petitioner argues that serious dishonesty should disqualify a person from practicing medicine in New York State.

In his October 16, 1996 letter, the Respondent requested copies of all papers which the Petitioner held in the matter of New York imposing a sanction against his license, as well as a copy of the full hearing transcript and information on the complainer or informant on the matter. The Respondent indicated that time was of the essence since the appeal date was November 4, 1996. The Respondent submitted no further material to the Board.

THE BOARD'S REVIEW AUTHORITY

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.

The Review Board may substitute our judgement for that of the Hearing 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).

THE BOARD'S DETERMINATION

The Board has considered the record below, the Petitioner's brief and the Respondent's letter. In response to the Respondent's letter, we note that the only papers we possess in the Respondent's case are the Committee's Determination, the hearing exhibits and transcripts and the parties' submissions to the Board. As to providing those documents to the Respondent, the Respondent obviously has copies of his own hearing exhibits and his October letter. He also received copies of the Petitioner's hearing exhibits prior to the hearing (see Hearing Transcript page 5), he received a copy of the Committee's Determination when the Determination was served on the parties and the Respondent's October letter indicates that he received a copy of the Petitioner's brief. As to the transcript, our Administrative Officer advised the Respondent by return letter that he could order a

transcript copy direct from the Reporting Service who prepared the transcript and the Administrative Officer provided the Respondent with the address for the Reporting Service. As to the informer or complainant, our Administrative Officer advised the Respondent to contact the Petitioner's counsel for that information, because no such information appears in the Board's record. Also, the Respondent's letter indicated incorrectly that the date for appeal was November 4, 1996. The last date for requesting review was fourteen days from the date the parties received a copy of the Committee's September 30, 1996 Determination. November 4, 1996 was the date thirty days from the Petitioner's Review Notice when the parties' review briefs were due to the Board.

After reviewing the record from the proceeding and the Committee's Determination, the Board sustains the Committee's Determination that the Respondent's conviction for attempting to evade income tax constitutes professional misconduct under EL § 6530 (9)(a)(i). Neither party challenged the Committee's finding on misconduct.

After reviewing the record, the Committee's Determination and the Petitioner's brief, the Board agrees with the Hearing Committee that the Respondent's conduct warrants a sanction less severe than revoking his New York Medical License. The Federal Court Sentence and the California Medical Board's Penalty constitute serious sanctions for the Respondent's misconduct and the Committee's Penalty assures that the Respondent will be unable to return to practice in New York without satisfying those sanctions. The Board concludes, however, that we should modify the Committee's Penalty to assure that the Respondent has remained free from further misconduct should he ever choose to return to practice in New York. The Board votes 5 - 0 to place a condition on the Respondent's New York license to require that:

- if he chooses to return to practice in New York, he must provide ninety days prior notice concerning his return to BPMC;
- he include with the notice proof that his license remains in good standing in all states where he maintains a license; and,
- he provide information concerning this disciplinary action to any New York hospital at which he applies for privileges and/or employment.

ORDER

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

1. The Board sustains the Hearing Committee's September 30, 1996 Determination finding the Respondent guilty for professional misconduct.
2. The Board modifies the Hearing Committee's penalty, by adding a condition to the Respondent's license, which we describe in our attached Determination.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

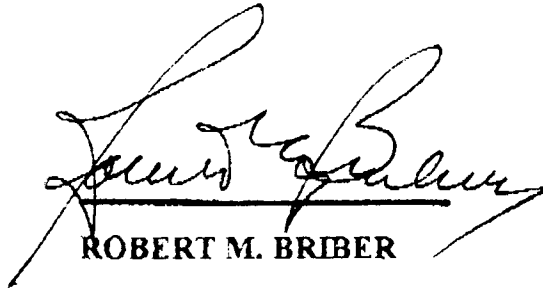
WILLIAM A. STEWART, M.D.

IN THE MATTER OF JIJIBHOY PATEL, 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. Patel.

DATED: Schenectady, New York

Dec 27, 1996



ROBERT M. BRIBER

IN THE MATTER OF JIJIBHOY PATEL, 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. Patel.

DATED: Delmar, New York

DEC 26, 1996

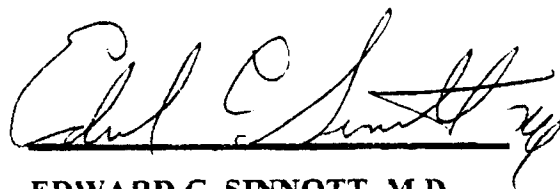

SUMNER SHAPIRO

IN THE MATTER OF JIJIBHOY PATEL, 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. Patel.

DATED: Roslyn, New York

Dec 26, 1996

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

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF JIJIBHOY PATEL, 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. Patel.

DATED: Syracuse, New York

30 Dec, 1996

William A Stewart

WILLIAM A. STEWART, M.D.