



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning 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

October 17, 1994

RECEIVED

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OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marta Sachey, Esq.
NYS Department of Health
Rm. 2438 Corning Tower
Empire State Plaza
Albany, New York 12237

David R. Dudley, Esq.
Suite 101
112 State Street
Albany, New York 12207

David C Tinling, M.D.
86 Sibley Road
Honeoye, New York 14472-9307

Effective Date: 10/24/94

RE: In the Matter of David C. Tinling, M.D.

Dear Ms. Sachey, Mr. Dudley and Dr. Tinling :

Enclosed please find the Determination and Order (No. 94-97) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning 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,

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:

Enclosure

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

IN THE MATTER
OF
DAVID CALVERT TINLING, M.D.

ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NO.
ARB 94-97

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D. held deliberations on September 16, 1994 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) June 29, 1994 Determination finding Dr. David C. Tinling (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on July 13, 1994. James F. Horan served as Administrative Officer to the Review Board. E. Marta Sachey, Esq. filed a brief for the Office of Professional Medical Conduct (Petitioner) on August 16, 1994. David R. Dudley Esq. filed a brief for the Respondent on August 15, 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 incompetence on more than one occasion, negligence on more than one occasion and failure to maintain adequate records in the treatment of thirteen persons, Patients A through M; with gross negligence and gross incompetence in the treatment of Patients A, B, D-K and M; with revealing information without prior patient consent in the case of Patient M; and with misconduct for violating Article 33 of the Public Health Law. The Petitioner commenced this proceeding by the service of an August 2, 1993 Summary Order suspending the Respondent from the practice of medicine immediately, based upon the Commissioner of Health's determination that the Respondent's continued practice constituted an imminent danger to the public health. The Hearing Committee issued an Interim Report on December 14, 1994 recommending that the Commissioner's Summary Order continue in effect until there is a final determination in the case.

The Hearing Committee found that the Respondent, a psychiatrist or psychopharmacologist, was guilty on all the charges, although not on each specification of every charge. The Committee found that the Respondent failed to maintain adequate records for all the patients and had failed to obtain an adequate mental status evaluation for all the patients. The Committee found that as to some of the patients, that the Respondent had failed to obtain or record mental status evaluations, failed to explore other diagnostic or treatment options, and failed to record adequate notes about drugs prescribed. The Committee found that in the treatment of some of the patients, that the Respondent had prescribed drugs in excessive doses, prescribed drugs that were not indicated or were contraindicated; had prescribed drugs without obtaining proper tests or consultations, prescribed drugs without having seen patients in treatment for a considerable period of time, and had prescribed drugs over excessive periods of time. The Committee found that the Respondent had failed to adequately evaluate and record one patient's report that the patient was "off and on" suicidal, had failed to address one patient's use of cocaine, and had provided information

obtained in a professional capacity about that patient to a collection agency without the patient's consent. The Committee found that the Respondent had violated provisions of Article 33 of the Public Health Law, dealing with prescribing controlled substances, based upon the Respondent's admissions in an October 15, 1992 Stipulation with the Commissioner of Health. Provisions of the Stipulation are summarized at pages 98-100 of the Hearing Committee's Determination.

The Hearing Committee voted 2-1 to revoke the Respondent's license to practice medicine in New York State. The majority of the Hearing Committee felt that the number of violations in this case were significant by any standard. The majority concluded that the Respondent evidenced a persistent sense of arrogance throughout the hearing, which led the majority to believe that a course of reeducation and retraining would be problematic. The majority felt that the Respondent had not demonstrated that he would alter his prescribing practices. The dissenting member of the panel concurred in all the Findings of Fact but felt that revocation was too harsh a penalty. The dissenting member felt that the Respondent was willing to alter his practice and that member voted for a penalty which would include probation, monitoring, limits on prescribing and supervised practice.

REQUESTS FOR REVIEW

The Respondent argues that the Committee's characterization of the Respondent as arrogant was unfair and prejudicial, and had a significant impact on the Committee's penalty. The Respondent asserts that since the time he signed the Stipulation concerning the Article 33 violations, he had cooperated fully with the terms of his probation and that none of the charges involved in the Summary Action arose from events that occurred after the Respondent entered into the Stipulation. The Respondent argues further that expert testimony at the hearing supported the dosages and combinations of drugs that the Respondent used in treating the patients in this case. The Respondent argues that the Hearing Committee's penalty was too harsh. The Respondent's brief argues that the Respondent has been an important contributing member of the mental health community in New York State and notes that six of the patients involved in this case appeared at the hearing to testify on the Respondent's behalf. The Respondent's brief asserts that the Respondent would be willing to

cooperate in education and retraining to improve his note taking and record keeping.

The Petitioner urges the Review board to sustain the Hearing Committee's Determination and sustain the penalty revoking the Respondent's license.

REVIEW BOARD DETERMINATION

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

The Review Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty of gross negligence, gross incompetence, negligence and incompetence on more than one occasion, failure to maintain adequate records, violation of Public Health Law Article 33 and release of patient information without the patient's consent. The Hearing Committee as the finder of fact makes the determination about the credibility of witnesses from the Committee's observations of the witnesses at the hearing. The Committee found that the credible evidence at this hearing supported their Findings that the Respondent's care of the patients involved in this hearing had included the prescribing of medications in excessive quantities, over excessive periods of time, in cases in which the Respondent had not seen a patient for long periods of time, in instances in which the medications were not indicated or were contraindicated, and in cases in which the Respondent had not performed adequate inquiries and had not considered other treatments. The Committee also found that the Respondent's record keeping was bad, that he had violated patient confidentiality in one case, and that the Respondent had violated the controlled substances provisions of the Public Health Law. The Committee's extensive and detailed Findings support and are consistent with the Committee's Determination that the Respondent was guilty of gross and repeated acts of negligence and incompetence, and are consistent with their conclusions on the other charges as well.

The Review Board votes to sustain the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State. That penalty is consistent with the Committee's Findings and Conclusions that the Respondent was guilty of an extensive number of serious instances of incompetence and negligence, involving the prescribing of medications in amounts and in circumstances which posed a danger to his patients.

The Respondent asserts that he would be willing to change his record keeping and note taking practices and the Respondent asks the Review Board to consider the Respondent's past service to the community as reasons that the penalty in this case is excessive. The Review Board finds that although the Respondent's record keeping was abysmal, it was the least of the problems in the Respondent's practice and the improvement of the Respondent's record keeping would not address the areas of his practice that constitute the greatest threat to the public health. The Review Board finds in addition, that regardless of what value the Respondent may have been to the mental health community at one time, the evidence before the Hearing Committee demonstrated clearly that the Respondent has placed the people in this case at risk and that the Respondent's current pattern of practice constitutes a clear danger to his patients. The Hearing Committee's penalty is appropriate in view of the serious nature of the Respondent's misconduct and in view of the determination by the Committee's majority that the Respondent is not likely to change his prescribing practices.

ORDER

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

ORDER:

1. The Review Board sustains the Hearing Committee on Professional Medical Conduct's June 29, 1994 Determination finding Dr. David C. Tinling guilty of professional misconduct.
2. The Review Board sustains the Hearing Committee's Determination to revoke Dr. Tinling'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 DAVID C. TINLING, 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. Tinling.

DATED: Albany, New York

Sept 29, 1994


ROBERT M. BRIBER

IN THE MATTER OF DAVID C . TINLING, 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. Tinling.

DATED: Delmar, New York

9/30, 1994



SUMNER SHAPIRO

IN THE MATTER OF DAVID C. TINLING, 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. Tinling.

DATED: Brooklyn, New York

_____, 1994



WINSTON S. PRICE, M.D.

IN THE MATTER OF DAVID C. TINLING, 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. Tinling.

DATED: Roslyn, New York

September 29, 1994

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF DAVID C. TINLING, 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. Tinling.

Syracuse
DATED: Albany, New York
30 Sept., 1994



WILLIAM A. STEWART, M.D.