



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

September 23, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel Markewich, Esq.
Mound, Cotton & Wollan
One Battery Park Plaza
New York, New York 10004

Robert Vidor, M.D.
837 Kearny Avenue
Kearny, New Jersey 07032

Marcia E. Kaplan, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

RE: In the Matter of Robert Vidor, M.D.

Dear Mr. Markewich, Dr. Vidor and Ms. Kaplan:

Enclosed please find the Determination and Order (No. ARB-93-53) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
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 than 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)].

Very truly yours,

Tyrone T. Butler nam

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

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

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IN THE MATTER : ADMINISTRATIVE
OF : REVIEW BOARD
ROBERT VIDOR, M.D. : DETERMINATION
: AND ORDER
: ARB NO.93-53

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The Administrative Review Board for Professional Medical Conduct (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 22, 1993 at 5 Penn Plaza in New York, New York¹ to review the Professional Medical Conduct Hearing Committee's (Committee) April 16, 1993 Determination finding Dr. Robert Vidor guilty of professional misconduct and suspending his license to practice medicine in New York State for one year. Dr. Vidor requested the review through a Notice which the Review Board received on April 20, 1993. James F. Horan served as Administrative Officer to the Review Board. Marcia E. Kaplan, Esq. submitted a brief for OPMC on May 6, 1993 and a response brief on June 1, 1993. Daniel Markewich, Esq. submitted a brief for Dr. Vidor on May 26, 1993.

¹ Dr. Stewart was not present at the deliberations in New York City, but participated by telephone.

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 Office of Professional Medical Conduct brought this proceeding against Dr. Vidor pursuant to PHL 230(10)(p) and Education Law 6530(9), which provide an expedited hearing in cases in which professional misconduct charges against a physician are based upon a prior criminal conviction in New York State or another jurisdiction or upon a prior administrative adjudication which would amount to misconduct if committed in New York State. The expedited hearing determines the nature and severity of the penalty which the Hearing Committee will impose based upon the criminal conviction or prior administrative adjudication.

The Hearing Committee in this matter found that OPMC had

met its burden of proof in establishing that the Federal Drug Enforcement Agency had revoked the Respondent's DEA Certificates of Registration after finding that the Respondent had prescribed controlled substances on three occasions to an undercover investigator which were not for legitimate medical purposes; that the Respondent had prescribed controlled substances for an individual even after learning that the individual was a drug addict, who was selling the drugs prescribed for him; and that the Respondent freely prescribed drugs to methadone clinic clients without coordinating treatment with the clinic. The Hearing Committee also found that the State of New Jersey had suspended the Respondent's license to practice in that state for one year, with all but thirty days stayed, and had ordered the Respondent not to apply for or hold DEA or state controlled dangerous substances privileges for a minimum of one year. The Hearing Committee also found that the Respondent had taken a mini-residency following the New Jersey suspension.

The Hearing Committee concluded that the Respondent's conduct would constitute professional misconduct if committed in New York State. Specifically, the Hearing Committee concluded that the Respondent's actions would constitute the fraudulent practice of medicine, practicing with gross negligence, practicing with negligence on more than one occasion, and ordering excessive treatment not warranted by the condition of the patient. The Hearing Committee also concluded that the Respondent's misconduct was very serious and that the New Jersey sanction against the

Respondent was minor. The Committee concluded that the Respondent's conduct in isolation would justify a revocation of his medical license.

The Hearing Committee found several mitigating factors, however, that influenced the Committee to impose a lesser sanction than revocation. The Committee noted that the Respondent's misconduct occurred ten years ago, that the misconduct was the only blemish on the Respondent's three decade medical career in the United States, that the Respondent had undertaken a period of retraining to re-educate himself in the proper use of controlled substances and that the Respondent appeared genuinely remorseful concerning his past misconduct during his testimony at the hearing. After considering all these factors, the Committee voted to suspend the Respondent's New York license to practice medicine for two years, with one year stayed and probation imposed.

REQUESTS FOR REVIEW

The Office of Professional Medical Conduct urges the Review Board to uphold the Hearing Committee's Determination and Penalty.

The Respondent, first, requests that the Review Board consider new information to correct a factual error and a factual omission in the Hearing Committee's Determination. In the alternative, the Respondent asks that the Review Board remand the case to the Hearing Committee so that they may consider the new evidence. Finally, if the Review Board will not consider the

additional evidence or remand to the Hearing Committee, the Respondent asks that the Review Board modify the Penalty to probation only, with no time on suspension. The Respondent also raises a number of procedural points at pages 5 to 7 of his brief.

In its response, OPMC asks that the Review Board not consider any additional evidence, that is beyond the hearing record, and asks further that the Review Board not remand the case to the Hearing Committee.

REVIEW BOARD DETERMINATION

The Review Board finds that the procedural issues which the Respondent raised at pages 5 to 7 of his brief are beyond the Review Board's scope of review. The Review Board declines to consider any evidence which was not before the Hearing Committee, because Public Health Law Section 203-c(4)(b) limits these reviews to considering only the record below and the parties' briefs. The Review Board will not remand this case to the Hearing Committee because we do not believe that the factual error and omission which the Respondent alleges are crucial to the Hearing Committee's Determination or Penalty.

After having considered the entire record from the hearing and the parties' briefs, the Review votes to sustain the Hearing Committee's Determination that the Respondent was guilty of professional misconduct based upon the adjudications by the Drug Enforcement Agency and the State of New Jersey. We vote to sustain the Committee's conclusion that the misconduct would

amount to gross negligence, negligence on more than one occasion, fraudulent practice and ordering excessive treatment if committed in New York.

The Review Board votes to sustain the Hearing Committee's Determination to place the Respondent's license to practice in New York State on suspension for two years, and to stay the second year of suspension and place the Respondent on probation for that second year. The Review Board finds this penalty is consistent with the Hearing Committee's findings and conclusions that the Respondent was guilty of serious incidents of misconduct and we find that the penalty is appropriate in view of the mitigating factors present in this case.

We agree with the Hearing Committee that the Respondent's misconduct would, standing alone, merit revocation and we agree that the New Jersey penalty was minor and was certainly not binding on New York State in determining what penalty we should impose in the Respondent's case.

The Board also agrees with the Hearing Committee that there are several mitigating factors in this case which justify a penalty less serious than revocation. First, the Review Board is troubled by the passage of time between the Respondent's misconduct and the date of the this hearing, which amounts to ten years. We feel, however, that the Hearing Committee considered that issue in determining to impose a lesser sanction than revocation in this case. We agree with the Hearing Committee that the Respondent has shown remorse both through his demeanor at the

hearing and through his attempt to retrain himself by pursuing the mini-residency following his New Jersey suspension. We also find that in the ten years that have passed since the Respondent's misconduct, there have been no further blemishes on the Respondent's record. The Review Board concludes that the Hearing Committee's Penalty is just in light of the serious misconduct which the Respondent committed and that the Penalty is fair in the light of the mitigating factors present in this case.

ORDER

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

1. The Review Board sustains the Hearing Committee's April 6, 1993 Determination finding Robert Vidor, M.D. guilty of professional misconduct.
2. The Review Board sustains the Hearing Committee's Determination to suspend Dr. Vidor's license for two years, with the second year stayed and the Respondent placed on probation for that second year.

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

MARYCLAIRE B. SHERWIN

EDWARD C. SINNOTT, M.D.

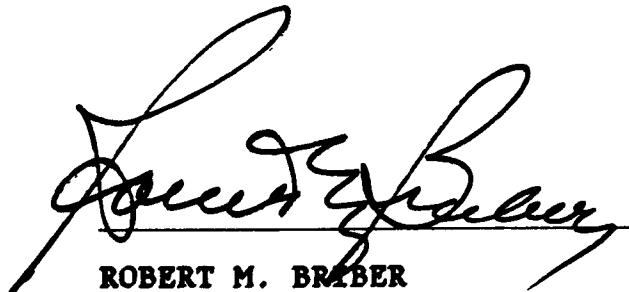
WILLIAM A. STEWART, M.D.

IN THE MATTER OF ROBERT VIDOR, 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. Vidor.

DATED: Albany, New York

August 23, 1993



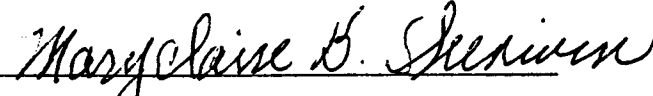
ROBERT M. BRIBER

IN THE MATTER OF ROBERT VIDOR, 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. Vidor.

DATED: Malone, New York

August 10, 1993

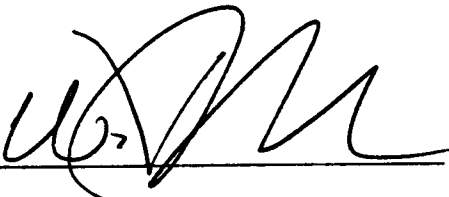

MARYCLAIRE B. SHERWIN

IN THE MATTER OF ROBERT VIDOR, 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. Vidor.

DATED: Brooklyn, New York

August 25th, 1993

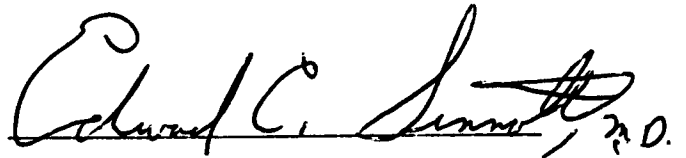


WINSTON S. PRICE

IN THE MATTER OF ROBERT VIDOR, 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. Vidor.

DATED: Roslyn, New York
August 20, 1993

A handwritten signature in cursive script that reads "Edward C. Sinnott, M.D." with a horizontal line drawn across the signature.

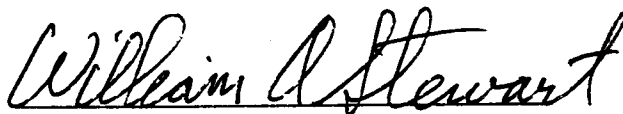
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF ROBERT VIDOR, 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. Vidor.

DATED: Syracuse, New York

August 20, 1993

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in black ink and is positioned above the printed name.

WILLIAM A. STEWART, M.D.