



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

April 12, 1996

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Roy Nemerson, Esq.
NYS Dept. of Health
5 Penn Plaza-6th Floor
New York, New York 10001

Jacob P. Welch, Esq.
Welch & Welch
17-19 East Market Street
Corning, New York 14830

Frederick Welch, M.D.
76 East First Street
Corning, New York 14830

RE: In the Matter of Frederick Welch, M.D.

Effective Date: 04/19/96

Dear Mr. Nemerson, Mr. Welch and Dr. Welch:

Enclosed please find the Determination and Order (No. 95-313) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. The 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.

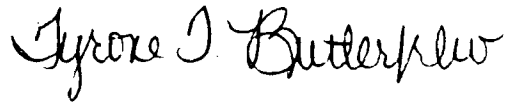
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T" and "B".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw

Enclosure

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

COPY

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IN THE MATTER : ADMINISTRATIVE
: REVIEW BOARD
OF : DECISION AND
: ORDER NUMBER
FREDERICK WILLIAM WELCH, M.D. : BPMC 95-313
-----X

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of SUMNER SHAPIRO, ROBERT M. BRIBER, WINSTON S. PRICE, M.D., EDWARD SINNOTT, M.D., and WILLIAM A. STEWART, M.D. held deliberations on March 1, 1996 to review the Hearing Committee on Professional Medical Conduct's (hereinafter the "Hearing Committee") December 21, 1995 Determination finding Dr. Welch guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on January 8, 1996. Larry G. Storch served as Administrative Officer to the Review Board. Jacob P. Welch, Esq. filed a brief for the Respondent which the Review Board received on January 29, 1996. Roy Nemerson, Esq. filed a reply brief for the Petitioner which the Review Board received on February 6, 1996. Mr. Welch filed a reply brief which the Review Board received on February 12, 1996.

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 one specification of professional misconduct. More specifically, the Petitioner alleged that Respondent's license to practice medicine in the Commonwealth of Pennsylvania was suspended by the duly authorized professional disciplinary agency for the Commonwealth, where the conduct resulting in the suspension would, if committed in New York State, constitute professional misconduct in violation of Education Law §6530(8).

The Petitioner began this proceeding by serving a

Summary Order of the Commissioner of Health upon Respondent, suspending Respondent's continued practice of medicine. The Summary Order was based upon the Commissioner's finding that Respondent's continued practice presented an imminent danger to the people of New York State.

After hearing testimony, the Hearing Committee recommended that the Summary Order continue in effect. An Interim Order was issued, continuing the Summary Order in effect pending the final resolution of this case. The Hearing Committee issued their Determination on the charges on December 21, 1995.

The Hearing Committee found that Respondent was authorized to practice medicine in New York State on or about March 24, 1978. The Committee further found that on or about July 25, 1995, the Commonwealth of Pennsylvania State Board of Medicine ordered the immediate suspension of Respondent's license to practice medicine in Pennsylvania based upon a finding that his continued practice of medicine and surgery presented an immediate and clear danger to the public health and safety. By Order of the Pennsylvania Board dated September 6, 1995, it was determined, following the taking of evidence at a preliminary hearing, that sufficient evidence had been presented to establish a prima facie case that Respondent's continued practice presented and immediate and clear danger to the public health and safety. Respondent's license was ordered to remain suspended for a period no longer than 180 days.

The Hearing Committee further found that the action of the Pennsylvania Board was based upon psychiatric and

psychological evaluations which concluded that Respondent's cognitive disorder (bipolar disorder) made him unfit to practice medicine.

The Hearing Committee further found that on August 11, 1989, Respondent's license to practice in New York State was suspended for a three year period, with two and one-half years of said suspension stayed, based upon a finding that he had practiced medicine in a grossly negligent and fraudulent manner. The Committee also found that by an Order of the Chairperson of the State Board for Professional Medical Conduct dated March 7, 1994, Respondent's Application for Consent Order was approved, whereby he admitted factual allegations related to the verbal and physical abuse of a patient. Respondent's license to practice medicine was again suspended, for a five year period, with such suspension stayed and Respondent placed on probation.

The Committee sustained the specification of professional misconduct and voted to revoke the Respondent's license to practice medicine in New York State. The Committee found that Respondent has received treatment for bipolar disorder since approximately 1992. The Committee found that Respondent's condition was not fully controlled and that it was not possible to estimate when it would be controlled. The Hearing Committee noted that its determination was significantly influenced by the demeanor and testimony of the Respondent himself. It unanimously concluded that the Respondent continued to suffer from a psychiatric condition which impaired his ability to practice, based upon these personal observations. Respondent's answers

were often non-responsive to the questions posed and he appeared to lack insight as to the extent to which his condition limited his ability to safely practice.

The Hearing Committee stated that it recognized the efforts expended by the Respondent toward addressing his history of alcohol abuse and his medical condition. However, the Hearing Committee was convinced that the Respondent remained impaired, that such impairment would prevent him from practicing safely and that the impairment would continue for an extended and indefinite period. The Hearing Committee's decision to revoke the Respondent's license was intended to best protect the public and was not based on a desire to punish the actions of the Respondent.

REQUEST FOR REVIEW

RESPONDENT: On his appeal, the Respondent has asked that the Review Board impose a less onerous penalty than revocation. The Respondent suggests, in the alternative, a suspension tied to the parameters of the Pennsylvania and New York Medical Societies' rehabilitation program. The Respondent argues that the Hearing Committee was radically harsh in its review of the witnesses who testified for the Respondent. He argues that the rehabilitation program more effectively deals with protecting patient safety than does revocation. The Respondent also preserved his rights to his argument that the Pennsylvania temporary suspension should not be used under Public Health Law §230(10)(p) and 230(12) and

Education Law §6530(9) as only a prima facie standard was used in the Pennsylvania proceeding. Additionally, the Respondent reserved all arguments presented and available under the Americans with Disabilities Act, 42 U.S.C. §12101.

PETITIONER: In an answering brief, the Petitioner notes that the factual findings and credibility determinations of the Hearing Committee are not subject to review by the Review Board. The Petitioner argues that the Respondent was incorrect in claiming that it was improper for the Hearing Committee to rely upon the suspension of the Respondent's license by the Pennsylvania Board. In support of this argument, the Petitioner cited Matter of Ricci v. Chassin 1995 App. Div. LEXIS 10104. The Petitioner requested that the Review Board uphold the Hearing Committee's Determination and Order revoking the Respondent's license.

In a reply brief, the Respondent argues that Matter of Ricci is distinguishable from the instant case because the Pennsylvania suspension was based simply upon a prima facie standard of proof. The Respondent also argues that justice and fairness mandate a lesser, more compassionate sanction than revocation.

REVIEW BOARD DETERMINATION

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

The Review Board votes 5-0 to sustain the Hearing Committee's Determination that the Respondent was guilty of professional misconduct based upon the suspension of the

Respondent's Pennsylvania medical license by the Pennsylvania Board. This Determination was consistent with the Committee's factual findings. The Respondent's arguments regarding the Hearing Committee's determination on the credibility of witnesses, as well as his arguments regarding the propriety of proceeding based upon the interim suspension of his license by the Pennsylvania Board and the applicability of the Americans with Disabilities Act, concern matters which are beyond the scope of the Review Board's jurisdiction and were not considered by the Board.

The Review Board votes 5-0 to sustain the Committee's Determination to revoke the Respondent's New York medical license.

The members of the Review Board recognize that this situation represents a personal tragedy for the Respondent and are sympathetic to his concerns, as well as those of his family. Nevertheless, the Review Board's first duty is to protect the public. The record has established that the Respondent has a long history of mental illness, which is not yet under control. His long-term prognosis is uncertain, at best.

Moreover, the Review Board agrees with the Hearing Committee that the opportunity to reapply for restoration of his license after one year will present a meaningful incentive for the Respondent to continue his rehabilitation so as to enable him at some future time to demonstrate that his condition no longer prevents him from practicing safely.

ORDER

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

1. The Review Board SUSTAINS the Hearing Committee's December 21, 1995 Determination finding the Respondent guilty of professional misconduct.

2. The Review Board SUSTAINS the Hearing Committee's Determination revoking the Respondent's license to practice medicine.

SUMNER SHAPIRO

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF FREDERICK WILLIAM WELCH, 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. Welch.

DATED: Delmar, New York

April 3, 1996


SUMNER SHAPIRO

IN THE MATTER OF FREDERICK WILLIAM WELCH, 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. Welch.

DATED: Brooklyn, New York

4/5, 1996

A handwritten signature in black ink, appearing to read "Winston S. Price, M.D.", written over a horizontal line.

WINSTON S. PRICE, M.D.

IN THE MATTER OF FREDERICK WILLIAM WELCH, 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. Welch.

DATED: Roslyn, New York

April 3, 1996

A handwritten signature in cursive script, reading "Edward C. Sinnott", written over a horizontal line. The signature is positioned to the right of the typed name below.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF FREDERICK WILLIAM WELCH, M.D.

WILLIAM A. STEWART, M.D., a member of the
Administrative Review Board for Professional Medical Conduct,
concurrs in the Determination and Order in the Matter of Dr.
Welch.

DATED: Syracuse, New York

2 April, 1996

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


WILLIAM A. STEWART, M.D.

IN THE MATTER OF FREDERICK WILLIAM WELCH, 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. Welch.

DATED: Syracuse, New York

April, 1996



ROBERT M. BRIBER