



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

April 23, 1997

Dennis P. Whalen
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David W. Smith, Esq.
NYS Department of Health
5 Penn Plaza-6th Floor
New York, New York 10001

Julius C. Butler, M.D.
4359 Winding Hill Lane
Fair Oaks California 95628

RE: In the Matter of Julius C. Butler, M.D.

Dear Mr. Smith and Dr. Butler :

Enclosed please find the Determination and Order (No.97-19) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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, appearing to read 'T. Butler', with a long horizontal flourish extending to the right.

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

IN THE MATTER
OF
JULIUS BUTLER, M.D.

ADMINISTRATIVE
REVIEW BOARD
DETERMINATION
ARB NO. 97-19

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

**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 **DR. JULIUS BUTLER** (Respondent) committed conduct in California that would constitute professional misconduct under New York Law, a Hearing Committee on Professional Medical Conduct (Committee) sustained the charges, revoked the Respondent's license to practice medicine in New York State (License), stayed the revocation, suspended the Respondent's License until he completes a penalty in California and placed the Respondent on probation. 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 Administrative Review Board for Professional Medical Conduct (Board) to overrule the Committee's January 8, 1997 Determination and revoke the Respondent's License, because only that sanction will protect New York's citizens against the unacceptable medical care that the Respondent provided in California. The Respondent requests that the Board limit any probation to only one year. After reviewing the record in this case and conducting Deliberations on March 21, 1997, the Board votes to sustain the Committee's Penalty, which we find appropriate legally and sufficient to assure that the Respondent can practice in New York only if he has corrected the deficiencies that he displayed in his practice in California.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination.

The Respondent represented himself in this proceeding.

DAVID W. SMITH, ESQ. (Associate Counsel, NYS Department of Health) represented the

Petitioner.

COMMITTEE DETERMINATION ON THE CHARGES

Under N.Y. Pub. Health Law §230(7)(McKinney's Supp. 1997), three member Committees from the State Board for Professional Medical Conduct (BPMC) conduct disciplinary proceedings to determine whether physicians have committed professional misconduct. The Petitioner filed charges with BPMC alleging that the Respondent violated N.Y. Educ. Law §6530(9)(d) because a sister state's (California) authorized disciplinary agency disciplined the Respondent for conduct that would constitute misconduct, if the Respondent had committed such conduct in New York. The Respondent holds New York and California Licenses and practiced in California when he provided the care at issue in this proceeding. The charges alleged that the Respondent's California conduct would constitute misconduct under the following categories:

- gross negligence, a violation under N.Y. Educ Law §6530(4)(McKinney's Supp. 1997);
- negligence on more than one occasion, a violation under N.Y. Educ Law §6530(3)(McKinney's Supp. 1997); and,
- incompetence on more than one occasion, a violation under N.Y. Educ Law §6530(4)(McKinney's Supp. 1997) .

The Petitioner brought the case pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney's Supp. 1997), 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 for the penalty that the Committee will impose for the criminal conduct or administrative violation.

Three BPMC Members, **MICHAEL JACOBUS, M.D. (Chair), ROBERT BRUCE BERGMANN, M.D. and RANDOLPH MANNING** comprised the Committee who conducted the hearing in the matter and who rendered the Determination which the Board now reviews. Administrative Law Judge **JONATHAN M. BRANDES** served as the Committee's Administrative Officer. The Committee determined that the Medical Board for California (California Board) issued an August 5, 1995 Stipulation and Order that:

- revoked the Respondent's California License;
- stayed the revocation;
- placed the Respondent on five years probation;
- required him to inform all hospitals at which he had privileges;
- required that he pass an oral examination; and,
- required that he submit an educational program for no less than forty hours per year for the first three years on probation.

The California Board found that the Respondent committed gross negligence, repeated negligence and incompetence in treating one patient for breast cancer and in failing to deliver timely a baby, after clear signs for fetal distress. The Committee concluded that California disciplined the Respondent and that the Respondent's California conduct would constitute misconduct under New York Law.

The Committee concluded that California had imposed strict probation terms for the Respondent's misconduct. Although the Committee found that the Respondent committed serious misconduct in California, that caused patient harm, the Committee noted that the California Board had greater familiarity with the Respondent's practice and chose to allow him to continue. The Committee voted to revoke the Respondent's New York License, stayed the revocation and suspended the Respondent until he completes successfully his California probation and any addenda to probation that California should impose. The Committee concluded that the Respondent will address all the Committee's concerns if he can convince California that he has regained the fitness to practice. The Committee provided further that, if the Respondent returns to practice in New York, he shall be on probation for five years, under supervision by the Director of the Office for Professional Medical Conduct (OPMC).

REVIEW HISTORY AND ISSUES

The Petitioner filed a Notice requesting this review, which the Board received on January 16, 1997. The Notice stayed the Committee's penalty automatically, pending this Determination from the Board [see N.Y. Pub. Health Law §230-c(4)(a)]. The Record for review contained the Committee's Determination, the hearing transcripts and exhibits, the Petitioner's brief and reply and the

Respondent's brief and reply. The Board received the Petitioner's brief on February 19, 1997, the Respondent's brief after February 17, 1997, the Petitioner's reply on February 27, 1997 and the Respondent's reply on March 10, 1997.

The Petitioner alleges that the Committee acted illegally by basing their License suspension on California's decision as to when or whether to allow the Respondent to resume practice. The Petitioner contends that N. Y. Pub Health Law § 230-a (2) allows license suspension only for a fixed time period. The Petitioner alleges further that the Committee acted contrary to the public interest and abdicated their responsibility to protect the public by accepting California's lenient treatment toward the Respondent. The Petitioner asks that the Board revoke the Respondent's License to protect the New York public from the Respondent's grossly negligent conduct.

The Respondent requests that the Board limit his probation to one year because he has practiced without any recurring aberrant behavior since the incidents that resulted in the California proceeding. The Respondent also offered to appear in New York if necessary to plead his case.

THE BOARD'S REVIEW 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(1) & 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 judgement 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).

THE BOARD'S DETERMINATION

The Board has considered the record below and the parties' briefs. The Board sustains the Committee's Determination that the Respondent committed conduct in California that would constitute misconduct under New York Law. Neither party contested the Committees' findings on the charges. Both parties did contest the Committee's Penalty. The Board votes to sustain that Penalty, which we find appropriate to protect the public and within the scope for penalties that the statute permits.

We reject the Petitioner's contention that the Committee acted illegally by imposing a suspension penalty for other than a fixed time period. Under N.Y. Pub. Health Law §230-a(2) (McKinney's Supp. 1997), a Committee or the Board may order a suspension for fixed time periods, but the Committee may also suspend for whatever time necessary to complete retraining, treatment or therapy. The Committee suspended the Respondent's License while he completes the California Penalty that requires him, in part, to attend educational programs and pass an oral examination. Further, the Board rejects the Petitioner's contention that the Committee acted against the public interest by following California's lead in imposing a lenient Penalty. The Board agrees with the Committee that California imposed strict rather than lenient limitations on the Respondent. The Board finds that the Committee has imposed additional strict limitations against the Respondent, if he returns to New York to practice. Next, the Board rejects the Respondent's request that we limit the Respondent's New York probation to one year. As the Committee noted, the Respondent committed serious misconduct and caused patient harm in California. The Board concludes that the five year probation that will follow the Respondent's return to New York practice will provide an appropriate measure to assure, through monitoring and record review, that the Respondent again practices within acceptable standards. Finally, we note that the Board permits no oral argument on reviews, so we reject the Respondent's request that the Board schedule a day for the Respondent to appear before us.

ORDER

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

1. The Board **SUSTAINS** the Hearing Committee's January 8, 1997 Determination finding the Respondent guilty for professional misconduct.

2. The Board **SUSTAINS** the Hearing Committee's penalty.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

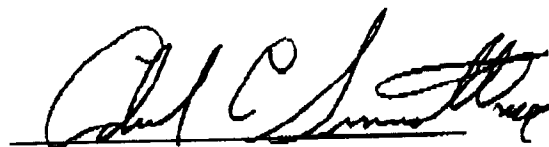
WILLIAM A. STEWART, M.D.

IN THE MATTER OF JULIUS BUTLER, 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. Butler.

DATED: Roslyn, New York

April 15, 1997

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

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF JULIUS BUTLER, 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. Butler.

DATED: Delmar, New York

April 16, 1997

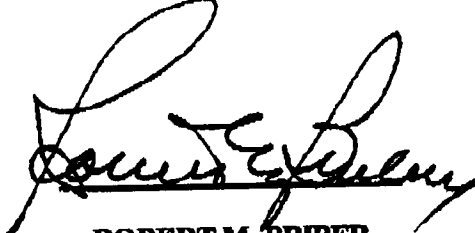

SUMNER SHAPIRO

IN THE MATTER OF JULIUS BUTLER, 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. Butler.

DATED: Schenectady, New York

April 16, 1997



ROBERT M. BRIBER

IN THE MATTER OF JULIUS BUTLER, M.D.

WILLIAMA. 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. Butler.

DATED: Syracuse, New York

17 April, 1997



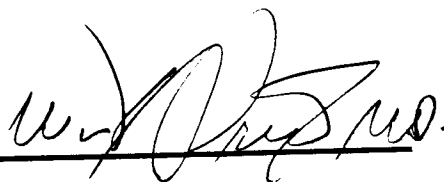
WILLIAMA. STEWART, M.D.

IN THE MATTER OF JULIUS BUTLER, 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. Butler.

DATED: Brooklyn, New York

APRIL 19, 1997

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

WINSTON S. PRICE, M.D.