

DOH 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

Dennis P. Whalen
Executive Deputy Commissioner

January 21, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marcia Kaplan, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Camille Raia, Esq.
Law Office of Mark A. Longo, Esq.
26 Court Street - Suite 1700
Brooklyn, New York 11242

Mabel Cohen, M.D.
1852 East 52nd Street
Brooklyn, New York 11234

RE: In the Matter of Mabel Cohen, M.D.

Dear Ms. Kaplan, Ms. Raia and Dr. Cohen:

Enclosed please find the Determination and Order (No.96-194) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

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IN THE MATTER : ADMINISTRATIVE
: REVIEW BOARD
OF : DECISION AND
: ORDER NUMBER
MABEL COHEN, M.D. : ARB# 96-194
-----X

The Office of Professional Medical Conduct (Petitioner) requests, pursuant to New York Public Health Law (Pub. H.L.) §230-c(4)(a) (McKinney's Supp. 1996), that the Administrative Review Board for Professional Medical Conduct (Board) review and modify a Determination by a Hearing Committee on Professional Medical Conduct (Committee) which determined that the Respondent, Mabel Cohen, M.D., committed professional misconduct in violation of New York Education Law (Educ. L) §§ 6530(3), 6530(5) and 6530(32). Board Members **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** conducted deliberations in this case on November 2, 1996 and the Board now renders this Determination. Administrative Law Judge **LARRY G. STORCH** served as the Board's Administrative Officer. The Board votes 5-0 to overturn the Hearing Committee's penalty in this case. We vote to suspend the Respondent's license to practice medicine in New York State, pending the Respondent's successful completion of a two-year

full-time residency in pediatrics accredited by the ACGME and approved by the Director of the Office of Professional Medical Conduct. The suspension shall be stayed to the extent necessary to participate in said residency program. The Board discusses the reasons for this Determination below after summarizing the Committee's Determination on the charges, the issues the parties raised on review and the Board's review authority.

MARK A. LONGO, ESQ. (Law Offices of Mark A. Longo), represented Respondent on this review.

MARCIA E. KAPLAN, ESQ., Associate Counsel for the New York State Department of Health, represented the Petitioner.

CHARGES AND COMMITTEE DETERMINATION

Pub. H.L. §230 authorizes three member committees from the State Board for Professional Medical Conduct (BPMC) to conduct disciplinary proceedings to determine whether physicians have committed professional misconduct by violating Educ. L. §6530. The Petitioner filed charges with BPMC alleging the Respondent:

- practiced the profession with negligence on more than one occasion, in violation of Educ. L. §6530(3);
- practiced the profession with incompetence on more than one occasion, in violation of Educ. L. §6530(5); and
- failed to maintain records which accurately

reflect the treatment and evaluation of patients,
in violation of Educ. L. §6530(32).

Three BPMC Members, **CONRAD ROSENBERG, M.D. (CHAIR)**,
RAFAEL LOPEZ, M.D. AND EUGENIA HERBST comprised the Committee
which conducted a hearing pursuant to Pub. H.L. §230(10) and
which rendered the August 20, 1996 Determination that the Board
now reviews. Administrative Law Judge **ELLEN B. SIMON, ESQ.**
served as the Committee's Administrative Officer. The Committee
determined that the Respondent's medical care and treatment of
the twelve patients at issue demonstrated negligence and
incompetence, as well as a failure to maintain accurate records.
More specifically, the Hearing Committee found that the
Respondent, a board-certified pediatrician, repeatedly failed to:

- obtain or note an adequate history;
- perform or note an appropriate physical examination;
- ascertain or note a chief complaint or an
appropriate chief complaint;
- perform or note an adequate work-up;
- consider or rule out extremely serious conditions;
- order, perform or note appropriate laboratory tests;
- perform or note appropriate follow-up;
- keep accurate records of her care and treatment of
the twelve patients charged.

The Hearing Committee further found that the Respondent
inappropriately prescribed medications and failed to give Patient

I's first immunizations in a timely manner, or to note the patient's immunization history appropriately.

The Committee concluded that the Respondent's conduct constituted professional misconduct in violation Educ. L. §6530(3) [negligence on more than one occasion], §6530(5) [incompetence on more than one occasion], and §6530(32) [failure to maintain accurate medical records]. The Committee voted to suspend the Respondent's medical license for twenty-four months. The first twelve months of the suspension would be stayed provided that during such stay (a) the Respondent actively attends an approved, accredited pediatric residency training program for the purpose of improving her skills in taking medical histories, performing physical examinations, keeping accurate records, and managing patient care and (b) the Respondent shall provide proof of successful participation in such a program to the Department of Health. The Committee further determined that in the event that Respondent is unable to find an appropriate residency program, she shall successfully complete a continuing medical education program in the diagnosis and treatment of infectious diseases. In addition, the second twelve month period of suspension would be stayed, and the Respondent placed on probation, subject to review of her practice and records by the Department.

RECORDS AND ISSUES ON REVIEW

The Petitioner filed a Notice requesting a review on the Committee's Determination, which the Board received on August 30, 1996. The Notice stayed the Committee penalty automatically, pending the Board's final Determination on the review (Pub. H.L. §230-c(4)(a)). The Record on review contained the hearing transcript and exhibits and the parties' briefs. The Board received the Petitioner's brief on September 30, 1996 and the Respondent's brief on October 2, 1996.

The Petitioner contends that the Hearing Committee's findings with respect to the twelve named patients set forth a pervasive pattern of negligence and incompetence in every aspect of the Respondent's medical practice. The record demonstrated that the Respondent lacks familiarity with basic concepts of medicine, lacks general competence to practice the profession, and lacks insight into her deficiencies. Respondent does not exhibit one or two focal deficits which can be identified and remedied; rather the Committee's findings make plain that she exhibits global deficits in the practice of pediatrics.

The Petitioner argues that the sanction imposed by the Hearing Committee does not follow from the Committee's findings and conclusions and fails to adequately protect the public. There is no evidence, and no findings by the Committee which suggest that the Respondent has the insight and motivation

necessary to make any re-education requirement successful. The Petitioner urges that the only sanction which will appropriately protect the public is revocation.

The Respondent contends that the Determination and Order of the Hearing Committee should be affirmed by the Board. It is clear from the Determination that the Committee deliberately considered all possible penalties and that the re-training requirement contained in the decision will be sufficient to guarantee that the Respondent's practice of pediatrics will be satisfactory. The Respondent notes that after due deliberation, the Hearing Committee reasoned that no danger to the public would ensue and that there has never been nor is there any risk to past or future patients on the basis of prior treatment rendered by the Respondent. The Respondent maintains that the findings of the Hearing Committee were well-reasoned and proper under the circumstances. She urges that the Determination and Order of the Hearing Committee be affirmed.

THE BOARD'S REVIEW AUTHORITY

Pub. H.L. §230(10)(i), §230-c(1) and §230-c(4)(b) authorize the Board to review determinations by hearing committees for professional medical conduct and to decide:

- 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 Pub. H.L. §230-a.

Pub. H.L. §230-c(4)(b) permits the Board to remand a case to the Committee for further consideration. Pub. H.L. §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

The Board has the authority to substitute our judgement for that of the Hearing Committee, in deciding upon a penalty Matter of Bogdan 195 AD2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, Matter of Spartalis 205 AD2d 940, 613 NYS2d 759 (Third Dept. 1994), and deciding credibility issues Matter of Minielly 222 AD2d 750, 634 NYS 2d 856, 1995.

THE BOARD'S DETERMINATION

The Board renders this Determination after reviewing the hearing record, the Committee's Determination and Order and the parties' briefs. The Board sustains the Committee's Determination finding the Respondent guilty of professional misconduct. There is ample evidence in the record to sustain the Hearing Committee's findings, as well as the Committee's conclusions that the Respondent is guilty of negligence, incompetence, and poor record-keeping.

The Board votes to overturn the Committee's penalty. We vote unanimously to suspend the Respondent's license to

practice medicine in New York State, pending the Respondent's successful completion of a two-year full-time residency in pediatrics accredited by the ACGME and approved by the Director of the Office of Professional Medical Conduct. The suspension shall be stayed only to the extent necessary to participate in said residency program.

The record established that the Respondent has widespread deficits, both in her judgment, and her technical skills. The penalty imposed by the Hearing Committee cannot realistically address these deficits. The Committee's determination merely requires the Respondent to "attend" a twelve month residency program. Moreover, in the event that she doesn't find an appropriate residency program, the Respondent could satisfy the retraining requirement by simply completing a continuing medical education program in the diagnosis and treatment of infectious diseases. The Hearing Committee's penalty would also permit the Respondent to maintain her private practice during her "retraining" subject to monitoring by the Office of Professional Medical Conduct.

The Board believes that the sanction imposed by the Hearing Committee is not appropriate, given their findings of fact and conclusions of law. Respondent's global deficits require a more aggressive approach to retraining. A twelve month program would not provide sufficient time to allow for the re-

education which the Respondent requires. The Review Board believes that a two year full-time residency in pediatrics is necessary in order to give the Respondent a realistic opportunity to regain the knowledge and skills necessary to safely practice. The Board further believes that it is necessary that the Respondent focus full-time on her retraining, without the distraction of her private practice. Accordingly, her license suspension shall be stayed only to the extent necessary to participate in a residency program.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's August 20, 1996 Determination finding the Respondent guilty of professional misconduct.
2. The Review Board **OVERTURNS** the Hearing Committee's penalty in this case.
3. The Board **SUSPENDS** the Respondent's license to practice medicine in New York State, pending the Respondent's successful

completion of a two-year full-time residency in pediatrics accredited by the ACGME and approved by the Director of the Office of Professional Medical Conduct. The suspension shall be stayed only to the extent necessary to participate in said residency program.

SUMNER SHAPIRO

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF MABEL COHEN, 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.
Cohen.

DATED: Syracuse, New York

17 Jan., 1997

William A. Stewart

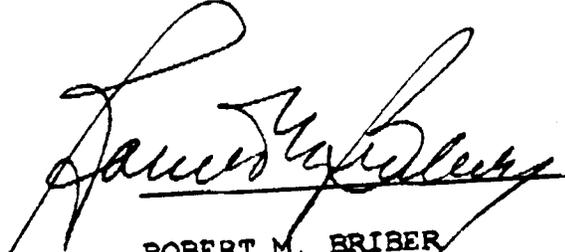
WILLIAM A. STEWART, M.D.

IN THE MATTER OF MABEL COHEN, 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. Cohen.

DATED: Schenectady, New York

Jan 18, 1997


ROBERT M. BRIBER

IN THE MATTER OF MABEL COHEN, 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. Cohen.

DATED: Roslyn, New York

Jan 18, 1997

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

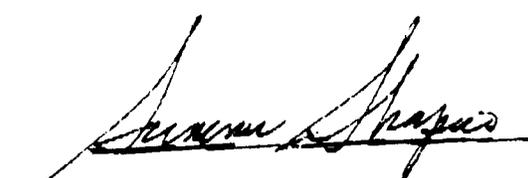
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF MABEL COHEN, 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. Cohen.

DATED: Delmar, New York

Jan 20, 1997


SUMNER SHAPIRO