



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

November 5, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Stephen Dell, M.D.
19 Bagdad Road
Durham, New Hampshire 03824

Anthony Z. Scher, Esq.
Wood & Scher
The Harwood Building
Scarsdale, New York 10583

Roy Nemerson, 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 Stephen Dell, M.D.

Dear Dr. Dell, Mr. Scher and Mr. Nemerson:

Enclosed please find the Determination and Order (No. ARB-93-99) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

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

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

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

-----X

IN THE MATTER : ADMINISTRATIVE
OF : REVIEW BOARD
STEPHEN DELL, M.D. : DETERMINATION
: AND ORDER
: ORDER NO. ARB-93-99

-----X

The Administrative Review Board for Professional Medical Conduct (hereinafter the "REVIEW BOARD"), consisting of ROBERT M. BRIBER, WINSTON S. PRICE, M.D., MARYCLAIRE B. SHERWIN, EDWARD C. SINNOTT, M.D. and WILLIAM B. STEWART, M.D.¹ held deliberations on September 17, 1993 to review the Professional Medical Conduct Hearing Committee's (hereinafter the "HEARING COMMITTEE") July 15, 1993 Determination finding Dr. Stephen Dell guilty of professional misconduct and revoking his license to practice medicine in the State of New York. Dr. Dell requested the review through a Notice of Review which the Board received on July 22, 1993. James F. Horan served as Administrative Officer to the Review Board. Anthony Z. Scher, Esq. submitted a brief for Dr. Dell on August 23, 1993. Roy Nemerson, Esq. filed a response brief on behalf of the Office of Professional Medical Conduct on August 25, 1993.

¹ Dr. Stewart participated in the deliberations 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. Dell pursuant to Public Health Law Section 203(10)(p) and Education Law Section 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 or another jurisdiction or upon a prior administrative adjudication which would amount to misconduct if committed in New York. 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 Office of Professional Medical Conduct charged the Respondent with professional misconduct based upon a 1990 Consent Order which the Respondent entered into with the New Hampshire Board of Registration in Medicine. The Office of Professional Medical Conduct had also charged the Respondent with misconduct based upon a Vermont disciplinary proceeding, but OPMC withdrew that charge during the course of the hearing.

The Hearing Committee in this matter found that the Department had met its burden of proof in establishing that the Respondent had executed a Consent Order with the New Hampshire Board of Registration in Medicine. The Respondent admitted to various misrepresentations concerning his academic degrees, concerning assistance in surgery at Wentworth-Douglas Hospital, on his application for New Hampshire Licensure and on his application for appointment to the Frisbie Memorial Hospital Medical Staff. The Respondent also admitted making misrepresentations to a patient and in that patient's medical records concerning disc surgery on the patient. The New Hampshire Board of Registration in Medicine reprimanded the Respondent and ordered that the Respondent complete a program in medical ethics, desist from making misrepresentations concerning his scholarly degrees, inform his surgical patient about the misrepresentation

concerning the disc surgery and inform Frisbie Memorial Hospital concerning the misrepresentation on the application for staff appointment.

Despite OPMC's withdrawal of the Specification concerning the Vermont disciplinary proceeding, the Hearing Committee determined that OPMC had proved that the Vermont Board of Medical Practice had found the Respondent guilty of professional misconduct.

The Hearing Committee voted to revoke the Respondent's license to practice medicine in the State of New York. The Committee determined that the Respondent's acts in New Hampshire were willful and reprehensible. The Committee concluded that the Respondent's multiple acts of dishonesty cumulatively amount to egregious conduct and that the conduct deviates from acceptable standards of medical practice. The Hearing Committee stated that they had determined that both New Hampshire and Vermont have denied the Respondent the right to practice in those states.

REQUESTS FOR REVIEW

The Respondent has asked that the Review Board reduce the penalty against the Respondent substantially or, in the alternative, remand the matter to a different hearing committee and administrative officer for further proceedings. The Respondent argues that the New Hampshire misconduct took place

many years ago, that the Hearing Committee erred in finding the Respondent guilty of the Vermont Specification which the prosecutor withdrew, that the Hearing Committee misquoted the Respondent's testimony, and that the Committee relied improperly on their finding that Vermont and New Hampshire had denied the Respondent the right to practice in those states. The Respondent has also submitted additional material to the Review Board, beyond that in the record, as an appendix to the Respondent's brief.

The Office of Professional Medical Conduct argues that the Hearing Committee's revocation penalty is an appropriate sanction for the Respondent's misconduct in New Hampshire. The Office of Professional Medical Conduct argues that the Second Specification has no bearing on the penalty and the Hearing Committee's mistake in sustaining that Specification was harmless. The Office of Professional Medical Conduct argues that the revocation is an appropriate penalty. The Office of Professional Medical Conduct requests that the Review Board not remand the case and OPMC also requests that the Review Board not consider the additional material in the appendix to the Respondent's brief.

REVIEW BOARD DETERMINATION

The Review Board has considered the entire record below

and the briefs which counsel have submitted. The Board did not consider any evidence which was not before the Hearing Committee.

The Review Board votes to sustain the Hearing Committee's Determination that the Respondent was guilty of professional misconduct based upon the Consent Order which the Respondent entered into with the New Hampshire Board of Medical Registration. We overturn the Hearing Committee's Determination that the States of New Hampshire and Vermont denied the Respondent the right to practice in those states. We find that this portion of the Determination is not consistent with the Committee's finding that the New Hampshire Board reprimanded the Respondent for his misconduct. We also overturn all findings of the Hearing Committee concerning the Vermont Specifications, because both parties agree in their briefs that the prosecutor withdrew that charge at the hearing. We consider the Parties' agreement on that issue to be a stipulation that the Vermont Specification was not before the Hearing Committee for Determination.

The Board has reviewed the Hearing Committee's penalty based upon the New Hampshire Consent Order alone. The Review Board votes unanimously to sustain the Determination of the Hearing Committee to revoke the Respondent's license to practice medicine in New York State. That penalty is consistent with the Hearing Committee's findings concerning the New Hampshire Consent Order and the penalty is appropriate considering the Respondent's

misconduct in New Hampshire. Since we believe that the Respondent's misconduct in New Hampshire alone supports the Hearing Committee's penalty, the Board finds that it is not necessary to remand this case to the Hearing Committee.

The New Hampshire Consent Order proves that the Respondent made misrepresentations to a patient involving that patient's condition, that the Respondent made misrepresentations in that patient's medical records, that the Respondent made misrepresentations concerning assistance in performing surgery at Wentworth-Douglas Hospital, that the Respondent made misrepresentations in his application for a staff position at Frisbie Memorial Hospital and that he made misrepresentations on his application for licensure in New Hampshire.

The Hearing Committee found that the Respondent's misconduct in New Hampshire was willful and reprehensible. The Respondent engaged in a pattern of dishonesty commencing with his application for New Hampshire licensure and continuing with his application for a staff appointment, with his preparation of surgical records and of a particular patient's medical record and culminating in a misrepresentation to that patient concerning that patient's surgery. Misrepresentations on an application for a staff appointment and in surgical and medical records can impede a hospital in its duty to perform quality assurance and will impair subsequent treating physicians. Misrepresentations to a patient about that patient's condition or his treatment

constitute a violation of the most basic trust that a patient places in a physician.

In assessing the appropriate penalty for misconduct, the Review Board does not believe that New York should be bound by how harsh or lenient a penalty that a sister state assesses against a Respondent for the same misconduct. New York must determine whether a physician is fit to continue practicing in this State and what if any restrictions upon that physician's license are necessary to protect the public. The Review Board agrees with the Hearing Committee that Dr. Dell's repeated and willful misrepresentations deviate from acceptable standards of medical practice and demonstrate that Dr. Dell is not fit to practice medicine in the State of New York.

ORDER

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

1. The July 1, 1992 Determination by the Hearing Committee on Professional Medical Conduct, finding Stephen Dell M.D. guilty of professional misconduct, is hereby sustained as to the finding that the Respondent was guilty of misconduct based upon a Consent Order which the Respondent entered into with the State of New Hampshire's Board of Registration in Medicine.
2. The Hearing Committee's Determination concerning misconduct by the Respondent in the State of Vermont and the Determination that the Respondent was denied the right to practice medicine in New Hampshire and Vermont are overturned for the reasons stated in the Determination.
3. The Hearing Committee's Determination to revoke the license of Stephen Dell, M.D. to practice medicine in the State of New York is sustained.

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

MARYCLAIRE B. SHERWIN

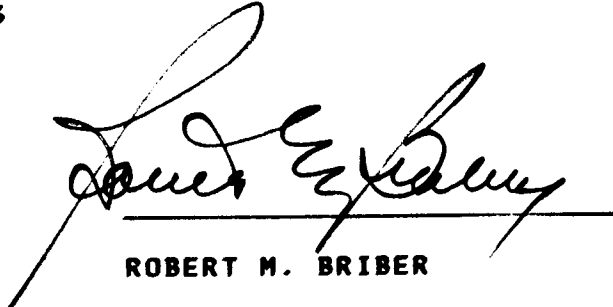
EDWARD C. SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF STEPHEN DELL, 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 Stephen Dell, M.D.

DATED: Albany, New York
October 8, 1993



ROBERT M. BRIBER

IN THE MATTER OF STEPHEN DELL, 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 Stephen Dell, M.D.

DATED: Albany, New York

October 8, 1993


Maryclaire B. Sherwin

MARYCLAIRE B. SHERWIN

IN THE MATTER OF STEPHEN DELL, 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 Stephen Dell, M.D.

DATED: Brooklyn, New York
October , 1993



WINSTON S. PRICE, M.D.

IN THE MATTER OF STEPHEN DELL, 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 Stephen Dell, M.D.

DATED: Albany, New York

October , 1993

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.

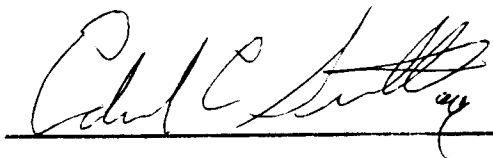
WILLIAM A. STEWART, M.D.

IN THE MATTER OF STEPHEN DELL, 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 Stephen Dell, M.D.

DATED: Albany, New York

October 26, 1993

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", is written over a horizontal line. The signature is fluid and somewhat stylized.

EDWARD C. SINNOTT, M.D.