

**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*

November 21, 1996

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Shirley L. Dixon, M.D.  
752 West End Avenue  
New York, New York 10025

William L. Wood, Esq.  
Wood & Scher  
The Harwood Bldg.  
14 Harwood Court - Suite 512  
Scarsdale, New York 10583

Roy Nemerson, Esq.  
New York State Department of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

EFFECTIVE DATE NOVEMBER 28, 1996

**RE: In the Matter of Shirley L. Dixon, M.D.**

Dear Dr. Dixon, Mr. Wood and Mr. Nemerson:

Enclosed please find the Determination and Order (No.96-157) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
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:crc

Enclosure

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

COPY

IN THE MATTER

OF

SHIRLEY LEE DIXON, M.D.

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

ADMINISTRATIVE  
REVIEW BOARD  
DETERMINATION  
ARB NO. 96-157

The Respondent **SHIRLEY LEE DIXON, M.D.** (Respondent) 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: 1.) found that the Respondent practiced medicine while impaired by a psychiatric condition, 2.) found that the Respondent suffered from a psychiatric condition that impairs medical practice and 3.) revoked the Respondent's license to practice medicine in New York State. After reviewing the record in this case and conducting Deliberations on September 20, 1996, Board Members **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** vote to sustain the Committee's Determination that the Respondent suffers from a condition which impairs her medical practice and that the Respondent practiced medicine while so impaired. The Board votes 5-0 to sustain the Committee's Determination to revoke the Respondent's New York medical license.

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

**WILLIAM L. WOOD, ESQ.** (Wood & Scher) represented the Respondent.

**ROY NEMERSON, ESQ.** (Deputy Counsel, NYS Department of Health) represented the NYS Department of Health (Petitioner).

## COMMITTEE DETERMINATION ON THE CHARGES

PUB.H.L. §230(7) authorizes three member panels from the State Board for Professional Medical Conduct (BPMC) to conduct disciplinary proceedings to determine whether physicians have committed professional misconduct in violation of New York Education Law (EDUC.L.) §6530 (McKinney Supp. 1996). The Petitioner filed charges with BPMC alleging that the Respondent :

- suffered from a psychiatric condition which impairs the ability to practice medicine, which constitutes misconduct under EDUC. L. § 6530(8); and
- practiced medicine while impaired by mental disability, which constitutes misconduct under EDUC. L. § 6530(7).

Three BPMC Members, **THEA GRAVES PELLMAN (Chair)**, **EDWIN LEAR, M.D.** and **RICHARD D. MILONE, M.D.** comprised the Committee who conducted the hearing in the matter and who rendered the Determination which the Board now reviews. Administrative Law Judge **Jane B. Levin** served as the Committee's Administrative Officer. The Committee determined that the Respondent suffered from a mental condition which impairs medical practice and that the Respondent had practiced while so impaired. The Committee found that:

- in 1994, while the Respondent worked as a physician for the United States Postal Service, her Supervisor ordered that the Respondent undergo an examination by a board certified psychiatrist;
- the Supervisor ordered the examination and placed the Respondent on administrative leave after the Respondent displayed unusual behavior at work;
- following the examination, Drs. Pasquale A. Carone and Leonard W. Krinsky (Carone Report) concluded that the Respondent suffered from paranoid type schizophrenia that disabled her from working as a physician for the Postal Service and that the Respondent presented a possible danger to others ;
- the Carone Report recommended intensive psychiatric treatment and possible hospitalization for the Respondent; and

- based on the Carone Report and on the documentary evidence, the Petitioner's expert witness, Lawrence Greenberg, M.D., testified that the Respondent suffered from a mental illness that impairs her from the practice of medicine.

At the point in the hearing after Dr. Greenberg's testimony, the Committee ordered, pursuant to PUB.H.L. §230 (7), that the Respondent undergo a physical examination and a psychiatric examination that included psychological testing as needed. Elliot J. Howard, M.D., Cavin P. Leeman, M.D. and Nancy Freeman, Psy. D. conducted the examinations or tests. After reviewing reports by Drs. Howard and Freeman, Dr. Leeman issued a final report (Leeman Report) to the Committee. The Committee found that Dr. Leeman's Report:

- confirmed that the Respondent suffered from a psychiatric disorder, most appropriately diagnosed as delusional disorder, grandiose type;
- stated that the Respondent's serious lapses in judgement, particularly in response to stress, raised serious questions as to whether the Respondent could be relied on in a clinical setting; and,
- concluded that the Respondent's prognosis for significant recovery would be poor without treatment.

The Committee also found that the Respondent had testified at the hearing:

- in a rambling and disjointed manner about her "engagement" by Presidents Bush and Clinton;
- that she had an interactive TV in her apartment, through which newscasters could see her; and,
- that there was a correlation between her master's thesis on marijuana and a later speech by President Clinton, because Clinton's speech used the term "engagement", a word that appeared in the Respondent's thesis.

The Committee concluded that:

- the examination results demonstrated that the Respondent is psychiatrically impaired;
- the Respondent practiced while impaired;

- the Respondent's hearing testimony in response to Committee questions indicated a thought disturbance; and
- the Respondent's continuing denial that she suffers an illness, after the results from the independent examinations and after the Committee's efforts to communicate with the Respondent, indicate further the serious nature of the illness.

The Committee voted to revoke the Respondent's license to practice medicine in New York State and stated that the Respondent should seek psychiatric treatment.

### **REVIEW HISTORY AND ISSUES**

The Respondent filed a Notice requesting this review, which the Board received on July 18, 1996. Pursuant to the then effective PUB.H.L. §230-c(4)(a), the Notice stayed the Committee's penalty automatically, pending this Determination from the Board. The Record for review contained the Committee's Determination, the hearing transcripts and exhibits, the Respondent's brief and the Petitioner's reply brief.

The Respondent alleges that the Committee's Determination was inconsistent with the facts and that the penalty was excessive. The Respondent raised four points for review.

- I. The Determination on impairment is unsupported by expert testimony and the Committee arrived at the conclusion based on their own evaluation of the Respondent's testimony.
- II. Erroneous rulings that admitted the Carone and Leeman Reports into evidence violated the Respondent's due process rights because the reports were hearsay and the Respondent was unable to cross-examine the Report authors or contributors.

III. The evidence does not support the Committee's findings on impairment. The Respondent argues that the Petitioner's proof was insufficient because the expert medical testimony was based on impermissible hearsay and because other testimony by non-psychiatrists involved only a brief time span that ended in June, 1994. The Respondent contends that testimony by the Respondent's current Supervisors at the Brooklyn Veteran's Administration Hospital establish that the Respondent performs satisfactorily as a physician at that facility.

IV. The penalty is unduly harsh and less drastic action would protect the public. The Respondent recommends probation with appropriate monitoring.

The Petitioner argues that the Respondent's Points I to III concern issues which are not properly raised before the Board. In response to the Respondent's Point IV, the Petitioner argues that revocation is the only penalty which protects the public adequately. The Petitioner contends that the degree of the Respondent's illness and her complete lack of insight into her condition make the Respondent an inappropriate candidate for probation.

### **THE BOARD'S REVIEW AUTHORITY**

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.

The Review Board may substitute our judgement for that of the Hearing Committee, in deciding upon a penalty Matter of Bogdan 195 AD 2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, Matter of Spartalis 205 AD 2d 940, 613 NYS 2d 759 (Third Dept. 1994), and on issues of credibility Matter of Minielly \_\_AD 2d \_\_, 634 NYS 2d 856, 1995 N.Y. App. Div. LEXIS 12692 (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 practiced while impaired and that the Respondent suffers from a mental condition that impairs her ability to practice medicine. The Board also sustains the Committee's Determination revoking the Respondent's New York Medical license. We reject the arguments which the Respondent raised in her Points for review, for the reasons which we discuss below.

In her Point II, the Respondent argued that the Committee should not have accepted the Carone or Leeman Reports into evidence because the Reports were hearsay and the authors and contributors were unavailable for cross-examination. The Respondent described the ruling admitting the Reports as extraordinary. The Board finds no merit in this argument. Hearsay is admissible in BPMC Hearings. In the ordinary course in these Hearings, Committees base findings on information from documents in evidence and experts testify based on records in evidence, without having examined the patients. The Respondent also had the opportunity to introduce conflicting expert testimony or to introduce her own records or reports concerning her condition to counter the Leeman or Carone Reports.

In her Point III, the Respondent argued that the record did not support the Committee's findings on the Respondent's impairment. The Board finds that preponderant evidence from the record supports the Committee's Determination. Eyewitness testimony and the Carone Report proved that the Respondent practiced medicine while impaired in 1994, which constitutes a violation of EDUC.L. §6530(7). The Carone Report, the Leeman Report and Dr. Greenberg's testimony proved that the Respondent suffers from a mental disability which impairs her ability to practice medicine, which



constitutes misconduct under EDUC. L. § 6530(8). Testimony or documents which contradict the evidence on which the Hearing Committee relied in making their findings does not invalidate those findings. The testimony by the Respondent's current Supervisors, that the Respondent performs satisfactorily in her current position, raised factual issues which the Committee, as the fact finder had the authority to resolve. The testimony by the Respondent actually provided corroboration for the expert conclusions that diagnosed the Respondent as being impaired.

In her Point I, the Respondent argues that the Committee based their conclusions improperly on their evaluation of the Respondent, from her testimony, rather than on expert testimony. The Board disagrees. As we stated in the prior paragraph, the hearing evidence supported the Committee's Determination on both impairment charges. The citations to the record, that accompany the Committee's Fact Findings, demonstrate that the Committee relied on expert and eyewitness testimony from the record and from Reports in evidence in reaching the Findings. The Committee did make conclusions based on the Respondent's testimony, but a Hearing Committee may properly draw conclusions from any Respondent's testimony when assessing that Respondent's credibility as a witness or skill and knowledge as a physician. The Committee may also rely on the conclusions they draw from a Respondent's testimony when the Committee considers a penalty, to determine whether a Respondent acknowledges a need to change his/her practice or expresses a willingness to undergo retraining. In assessing testimony by a Respondent, when evidence indicates that the Respondent suffers from a condition which impairs medical practice, the Committee can consider whether the Respondent acknowledges the impairment and whether the Respondent would be willing to undergo the treatment or take the other steps necessary to deal with the condition. In this case, the testimony by the Respondent corroborated the evidence which indicated that the Respondent suffers from a condition which impairs her mentally and the testimony demonstrated that the Respondent lacks insight into the serious nature of her illness.

In her Point IV, the Respondent argued that the Committee's penalty was too harsh and recommended that the Board place the Respondent on probation with a monitor instead. The Board concludes that the evidence in this case, including the testimony by the Respondent, demonstrate that the Committee and the Board can protect the public only by removing the Respondent from medical practice. The Carone Report concluded that the Respondent presented a possible danger to others from potentially acting out against imagined enemies. The Leeman Report stated that the Respondent's serious lapses in judgement, especially in response to stress, raise serious questions about the Respondent's reliability in a clinical setting and concluded that her prognosis for recovery was poor without treatment. Finally, the Respondent's own testimony before the Committee showed that she lacks insight into her condition.

As one alternative to revocation, the Respondent's brief mentioned that, under the Impaired Physician's Program, the Respondent could surrender her license voluntarily and obtain her license back, when her condition improves. The Board notes that the Impaired Physician's Program is a voluntary option for a Respondent and not a penalty which the Committee or Board may impose under PUB.H.L. § 230-a. The Respondent has had two years, since the Carone Report concluded that she suffered from a condition that impairs her ability to practice, to enter the impaired Physician's Program. The Board finds that the probation which the Respondent proposed would be totally inadequate, because the Respondent shows no willingness to undergo the treatment that will be necessary to treat her condition. The Board agrees with the Committee that there is no alternative in this case to revocation and we join the Committee in urging the Respondent to seek psychiatric treatment.

**ORDER**

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

1. The Board **SUSTAINS** the Hearing Committee's July 9, 1996 Determination finding the Respondent guilty for professional misconduct.
2. The Board **SUSTAINS** the Hearing Committee's penalty revoking the Respondent's license to practice medicine in New York State.

**ROBERT M. BRIBER**

**SUMNER SHAPIRO**

**WINSTON S. PRICE, M.D.**

**EDWARD SINNOTT, M.D.**

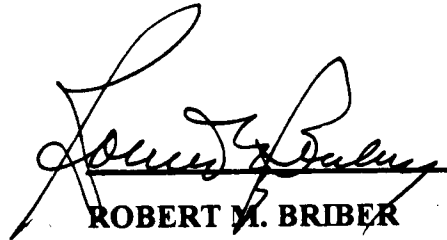
**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF SHIRLEY LEE DIXON, 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. Dixon.

**DATED: Schenectady, New York**

10/21, 1996

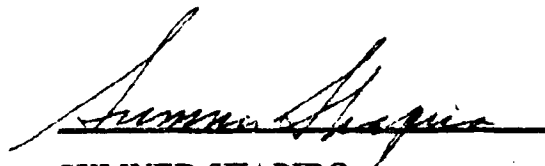
  
**ROBERT M. BRIBER**

IN THE MATTER OF SHIRLEY LEE DIXON 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. Dixon

DATED: Delmar, New York

OCT. 31, 1996

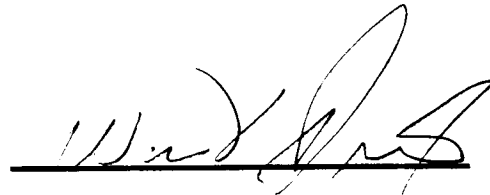
  
SUMNER SHAPIRO

**IN THE MATTER OF SHIRLEY LEE DIXON, 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. Dixon.

**DATED: Brooklyn, New York**

10/2, 1996

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

**WINSTON S. PRICE, M.D.**

**IN THE MATTER OF SHIRLEY LEE DIXON, 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. Dixon.

**DATED: Roslyn, New York**

*October 31, 1996*

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

**EDWARD C. SINNOTT, M.D.**

**IN THE MATTER OF SHIRLEY LEE DIXON, 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. Dixon.

**DATED:** Syracuse, New York

31 Oct, 1996

*William A. Stewart*

**WILLIAM A. STEWART, M.D.**