



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

December 18, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Karen E. Carlson, Esq.
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237

Edward Hernstadt, Esq.
Frankfurt, Garbus, Klein & Selz
488 Madison Avenue
New York, New York 10022

Stephen Balsam, M.D.
235 East 57th Street
New York, New York 10022

RE: In the Matter of Stephen Balsam, M.D.

Dear Ms. Carlson, Mr. Hernstadt and Dr. Balsam:

Enclosed please find the Determination and Order (No. 96-294) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties **other than suspension or revocation** until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

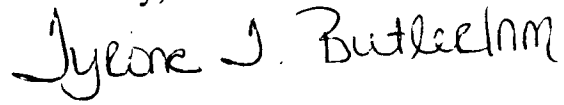
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's
Determination and Order.

Sincerely,

Handwritten signature of Tyrone T. Butler in black ink.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

IN THE MATTER
OF
STEPHEN BALSAM, M.D.

DETERMINATION
AND
ORDER

BPMC-96-294

A Notice of Hearing and Statement of Charges dated September 5, 1996 were served upon the Respondent, **STEPHEN BALSAM, M.D.** on October 15, 1996. **MARYCLAIRE B. SHERWIN, (Chair), ROBERT M. KOHN, M.D.** and **LYON M. GREENBERG, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY ARMON, ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. A hearing was held on November 13, 1996. The Department of Health appeared by **KAREN E. CARLSON, ESQ.**, Assistant Counsel. The Respondent was represented by **EDWARD HERNSTADT, ESQ.** Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

STATEMENT OF CASE

The case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent was charged with professional misconduct pursuant to Education Law Section 6530(9)(d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Stephen Balsam, M.D. (hereinafter "Respondent") was authorized to practice medicine in New York State on August 11, 1967 by the issuance of license number 98886 by the New York State Education Department. Respondent is currently registered through May 31, 1998 with the New York State Education Department to practice medicine. (Ex. 3)
2. On or about October 31, 1995, Respondent entered into a Stipulation with the Board wherein he did not contest charges of:
 - a) filing a false report in connection with the billing of two separate patients, in violation of 26 Vermont Statutes Annotated, §1354(8); and
 - b) acting with gross failure to use and exercise, on a particular occasion, that degree of care and skill which is commonly exercised by a prudent physician, in violation of 26 Vermont Statutes Annotated §1354(22).

Charge b) related to Respondent's advice to a patient's mother concerning business dealings between the mother of the patient, whom he was counseling in the care of her son, and Respondent's wife. (Ex. 4)

3. The Vermont Board imposed a penalty of a one and one half year suspension of his Vermont license and set forth several conditions to be satisfied during said period of suspension, including assessment of Respondent's psychiatric knowledge and skill, participation in continuing medical education and a psychiatric evaluation. (Ex. 4)
4. Respondent is a psychiatrist with a specialty in pediatric psychiatry. His current practice consists of approximately fifteen hours per week of treating private patients, primarily children, plus work at the Children's Aid Society and the Young Adult Institute, where he treats abused and neglected children in foster care and severely handicapped children. (T. 7, 41-8)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Committee concluded that the Department had met its burden of proof by demonstrating by a preponderance of the evidence that the Vermont Board took disciplinary action against Respondent's license to practice medicine in that State. The basis for such action was conduct which, had it been committed in New York State, would have constituted professional misconduct pursuant to New York Education Law Section 6530(6) [practice of the profession with gross incompetence] and (21) [willfully making or filing a false report]. Therefore, the Hearing Committee voted to sustain the specification of professional misconduct contained within the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be suspended for a two (2) year period, said suspension to be stayed, and that Respondent be placed on probation in accordance with the Terms of Probation as set forth in Appendix II during said period of suspension. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute; including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Committee concluded that the acts of professional misconduct committed by Respondent while in practice in Vermont were of such a serious nature so as to justify the imposition of a significant penalty. The commitment of Respondent to the provision of valuable services to low income developmentally disabled children was considered in the Committee's determination that the people of New York could best be protected and served by permitting him to maintain his medical license in conjunction with his compliance with specified terms of probation. Respondent's testimony that he allowed his Vermont medical license to lapse and therefore did not complete the requirements imposed by the Vermont Board in the 1995 Stipulation was noted. Therefore, the Hearing Committee agreed with the recommendation of the Department that Respondent's practice be monitored and also determined that it would be appropriate to require that he participate in a continuing medical education course and in community service.

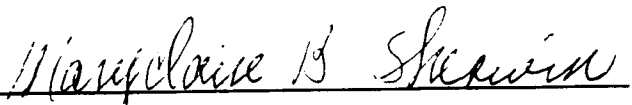
ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The specification of professional misconduct contained within the Statement of Charges (Pet. Ex. 1) is **SUSTAINED**.
2. Respondent's license to practice medicine in New York State is **SUSPENDED** for a period of two (2) years from the effective date of this Order, said suspension to be **STAYED**.
3. Respondent's license shall be placed on **PROBATION** during the period of suspension, and he shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order.
4. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or be certified or registered mail.

DATED: Albany, New York

12/16/1996



MARYCLAIRE B. SHERWIN (Chair)

ROBERT M. KOHN, M.D.
LYON M. GREENBERG, M.D.



APPENDIX I

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

-----X

IN THE MATTER : NOTICE OF
OF : REFERRAL
STEPHEN BALSAM, M.D. : PROCEEDING

-----X

TO: Stephen Balsam, M.D.
235 East 57th Street
New York, New York 10022

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 13th day of November, 1996 at 10:00 in the forenoon of that day at the Legislative Office Building, 7th Floor - Room 711A, Empire State Plaza, Albany, New York 12248.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the

licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before October 30, 1996.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before October 30, 1996 and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated

above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceedings. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
September 5, 1996



PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct

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

-----X

IN THE MATTER : STATEMENT
OF : OF
STEPHEN BALSAM, M.D. : CHARGES

-----X

Stephen Balsam, M.D., the Respondent, was authorized to practice medicine in New York State on August 11, 1967 by the issuance of license number 98886 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period June 1, 1996 through May 31, 1998, with a registration address of Professional Suite 3A, 105 East 63rd Street, New York, New York, 10021.

FACTUAL ALLEGATIONS

1. Respondent, on or about October 31, 1995, was disciplined by the State of Vermont, Board of Medical Practice, [hereafter the "Board"] for the care and treatment of two separate patients in his psychiatric practice.
2. More specifically, Respondent entered into a Stipulation with the Board wherein he did not contest charges of filing a false report in connection with the billing of two separate patients, in violation of §26 of the Vermont Statutes Annotated, §1354(8).

3. Further, Respondent did not contest charges that he acted with gross failure to use and exercise, on a particular occasion, that degree of care and skill which is commonly exercised by a prudent physician. More specifically this charge dealt with Respondent's advice to a patient's mother concerning business dealings between the mother of the patient, whom he was counseling in the care of her son, and Respondent's wife. This was in violation of §26 of the Vermont Statutes Annotated §1354(22).

4. Respondent was disciplined by the Board with a one and one half year suspension of his Vermont license and several conditions during that period of suspension to be satisfied prior to the lifting of that suspension. Those conditions include:

assessment of Respondent's psychiatric knowledge and skill
continuing medical education
psychiatric evaluation of Respondent

5. The conduct resulting in the discipline imposed on Respondent would, if committed in New York State, constitute professional misconduct under the laws of New York State, specifically N.Y. Educ. Law §6530(6) (McKinney Supp.1996) [gross incompetence] and N.Y. Educ. Law §6530(21) (McKinney Supp. 1996) [wilfully filing a false report].


SPECIFICATION

DISCIPLINE IN ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1996) by reason of his having disciplinary action taken by a duly authorized professional disciplinary agency of another state where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

1. The facts in Paragraphs 1, 2, 3, 4, and/or 5.

DATED: *September 5*, 1996
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Karen Eileen Carlson
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 473-4282

APPENDIX II

TERMS OF PROBATION

1. Dr. Balsam shall conduct himself at all times in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.
2. Dr. Balsam shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Dr. Balsam shall submit written notification to the Board addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Hedley Park Place, 433 River Street, Fourth Floor, Troy, New York 12180-2299, regarding any change in employment, practice, addresses, (residence or professional) telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.
4. Dr. Balsam shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.

5. In the event that Dr. Balsam leaves New York to reside or practice outside the State, he shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.

6. Dr. Balsam shall enroll in and complete a program of continuing medical education which includes, in whole or as part of a broader area of medical education, instruction addressing identification and maintenance of doctor-patient boundaries. This program shall be subject to the prior approval of the Director of the Office of Professional Medical Conduct and shall be completed within six months of the effective date of this Order. Respondent shall be responsible for providing to the Director verification of his successful completion of this continuing medical education program.

7. Dr. Balsam shall have quarterly meetings with a physician selected by him and approved by the Office of Professional Medical Conduct, who shall review the billing records of Dr. Balsam's private medical practice. This monitoring physician shall review randomly selected medical records and evaluate whether the billing records of Dr. Balsam are appropriate and comport with acceptable standards of medical practice. The monitoring physician shall provide a written report of such evaluation to the Office of Professional Medical Conduct on a schedule to be determined by said Office. It shall be the responsibility of the Respondent to ensure that the reports of the practice monitor are submitted in a timely manner. A failure of the practice monitor to submit required reports on a timely basis will be considered a possible violation of the terms of probation.

8. Dr. Balsam shall perform two hundred (200) hours of community service during the period of probation. The service must be medical in nature, delivered in a facility or with an organization equipped to provide medical services and which serves a needy or medically underserved population. The facility or organization shall not be one at which he is employed or which otherwise compensates him for his services. Dr. Balsam shall provide in advance a written proposal for his performance of this community service for written approval by the Director of the Office of Professional Medical Conduct or her designee. Community service performed prior to the effective date of this Order cannot be considered for compliance with the terms of this Paragraph.
9. All expenses, including but not limited to those of complying with these terms of probation and the Determination and Order, shall be the sole responsibility of the Respondent.
10. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the Order of the Board. A violation of any of these terms of probation shall be considered professional misconduct. On receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law §230(19) or any other applicable laws.