New York State Board for Professional Medical Conduct

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Barbara A. DeBuono, M.D., M.P.H.
Commissioner of Health

Charles J. Vacanti, M.D.
Chair

March 10, 1997

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mireya A. Francis-Carvajal, M.D.
REDACTED

RE: License No. 173702

Dear Dr. Francis-Carvajal:

Enclosed please find Order #BPMC 97-61 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect upon receipt of this letter or seven (7) days after the date of this letter, whichever is earlier.

Sincerely,

REDACTED
Charles Vacanti, M.D.
Chair
Board for Professional Medical Conduct

Enclosure
cc: Peter D. Van Buren, Esq.

STATE OF NEW YORK : DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

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IN THE MATTER	:	SURRENDER
OF	:	ORDER
MIREYA A. FRANCIS-CARVAJAL, M.D.	:	BPMC # 97-61

----------X

MIREYA A. FRANCIS-CARVAJAL, M.D., was licensed as a physician in the State of New York having been issued License No. 173702 by the New York State Education Department on or about March 29, 1987.

She is currently registered with the New York State Education Department to practice as a physician in the State of New York.

Dr. Francis-Carvajal is currently serving a five year term of probation as set forth in Administrative Review Board Decision and Order No. 95-217, annexed hereto, made a part hereof, and marked as Exhibit A.

On June 17, 1996, Dr. Francis-Carvajal forwarded her License Parchment and Registration Certificate to the Office of Professional Medical Conduct under a note which said: "Enclosed find medical license and registration which you may keep." This note was in response to communications from the Office of Professional Medical Conduct's Physician Monitoring staff seeking compliance with her probation under Decision and Order No. 95-

217. A copy of this note is attached hereto, made a part hereof and marked as Exhibit B.

The undersigned agree to treat the note (Exhibit B), the tendered License Parchment and the tendered Registration Certificate as a Surrender in lieu of compliance with the terms of probation set forth in Exhibit A.

AGREED TO:

Date: February 27, 1997

REDACTED

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

Date: March 3, 1997

REDACTED

ANNE F. SAILE
Director, Office
of Professional Medical Conduct

ORDER

Upon the note and tendered License Parchment and Registration Certificate of MIREYA A. FRANCIS-CARVAJAL, M.D., copies of which documents are made a part hereof, it is AGREED TO and

ORDERED, that the surrender is hereby adopted; it is further

ORDERED, that the name of Respondent be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that this Order shall take effect as of the date of the personal service of this Order upon Respondent, upon receipt by Respondent of this Order via certified mail, or seven days after mailing of this Order via certified mail, whichever is earliest.

DATED: 4 March 1997

REDACTED

CHARLES J. VACANTI, M.D.
Chairperson
State Board for Professional
Medical Conduct

EXHIBIT A

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

IN THE MATTER

OF

MIREYA ALTAGRACIA FRANCIS-CARVAJAL, M.D.

ADMINISTRATIVE REVIEW BOARD DECISION AND ORDER NUMBER ARB NO. 95-217

A quorum of the Administrative Review Board for Professional Medical Conduct [1](hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, EDWARD C. SINNOTT, M.D.**[2] and **WILLIAM A. STEWART, M.D.** held deliberations on December 1, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) September 12, 1995 Determination finding Dr. Mireya Altagracia Francis-Carvajal (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on September 29, 1995. James F. Horan served as Administrative Officer to the Review Board. Kimberly A. O'Brien, Esq. filed a brief for the Office of Professional Medical Conduct (Petitioner), which the Review Board received on October 31, 1995 and a reply brief, which the Review Board received on November 9, 1995. Louis M. Freeman, Esq. filed a brief for the Respondent, which the Review Board received on October 31, 1995.

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

[1]Dr. Winston Price was unable to participate in the deliberations.

[2]Dr. Sinnott participated in the deliberations by telephone.

- 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 Petitioner brought this case pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9)(a)(i), which provide an expedited hearing in cases in which professional misconduct charges against a Respondent 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 State. 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. In this case, the Petitioner alleged that the State of Florida had disciplined the Respondent for violations in prescribing controlled substances and alleged that the State of Ohio had denied the Respondent licensure, because the Respondent falsified her application.

The Hearing Committee in this case found that the Petitioner had met its burden of proof in establishing that the Respondent signed a Consent Order with the State Medical Board of Florida (Florida Board), which included Stipulated Facts charging that the Respondent failed to keep adequate records and prescribed legend drugs without professional justification. The Committee found that the Respondent consented to a Stipulated Disposition, which consisted of a Letter of Concern, a Two Thousand Five Hundred ($2,500.00) Dollar administrative fine and five hours continuing medical education. The Committee found that the Respondent's underlying conduct, if committed in New York, would consist of negligence on more than one occasion, incompetence on more than one occasion and failing to maintain an accurate record.

The Committee found further that the State Medical Board of Ohio (Ohio Board) found the Respondent guilty of fraud, misrepresentation or deception in applying for an Ohio license and for publishing a false, fraudulent, deceptive or misleading statement. The Ohio Board found that the Respondent denied that she had been notified of any investigation concerning her license, when in fact the Respondent had been notified of the investigation which led to the Consent Agreement, which the Respondent had already entered into with the Florida Board. The Respondent also stated she had taken FLEX examination six times, when in fact she had taken the exam twenty times. The Committee found that the conduct underlying the Ohio Board's findings would constitute fraud, moral unfitness and willfully making a false report.

The Hearing Committee stated that it was inconceivable that the Respondent did not knowingly lie on her Ohio application, but the Committee concluded that the Ohio application was an isolated incident. The Committee also stated that they found it possible to forgive, though not endorse, the Respondent's actions in Florida. The Committee concluded that there was no evidence that the Respondent is other than clinically capable and concluded that the Respondent serves a medical community in dire need of staff. The Committee determined that, although the Respondent is not an immediate threat to the community, that caution is warranted. The Committee voted to revoke the Respondent's license to practice in New York State, stayed the revocation, pending successful completion of not less than two years probation. The probation requires that the Respondent fulfill all requirements of probation in any other state, that the Respondent's records will be subject to random review, that the Respondent obtain a practice monitor, complete at least one course of continuing medical education in the area of risk management and practice in a supervised environment, with prior approval necessary from the Director of the Office of Professional Medical Conduct.

REQUESTS FOR REVIEW

RESPONDENT: The Respondent asks that the Review Board reverse the Hearing Committee's Determination and order a new hearing, because the Hearing Committee refused to consider mitigating factors in the Respondent's case and because the penalty is disproportionate to the Respondent's conduct. The Respondent notes that she represented herself at the hearing.

The Respondent contends that the conduct involved in the Florida disciplinary action had no bearing on the Respondent's abilities as a physician. The Respondent argues that the stayed revocation is an excessive penalty because there was no patient harm in this case. The Respondent also argues that the Committee did not consider in mitigation that the Respondent made inaccurate statements on her Ohio application because she was ashamed of her misconduct and wished to start fresh in Ohio, without the stigma of her past wrongdoing.

The Respondent contends that a stayed revocation is not a mild punishment, because the revocation will be reported to the National Data Bank and because the penalty will make it impossible for the Respondent to obtain employment.

PETITIONER: The Petitioner requests that the Hearing Committee deny the Respondent's request for a new hearing and deny the request to reduce the Hearing Committee's penalty

The Petitioner notes that the Respondent was advised to obtain counsel and was advised of the possible penalties that could result from the hearing, so that there is no reason to grant a new hearing. The Petitioner argues that there are no grounds to reduce the Hearing Committee's penalty, because the penalty is the appropriate minimum considering the Respondent's two separate and distinct acts of misconduct from two different states. The Petitioner contends that the conduct in Florida involved quality of care and that the Ohio conduct involved lack of character and moral unfitness. The Petitioner contends further that the Respondent's hearing testimony indicates that she continues to make excuses for her behavior and blames others. The Petitioner contends that reducing the Hearing Committee's penalty would serve only to encourage the Respondent to misinterpret the truth in the future. The Petitioner contends that a stiff penalty is warranted to protect the interests of the people of New York and in light of the lack of insight which the Respondent has exhibited

REVIEW BOARD DETERMINATION

The Review Board has considered the entire record below and the briefs which counsel have submitted.

First, the Review Board does not have the authority to order a new hearing for the Respondent. The Review Board's remand authority is limited to remanding a case to the original hearing committee. The Review Board finds no reason to remand this case. The Respondent had an opportunity to have counsel present at her hearing, and chose to proceed without counsel. The Respondent's choice to proceed without counsel does not entitle her to a further hearing now that she is unhappy with the Hearing Committee's Determination. Further, we disagree with the Respondent's contention that the Hearing Committee ignored mitigating factors in this case. It is clear from their Determination that the Committee considered mitigation when they chose to stay the revocation of the Respondent's license.

The Review Board votes 4-0 to sustain the Committee's Determination to revoke the Respondent's license to practice medicine in New York State. The Board votes 3-1 to sustain the Committee's determination to stay the revocation in lieu of a different penalty. The dissenting member feels that no stay is warranted due to the Respondent's false statements on her Ohio application.

Making false statements in obtaining licensure or employment is serious misconduct. State licensing authorities must protect the public and medical facilities must protect their patients by ensuring that applicants for licensure or for privileges are competent to practice medicine safely and effectively. Licensing authorities and medical facilities must rely on physicians' integrity to make that process work. Physicians who make false statements in applying for licenses or for privileges damage the quality assurance measures that are in place to protect the public and these physicians violate the public trust in the medical profession. Integrity is essential to medical practice. Dishonesty is not a form of misconduct which we can correct through retraining. Dishonesty in the practice of medicine warrants a severe sanction and justifies the revocation of a physician's license, Matter of Nguyen 212 AD2d 831, 622 NYS 2d 145 (Third Dept. 1995).

The majority of the Review Board agrees with the Hearing Committee that the mitigating factors present in this case would justify a stay of the revocation. The Committee believed that the application in Ohio was an isolated incident. The Respondent does provide care to an underserved population, and is apparently functioning well in the supervised setting in which she now works. The Respondent's original misconduct in Florida was not serious and did not involve fraud. The Review Board's majority feels, however, that the lesser sanction in lieu of revocation must still be severe enough to educate the Respondent and other physicians that dishonesty is unacceptable, regardless of how much shame a physician feels about the past misconduct which she is trying to conceal.

The Review Board, therefore, votes to modify the Hearing Committee's penalty. The revocation of the Respondent's license is stayed, but the Respondent's license is limited to the practice of psychiatry. In addition to that limitation, the Respondent shall be on probation for five years rather than the two which the Hearing Committee ordered. The terms of probation shall be the same as the terms which the Hearing Committee set our in their Determination, including work in a supervised setting and a practice monitor. The Respondent's supervisor at her place of employment can act as her practice monitor, if the supervisor is willing.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's September 12, 1995 Determination finding the Respondent guilty of professional misconduct.

2. The Review Board **SUSTAINS** the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State and by a vote of 3-1 **SUSTAINS** the Hearing Committee's Determination to stay the revocation.

3. The Review Board **LIMITS** the Respondent's license to the practice of psychiatry.

4. The Review Board **PLACES THE RESPONDENT** on five years probation, under the terms set out in the Order by the Hearing Committee.

ROBERT M. BRIBER

SUMNER SHAPIRO

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF MIREYA ALTAGRACIA FRANCIS-CARVAJAL, 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. Francis-Carvajal.

DATED: ~~Albany~~, **New York**

12/13, **1995**

REDACTED

ROBERT M. BRIBER

NEW YORK STATE DEPARTMENT OF HEALTH

IN THE MATTER OF MIREYA ALTAGRACIA FRANCIS-CARVAJAL, 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. Francis-Carvajal.

DATED: Delmar, New York

Dec 12, 1995

REDACTED

SUMNER SHAPIRO

NEW YORK STATE DEPARTMENT OF HEALTH

IN THE MATTER OF MIREYA ALTAGRACIA FRANCIS-CARVAJAL, 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. Francis-Carvajal.

DATED: Roslyn, New York

December 14, 1995

REDACTED

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF MIREYA ALTAGRACIA FRANCIS-CARVAJAL, M.D.

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board for Professional Medical Conduct, affirms that he took part in the deliberations in the case of Dr. Francis-Carvajal and that the attached Determination reflects the decision by the majority of the Review Board.

DATED: Syracuse, New York

11 Dec , **1995**

REDACTED

WILLIAM A. STEWART, M.D.