STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

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

Karen Schimke
Executive Deputy Commissioner

February 21, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kevin C. Roe, Esq.
NYS Dept. of Health
Rm. 2438 Corning Tower
New York, New York 10001

Leonard W. Krouner, Esq.
Two Greyledge Drive
Albany, New York 12211-2054

E. Stewart Jones, Esq.
28 Second Street
Troy, New York 12181

RE: In the Matter of Bernard Barry Greenhouse, M.D.

Dear Mr. Roe, Mr. Krouner and Mr. Jones :

EFFECTIVE DATE
MAY 17, 1996

Enclosed please find the Determination and Order (No. 95-278) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. The 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:

Enclosure

NEW YORK STATE DEPARTMENT OF HEALTH 19

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

IN THE MATTER

OF

BERNARD BARRY GREENHOUSE, M.D.

ADMINISTRATIVE REVIEW BOARD DECISION AND ORDER NUMBER ARB NO. 95-278

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.**[1] held deliberations on January 26, 1996 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) November 14, 1995 Determination finding Dr. Bernard Barry Greenhouse (Respondent) guilty of professional misconduct. The Office of Professional Medical Conduct (Petitioner) and the Respondent requested the review through Notices which the Board received on November 20, 1995 and November 27, 1995. James F. Horan served as Administrative Officer to the Review Board. Kevin C. Roe, Esq. filed a brief for the Petitioner, which the Review Board received on January 3, 1996. Leonard W. Krouner, Esq. filed a brief for the Respondent, which the Review Board received on January 2, 1996 and a reply brief which the Review Board received on January 12, 1996.

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:

[1]Sumner Shapiro was unavailable to participate in the deliberations. Dr. Stewart participated in the deliberations by telephone.

- 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 Petitioner charged the Respondent with practicing medicine with gross negligence, gross incompetence, negligence on more than one (1) occasion, and fraud in the practice of medicine. The charges arose from the Respondent's treatment for five (5) persons, Patients A through E. The Petitioner withdrew the charges concerning Patient E. The charges relating to Patients A through D involved treatment to the Patients by the Respondent for chronic pain.

The Hearing Committee did not sustain those specifications of Misconduct which charged gross incompetence, incompetence on more than one (1) occasion or fraud. The Committee did sustain charges that the Respondent practiced with gross negligence in treating Patients A, B and C, and negligence on more than one (1) occasion in treating Patients A through D.

As to the Determination of gross negligence in treating Patients A through C, the Committee found that the Respondent used phenol neurolysis in treating all three (3) patients, that all three (3) patients were relatively young and that all three were non-malignant patients. The Committee found that phenol neurolysis involves permanent destruction of sensory and autonomic nerve structures and that procedural risks include paralysis, paraplegia, quadriplegia, infections, hematoma and the creation of unintended sympathectomy to previously uninfected areas. The Committee found that epidural phenol neurolysis is indicated for the treatment of severe, chronic, malignant pain in patients with a short life expectancy in whom all other treatment modalities have been tried and failed. The

NEW YORK STATE DEPARTMENT OF HEALTH 19

Committee concluded that the multiple use of phenol neurolysis, with three (3) injections for Patient A and two (2) each for Patients B and C, did not meet basic requirements, and in each Patient, represented egregious conduct amounting to gross negligence. The Committee noted that the Respondent testified that he no longer does epidural phenol neurolysis and that it has fallen out of favor in pain management circles.

The Committee determined that the Respondent was guilty of negligence for ordering intravenous (IV) Buprenex for Patients A through D, without medical justification. The Committee concluded that the Respondent evidenced judgmental problems in using permanent catheters for the IV Buprenex injections outside a hospital setting. The Committee found that using IV Buprenex for chronic pain requires long term intravenous access, with its associated risks and morbidity. The Committee found that the catheter must be placed surgically, in an operating room, with its attendant risks, and that the IV route impacts on a patient's independence, mobility and autonomy, with more dependence on the medical system and likely psychological independence. The Committee found that the IV route is not indicated unless all oral opioids have been tried and failed, or oral medications can not be tolerated by the patient. The Committee found that Buprenex is a synthetic narcotic classified as an agonist/antagonist that is associated with a low incidence of physical dependence, but a known potential for psychological dependence. The Committee found that once a patient receives a certain dose of Buprenex, no further analgesia can be achieved, no matter how much of the drug is given. The Committee found that in each of the cases of Patients A-D, there was neither an adequate trial or a failure of all available oral medications, and no showing that the Patients were unable to tolerate oral medications.

The Committee also found that the Respondent was negligent in ordering or performing surgical epidural blocks for Patient C without medical justification. The Committee found that other, less invasive treatments had not been exhausted. The Committee found that the Respondent had performed two (2) cervical epidural blocks on Patient C in September, 1990, performed phenol neurolysis on Patient C in October, 1990, and between July 22, 1991 to January 25, 1993, ordered five (5) and performed four (4) cervical epidural blocks on Patient C. The Committee found that after phenol neurolysis in September and October, 1990, there was no rational or medical justification for

NEW YORK STATE DEPARTMENT OF HEALTH 19

further blocks, that all previous blocks had failed, and that after phenol neurolysis, there was nothing left to block.

The Committee also found that the Respondent was guilty of negligence for diagnosing Patient D as suffering from reflex symptomatic dystrophy (RSD) without medical justification and for failing to order a confirmatory or diagnostic workup for reflex sympathetic dystrophy. The Committee found none of the several other physicians who treated Patient D reported signs or symptoms of RSD and that the Respondent neither ordered nor carried out any of the ten (10) or more specific tests for RSD.

The Committee found that the Respondent's practice has generally been a dedicated one, that the Respondent admitted his mistakes willingly, that he testified candidly and that he had trained well and shared his knowledge. The Committee also found problems in several facets of the Respondent's practice. The Committee voted to suspend the Respondent's license, but provided that the suspension shall be stayed if the Respondent is granted admission to the remediation program for anesthesiologists of the New York State Society of Anesthesiologists. Following the retraining, the Committee ordered that the Respondent apply for admission to the Physician's Monitoring Program of the Office of Professional Medical Conduct, for a two (2) year period, with bimonthly reports to be submitted to the Office of Professional Medical Conduct by the approved monitor. The stay of the license suspension would remain in effect during the monitoring program and the suspension would terminate after successful completion of the monitoring program.

REQUESTS FOR REVIEW

PETITIONER: The Petitioner has asked the Review Board to modify the Committee's Determination to find the Respondent guilty on an additional count of negligence and argues that the Committee's penalty is inappropriate and not authorized.

NEW YORK STATE DEPARTMENT OF HEALTH 19

The Petitioner charged in Paragraph A.3 of the Statement of Charges[2], that the Respondent recommended and/or referred Patient A for a surgical sympathectomy without adequate medical justification. The Committee did not sustain that charge. The Petitioner argues that the Committee's Findings of Fact 24, which found that the Respondent recommended a surgical sympathectomy and referred Patient A to a surgeon, and the Committee's Finding 41, which found that the sympathectomy was not indicated, were consistent with sustaining the specification from Paragraph A.3. The Petitioner argues that the Petitioner's expert Dr. Jain testified that a reasonably prudent physician would not have recommended or referred the patient for the sympathectomy.

The Petitioner asks that the Review Board revoke the Respondent's license to practice medicine. The Petitioner argues that the record indicates that the Respondent is incapable of rehabilitation, that the Respondent's misconduct occurred over an extended period of time and that the Respondent's gross negligence resulted in severe injury to Patients A through C. The Petitioner also argues that the Hearing Committee's penalty was not appropriate because the Committee stayed the suspension wholly during retraining and because there is no Physician Monitoring Program operated by the Office of Professional Medical Conduct.

RESPONDENT: The Respondent's First Submission to the Review Board asked that the Board remand this matter to the Hearing Committee, because 1) the Hearing Committee's Penalty is not appropriate, because the Committee did not discuss evidence of mitigating factors in treating Patients A through D, which make the Penalty too severe; and, 2) the Committee's Order should be reconsidered because the Order fails to make required findings demonstrating that legal principles regarding negligence, evidence, burden of proof and conflicting medical evidence were recognized and applied to the facts in this case.

[2]DOH Ex. 1.

NEW YORK STATE DEPARTMENT OF HEALTH 19

The Respondent's reply to the Petitioner's brief asks the Review Board to correct the Hearing Committee's Determination that the Respondent was guilty of negligence on more than one occasion and gross negligence. The Respondent requests, that if the Board will not change the Committee's Determination, that the Board remand to the Hearing Committee to consider controlling negligence principles, the Petitioner's burden of proof, the evidence offered by the Respondent as medical justification for treating Patients A through D, the qualification of Petitioner's experts including their actual experience with the treatments they claim the Respondent was negligent in administering, and, factors in mitigation of the alleged misconduct, before determining whether the Respondent was guilty of negligence and what, if any, penalty is appropriate. The Respondent next asks, that if the Board denies the request for a remand, that the Board fashion an appropriate penalty based upon the limited nature of the Respondent's negligence and mitigating factors specified by the Respondent, which will allow the Respondent to treat patients, with a practice monitor if necessary, while undergoing such retraining as the Board may direct.

In reply to the Petitioner, the Respondent contends that the Hearing Committee's penalty is authorized by law and can be modified to satisfy the Petitioner's objections. The Respondent opposes the Petitioner's request that the Board find that the Respondent was negligent for recommending that Patient A consult a surgeon regarding a surgical sympathectomy. The Respondent argues that a penalty which prevents the Respondent from treating patients in not appropriate considering the limited findings of alleged negligence and the mitigating factors not mentioned in the Hearing Committee Report.

REVIEW BOARD DETERMINATION

The Review Board has considered the record below and the briefs which counsel have submitted. The Review Board votes 4-0 to sustain the Hearing Committee's Determination finding the Respondent guilty of gross negligence and negligence on more that none occasion. We modify the Determination to find that the Respondent is guilty on an additional count of negligence. The

NEW YORK STATE DEPARTMENT OF HEALTH 19

Review Board rejects the Respondent's request to remand this matter to the Hearing Committee. As to the Penalty, we vote to overrule the Hearing Committee's Penalty and we vote to limit the Respondent's license to prohibit him from continuing to practice Pain Management.

BURDEN AND STANDARDS: The Review Board rejects the Respondent's contention that the Hearing Committee did not discuss burden of proof, evidentiary standards or the standards which the Committee relied on in reaching their findings on negligence and gross negligence. The Committee's Determination at pages 4-6 discusses the definitions for gross negligence and negligence. The Committee cited to the evidence which they found convincing, they stated that all findings were by a preponderance of the evidence and they stated that the extent to which one witness's opinion was given more weight than another's was demonstrated by the Committee's reference to one person's testimony rather than another's. The Committee is not required to state at every individual finding that the finding was by a preponderance, or to state at every single finding what evidence the Committee rejected and why. Neither Public Health Law §230, not Part 51 of Volume 10 of the New York Codes, Rules and Regulations, require that the Committee make separate statements about the burden of proof and conflicting testimony for every finding. The Committee was quite clear in their findings and conclusions as to what they considered to be the accepted standards of medicine and how they felt the Respondent deviated from the standards. The Committee's findings were supported by testimony by the Petitioner's experts Dr. Richard P. Patt and Dr. Subhash Jain.

EXPERT TESTIMONY: The Respondent has challenged the Committee's reliance on the testimony by Drs. Jain and Patt for several reasons and has challenged the Committee's rejection of the testimony by the Respondent, testifying on his own behalf. The Board finds no merit in those challenges. The Committee as the finder of fact have the authority to weigh the testimony and decide which experts are credible. It is clear from the Committee findings exactly what testimony by Dr. Jain

NEW YORK STATE DEPARTMENT OF HEALTH 19

and Dr. Patt that the Committee relied on when they made their findings. There is no error because they find one party to be more credible or because they reject conflicting evidence, Matter of Minielly ,__AD2d__, 634 NYS 2d 856, 1995 N.Y. App. Div. LEXIS 12692 (Third Dept. 1995); Matter of Hachamovitch, 206 AD2d 637, 614 NYS2d 608, 1994 N.Y. App. Div. LEXIS 7373 (Third Dept. 1994).

The Respondent argued that the Committee can not base a finding of negligence merely on a disagreement among experts using different recognized approaches, that the Petitioner's experts were not specific about the treatment modalities they would have used in treating the patients, and that Drs. Jain and Dr. Patt have no first hand knowledge or practice experience in using the Respondent's treatment modalities. The Board finds no merit in these arguments. It is not necessary for the Petitioner's experts to use the same treatment modalities as the Respondent, in order for Drs. Patt and Jain to offer opinions as to whether the Respondent's care for these patient's met medically acceptable standards, Matter of Metzler, 203 AD2d 617, 610 NYS2d 334, 1994 N.Y. App. Div. LEXIS 3600 (Third Dept. 1994); Matter of Spartalis, 205 AD2d 940, 613 NYS2d 759, 1994 N.Y. App. Div. LEXIS 6524 (Third Dept. 1994). The curricula vitae (CV) for Dr. Patt and for Dr. Jain[3], indicate that they are both qualified as experts. Dr. Patt had formal training in Pain Medicine in 1985 to 1986 and received the American Board of Anesthesiology Certificate of Added Qualifications in Pain Management. Both the witnesses' CVs indicate that they have written extensively on Pain Management themselves. Both witnesses also began practicing medicine in New York prior to 1991. As to conflicting testimony, the Board notes that the Respondent introduced no independent expert testimony on his own behalf. As to the Respondent's own testimony, clearly the Respondent has an interest in the outcome of this proceeding and the Committee had the right to consider that interest as a bias, when the Committee considered the Respondent's testimony. The Committee's Summary of Conclusions, appearing at pages 56-58 of their report, does demonstrate clearly that the Committee did consider testimony by the Respondent, and that the Committee relied on that testimony as a mitigating factor in arriving at their penalty. Finally, the Review Board rejects the Respondent's

[3]In evidence as DOH Exs. 30 and 31, and included in the Documentary Attachments Respondent's Submission.

NEW YORK STATE DEPARTMENT OF HEALTH 19

contention that the conflicting expert testimony between the Petitioner's experts and the Respondent amounted to merely a disagreement about recognized medical approaches. The credible expert testimony indicated that the Respondent did not employ a recognized approach. Drs. Jain and Patt defined accepted standards for treating pain and the Respondent failed to follow those accepted standards.

Finally, the Respondent argued that Dr. Patt and Dr. Jain's opinions about administration of oral opioids violate the treatment standards that the Review Board established for addictive narcotics in Matter of Binenfeld (ARB No. 94-168). The Respondent fails to explain, however, what standard he imagines that the Board established in Binenfeld and how the Petitioner's experts' testimony violated those standards. Contrary to the Respondent's contention, the Binenfeld case established no rule or standard concerning the use of opioids or analgesics to manage chronic pain. In Binenfeld, the Review Board sustained a Hearing Committee's Determination that a physician was guilty of gross negligence and gross incompetence for repeatedly prescribing controlled substances without proper indication and without appropriate attention to the possibility of addictions. Specifically, Dr. Binenfeld had prescribed controlled substances in alarming amounts, had prescribed addictive substances to persons undergoing treatment for addiction and had prescribed and had treated one patient with medication in an inappropriate setting. The Hearing Committee in that case had characterized Dr. Binenfeld's practice as a clearinghouse for drugs. The Committee made their findings as to what constitued accepted medical practice based upon testimony by a Department of Health witness and rejected testimony by the Respondent, who claimed that he had prescribed substances properly for Pain Management.

DETERMINATION OF GUILT: The Review Board concludes that the Hearing Committee's Determination finding the Respondent guilty of gross negligence is consistent with the Committee's findings and conclusions that the Respondent administered or ordered epidural phenol without medical justification to Patients A-C. The Determination is also consistent with the Committee's conclusions that the Respondent's negligence in those cases represented egregious conduct. The Respondent even admitted at the hearing that he has discontinued performing epidural phenol

NEW YORK STATE DEPARTMENT OF HEALTH 19

neurolysis in favor of different and safer alternatives (Hearing Transcript p. 545). The Review Board sustains the Committee's Determination that the Respondent was guilty of negligence on more than one occasion, for treating Patients A through D with IV Buprenex without medical justification, for ordering cervical epidural blocks for Patient C, for diagnosing Patient F as suffering from RSD without adequate medical justification and for failing to order confirmatory or diagnostic workup for Patient D for RSD.

The Review Board overturns the Hearing Committee's Determination that the Respondent was not guilty of negligence for arranging, recommending, and/or ordering a bilateral surgical lumbar sympathectomy for Patient A. The Committee found at Finding of Fact 24, that the Respondent recommended a surgical sympathectomy and referred Patient A to a surgeon. The Committee's Finding of Fact 41, found that such surgery was not medically indicated. The Committee based that finding on testimony by Dr. Jain (Tr. pp. 125-128; 165-166), in which he stated that a reasonably prudent physician would not have recommended Patient A for the surgical sympathectomy, because a recommendation for surgical sympathectomy requires good documentation that cervical sympathetic blocks have been effective. Dr. Jain testified that the blocks attempted for Patient A had been unsuccessful. The Board finds that the evidence at the hearing proved that the Respondent recommended Patient A for the procedure and that the recommendation was not medically indicated. This proof, therefore, supported the charge that the Respondent's recommendation for the surgical sympathectomy constituted negligence.

MITIGATION: The Review Board rejects the Respondent's request that we remand to the Hearing Committee on the grounds that the Hearing Committee did not properly consider mitigating factors in making their Determination on the negligence counts and on the Penalty. The Hearing Committee's Determination, beginning at page 56, discussed several mitigating factors, such as: the Respondent's dedication, his training, his professional activities, and his willingness to admit mistakes (such as abandoning epidural phenol neurolysis). The Board believes that the Committee's findings and conclusions, that the Respondent committed repeated and egregious acts of negligence on several patients, which resulted in significant harm to some patients, would warrant the revocation of a the

NEW YORK STATE DEPARTMENT OF HEALTH 19

Respondent's license, unless the Committee could find that the Respondent could correct his dangerous practice pattern through retraining or other remediation, or unless the Committee could fashion some means to limit the Respondent's practice to guarantee that the Respondent no longer posed a threat to the public. The fact that the Committee imposed a penalty less severe than revocation in this case demonstrates that the Committee did consider and rely upon mitigating factors in this case.

The Respondent argued that there are factors other than professional standing and willingness to admit mistakes, which should be considered before the Committee made a determination on the negligence charges or the Penalty. The Review Board disagrees. The Review Board rejects the Respondent's contention that physicians dealing with the new field of Pain Management are entitled to greater discretion in making treatment decisions. The Review Board finds that there should be no different or less strenuous standard in judging negligence for physicians practicing Pain Management. We also reject the Respondent's contentions that he practiced in good faith, with patient consent, using a competently administered recognized approach. Good faith treatment is not a mitigating factor, because neither bad faith nor intent are elements in negligence or gross negligence, and because the fraud charge in this case was dismissed. Also, a patient's consent or even insistence upon a certain treatment does not relieve a physician from the obligation of treating the patient with the usual standard of care, Matter of Metzler, supra; Matter of Van Gaasbeek , 198 AD2d 572, 603 NYS 2d 223, 1993 N.Y. App. Div. LEXIS 10320 (Third Dept. 1993). As to a competently administered, recognized approach, the Review Board has already indicated that we found the Respondent's treatment for the patients in this case did not meet medically accepted standards. Finally, the Review Board rejects the Respondent's contention that the Respondent properly considered the individual circumstances for each Patient A-D. The Board finds there was a pattern in all four cases in which the Respondent proceeded without adequate trial of other treatments, despite contraindications, and, in some instances, against recommendations by other physicians.

NEW YORK STATE DEPARTMENT OF HEALTH 19

PENALTY: After much discussion, the Review Board has come to agree with the Hearing Committee's Determination that the factors in this case indicate that we can protect the public health without revoking the Respondent's license to practice medicine in New York State. We disagree with the Committee, however, on the nature of the penalty which is necessary to protect the public in this case. The Review Board votes 4-0 to overrule the Hearing Committee's Penalty. The Board votes 4-0 to limit the Respondent's license to the practice of anesthesiology, for surgery procedures, exclusive of Pain Management. The Respondent is limited to practicing anesthesiology in an Operating or Recovery Setting, meaning pre-operative, operative or post-operative care, which would include care in an Emergency Room, Intensive Care Unit or Recovery Room. As part of this limitation, the Respondent must advise his supervisor in any operative setting at which he might work, as to the reasons for the stricture on his license.

The Board is not rejecting the Committee's Penalty because we agree with the Petitioner's arguments about the Penalty's legality. Either a Hearing Committee or the Review Board may stay any penalty in full, including a penalty ordering the Respondent to undergo retraining. A suspension may also be stayed during retraining, to the extent necessary for retraining, but the section allowing a stay to the extent necessary for retraining (Public Health Law §230-a), does not limit the Committee's or the Board's authority to impose another form of stayed suspension when retraining is involved. Further, the Review Board and Hearing Committees have previously referred physicians for retraining under the auspices of the New York State Society of Anesthesiologists. Finally, a Committee's desire to have a Respondent monitored for two (2) years following retraining can be accomplished by imposing monitoring as a condition of probation.

The Review Board overrules the Hearing Committee's penalty because we do not believe the Respondent's deficiencies can be corrected through retraining. The Committee did not sustain any specifications of Incompetence against the Respondent. The Committee concluded also that the Respondent was well trained. The Committee ascribed the Respondent's negligence to judgmental problems. The Review Board has stated previously that retraining can not correct problems with a physician's judgment. The Committee in this case found that the Respondent had proceeded with treatment against the recommendations of other physicians and that he proceeded to perform blocks

NEW YORK STATE DEPARTMENT OF HEALTH 19

when nothing further was to be blocked. The Committee also found that the Respondent's poor judgement in treating Patient B led to severe and permanent harm to that Patient. The Review Board finds that the Respondent's repeated pattern of negligent and grossly negligent care in Pain Management presents on ongoing danger to the Respondent's patients. The Board finds that the one sure way to protect the public from such substandard care is to limit the Respondent's license, so that he can no longer practice Pain Management.

The Board voted to limit rather than revoke the Respondent's license because the Respondent is Board Certified in Anesthesiology and because there were no patient cases in this proceeding involving the Respondent's care for patients as an Anesthesiologist in a surgical setting. In limiting a license, the Board must be sure that the Respondent's deficiencies in one area do not implicate his general competence to practice medicine, Matter of Colvin,____AD2d____,625 NYS2d 351, 1995 N.Y. App. Div. 4402 (Third Dept. 1995), and must be sure that the Respondent is capable to practice in an area other than that in which he is now limited. The Board finds that the Respondent's deficiencies appear limited to the field of Pain Management and do not implicate his competence to practice in other areas of Anesthesiology. The Board finds that the Respondent's Board Certification in Anesthesiology indicates that the Respondent is qualified to practice that specialty in the surgical setting. The Board also finds that limiting the Respondent to practice as an Anesthesiologist in a surgical setting will guarantee some supervision and/or observation. This may prevent any recurrence in the Respondent's judgmental problems. The Board feels that our requirement that the Respondent inform the surgical setting as to the reason for the strictures on his license will assure that the Respondent's supervisors will maintain an adequate level of supervision and/or observation over the Respondent's work.

NEW YORK STATE DEPARTMENT OF HEALTH 19

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee on Professional Medical Conduct's November 14, 1995 Determination finding the Respondent guilty of practicing medicine with gross negligence and negligence on more than one (1) occasion, except that,

2. The Review Board **MODIFIES** the Committee's Determination to find the Respondent guilty for a further instance of negligence, as we explain in our Determination.

3. The Review Board **OVERRULES** the Hearing Committee's Penalty in this case.

4. The Review Board votes 4-0 to **LIMIT** the Respondent's license to prohibit him from practicing pain management and the Board votes 4-0 to **LIMIT** the Respondent's license to the practice of anesthesiology for surgical procedures, which means pre-operative, operative or post-operative care, which would include care in the Emergency Room, Intensive Care Unit or Recovery Room.

ROBERT M. BRIBER
WINSTON S. PRICE, M.D.
EDWARD SINNOTT, M.D.
WILLIAM A. STEWART, M.D.

NEW YORK STATE DEPARTMENT OF HEALTH 19

IN THE MATTER OF BERNARD BARRY GREENHOUSE, 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. Greenhouse.

DATED: Albany, New York

2/14 , **1996**

ROBERT M. BRIBER

NEW YORK STATE DEPARTMENT OF HEALTH 19

IN THE MATTER OF BERNARD BARRY GREENHOUSE, 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. Greenhouse.

DATED: Brooklyn, New York

2/16/, **1996**

WINSTON S. PRICE, M.D.

NEW YORK STATE DEPARTMENT OF HEALTH 19

IN THE MATTER OF BERNARD BARRY GREENHOUSE, 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. Greenhouse.

DATED: Roslyn, New York
Feb. 14, 1996

EDWARD C. SINNOTT, M.D.

NEW YORK STATE DEPARTMENT OF HEALTH 19

IN THE MATTER OF BERNARD BARRY GREENHOUSE, 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. Greenhouse.

DATED: Syracuse, New York
14 Feb, **1996**

William A. Stewart

WILLIAM A. STEWART, M.D.

NEW YORK STATE DEPARTMENT OF HEALTH 19