



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

January 30, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kevin A. Brousell, Esq.
26 Broadway, 21st Floor
New York, New York 10004

Daniel Guenzburger, Esq.
NYS Dept. of Health
5 Penn Plaza-Sixth Floor
New York, New York 12237

RECEIVED
JAN 31 1995
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

RE: In the Matter of Armand DiNolfi, M.D.

Effective Date: 2/06/95

Dear Mr. Brousell and Mr. Guenzburger:

Enclosed please find the Determination and Order (No. 94-165) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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" followed by a stylized flourish.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:

Enclosure

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

IN THE MATTER

OF

ARMAND DINOLFI, M.D.

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
BPMC 94-165**

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.¹** and **WILLIAM A. STEWART, M.D.** held deliberations on November 18, 1994 to Review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) September 6, 1994 Determination finding Dr. Armand DiNolfi (Respondent) guilty of professional misconduct. The Office of Professional Medical Conduct (Petitioner) requested the review through a Notice which the Review Board received on September 29, 1994. James F. Horan served as Administrative Officer for the Review Board. Daniel J. Guenzburger submitted a brief on the Petitioner's behalf on October 27, 1994, and a reply brief on November 14, 1994. Kevin P. Brousell, Esq. submitted a brief for the Respondent on October 31, 1994, and a reply brief on November 10, 1994.

¹Dr. Sinnott participated in the deliberations by conference call.

SCOPE OF REVIEW

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL §230-a.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

HEARING COMMITTEE DETERMINATION

The Petitioner charged that the Respondent, who concentrates his practice in the area of weight loss and nutritional medicine, practiced with negligence on more than one occasion, gross negligence on a particular occasion, incompetence on more than one occasion and gross incompetence on a particular occasion, failure to maintain adequate records and violation of the statute and regulations concerning the maintenance of an inventory for controlled substances. The charges involve the Respondent's treatment of nine persons, whom the record identifies by the initials B through J.

The Hearing Committee found the Respondent guilty of negligence on more than one occasion, incompetence on more than one occasion, failing to maintain adequate records and failing to comply with state law and regulation governing the practice of medicine.

On the specification that the Respondent had failed to comply with state law and regulation, the Committee found that the Respondent had failed to comply with the provisions of Public Health

Law Article 33 and Title 10 NYCRR Part 80 pertaining to reports on the purchase and dispensing of controlled substances. The Committee found that the Respondent had purchased 465,000 tablets of appetite suppressant medication, including medications classified as controlled substances, and that the Respondent failed to keep an accurate inventory of the controlled substances as required.

The Committee found that the Respondent was guilty of negligence on more than one occasion and incompetence on more than one occasion for inappropriately prescribing and dispensing appetite suppressants to Patients B through J. The Committee found that the Respondent had failed to elicit an adequate history and examination from any of the patients prior to prescribing the appetite suppressants and had failed to order an appropriate regimen of diet and exercise prior to prescribing and dispensing appetite suppressants.

The Committee found that the dispensing and prescribing of the suppressants was especially inappropriate for Patients C,D,E,F,and G because the Patients had indicated past experience with narcotics. The Committee found that appetite suppressants have significant addiction potential. The Committee found that the dispensing was especially inappropriate again in the cases of Patients D and E, because both Patients' weight was less than twenty percent over their ideal weight. The Committee found that this meant these Patients did not have a serious weight problem (Finding of Fact 9, page 5). The Committee found further that no legitimate medical authority supports prescribing these appetite suppressants to Patients who are not truly obese. The Committee also found that Patient B was less than twenty percent above ideal body weight.

The Committee found that the dispensing and prescribing were especially inappropriate in the cases of Patients I and J, because the Respondent did not adequately evaluate those patients' cardiac condition. The Committee found that the Respondent was further negligent and incompetent for inappropriately prescribing diuretics for Patients E and I.

The Committee found the Respondent failed to maintain adequate records for all the Patients B through J. The Committee's Decision noted that the Respondent had testified that he had lost data from the files for Patients B through J, when he experienced problems with retrieving data from his computer. The Committee concluded that the Respondent's testimony about the lost records was not

credible (Hearing Committee Determination, Conclusions, Page 27). The Committee also found that the Respondent was not credible in certain testimony concerning Patient H (Hearing Committee Determination, Finding of Fact #4, page 20). The Committee also stated that, since the Respondent restricted his practice to bariatric medicine, that the Committee had expected the Respondent to have more knowledge in that area than he demonstrated.

The Hearing Committee voted to suspend the Respondent's license for three years, and voted further to stay the suspension and placed the Respondent on probation. The probation requires that the Respondent complete the Phase I Evaluation of the Physician Prescribed Education Program (PPEP) of the Department of Family Medicine, SUNY Health Center and St. Joseph's Hospital and Health Center, Syracuse. The Committee ordered that if the Evaluation indicated that the Respondent was a candidate for retraining, that the Respondent should complete a program of retraining. The Committee ordered further, that the Respondent's practice would be monitored for three years following the successful completion of retraining. The Committee provided that if the PPEP Evaluation indicated that the Respondent is not a candidate for retraining, the Respondent shall be referred back to the Committee for reconsideration of the penalty.

REQUESTS FOR REVIEW

The Petitioner has requested that the Review Board modify the Hearing Committee's Determination and find that the Respondent was guilty of gross negligence and gross incompetence in the treatment of Patient I. The Petitioner requests further that the Review Board overrule the Hearing Committee's Penalty and revoke the Respondent's license to practice medicine in New York State. The Petitioner contends that the retraining, which the Hearing Committee ordered, will not be sufficient to correct the deficiencies in the Respondent's practice.

The Respondent opposes any increase in the penalty and asks that the Review Board modify the Hearing Committee's Penalty to remove the requirement for evaluation and retraining. The Respondent contends that the only problems in the Respondent's practice concerned record keeping and that record keeping problems could be addressed through monitoring and probation.

The Respondent contests the Hearing Committee's findings that led to the Committee's Determination that the Respondent was guilty of negligence and incompetence on more than one occasion. The Respondent asserts that no patients testified against the Respondent, that the testimony by the Petitioner's medical expert was flawed and disregarded and that the Committee made Findings of Fact that the Respondent had lost medical records. The Respondent argues that the Committee could not find the Respondent guilty for negligence or incompetence based on findings that the Respondent failed to document information, when medical records were incomplete due to lost records.

The Respondent's brief attaches affidavits from three patients involved in the case. The Respondent alleges that one of the affidavits was not before the Hearing Committee for consideration at the Committee's deliberation and that this was improper. The Respondent asks that the Review Board recognize the error and consider all the affidavits as a matter of fact for the truth of their contents.

REVIEW BOARD DETERMINATION

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

The Review Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty of negligence on more than one occasion, incompetence on more than one occasion, failure to maintain adequate records and failure to comply with state law and regulation. The Determination is consistent with the Committee's findings concerning the Respondent's inappropriate prescribing and dispensing of appetite suppressing controlled substances to the nine

patients involved in this case, the Respondent's failure to maintain an inventory for controlled substances and the Respondent's failure to document his treatment of the patients. The Review Board also sustains the Committee's Determination that the Respondent was not guilty of gross negligence or gross incompetence.

The Review Board does amend the Committee's Determination at Conclusion G 3 on page 19, to correct an error. The reference in the last full line of the paragraph should be to Patient G not Patient D.

The Review Board finds no merit in the Respondent's contentions concerning the Petitioner's expert witness, the patient affidavits and the Respondent's story about lost records. The Committee as the fact finder is the proper party to judge the weight to assign to evidence, the credibility of witnesses and the level of experience and knowledge of expert witnesses. The Committee apparently found little of value in the patient affidavits, accepted the testimony of the Petitioner's expert witness and found the Respondent to be lacking in credibility and in expertise.

These findings were within the scope of the Committee's role as the fact finder and the Review Board sees no reason to upset those findings.

The Review Board votes unanimously to overrule the Hearing Committee's Determination to refer Respondent for evaluation and possible retraining, followed by probation. The Review Board finds that the penalty is not appropriate to protect the public and is inconsistent with the Committee's findings concerning the Respondent's inappropriate prescribing and dispensing of controlled substances. The Review Board votes unanimously to revoke the Respondent's license to practice medicine in New York State.

The Hearing Committee found that the Respondent prescribed appetite suppressing controlled substances inappropriately in all nine patient cases which the Committee reviewed. The Committee found that the Respondent had prescribed the substances without first placing the patient on a regimen of diet and exercise. The Committee found that the Respondent prescribed and dispensed the appetite suppressants without properly exploring contraindications such as past involvement with narcotics by some patients and cardiac conditions in some other patients. The Committee found in some instances that the Respondent prescribed and dispensed the appetite suppressants to patients who did

not have serious weight problems. These findings demonstrate a pattern of substandard practice which poses a danger to the Respondent's patients. The Committee's findings demonstrate that the Respondent's practice was dedicated not to treating obesity, but rather to dispensing medication, regardless of whether the patient needed the medication, regardless of the medication's addiction potential, regardless of any contraindications and regardless of whether there was an alternative treatment regimen.

The Review Board finds that the Hearing Committee's Penalty is inappropriate because the Penalty would not be sufficient to correct the deficiencies in the Respondent's practice. There are no findings or conclusions by the Committee and no evidence from the record that the Respondent is a candidate for retraining. Nothing in the record demonstrates that the Respondent has any motivation to change his prescribing and dispensing pattern of practice and nothing in the record demonstrates that the Respondent has any insight into the danger which his repeated and careless treatment poses to his patients. Further, the Board does not believe that retraining will correct the deficiencies in the Respondent's practice. The Respondent has restricted himself to bariatric medicine for twenty-five years and yet still fails to follow medically acceptable standards for employing appetite suppressants and for prescribing and dispensing controlled substances. The Review Board does not believe that the Respondent's careless pattern of self-dispensing controlled substances is due to a lack of training. The Review Board concludes that the only Penalty appropriate to protect the public in this case is to revoke Dr. DiNolfi's license to practice medicine in New York State.

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 September 6, 1994 Determination finding Dr. Armand DiNolfi guilty of professional misconduct.

2. The Review Board **overrules** the Hearing Committee's penalty.

3. The review Board **votes unanimously to revoke** 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.

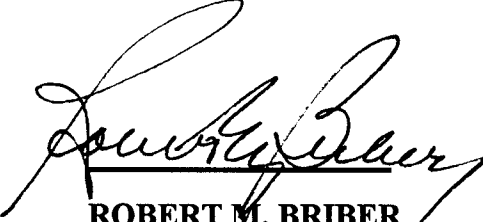
WILLIAM B. STEWART, M.D.

IN THE MATTER OF ARMAND DiNOLFI, 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. DiNolfi.

DATED: Albany, New York

12/29, 1994



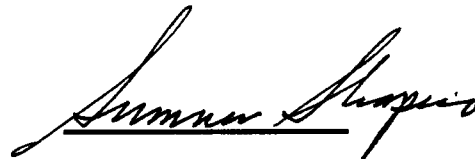
ROBERT M. BRIBER

IN THE MATTER OF ARMAND DiNOLFI, 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. DiNolfi.

DATED: Delmar, New York

Dec 28, 1994

A handwritten signature in cursive script that reads "Sumner Shapiro". The signature is written in black ink and is positioned above a horizontal line.

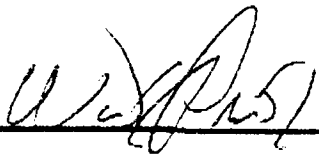
SUMNER SHAPIRO

IN THE MATTER OF ARMAND DiNOLFI, 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. DiNolfi.

DATED: Brooklyn, New York

_____, 1994



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

WINSTON S. PRICE, M.D.

IN THE MATTER OF ARMAND DiNOLFI, 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. DiNolfi.

DATED: Roslyn, New York

Dec 23, 1994

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

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF ARMAND DiNOLFI, 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. DiNolfi.

DATED: Syracuse, New York

27 Dec, 1994

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in black ink and is positioned above a horizontal line.

WILLIAM A. STEWART, M.D.