



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

December 14, 1994

OFFICE OF PUBLIC HEALTH
Lloyd F. Novick, M.D., M.P.H.
Director
Diana Jones Ritter
Executive Deputy Director

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Frederick Zimmer, Esq.
NYS Dept. of Health
Rm. 2438 Corning Tower
Empire State Plaza
Albany, New York 12237

Michael Sussman, Esq.
Scott Thornton, Esq.
Flat Iron Building
25 Main Street
Goshen, New York 10924

RECEIVED
DEC 15 1994
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

Robert Binenfeld, M.D.
4 Woodland Road
Monroe, New York 10950-4408

Effective date: 12/21/94

RE: In the Matter of Robert Binenfeld, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 94-168) 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.

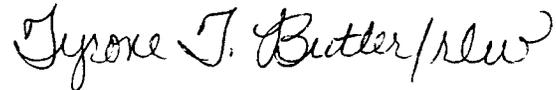
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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 cursive script that reads "Tyrone T. Butler" followed by a 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
ROBERT BINENFELD, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 94-168**

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.** and **WILLIAM A. STEWART, M.D.** held deliberations on Saturday, November 5, 1994 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) August 31, 1994 Determination finding Dr. Robert Binenfeld (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on September 16, 1994. James F. Horan served as Administrative Officer to the Review Board. Michael H. Sussman, Esq. filed a brief for the Respondent, which the Review Board received on October 20, 1994. Frederick Zimmer, Esq. filed a reply brief for the Office of Professional Medical Conduct (Petitioner), which the Review Board received on October 27, 1994.

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 the Respondent with practicing medicine with gross negligence, negligence on more than one occasion, gross incompetence, incompetence on more than one occasion, violating a term of probation and failing to maintain appropriate patient records. The charges arose from the Respondent's treatment of nine patients, whom the record refer to by the initials A through I.

The Committee found the Respondent guilty of failing to maintain appropriate records, gross negligence, gross incompetence, incompetence on more than one occasion, negligence on more than one occasion and violation of probation in the Respondent's treatment of Patient's A,B,D,G,H and I.

On the violation of probation charge, the Committee found that the Respondent signed an Application for Consent Order in May, 1988 admitting nine specifications of professional misconduct. As a result of an October, 1988 Consent Order signed by the Commissioner of Education, the Respondent was placed on probation for two and one-half years. The probation terms included a requirement that the Respondent comply with the professional standards of conduct imposed by law and his profession. The Committee found that the Respondent's misconduct involving his treatment of Patients A,B,D,G,H and I constituted a separate violation of probation.

On the negligence and incompetence charges, the Committee found that the Respondent had failed to obtain adequate initial histories and physical examinations for any of the Patients A,B,D,G,H and I. The Committee also found repeated instances in which the Respondent prescribed medication inappropriately for all the six patients and prescribed controlled substances inappropriately or without proper justification for Patients A,B,D,G and H.

In the case of Patient A, the Committee found that the Respondent repeatedly prescribed Vicodin, Vicodin ES, Valium, Talwin and Xanax to the Patient. The Committee found that the repeated prescribing in this case was inappropriate. The Committee found that, although

continuous prescribing of controlled substances for chronic pain was not in and of itself inappropriate, the Respondent performed no diagnostic studies to ascertain the reason for the pain and was unable to objectively assess the patient's progress or lack of progress. The Committee found that simply treating a patient with analgesics, as the Respondent did with Patient A, was not in the Patient's best interest because the cause of pain was never investigated. The Committee also found that the Respondent did not show appropriate attention to the possibility of addiction or dependence.

As to Patient B, the Committee found that the Respondent had inappropriately prescribed controlled substances and administered intra-muscular injections to the Patient for pain, failed to refer the Patient to a pain clinic and continued to prescribe controlled substances to a patient he knew was participating in a Methadone program. The Committee found that, as in the case of Patient A, the Respondent prescribed controlled substances for pain over a long period of time without doing a diagnostic workup to ascertain the cause of the pain. The Committee found that the pattern of practice, prescribing potent analgesics without making a substantial effort to ascertain the cause of pain, is outside the bounds of the accepted standards of medicine. The Committee found that the Respondent deviated from the accepted standards further in this case because the Respondent knew that Patient B was a narcotics addict receiving treatment for addiction. The Committee found that treating an addict with addictive substances was contradictory treatment that negated the addiction control treatments. The Committee also found a further glaring deviation in the Respondent's repeated injections of Demerol to Patient B. The Committee found that Demerol is extremely addictive, especially when injected intra-muscularly, and that the dose, 100-150 mg., was too large to be given on an out-patient basis. The Committee found further that there was no basis to indicate that Demerol was even warranted in this case.

As to Patient D, the Committee found that the Respondent failed to have adequate medical testing done for the Patient, who was on anti-hypertensive medication and that the Respondent repeatedly and/or inappropriately prescribed controlled substances for the Patient. The Committee found again that the Respondent had prescribed potent controlled substances for headaches over a long period of time without attempting to ascertain the cause of pain and had

prescribed Demerol, without proper indication, and in an out-patient setting. The Committee also found that the Respondent had prescribed anoretics inappropriately to the Patient. The Committee found this to be a violation of the standards of medicine, for a Patient with a history of headaches, because anoretics can effectuate headaches.

In the case of Patient G, the Committee again found that the Respondent had provided the Patient with analgesics in the absence of any effort to ascertain the cause of pain. The Committee found further that the Respondent prescribed anxiety medication for the patient without any justification in the Patient's record.

In the case of Patient H, the Committee found that the Respondent inappropriately prescribed Valium and Xanax, without meaningful justification. Respondent acknowledged that by some definitions, Patient H was an addict.

In the case of Patient I, the Committee found that the Respondent had prescribed Amoxicillin to the Patient. The Respondent admitted that the prescription was not medically appropriate because Patient I was allergic to Penicillin.

The Hearing Committee voted to revoke the Respondent's license to practice medicine in New York State. The Committee noted that they had found the Respondent guilty of six acts of gross negligence and six acts of gross incompetence. The Committee concluded that the Respondent was devoid of skill, knowledge and judgement. The Committee determined that the Respondent shows no awareness of his gross departures from accepted standards and actually considers his practice to be mainstream. The Committee determined that the Respondent would continue to practice in the same manner unless he is stopped. The Committee described the case as particularly troubling because the Respondent's ignorance about accepted standards is contributing to our society's ongoing drug problems and the Committee described the Respondent as little more than a clearinghouse for the wants of known addicts.

REQUESTS FOR REVIEW

The Respondent asks the Review Board to overturn the Hearing Committee's Determination to revoke the Respondent's license. The Respondent concedes that there were

problems with his records and asks that the Review Board to impose a penalty commensurate with that violation only. The Respondent challenges the Hearing Committee's Determination on every other charge.

First, the Respondent challenges the definition of negligence which the Administrative Officer used in instructing the panel. The Respondent argues that it was incorrect to advise the Committee that harm never need be shown to establish negligence. The Respondent proposes that the central test should relate to efficacy: whether the physician dealt with the patient's complaints and assisted in ameliorating the complaint, or conversely, whether the care will assuredly lead to injury, even if no injury has been established. The Respondent also challenged the Committee's Introductory Findings 4, 5 and 8 as being irrelevant and demonstrating bias and challenged Findings as to Probation 1 through 4 as irrelevant.

The Respondent's brief, in detail, challenged each charge and specification which the Committee sustained, relying heavily on the Respondent's testimony from the hearing to dispute the Hearing Committee's Findings.

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 failure to maintain adequate records, violation of probation, gross negligence, gross incompetence, negligence on more than one occasion and incompetence on more than one occasion. The Determination is consistent with the Committee's Findings and Conclusions.

The Respondent did not dispute the Findings that he did not maintain adequate records.

As to the violation of probation, we agree with the Committee that, under the conditions of the Respondent's 1988 probation, any finding of misconduct during that period would

constitute a violation of probation.

The Committee's Findings and Conclusions concerning the Respondent's care for Patients A,B,D,G,H and I are consistent with the Determination that the Respondent was guilty of egregious deviations from the standards of the medical profession as to both the Respondent's level of care and diligence and his level of knowledge and expertise. The Respondent demonstrated patterns of dangerous and substandard care in the cases of all six patients in both his failure to obtain adequate examinations and histories and in his prescribing of medications. In the care of Patients A,B,D,G and H, the Respondent repeatedly prescribed controlled substances without proper indication and without appropriate attention to the possibility of addiction. In the cases of Patients A and B, the Respondent prescribed controlled substances in alarming amounts. In the cases of Patients B and D, the Respondent prescribed Demerol in an out-patient setting and without proper or documented indication. In the case of Patient B, the Respondent prescribed addictive substances to a person whom the Respondent knew to be undergoing treatment for addiction.

The Review Board finds that the Respondent's challenge to the Committee's Determination on the negligence and incompetence charges is an attempt to relitigate the case. The Hearing Committee heard the Respondent's testimony in which he stated that he had 1.) performed adequate examinations on all the patients but had failed to record them, and 2.) prescribed the controlled substances properly for pain management. The Hearing Committee as finder of fact rejected the Respondent's explanations and instead relied upon the expert testimony by the Petitioner's expert Dr. Mesches. The finder of fact is the proper party to assess the credibility and expertise of witnesses and the Review Board sees no reason to overturn the Hearing Committee's judgement on those issues in this case.

The Review Board finds no merit in the Respondent's argument that the Hearing Committee applied an improper standard in determining whether conduct was negligence. Proof of harm is not necessary to prove negligence. Proof that a physician failed to exercise the care that a reasonably prudent physician would exercise under the circumstances is sufficient to sustain a finding of negligence in a medical disciplinary proceeding **Matter of Bogdan v. New York State Board for Professional Medical Conduct**, 195 A.D.2d 86, 606 N.Y.S.2d 381 (Third Dept. 1993).

Further, the Review Board finds nothing in the record to indicate that any bias by the Hearing Committee against the Respondent.

The Review Board sustains the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State. The Determination is consistent with the Committee's findings concerning the Respondent's repeated and egregious acts of negligence and incompetence and is appropriate in view of the danger that the Respondent poses to his patients, due to his pattern of prescribing controlled substances. The Review Board agrees with the Hearing Committee that the Respondent will continue to practice in this manner unless he is stopped.

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 August 31, 1994 Determination finding Dr. Robert Binenfeld guilty of professional misconduct.

2. The Review Board **sustains** the Respondent's Determination to revoke Dr. Binenfeld's license to practice medicine in New York State.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

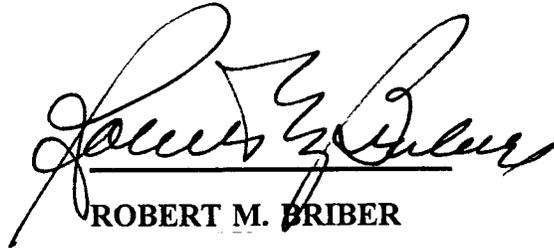
WILLIAM A. STEWART, M.D.

IN THE MATTER OF ROBERT BINENFELD, 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. Binenfeld.

DATED: Albany, New York

12/9, 1994



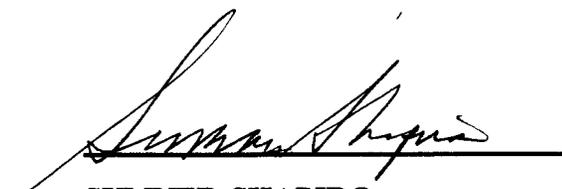
ROBERT M. BRIBER

IN THE MATTER OF ROBERT BINENFELD, 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. Binenfeld.

DATED: Delmar, New York

Nov. 30, 1994


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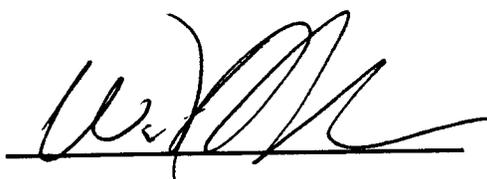
SUMNER SHAPIRO

IN THE MATTER OF ROBERT BINENFELD, 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. Binenfeld.

DATED: Brooklyn, New York

_____, 1994



WINSTON S. PRICE, M.D.

IN THE MATTER OF ROBERT BINENFELD, 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. Binenfeld.

DATED: Roslyn, New York

March 30, 1994

A handwritten signature in black ink, appearing to read "Ed C. Sinnott", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF ROBERT BINENFELD, 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. Binenfeld.

DATED: Syracuse, New York

1 Dec , 1994

William A Stewart

WILLIAM A. STEWART, M.D.