



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

April 17, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
& Paul Robert Maher, Esq.
NYS Department of Health
Hedley Building - 4th Floor
Troy, New York 12180

FRANK Fang Shuh Horng, M.D.
Route 4, Old Farms Subdivision
Luray, Virginia 22835

FRANK Fang Shuh Horng, M.D.
218 Page Street
Luray, Virginia 22835

Robert P. Roche, Esq.
36 South Pearl Street
Albany, New York 12207

FRANK FANG SHUH HORNG
RE: In the Matter of ~~Fang Shu Horng~~, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-362) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah

Enclosure

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

In the Matter of

FRANK FANG SHUH HOENG
~~Fang Shu Horng~~, M.D. (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 00-362

A proceeding to review a Determination by a
Committee (Committee) from the Board for
Professional Medical Conduct (BPMC)

COPY

Before ARB Members Grossman, Lynch, Pellman, Price and Briber
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner):
For the Respondent:

Paul Robert Maher, Esq.
Robert P. Roche, Esq.

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 2001), the Respondent asks the ARB to modify a Determination by a BPMC Committee that found the Respondent guilty for professional misconduct, due to a disciplinary action against him in another state. After considering the record below and the review submissions by the parties, we affirm the Committee's Determination to revoke the Respondent's License to practice medicine in New York State (License). We hold that revocation constitutes the appropriate penalty, because the Respondent violated the public trust by engaging in sexual conduct with a patient and giving false answers to investigators to conceal his misconduct and because the Respondent has engaged in prior serious misconduct.

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law §§ 6530(9)(b) & 6530(9)(d) (McKinney Supp. 2001) by engaging in conduct:

- that results in a guilty finding [§ 6530(9)(b)] or disciplinary action [§ 6530(9)(d)] by another state's duly authorized medical board,
- that would amount to professional misconduct under New York Law.

The allegations arose following an action before the Virginia Department of Health Professions, Board of Medicine (Virginia Board) concerning the Respondent's medical license in that state. The charges allege that the Virginia conduct would amount to misconduct in New York under the following specifications:

- practicing medicine with negligence on more than one occasion, a violation under N. Y. Educ. Law § 6530(3)(McKinney Supp. 2001),
- willful or grossly negligent failure to comply with laws rules or regulations, a violation under N. Y. Educ. Law § 6530(16)(McKinney Supp. 2001), and,
- engaging in conduct that evidences moral unfitness, a violation under N. Y. Educ. Law § 6530(20)(McKinney Supp. 2001).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 2001), before a BPMC Committee, who rendered the Determination which the ARB now reviews. In such a Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The Committee determined that the Virginia Board conducted a disciplinary action against the Respondent in 2000, in which the Virginia Board made the following findings of fact:

- the Respondent engaged in sexual relationship with a patient (Patient A) during treatment for Patient A;
- the Respondent fathered a child by Patient A;
- the Respondent denied the relationship and fathering the child during an interview with an investigator from the Virginia Department of Health Professions; and,
- the Respondent prescribed divers medications for the Patient, during the Patient's pregnancy, without ascertaining if the Patient was pregnant.

As a result of these findings, the Virginia Board reprimanded the Respondent, fined him Five Thousand Dollars (\$5000.00), ordered that the Respondent take a course on physician/patient boundaries and restricted the Respondent to examining female patients only with a chaperone present. The Committee's Determination noted that the Respondent testified before the Committee that his relationship with the patient occurred outside his practice.

The Committee sustained all charges against the Respondent and concluded that the Respondent had engaged in a sexual relationship with the patient during treatment. The Committee found that such conduct constituted an egregious violation of professional trust and ethics and that such conduct warranted license revocation.

The hearing record also demonstrated that BPMC took prior disciplinary action against the Respondent in 1994 [Petitioner's Exhibit 6]. The prior action also commenced as a Direct Referral from the Virginia Board. In the prior action, the Virginia Board entered into a Consent Order that found the Respondent provided substandard medical care to six patients, made false statements or representations or engaged in fraud or deceit, conducted his practice in a way contrary to medical ethics, conducted his practice in a manner that created a danger to patients or the public and performed an act likely to deceive, defraud or harm the public. In the 1994 Direct Referral Proceeding, the BPMC Committee suspended the Respondent's License for two years, stayed the suspension, placed the Respondent on probation and limited the Respondent's License to practicing current, standard, general surgery.

Review History and Issues

The Committee rendered their Determination on December 28, 2001. This proceeding commenced on January 17, 2001, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and response brief and the Petitioner's response brief. The record closed when the ARB received the Respondent's response brief on February 14, 2001.

The Respondent's brief states that no dispute exists as to the facts in the case, but the brief asks that the ARB overturn the Committee's Determination on penalty. The Respondent argues that his false statement to the Virginia investigator caused no deception and that his conduct toward Patient A caused no immediate or even remote threat to health. The Patient filed no complaint. The Respondent asserts that the Virginia Board has found that he complied with the conditions under the most recent disciplinary action. The Respondent argues that New York has imposed a stricter penalty than the state in which the misconduct occurred and that the penalty fails to protect the public, other than to punish. The Respondent requests that the ARB overturn the Committee and reduce the penalty to a suspension, until such time as the Respondent returns to practice in New York.

The Petitioner's reply argued that no need exists to show patient harm to prove misconduct. The Petitioner also argued that BPMC may impose a harsher sanction against a New York licensee in a Direct Referral Proceeding than that imposed by the disciplinary body in the state in which the original misconduct occurred.

Determination

The ARB has considered the record and the parties' briefs. We sustain the Committee's Determination that the Respondent committed professional misconduct. The Respondent made no challenge to the Committee's conclusion that Respondent's conduct in Virginia made him liable for action against his New York License pursuant to N. Y. Educ. Law §§ 6530(9)(b) & 6530(9)(d) (McKinney Supp. 2001). The Respondent restricted his challenge in this review to the Committee's Determination on penalty. We affirm the penalty.

The Respondent engaged in a sexual relationship with a patient. Such relationship violated the trust society places in the medical profession. The Respondent compounded his misconduct by attempting to conceal his conduct by providing false answers to Virginia investigators and by attempting to argue that the relationship occurred outside his practice. The record revealed that the Respondent prescribed medications for Patient A. The prescribing constituted medical practice, so the relationship did occur during the Respondent's treatment for Patient A. The Respondent argued that his actions caused neither patient harm nor reliance on the deceit. We find no mitigating circumstances in the absence of harm or reliance. The Respondent violated his position of trust.

The Respondent argued that New York is imposing a harsher sanction than the penalty that Virginia imposed. The ARB agrees with the Petitioner's statement that BPMC may impose harsher sanctions in Direct Referral Proceedings than the disciplinary bodies impose in the states in which the misconduct occurred.

A Committee or the ARB may also consider a Respondent's prior disciplinary history in assessing an appropriate sanction. In a prior disciplinary action, the Virginia Board cited the Respondent for substandard care to six patients and for making false statements. The latest violations in Virginia reveal further substandard care through the boundary violations with Patient A and further false statements. The Respondent's latest violations reveal that he has failed to learn anything from the prior disciplinary action. We conclude that, if we allowed the Respondent to retain a License, he would remain at risk to commit further misconduct. We determine that the Committee imposed the appropriate penalty by revoking the Respondent's License.

ORDER

NOW, with this Determination as our basis, the ARB renders the following **ORDER**:

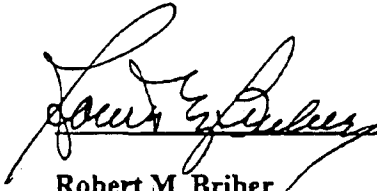
1. The ARB **AFFIRMS** the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB **AFFIRMS** the Committee's Determination revoking the Respondent's License.

Robert M. Briber
Thea Graves Pellman
Winston S. Price, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

Frank
In the Matter of Fang Shuh Horng, M.D.

Robert M. Briber, an ARB Member concurs in the Determination and Order in the
Matter of Dr. Horng.

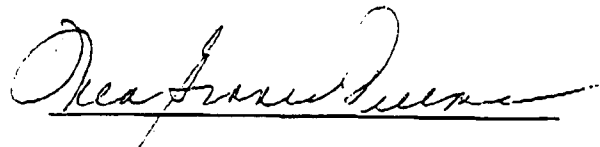
Dated: April 12, 2001


Robert M. Briber

Frank
In the Matter of Fang Shuh Horng, M.D.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the Matter of Dr. Horng.

Dated: April 11, 2001

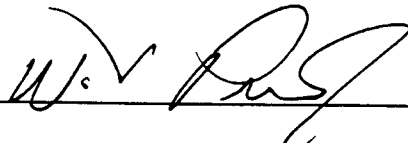

Thea Graves Pellman
Thea Graves Pellman

Frank

In the Matter of Fang Shuh Horng, M.D.

Winston S. Price, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Horng.

Dated: 4/8, 2001



Winston S. Price, M.D.

Franck

In the Matter of Fang Shuh Horng, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Horng.

Dated: April 5, 2001

Stanley L. Grossman M.D.

Stanley L Grossman, M.D.

Prank

In the Matter of Fang Shuh Horng, M.D.

Therese G. Lynch, M.D., J.E.B. Member concurs in the Determination and Order in
the Matter of Dr. Horng.

Dated: April 3, 2007

Therese G. Lynch M.D.

Therese G. Lynch, M.D.