



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

November 21, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Judd Gary Goodman, M.D.
42 Hawthorne Avenue
Glen Ridge, New Jersey

Thurm & Heller, LLP
Kevin D. Porter, Esq., of Counsel
261 Madison Avenue
New York, New York 10016

Paul Stein, Esq.
New York State Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

EFFECTIVE DATE NOVEMBER 28, 1996

RE: In the Matter of Judd Gary Goodman, M.D.

Dear Dr. Goodman, Mr. Porter and Mr. Stein:

Enclosed please find the Determination and Order (No.96-164) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc

Enclosure

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

COPY

IN THE MATTER
OF

JUDD GARY GOODMAN, M.D.

Administrative Review from a Determination by a Hearing
Committee on Professional Medical Conduct

ADMINISTRATIVE
REVIEW BOARD
DETERMINATION
ARB NO. 96-164

JUDD GARY GOODMAN, M.D. (Respondent) requests pursuant to New York Public Health Law (PUB.H.L.) §230-c(4)(a) (McKinney's Supp 1996), that the Administrative Review Board for Professional Medical Conduct (Board) review and modify a July 16, 1996 Determination by a Hearing Committee on Professional Medical Conduct (Committee), which found the Respondent (Respondent) guilty for professional misconduct and revoked his license to practice medicine in New York State. After reviewing the record in this case and conducting Deliberations on September 20, 1996, Board Members **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** vote to sustain the Committee's Determination that the Respondent committed professional misconduct in violation of N.Y. Education Law (EDUC. L.) §6530 (McKinney's Supp. 1996). The Board votes 4-1 to sustain the Committee's Determination to revoke the Respondent's New York Medical License.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination.

KEVIN D. PORTER, ESQ. (Thurm & Heller, LLP) represented the Respondent.

PAUL STEIN, ESQ. (Associate Counsel, NYS Department of Health) represented the NYS Department of Health (Petitioner).

COMMITTEE DETERMINATION ON THE CHARGES

PUB.H.L. §230(7) authorizes three member panels from the State Board for Professional Medical Conduct (BPMC) to conduct disciplinary proceedings to determine whether physicians have committed professional misconduct in violation of EDUC. L. §6530. The Petitioner filed charges with BPMC alleging that the Respondent violated EDUC. L. §6530(9)(b) because:

- a sister state's (New Jersey) duly authorized disciplinary agency found the Respondent committed improper professional practice or misconduct; and
- the conduct, which formed the basis for the New Jersey action, would constitute misconduct if the Respondent committed the acts in New York.

The Petitioner charged that the Respondent's actions in New Jersey, if committed in New York would have constituted :

- practicing medicine with negligence on more than one occasion, a violation of EDUC. L. § 6530(3); and
- practicing medicine with gross negligence, a violation of EDUC. L. § 6530(4).

The Petitioner brought this case as an expedited proceeding pursuant to PUB.H.L. §230(10)(p). The purpose of such a proceeding is to determine the nature and severity for the penalty to be imposed for the conduct. The charges arose after the Respondent surrendered his New Jersey Medical License, under a Consent Order with the New Jersey Board of Medical Examiners (New Jersey Board).

Three BPMC Members, **MICHAEL R. GOLDING, M.D. (Chair)**, **RAFAEL LOPEZ, M.D.** and **DENNIS P. GARCIA** comprised the Committee who conducted the hearing in the matter and who rendered the Determination which the Board now reviews. Administrative Law Judge **MARC P. ZYLBERBERG** served as the Committee's Administrative Officer. The Committee determined the Respondent signed and agreed to be bound by a Consent Order with the New Jersey Board, which stated that :

- on April 6, 1991, the Respondent performed twenty-six termination of pregnancy proceedings at the Union City Women's Health Center;

- he left the premises while two patients were still recovering from the effects of anesthesia, leaving only one licensed health care practitioner, a Certified Nurse Anesthetist, on the premises;
- both patients still required trained monitoring at the time the Respondent left;
- on duty office staff lacked training in cardiopulmonary resuscitation; and,
- one patient recovered fully and left the clinic ambulatory, but the other patient died several days later.

The Committee determined that the New Jersey Consent Order constituted disciplinary action by another state and that the Respondent's New Jersey conduct would constitute gross negligence and negligence on more than one occasion, if the Respondent had committed such conduct in New York.

The Committee voted to revoke the Respondent's New York Medical License. The Committee stated that a generally accepted principle holds that the State where the Respondent lived and practiced when he committed the misconduct has the greatest interest in the sanction for the misconduct. The Committee, therefore, accorded greater weight to the sanction that New Jersey imposed rather than to the mitigating factors which the Respondent offered in his defense. The Committee found the Respondent's misconduct to be serious and concluded that the total circumstances present and the concern for New York patients' health and welfare pointed to revocation as the appropriate penalty in this case.

REVIEW HISTORY AND ISSUES

The Respondent filed a Notice requesting this review, which the Board received on July 25, 1996. Pursuant to PUB.H.L. §230-c(4)(a), the Notice stayed the Committee's penalty automatically pending this Determination from the Board. The Record for review contained the Committee's Determination, the hearing transcripts and exhibits, the Petitioner's brief and the Respondent's reply brief.

The Respondent contends that revoking his license would serve no meaningful regulatory purpose and the Respondent requests that the Board overturn the Committee's Determination and permit the Respondent to practice in a structured setting in a facility licensed through PUB.H.L. Article 28, under medical supervision and monitoring. To support his request the Respondent has raised three points for review, which the Board summarizes below.

I. The Committee's penalty was incommensurate with the Respondent's offense, because the Committee failed to consider four factors which are germane when assessing a penalty for physician misconduct:

- gravity of the offense;
- the physician's rehabilitation;
- professional competence; and,
- risk of harm to the public.

II. The Committee failed to assess adequately whether the Respondent's conduct constituted misconduct in New York State. The Respondent contends that there no standards in New York for conscious sedation or general anesthesia by physicians in non- hospital settings.

III. The equitable doctrine laches bars imposing a second penalty in New York.

The Petitioner opposes the Respondent's request and contends that:

- there is no bar to this action ;
- the Respondent's New Jersey Consent Order provides the basis for finding that the Respondent's New Jersey conduct would amount to negligence and gross negligence in New York; and,
- the Hearing Committee's penalty is commensurate with the grave offense which the Respondent committed in New Jersey.

The Respondent submitted a sur reply to the Board on September 20, 1996, the day the Board met in New York City for the deliberations in this case. The sur reply repeated the Respondent's contentions that the penalty was incommensurate to the offense and that the Committee failed to adequately assess whether the Respondent's New Jersey conduct constituted misconduct in New York.

THE BOARD'S REVIEW AUTHORITY

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.

The Review Board may substitute our judgement for that of the Hearing Committee, in deciding upon a penalty Matter of Bogdan 195 AD 2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, Matter of Spartalis 205 AD 2d 940, 613 NYS 2d 759 (Third Dept. 1994), and on issues of credibility Matter of Minielly __AD 2d __, 634 NYS 2d 856, 1995 N.Y. App. Div. LEXIS 12692 (Third Dept. 1995).

THE BOARD'S DETERMINATION

The Board has considered the record below and the parties' briefs. The Board votes unanimously to sustain the Committee's Determination finding the Respondent guilty for professional misconduct in violation of EDUC. L. § 6530(9)(b). The Committee's Determination was consistent with their findings and conclusions, that New Jersey's duly authorized physician disciplinary agency disciplined the Respondent for conduct, which would constitute gross negligence and negligence on

more than one occasion, if the Respondent had committed the misconduct in New York. The Board votes 4-1 to sustain the Committee's Determination revoking the Respondent's license to practice medicine in New York State. The Committee's penalty is consistent with the Committee's findings and conclusions concerning the Respondent's serious misconduct and the penalty falls within the scope of penalties which PUB.H.L. 230-a authorizes. The Board finds no merit in the points which the Respondent raises on procedural matters, on the Committee's finding on the charges and on the factors which the Committee considered in determining the penalty.

PROCEDURAL ISSUES: First to clarify the record, the Respondent's brief refers to Dr. Goodman as the appellant-petitioner. This Determination, however, refers to Dr. Goodman as the Respondent, the same designation that identified Dr. Goodman at the hearing. Also, the Respondent's brief refers to the BPMC Hearing Committee, which rendered the Determination below, as the "Board". In this Determination, we refer to the Hearing Committee as the Committee and we refer to ourselves as the Board.

Next, the Respondent asked to submit a sur reply brief over the Petitioner's objection. The Board notes that PUB.H.L. § 230-c(4)(a) allows only for parties to submit briefs and reply briefs. If the party who does not seek review chooses to forego submitting a brief, and submits only a reply to the arguments which the other party submits in their review brief, then the reply brief ends the submissions and the Board will not consider any further documents. We would make an exception if the party filing a reply brief used the reply to actually raise new issues for review, such as requesting a more severe or less severe penalty. In this case, the Petitioner raised no issues in their reply and only answered the issues which the Respondent raised in his brief. We note that the Respondent's sur reply makes no assertions that the Petitioner raised new issues in their reply, but rather the document restated two points from the Petitioner's brief. The Board, therefore, did not consider the Petitioner's sur reply.

Finally, the Respondent's brief at Point III, argues that the equitable doctrine laches bars New York from imposing a penalty against the Respondent, because the delay in bringing this action, from the time that the Respondent committed the New Jersey misconduct in 1991, prejudices the Respondent's further rehabilitation. The Board finds that the Respondent's laches argument raises legal

issues which are beyond the Board's scope of review and the Board leaves the Respondent to raise those issues with the Courts.

COMMITTEE DETERMINATION ON THE CHARGES: At Point II in his brief, the Respondent argues that New York has no statutory guidelines to analyze the Respondent's New Jersey conduct and argues that the Committee failed to assess properly whether the Respondent's conduct in New Jersey would constitute New York misconduct. We reject both arguments. Although the provisions from EDUC. L. §6530 do not enumerate specifically what acts constitute such misconduct as negligence or gross negligence, the failure to so enumerate does not deprive a Respondent from due process, because terms such as negligence and gross negligence provide physicians with sufficient notice that they must practice the profession in accordance with reasonable medical standards, **Matter of Binenfeld v. Chassin**, _ A.D.2d _, 640 N.Y.S.2d 924, 1996 N.Y. App. Div. LEXIS 3926 (Third Dept. 1996). The Committee stated at page 7 in their Determination that negligence means the failure to exercise the care that a reasonably prudent physician exercises under the circumstances, and, gross negligence means negligence manifested by conduct that is egregious or conspicuously bad. The Committee then assessed whether the Respondent's New Jersey conduct, would amount to misconduct in New York, by applying those misconduct definitions against the facts and conclusions from the New Jersey Determination. A Committee may base their Determinations on such facts and conclusions and nothing requires a showing that a particular New York statute or regulation prohibits such conduct, **Matter of Ricci v. Chassin**, 220 A.D. 2d 828, 632 N.Y.S. 2d 303, 1995 N.Y. App. Div. LEXIS 10104 (Third Dept. 1995).

In this case, the Respondent agreed to be bound by a Consent Order that stated that:

- the Respondent left a private medical office, after performing procedures on two patients, while the patients were still recovering from the effects of anesthesia;
- both patients still required trained monitoring;
- only one licensed health care provider (a non-physician) remained on the premises;
- no on-duty office staff at the office had training in cardiopulmonary resuscitation; and,
- one of the patients died several days later.

The Consent Order provided that the Respondent's conduct violated the New Jersey Statute that prohibits physician misconduct (N.J.S.A. 45:1-21), which includes prohibitions against practice with gross negligence and repeated negligence. To satisfy the charges against him in New Jersey, the Respondent surrendered his New Jersey license. In his testimony at the hearing, the Respondent admitted that leaving the office, while the patients still required monitoring, amounted to an error in judgment - a big error in judgement (Hearing Commission Transcript pages 23-24). The Board concludes that this evidence from the hearing provided the Committee with sufficient grounds to find that the Respondent's New Jersey conduct would amount to negligence on more than one occasion and gross negligence, if the Respondent had committed the misconduct in New York.

PENALTY: The Board rejects the Respondent's contention that the Board did not consider the proper factors in assessing the penalty against the Respondent. As to the gravity of the offense, the Board finds that the Respondent's misconduct was extremely serious because the Respondent placed two patients at unacceptable risk for no reason. Nothing in the record justifies the Respondent's decision to leave the patients while they still required monitoring. The offense was sufficiently grave that the Respondent surrendered his license to satisfy the charges against him in the state where he committed the conduct at issue in this hearing. As to rehabilitation, the Respondent argued that he had become recertified in Obstetrics. The Board concludes that recertification provides no guarantee that the Respondent's judgement or sense of duty to his patients has improved. A physician does not need Board Certification to know that you do not leave a patient who still requires monitoring after anesthesia, while the patient remains sedated. As to public risk, the Respondent contends that he has minimized risk by leaving facilities with inadequate safety procedures and placing himself in a situation in which the subject incident could not occur. The Board concludes that the Respondent 's New Jersey conduct resulted from the Respondent's egregious failure to meet acceptable medical standards, not from any protocols at the office where the Respondent performed the procedures at issue. As to professional competence, although the Respondent offered testimonials to his competence, the Board finds that the most compelling evidence about his competence comes from enumerated facts in the New Jersey Consent Order.

The Board's majority concludes that the Committee acted consistently with the record and with the public's protection in revoking the Respondent's New York Medical License. As this Board has stated in the past, New York can not be a refuge for physicians, who commit grave misconduct in other states and then settle the misconduct actions in those states expeditiously and move their practices to another state.

The dissenting member feels that the Respondent has rehabilitated himself and votes to overturn the Committee's Penalty. The dissenting member would suspend the Respondent for a specific time period and restrict his license to a structured setting.

ORDER

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

1. The Board **SUSTAINS** the Hearing Committee's July 16, 1996 Determination finding the Respondent guilty for professional misconduct.
2. The Board **SUSTAINS** the Hearing Committee's penalty revoking the Respondent's license to practice medicine in New York.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

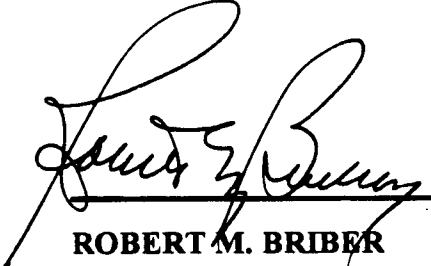
WILLIAM A. STEWART, M.D.

IN THE MATTER OF JUDD GARY GOODMAN, 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. Goodman.

DATED: Schenectady, New York

10/31, 1996



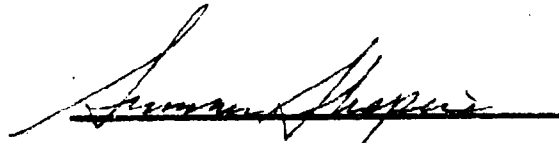
ROBERT M. BRIBER

IN THE MATTER OF JUDD GARY GOODMAN, M.D.

SUMNER SHAPIRO, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order, in part, and affirms that the remaining portion of the Determination reflects the decision by the majority of the Board in the Matter of Dr. Goodman

DATED: Delmar, New York

OCT. 31, 1996

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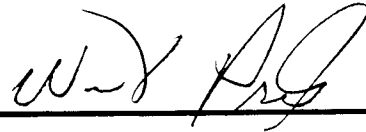
SUMNER SHAPIRO

IN THE MATTER OF JUDD GARY GOODMAN, 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. Goodman.

DATED: Brooklyn, New York

11/2, 1996

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WINSTON S. PRICE, M.D.

IN THE MATTER OF JUDD GARY GOODMAN, 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. Goodman.

DATED: Roslyn, New York

Oct 31, 1996

A handwritten signature in cursive script, reading "Edward C. Sinnott, M.D.", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF JUDD GARY GOODMAN, 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. Goodman.

DATED: Syracuse, New York

6 Nov, 1996



WILLIAM A. STEWART, M.D.