



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 16, 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

Jack Shapiro
100 Manetto Hill Road
Suite 208
Plainview, New York 11803-1310

Lawrence A. Berger, Esq.
Mahon & Berger
600 Old Country Road, Suite 50A
Garden City, New York 11530

Ralph J. Bavaro, Esq.
NYS Dept. of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

RE: In the Matter of Jack Shapiro, M.D.

RECEIVED
DEC 16 1994
OFFICE OF PUBLIC HEALTH
EFFECTIVE DATE
DECEMBER 23, 1994

Dear Dr. Shapiro, Mr. Berger and Mr. Bavaro:

Enclosed please find the Determination and Order (No. 94-162) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 or initials.

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
JACK SHAPIRO, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
BPMC 94-162**

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.**¹ held deliberations on October 28, 1994 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) August 19, 1994 Determination finding Dr. Jack Shapiro (Respondent) guilty of professional misconduct. Both the Respondent and the Office of Professional Medical Conduct (Petitioner) requested the Review, through Notices which the Board received on August 26, 1992 and September 2, 1992. James F. Horan served as Administrative Officer to the Review Board. Lawrence A. Berger submitted a brief on the Respondent's behalf on October 3, 1994 and a reply brief on October 12, 1994. Ralph J. Bavaro submitted a brief on the Petitioner's behalf on September 29, 1994 and a reply brief on October 24, 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.

¹Drs. Stewart and Sinnott participated in the deliberations through a telephone conference.

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, an otolaryngologist, with practicing medicine with negligence on more than one occasion, with gross negligence and with gross incompetence. The charges involved three patients, whom the record refers to by the initials A through C.

The Hearing Committee sustained only the Third Specification of Charges, that the Respondent had been grossly negligent in treating Patient A. The Committee found that the Respondent had operated on Patient A for an aberrant thyroid mass located within the mediastinum. The Committee found that the Respondent had failed to explore the mediastinum during surgery, even through the Respondent's stated reason for the surgery was to rule out malignancy in the mediastinum (Finding of Fact 14, page 7 of the Hearing Committee Determination). The Committee also found that the Respondent had performed a thyroidectomy on Patient A without medical indication, because the area of suspicion, the aberrant mass, was below the thyroid. The Committee found that the Respondent did not explore this suspicious area (also Finding of Fact 14).

The Committee voted to suspend the Respondent's license for one year, and thereafter, to prohibit the Respondent from performing surgery for two additional years. The Committee also voted to require the Respondent to perform non-remunerative services at a Community Health Center to be approved in advance by the Office of Professional Medical Conduct, for one-hundred fifty hours per year for three years.

REQUESTS FOR REVIEW

The Petitioner contends the Hearing Committee's penalty does not allow for any oversight to assure that the Respondent is fit to resume practice following his suspension and his prohibition from performing surgery. The Petitioner requests that the Review Board modify the penalty to place the Respondent on probation for three years, to begin following the Respondent's suspension, that the probation would include a restriction that the Respondent may not perform surgery during the probation period and that the Respondent should practice under a supervisor during the period of probation. The Petitioner also asks the Review Board to modify the community service portion of the Hearing Committee's Penalty to provide that, while the Respondent's license is suspended, the Community service shall not involve the practice of medicine.

The Respondent asks that the Review Board annul the Hearing Committee's Determination.

1. The Respondent contends that the Board is foreclosed from reviewing the Determination because the Hearing Committee did not indicate which specification concerning Patient A the Committee sustained.
2. The Respondent alleges that the Committee did not base their Determination on expert testimony. The Respondent contends that the Committee found the Department's expert Dr. Cheng to be credible but indecisive. The Respondent argues that if the Committee rejected Dr. Cheng's testimony in toto, there was no basis in the record for the Committee's findings.
3. The Respondent contends that the Hearing Committee could not find the Respondent negligent for failing to explore Patient A's mediastinum and for removing the Patient's thyroid, because the Patient signed a consent for a thyroidectomy, but did not consent to do exploration of the mediastinum.
4. The Respondent contends that the Committee's penalty is so grave that it is disproportionate to the alleged misconduct.

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 gross negligence in the treatment of Patient A. The Determination was consistent with the Committee's Finding that the Respondent failed to explore the Patient's mediastinum, to rule out malignancy, and performed a thyroidectomy without indication.

The Board finds no merit in the Respondent's argument that the Board was foreclosed from reviewing the Hearing Committee's Determination because the Hearing Committee did not indicate which specifications the Committee sustained. The Statement of Charges alleged three specifications concerning Patient A: A.1) failure to perform adequate evaluation, A.2) performed left hemithyroidectomy without adequate indication, and A.3) failed to adequately explore mediastinum intraoperatively. The Committee's Finding of Fact 14 on page 7 of the Committee's Determination found that the Respondent did not explore the mediastinum and that there was no indication to remove the thyroid. That Finding clearly sustains Specification A.2 and A.3. The Committee's Findings 15-17 on page 7 indicate that Charge A.1, concerning failure to perform adequate evaluation, is not sustained.

The Board finds no merit in the Respondent's argument that the Committee's findings are not supported by expert testimony or that the Committee rejected the testimony by the Petitioner's expert in toto. The Committee indicated that they found the Petitioner's expert credible and at no point did they state that they rejected the Petitioner's expert in toto. The Committee's Determination cites specifically to testimony by the Petitioner's expert in the parentheses which follow several of the Committee's Findings of Fact.

The Committee finds no merit in the Respondent's argument concerning Patient A's consent for surgery. First, the Committee at Finding of Fact 14 on page 7 found that Patient A's medical records contain no evidence that the Patient rejected exploration of the mediastinum. Second, the Respondent was not charged with failing to obtain informed consent, the Respondent was charged gross negligence. The question was not whether Patient A consented to a thyroidectomy, it was whether there was any indication for a thyroidectomy. The Committee found there was no indication.

The Review Board votes to overturn the Hearing Committee's Penalty because we do not find that the Penalty is appropriate.

The Respondent's gross negligence in treating Patient A demonstrates a deficit in the Respondent's judgement. The Respondent is an Otolaryngologist. A specialty that treats conditions of the Paranasal Sinuses and the ear, nose and throat. The Respondent should not have undertaken the surgery on Patient A, but should have referred the matter to a general or thoracic surgeon. In treating Patient A, the Respondent demonstrated that he should not be performing general surgery, through his performance of a thyroidectomy on Patient A without indication and through his failure to explore the Patient's mediastinum.

The Hearing Committee's Penalty would suspend the Respondent from practicing medicine for one year and from practicing surgery for two more years. At the end of this period, however, there is nothing to restrict the Respondent from returning to general surgery. The penalty also includes community service, but the Committee does not specify what purpose this serves. There is no requirement in the Penalty that the Respondent undergo any continuing medical education while the Respondent is out of medicine and surgery.

The Review Board believes that the Respondent's misconduct was serious enough in this case to merit a harsh sanction, but the Board does not feel that the Hearing Committee's Penalty will protect the public beyond the period of the suspension. The Board feels further that there is no reason to order that the Respondent perform community service. The Board feels that the public's protection requires that the Respondent cease to perform general surgery and limit his surgery to the area in which he specializes. The Board also feels the Respondent should be supervised for a period of time to assure that the Respondent is not performing surgery in his specialty without indication.

The Review Board votes to limit the Respondent's license to prohibit the Respondent from performing general surgery. The Respondent is limited to performing surgery on the paranasal sinuses and the ear nose and throat. Further, the Respondent shall be on probation for two years. The sole condition of the probation shall be that the Respondent shall obtain a second opinion before performing surgery, to confirm that the surgery is necessary and that the procedure is indicated. The second opinion shall be from either an Otolaryngologist selected by the Respondent and approved by

the Office of Professional Medical Conduct or from the Respondent's Chief of Service.

As a further sanction for the Respondent's gross misconduct, the Board votes to impose a civil penalty of (\$10,000.00) Dollars.

NOW, based upon this Determination, the Review Board issues the following

ORDER:


1. The Review Board sustains the Hearing Committee's August 19, 1994 Determination finding Dr. Jack Shapiro guilty of professional misconduct.
2. The Review Board overturns the Hearing Committee's Penalty suspending the Respondent's license and ordering the Respondent to perform community service.
3. The Review Board votes to limit the Respondent's license to prohibit the Respondent from performing general surgery and to restrict the Respondent to performing surgery only on the paranasal sinuses and the ear, nose and throat.
4. The Review Board places the Respondent on probation for two years under the terms set out in this Determination.
5. The Review Board votes to impose a civil penalty of Ten Thousand (\$10,000.00) Dollars.

**ROBERT M. BRIBER
SUMNER SHAPIRO
WINSTON S. PRICE, M.D.
EDWARD SINNOTT, M.D.
WILLIAM B. STEWART, M.D.**

IN THE MATTER OF JACK SHAPIRO, 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. Jack Shapiro.

DATED: Albany, New York
12/9, 1994


ROBERT M. BRIBER

IN THE MATTER OF JACK SHAPIRO, 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. Jack Shapiro.

DATED: Albany, New York
Nov. 30, 1994


SUMNER SHAPIRO

IN THE MATTER OF JACK SHAPIRO, 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. Jack Shapiro.

DATED: Brooklyn, New York
_____, 1994




WINSTON S. PRICE, M.D.

IN THE MATTER OF JACK SHAPIRO, 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. Jack Shapiro.

DATED: Albany, New York
December 14, 1994



EDWARD C. SINNOTT, M.D.

IN THE MATTER OF JACK SHAPIRO, 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. Jack Shapiro.

Synacus e
DATED: Albany, New York
_____, 1994

William A. Stewart
WILLIAM A. STEWART, M.D.



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

August 19, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jack Shapiro, M.D.
100 Manetto Hill Road
Suite 208
Plainview, New York 11803-1310

Ralph J. Bavaro, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

William Wood, Esq.
Wood & Scher
Harwood Building
14 Harwood Court Suite 512
Scarsdale, New York 10583

Re: Matter of Jack Shapiro, M.D.

Dear Dr. Shapiro, Mr. Wood and Mr. Bavaro :

Enclosed please find the Determination and Order (No. 94-162) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
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.

As prescribed by the New York State Public health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

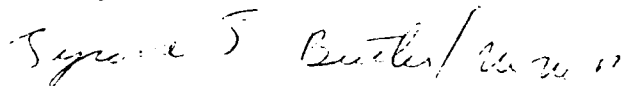
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

-----X
IN THE MATTER : HEARING COMMITTEE
OF : DETERMINATION
JACK SHAPIRO, M.D. : AND ORDER

-----X NO. BPMC -94 - 162

JOHN P. FRAZER, M.D., Chairperson, RALPH LEVY, D.O., and RANDOLPH H. MANNING, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230(10)(e) and 230(12) of the Public Health Law. Stephen Bernas, Esq., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this Determination and Order.

SUMMARY OF THE PROCEEDINGS

Notice of Hearing dated: March 15, 1994
Statement of Charges dated: March 15, 1994
Hearing Dates: April 14, June 30 and July 1, 1994
Deliberation Date: July 28, 1994

Place of Hearing: NYS Department of Health
5 Penn Plaza
New York, New York

Petitioner Appeared By: Peter J. Millock, Esq.
General Counsel
NYS Department of Health
BY: Ralph J. Bavaro, Esq.
Associate Counsel

Respondent Appeared By: Wood & Scher, Esqs.
BY: William Wood, Esq.

STATEMENT OF CHARGES

The Statement of Charges has been marked as Petitioner's Exhibit 1 and hereto attached as Appendix A.

CREDIBILITY OF WITNESS

The Panel found Dr. Andrew Cheng to be a credible witness, but indecisive in some of his responses to questions.

Drs. Tantelff, Cheron and Lawson were found to be credible witnesses.

A portion of Dr. Jack Shapiro's testimony was not found to be credible because it was in direct conflict with documentary evidence in this proceeding.

FINDINGS OF FACT

Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding.

Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. Respondent was authorized to practice medicine in New York State on October 5, 1979 by the issuance of license number 140155 by the New York State Education Department. (Ex.1)
2. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994. (Ex. 1)

PATIENT A

3. Patient A, a 54 year old female, first presented to Respondent on November 28, 1988 with an aberrant thyroid mass. (Ex. 4) A previous CT scan of August 31, 1988 had revealed normal thyroid glands with a "focus of increased radioactivity noted several centimeters inferior to the left lobe [which] may represent accessory thyroid tissue". (Ex. 3, p. 29; T. 23)
4. Patient A was referred to Respondent by Dr. Cheron, an endocrinologist. Patient A was referred to Dr. Cheron on or about November 28, 1988 by a chiropractor. Dr. Cheron found a normal size thyroid gland with no palpable nodules, as did Respondent. Dr. Cheron also obtained thyroid function tests which were normal. Dr. Cheron's recommendation was for

surgical exploration of the accessory tissue. (T. 365, 371; Ex. 3, p. 5)

5. A CT scan of November 29, 1988 revealed normal right and left lobes of the thyroid with probable accessory thyroid tissue several centimeters below the left lobe. The CT scan also revealed:

"a very vague area of increased attenuation just lateral to the esophagus and medial to the left subclavian vein on the left at a level approximately 3.0 cm below the lower pole of the left thyroid gland. This area is not well demarcated and it is uncertain whether or not this may correlate to the small area of accessory thyroid tissue. (Ex. 3, p. 28; T. 24-25)

6. On December 12, 1988, Patient A was admitted to Central General Hospital, Plainview, New York, and on that date underwent a left hemithyroidectomy performed by Respondent. (Ex. 3, pp. 13-14)

7. In Respondent's operative note of December 12, 1988, he stated his reason for performing the operation as follows:

The patient was found to have an aberrant thyroid mass located within the mediastinum that was picked up on thyroid scan. There was some question on the CAT scan of

localizing the mass and the high degree of possibility of metastatic thyroid carcinoma in this patient were believed by myself and the endocrinologist to warrant thyroidectomy on the left and excisional biopsy. (Ex. 3, p. 13)

That note is inaccurate in that Respondent never discussed thyroidectomy with the endocrinologist preoperatively. In fact, the endocrinologist was disappointed when he learned that a thyroidectomy rather than mediastinal exploration had been performed. (T. 351, 365, 380-4)

8. The operative report only describes removal of the left thyroid gland without any description of an attempt to explore the mediastinum. (T. 86-87)
9. A laryngoscopy was optional since the mass under investigation was in the mediastinum. (Exhibits 3, 4 C and E)
10. Respondent testified that his recommendation to Patient A was for surgical exploration of the mediastinum to investigate the accessory tissue, but Patient A refused that recommendation. However, neither Respondent's office record nor the hospital chart makes any mention of that rejection. (Ex. 3, Ex. 4) Rejection of medical advice under those circumstances is significant and should be documented. There is no evidence to

corroborate Respondent's testimony that Patient A rejected the initial recommendation. Moreover, the nurse's note indicates that Patient A stated that she was in the hospital for the removal of a thyroid mass. (Ex. 3, p. 7)

11. An endocrinology consultation appears in the hospital chart from Dr. Cheron. It is in the nature of a pre-operative consult. However, it was ordered by Respondent on December 14th (Ex. 3, p. 36) and is dated December 14th (Ex. 3, p. 5), two days post-operatively. Dr. Cheron's impression was aberrant thyroid tissue with possibility of malignancy. His plan was surgical exploration, biopsy/ecotomy as possible. (Ex. 3, p. 5)
12. There is no evidence of a biopsy or a needle aspiration being attempted intra-operatively. (Ex. 3, Ex. 4)
13. Pathological examination (in-hospital) of the thyroid gland, portion of thyroid tissue, and portion of parathyroid gland, in multiple layers, revealed no evidence of neoplasia. Thyroid parenchyma was normal with no nodules. Thyroid gland and tissue showed mild interstitial fibrosis and scattered lymphocytic aggregate without germinal centers. (Ex. 3, pp. 15-17) Pathological examination of specimen sections by the Department of Defense, Armed Forces Institute of Pathology, reported thyroid tissue with no significant abnormalities and

no pathological diagnosis of thyroid or parathyroid tissue.
(Ex. 3, p. 18; T. 26-30)

14. Despite Respondent's stated reason to rule out malignancy in the mediastinum, the operation, as determined from the operative report and the pathological specimens, did not explore the mediastinum. There was no indication to remove the thyroid because the area of suspicion was below the thyroid. The area that was suspicious was not explored.
(T. 30-32, 86-89) The medical records contain no evidence that Patient A rejected exploration of the mediastinum.

15. The preoperative evaluation for suspected thyroid cancer consists of:
 - (a) a thyroid scan (T. 547, 358)
 - (b) a sonogram (T. 547, 358)
 - (c) a thyroid function test (T. 547, 358)
 - (d) normal and routine blood tests (T. 25)
 - (e) an EKG (T. 25)

16. All the tests listed above in Finding 15 were performed. (T. 21, 26, 46, 344, 547)

17. A fine needle biopsy for suspected thyroid cancer was contraindicated. (T. 248, 348, 426)

18. There is no hard and fast rule governing the diagnostic tests that must be done for suspected thyroid cancer, but, rather, the treating physician must exercise prudent judgment. (T. 34, 35, 77)

PATIENT B

19. Patient B, a 71 year old male, first presented to Respondent in his office on Wednesday, November 30, 1988 with a chief complaint of "acute parotitis, now sialoadenitis". Respondent noted: "Saturday night swelling behind right mandible. Sunday and Monday right hemifacial swelling, now submaxillary swelling." (Ex. 6) Respondent suspected right parotid tumor and planned a CT scan of the right parotid. (Ex. 6; T. 98-99)
20. A CT scan of the parotid gland on November 30, 1988 revealed:
- Slight enlargement of the right gland compared to the left. Soft tissue fullness with evidence of slight enhancement in the posterior aspect of the right gland and a mass in the posterior aspect of the right gland seems most likely. Stone within the gland is incidentally noted. (Ex. 5, p. 62)
21. Respondent's note for the second office visit of December 19, 1988, states: "gland improved on antibiotics, chronic sialoadenitis". (Ex. 6; T. 99-104)

22. On December 22, 1988 Patient B was admitted to Community General Hospital. On that date Patient B underwent a right parotidectomy with repair at the lower division of the seventh nerve and right myringotomy with tube insertion, performed by Respondent. (Ex. 5, pp. 19-20)

23. Pathological examination of surgical specimens found no malignancy and resulted in the following report:

Salivary gland; parotid, with foci of marked hyalinization noted as well as marked chronic inflammatory infiltrate. Also present is bundle of nerve fibers. Some old hemorrhage is noted. Occasional ectatic duct is present. Occasional focus of lymphadenitis. Considerable fatty replacement noted. Sialoadenitis, chronic.
(Ex. 5, p. 21)

24. The preoperative evaluation for suspected parotid infection and suspicious lesion consists of :

- (a) CT scan (T. 409, 588)
- (b) clinical evaluation (T. 408, 589)
- (c) documentation in the chart of any nerve weakness (T. 408, 589).

25. All the items listed in Finding 24 were performed. (T. 588, 589)

26. The following tests were not necessary in the case of Patient B:

- (a) fine needle aspiration (T. 420, 589).
- (b) nerve conduction studies (T. 408, 592)
- (c) an unusually extensive history (T. 415, 595)
- (d) photographing the face (T. 415, 596).

PATIENT C

27. Patient C, a 29 year old male, first presented to Respondent in his office on Tuesday, March 29, 1988 with a complaint of right otitis with severe otalgia and periorbital pain. Patient C had seen another physician previously who had prescribed erythromycin. Respondent noted that on Saturday Patient C had gone to an emergency room where his prescription was changed to Ceclor because of sinus pain from erythromycin. It is unknown how long patient C was on erythromycin. Patient C complained to Respondent of pain in his neck and face and inability to chew. Respondent's physical examination of Patient C included findings of nasal deviated septum bilaterally, purulent nasal drainage and turbinate hypertrophy. Physical examination also revealed bilateral cervical adenopathy. Respondent prescribed Augmentin 500 mgs. three times a day for fifteen days and Volsol. (Ex. 8)
28. In summary, the following occurred on subsequent office visits preoperatively. (Ex. 8):

On March 31, 1988 Patient C's ear pain had resolved, aural and nasal toilet was performed, and Patient C was noted to be feeling better.

On April 6, Patient C had pain and pressure over eyes and his nose was completely congested. Patient C was noted to be not any better on April 7.

On April 12, Patient C was feeling better and his nose was clear.

On April 20, Patient C was noted to be doing well with ears clear.

On May 2, Respondent noted acute left sinusitis and renewed the prescription for Augmentin for 15 days because "Augmentin did work for the first time". (T. 479)

On May 4 there was some sinus blockage and ears were improved.

On May 15 Patient C's condition was noted as follows: feeling better, less otalgia, ears within normal limits and tympanic membranes intact, nose clean, right side blocked. There was no purulent discharge. (T. 480)

On May 31, Respondent noted continuous post nasal drip, blockage of ears, and bilateral middle meatal discharge. Respondent recommended septoplasty, ethmoidectomy and turbinectomy.

On the next visit of July 23, Respondent noted that the procedure was explained to Patient C.

29. A report of CT scan of the sinuses on May 4, 1988 was essentially normal and resulted in the following Impression: "Partial obliteration of the left frontal sinus. Otherwise normal aeration of all sinuses. Deviated septum and large turbinates. (Ex. 9 last page, T. 156) There is also an addendum to the 5/4/88 CT scan report which is dated June 11, 1990, after the investigation of Respondent by OPMC had begun. The addendum states: "The examination revealed focal ethmoiditis bilaterally". (Ex. 8 next to last page) It is a marginally reasonable interpretation of the actual CT films. (Ex. 9). Respondent testified that he performed surgery based only upon Patient C's clinical condition. (T. 485)
30. On July 25, 1988 Patient C was admitted to Central General Hospital and underwent a septoplasty with bilateral ethmoidectomy performed by Respondent. (Ex. 7, p. 12, 13)
31. Pathological examination of surgical specimens revealed "Respiratory mucosa with seromucinous glands and bone, fragments of, consistent with ethmoid. Hyaline cartilage, and bone fragments of." (Ex. 7, p. 14) There was no pathological finding of an infected ethmoid. (T. 163)

CONCLUSIONS

FIRST: Respondent is found to have engaged in professional misconduct by reason of practicing medicine with gross negligence with respect to Patient A within the meaning of N.Y. Educ. Law Section 6530(4) (McKinney Supp. 1994) as set forth in Findings of Fact 3 through 18, supra.

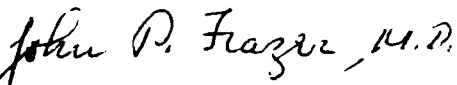
SECOND: Respondent is found not to have engaged in professional misconduct as alleged in Specifications FIRST, SECOND, FOURTH, FIFTH, SIXTH, SEVENTH and EIGHTH of the STATEMENT OF CHARGES hereto attached as Appendix A.

ORDER

The Hearing Committee determines and orders that Respondent's license to practice medicine shall be suspended for one year. Thereafter, for the following two years, Respondent shall be permitted to practice medicine but shall not be permitted to perform any surgical procedures.

Furthermore, Respondent is ordered to perform non-remunerative services at a community health center to be approved in advance by the Office of Professional Medical Conduct, for 150 hours each year for the next three years.

Dated: New York, N.Y.
August 16th, 1994



John P. Frazer, M.D.
Chairperson

Ralph Levy, D.O.
Randolph H. Manning

APPENDIX I

f

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

-----X
: IN THE MATTER : NOTICE
: OF : OF
: JACK SHAPIRO, M.D. : HEARING
: -----X

TO: JACK SHAPIRO, M.D.
100 Manetto Hill Road
Suite 208
Plainview, New York 11803-1310

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990 and Supp. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 14th day of April, 1994, at 10:00 in the forenoon of that day at 5 Penn Plaza, Sixth Floor, New York, New York 10001 and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by

counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Administrative Law Judge's Office, Empire State Plaza, Tower Building, 25th Floor, Albany, New York 12237, (518-473-1385), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990 and Supp. 1994), you may file an answer to the Statement of Charges not less than ten days prior to the date of the hearing. If you wish to raise an affirmative defense, however, N.Y. Admin. Code tit. 10, Section 51.5(c) requires that an answer be filed, but allows the filing of such an answer until three days prior to the date of the hearing. Any answer shall be forwarded to the attorney for the Department of Health whose

name appears below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO THE OTHER SANCTIONS SET OUT IN
NEW YORK PUBLIC HEALTH LAW SECTION 230-a
(McKinney Supp. 1994). YOU ARE URGED TO
OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS
MATTER.

DATED: New York, New York

March 15, 1994


CHRIS STERN HYMAN,
Counsel

Inquiries should be directed to: Ralph J. Bavaro
Associate Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001
Telephone No.: 212-613-2601

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

-----X
IN THE MATTER : STATEMENT
OF : OF
JACK SHAPIRO, M.D. : CHARGES
-----X

JACK SHAPIRO, M.D., the Respondent, was authorized to practice medicine in New York State on October 5, 1979 by the issuance of license number 140155 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period, January 1, 1993 through December 31, 1994 at 100 Manetto Hill Road, Suite 208, Plainview, New York 11803-1310.

FACTUAL ALLEGATIONS

- A. Patient A (all patients are more fully identified in Appendix A) was admitted to Central General Hospital, Plainview, New York, under Respondent's care and underwent a left hemithyroidectomy on or about December 12, 1988.
Respondent:

1. Failed to perform adequate preoperative evaluation for suspected thyroid cancer.
2. Performed left hemithyroidectomy without adequate indication.
3. Failed to adequately explore mediastinum intraoperatively.

B. Patient B was admitted to Central General Hospital under Respondent's care and underwent a right parotidectomy, repair of lower division of right 7th facial nerve, and right myringotomy on or about December 22, 1988.

Respondent:

1. Failed to perform adequate preoperative evaluation for suspected parotid infection and suspicious lesion.
2. Failed to perform adequate preoperative evaluation for purported facial nerve weakness.

C. Patient C was admitted to Central General Hospital under Respondent's care and underwent a septoplasty with bilateral ethmoidectomy on or about July 25, 1988. Respondent:

1. Performed bilateral ethmoidectomy without indication.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

PRACTICING WITH NEGLIGENCE

ON MORE THAN ONE OCCASION

Respondent is charged with practicing the profession with negligence on more than one occasion under N.Y. Educ. Law Section 6530(3) (McKinney Supp. 1994) in that Petitioner charges at least two of the following:

1. The facts contained in Paragraphs A and A1-A3, B and B1-B2, and/or C and C1.

SECOND SPECIFICATION

PRACTICING WITH INCOMPETENCE

ON MORE THAN ONE OCCASION

Respondent is charged with practicing the profession with incompetence on more than one occasion under N.Y. Educ. Law Section 6530(5) (McKinney Supp. 1994), in that Petitioner charges at least two of the following:

2. The facts contained in Paragraphs A and A1-A3,
B and B1-B2, and/or C and C1.

THIRD THROUGH FIFTH SPECIFICATIONS
PRACTICING WITH GROSS NEGLIGENCE

Respondent is charged with practicing the profession with gross negligence under N.Y. Educ. Law Section 6530(4) (McKinney Supp. 1994), in that Petitioner charges:

3. The facts contained in Paragraph A and A1-A3.
4. The facts contained in Paragraph B and B1-B2.
5. The facts contained in Paragraph C and C1.


SIXTH THROUGH EIGHTH SPECIFICATIONS

PRACTICING WITH GROSS INCOMPETENCE

Respondent is charged with practicing the profession with gross incompetence on more than one occasion under N.Y. Educ. Law Section 6530(6) (McKinney Supp. 1994), in that Petitioner charges:

6. The facts contained in Paragraph A and A1-A3.
7. The facts contained in Paragraph B and B1-B3.
8. The facts contained in Paragraph C and C1.

DATED: New York, New York
March 15, 1994


CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct