



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

June 25, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Menicos Spartalis, M.D.
48-23 Fourth Avenue
Brooklyn, New York 11220

Stanley D. Friedman, Esq.
McAloon & Friedman, P.C.
116 John Street
New York, New York 10038

Daniel Guenzburger, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

RE: In the Matter of Menicos Spartalis, M.D.

Dear Dr. Spartalis, Mr. Friedman and Mr. Guenzburger:

Enclosed please find the Determination and Order (No. ARB-93-30) 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 (b) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 than 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)].

Very truly yours,

A handwritten signature in cursive script that reads "Tyrone T. Butler, nam".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

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

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IN THE MATTER	:	<u>ADMINISTRATIVE</u>
	:	<u>REVIEW BOARD</u>
OF	:	<u>DETERMINATION</u>
	:	<u>AND ORDER</u>
MENICOS SPARTALIS, M.D.	:	<u>ARB NO.93-30</u>

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The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, WINSTON S. PRICE, M.D., MARYCLAIRE B. SHERWIN, EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.** held deliberations on May 3, 1993 and June 1, 1993 to review the Professional Medical Conduct Hearing Committee's (hereinafter the "Hearing Committee") February 19, 1993 Determination and Order finding Dr. Menicos Spartalis guilty of professional misconduct, suspending him for six months and placing him on probation with a monitor for eighteen months. The Office of Professional Medical Conduct (OPMC) requested the review through a Notice which the Review Board received on March 9, 1993. **James F. Horan, Esq.** served as Administrative Officer to the Review Board. Daniel Guenzburger, Esq. submitted a brief for OPMC on April 15, 1993 and a response on April 26, 1993. McAloon and Friedman submitted a brief for Dr. Spartalis on April 20, 1993 and a response on April 27, 1993.

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 Office of Professional Medical Conduct charged Dr. Spartalis with negligence on more than one occasion, incompetence on more than one occasion, gross negligence, gross incompetence, ordering excessive treatment, failing to maintain adequate patient records, fraud and willfully filing false reports. The negligence, incompetence, inadequate record keeping and excessive treatment charges involved the treatment which the Respondent rendered to six patients, A-F, for deep vein thrombosis and the Respondent's use of a Deep Vein Thrombosis Modality Therapy Regimen (DVT-MMTX). The fraud charges involved the Respondent's representation to Patients A-F that the United States

Food and Drug Administration (FDA) had approved the DVT-MMTX protocol. The false filing charges related to statements on the hospital applications also.

The Hearing Committee found the Respondent guilty of gross negligence in treating Patient F, negligence on more than one occasion in treating Patients A-F, ordering excessive tests in treating Patients A and F and maintaining inadequate medical records for Patients A-F. The Hearing Committee also found the Respondent guilty of five charges of fraud involving his representation that the FDA had approved the DVT-MMTX protocol and his false statements on hospital applications. Further, the Hearing Committee found the Respondent guilty of willfully filing false reports, arising from statements which the Respondent made on applications to hospitals. The Hearing Committee found the Respondent not guilty of gross incompetence and not guilty of incompetence on more than one occasion.

As a penalty, the Hearing Committee voted to suspend the Respondent's license for two years, with all but six months of the suspension stayed, placed him on probation for the eighteen months of the stayed suspension, and required that a competent hematologist monitor the Respondent's practice during the probationary period. The Hearing Committee felt that the Respondent's repeated false statements on his hospital applications concerning the DVT-MMTX protocol required a period of suspension. The Hearing Committee stated further that the Respondent demonstrated significant lapses in judgement in

treating patients and that his extensive use of anti-coagulant medications without proper monitoring placed his patients in grave danger. For that reason, the Hearing Committee required a practice monitor during the Respondent's probation.

REQUESTS FOR REVIEW

The Office of Professional Medical Conduct has asked that the Review Board overturn the Hearing Committee's penalty because the penalty is inconsistent with the Hearing Committee's Findings and Conclusions. The OPMC has asked the Review Board to revoke the Respondent's license to practice medicine. The OPMC argues that the Hearing Committee found the Respondent guilty of gross negligence and negligence on more than one occasion based on the Hearing Committee's finding that the Respondent demonstrated significant lapses in judgement and placed his patients in grave danger due to the excessive use of anti-coagulant medications without monitoring. The OPMC's Brief also notes that the Respondent was found guilty on multiple specifications of fraud. The OPMC argues that the Hearing Committee's sanction offers inadequate protection to the public, because the suspension and monitoring will not correct the deficiencies in the Respondent's practice.

The Respondent requests that the Review Board reverse the Hearing Committee's Determination to sustain the charges of gross negligence, ordering excessive treatment, fraud and filing false reports. The Respondent also argues that the Hearing

Committee's penalty is excessively harsh and asks that the Review Board modify the penalty by overturning the suspension and by imposing a shorter period of probation.

In their response, OPMC asks that the Review Board deny the Respondent's appeal, partially because the Respondent did not file a Notice of Review with the Review Board.

REVIEW BOARD DETERMINATION

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

The Review Board considered the appeals by both the Department and the Respondent, even though the Department was the only party to file a Notice of Review. The Review Board's practice is that, once a case is before the Review Board, either party may raise issues on appeal regardless of which party filed a Notice of Review. We feel this practice is consistent with the provisions of Public Health Law §230-c(4)(a), which provides that all parties have 30 days from the service of a Notice of Appeal to file briefs. The case which OPMC cites in support of their request that the Review Board not consider the issues which the Respondent has raised in his appeal, **Matter of Llorens, ARB No. 92-52-A**, does not hold that only the party which files a Notice of Review may appeal issues to the Review Board. In **the Matter of Llorens**, the Respondent, who was the only party to file a Notice of Review with the Review Board, withdrew that Notice. The Review Board accepted the withdrawal and determined that there was no

longer a case before us. We then refused to consider issues which OPMC raised in the brief which they filed concerning the Llorens case, since OPMC had not filed a separate appeal and since the Respondent's appeal was no longer before us.

As to the requests by both parties to modify some portion of the Hearing Committee's Determination in the case of Dr. Spartalis, the Review Board votes unanimously to sustain the Hearing Committee's Determination that the Respondent was guilty of gross negligence, negligence on more than one occasion, ordering excessive tests and/or treatment and maintaining inadequate medical records. We sustain the determination that the Respondent practiced the profession fraudulently arising from his misrepresentations to Patients A through F and his misrepresentations to three hospitals, and we sustain the determination that the Respondent willfully filed a false report. We vote further to sustain the Hearing Committee's Determination that the Respondent was not guilty of gross incompetence. The Hearing Committee's determinations on all these charges was consistent with their findings of fact and conclusions.

We vote unanimously to overturn the Hearing Committee's Determination that the Respondent was not guilty of incompetence on more than one occasion. That Determination was not consistent with the Hearing Committee's findings of fact and conclusions concerning the Respondent's treatment of Patients A through F with the DVT-MMTX protocol, his failure to differentiate between acute and chronic Deep Vein Thrombosis, and his failure to monitor these

patients for whom he had prescribed anti-coagulant medication.

Incompetence is a lack of the skill or knowledge necessary to practice medicine. The Hearing Committee's Findings and Conclusions concerning the Respondent's treatment of Patients A through F are consistent with a determination that the Respondent lacked the knowledge necessary to practice medicine. The Hearing Committee found and concluded that the Respondent had used a hand held doppler machine to diagnose Deep Vein Thrombosis below the knee in Patients A through F, even though that machine is not effective in diagnosing DVT below the knee (Hearing Committee's Determination and Order, p. 54). The Respondent did not distinguish between acute and chronic DVT in his medical records or in his treatment protocol, even though the treatment for the two conditions differs significantly (Hearing Committee's Determination and Order pp. 54-55). The Respondent's treatment protocol used anti-coagulant medications to treat chronic DVT, which was contrary to accepted standards of medical practice, and the protocol employed the anti-coagulants in doses which were ineffective to treat acute DVT and not indicated for chronic DVT (Hearing Committee's Determination and Order pp. 55-56). The Hearing Committee concluded that the unnecessary use of anti-coagulant medication places the patient at risk of internal bleeding (Hearing Committee's Determination and Order p. 56). The Respondent failed to determine the homeostatic competence of his patients prior to placing the patients on anti-coagulants (Hearing Committee's Determination and Order p. 56). The Respondent failed

to ascertain the prothrombin level of the patients he treated with the anti-coagulant Coumadin, which was contrary to the generally accepted standards of medicine (Hearing Committee's Determination and Order p. 56). The Hearing Committee found that if the Coumadin level in the patient's blood is too high, the patient is at risk of internal bleeding (Hearing Committee's Determination and Order p. 56). The Hearing Committee found and concluded that when the Respondent did ascertain the patient's prothrombin levels, he failed to adjust the Coumadin dosages based upon laboratory results (Hearing Committee's Determination and Order p. 57). The Respondent treated the patients with an intermittent pneumatic compression therapy, which the Hearing Committee found to be ineffective for treating DVT (Hearing Committee's Determination and Order p. 57).

Based upon the above discussed findings and conclusions by the Hearing Committee, the Review Board overturns the Hearing Committee's Determination as to incompetence on more than one occasion. The Review Board determines that the Respondent was guilty of incompetence on more than one occasion.

PENALTY

The Review Board votes unanimously to overturn the Hearing Committee's penalty which placed the Respondent on six months actual suspension and placed him on eighteen months additional probation with monitoring by a hematologist. The penalty is not consistent with the Hearing Committee's extensive

findings and conclusions as to the Respondent's negligent and grossly negligent patient care, and his fraudulent misrepresentations to patients and to hospitals and it is not consistent with the Review Board's determination as to the Respondent's incompetence on more than one occasion. The penalty is also not appropriate to protect the public health.

We believe that monitoring by a hematologist will not be sufficient protection for the public or sufficient remediation to correct the serious deficiencies in the Respondent's medical skills and practice pattern. Even if the Respondent were a candidate for rehabilitation, the Respondent would require a much more intensive program of retraining than a monitor could provide, in view of the serious lapses of judgement and lack of skill or knowledge which the Respondent displayed in treating the patients in this case. The record does not, however, indicate that the Respondent is a candidate for rehabilitation, and the Hearing Committee made no conclusions and provided no reasoning as to why they felt the deficiencies in the Respondent's practice and skills could be corrected merely through monitoring by a hematologist. The Respondent continued to defend the DVT-MMTX protocol at the hearing, in the face of expert testimony that the protocol was in some instances ineffective and in some instances posed a danger to patients.

The serious deficiencies in the Respondent's medical skills and pattern of practice were compounded by the Respondent's fraudulent misrepresentations to his patients and to the hospitals

at which he sought privileges. The Review Board believes that the Respondent's repeated acts of negligence and incompetence, his grossly negligent treatment of Patient F and his pattern of fraudulent misrepresentations to his patients and to hospitals demonstrate that the Respondent is not fit to practice medicine in New York State. The Review Board votes unanimously to revoke the Respondent's licence to practice medicine in the State of New York.

ORDER

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

1. The Administrative Review Board votes to sustain the February 2, 1993 Determination and Order of the Hearing Committee for Professional Medical Conduct, except that we overturn the Hearing Committee's Determination that Dr. Spartalis was not guilty of incompetence on more than one occasion, and we determine that the Respondent was guilty of incompetence on more than one occasion.
2. The Review Board votes to overturn the penalty which the Hearing Committee imposed in their February 19, 1993 Determination and Order.

3. The Review Board votes unanimously to revoke the license of Dr. Menicos Spartalis to practice medicine in the State of New York.

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

MARYCLAIRE B. SHERWIN

EDWARD C. SINNOTT, M.D.

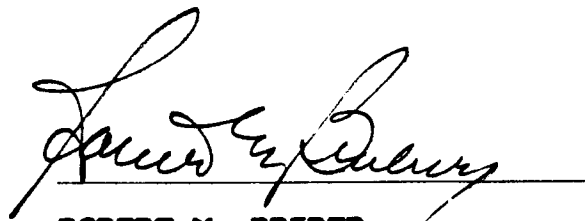
WILLIAM A. STEWART, M.D.

IN THE MATTER OF MENICOS SPARTALIS, 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. Spartalis.

DATED: Albany, New York

June 15, 1993

A handwritten signature in cursive script, appearing to read "Robert M. Briber", is written over a horizontal line.

ROBERT M. BRIBER

IN THE MATTER OF MENICOS SPARTALIS, 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. Spartalis.

DATED: Syracuse, New York

June 12, 1993

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in black ink and is positioned above the printed name.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF MENICOS SPARTALIS, M.D.

MARYCLAIRE B. SHERWIN, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Spartalis.

DATED: Malone, New York

June 15, 1993

Maryclaire B. Sherwin

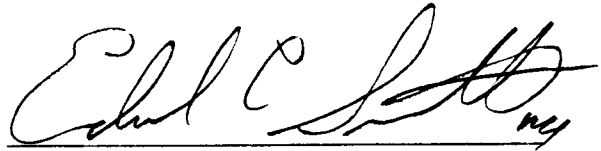
MARYCLAIRE B. SHERWIN

IN THE MATTER OF MENICOS SPARTALIS, 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. Spartalis.

DATED: Roslyn, New York

June 21, 1993

A handwritten signature in cursive script, reading "Edward C. Sinnott", with a horizontal line underneath. There is a small mark resembling "ny" at the bottom right of the signature.

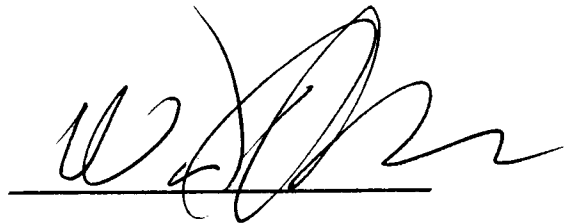
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF MENICOS SPARTALIS, 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. Spartalis.

DATED: Brooklyn, New York

June 22, 1993

A handwritten signature in black ink, appearing to read 'WSP', is written over a horizontal line. The signature is stylized and cursive.

WINSTON S. PRICE, M.D.