



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

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

September 23, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kevin C. Roe, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Empire State Plaza
Corning Tower - Room 2438
Albany, NY 12237

John A. Scorza, M.D.
Redacted Address

Barry A. Gold, Esq.
Thuillez, Ford, Gold & Conolly
90 State Street
Albany, New York 12207

Effective Date: 09/30/96

RE: In the Matter of John A. Scorza, M.D.

Dear Mr. Roe, Dr. Scorza and Mr. Gold:

Enclosed please find the Determination and Order (No. ARB-96-98) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Redacted Signature

✓
Tyrone T. Butler, Director
Bureau of Adjudication

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TTB:rlw

Enclosure

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

COPY

IN THE MATTER

OF

JOHN A. SCORZA, M.D.

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

ADMINISTRATIVE

REVIEW BOARD

DETERMINATION

AND ORDER

ARB 96-98

The Office of Professional Medical Conduct (Petitioner) requests, pursuant to Public Health Law (PHL) §230-c (4)(a), that the Administrative Review Board for Professional Medical Conduct (Board) review and modify an April 22, 1996 determination by a Hearing Committee on Professional Medical Conduct (Committee), which found the Respondent **JOHN A. SCORZA, M.D.** (Respondent) guilty for violating a previous disciplinary probation and which extended the Respondent's probation for an additional term. Review Board members **ROBERT M. BRIBER, WINSTON S. PRICE, M.D., SUMNER SHAPIRO, EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** held deliberations on this review on June 28, 1996, with Administrative Law Judge **JAMES F. HORAN**, serving as our Administrative Officer. After reviewing the hearing record and submissions from the Respondent and the Petitioner, the Board finds that the Respondent violated probation terms from a 1994 Consent Order with New York State. The Board votes to suspend the Respondent's license in New York until the Respondent has completed successfully a probation term he presently serves in Massachusetts and we place the Respondent on two (2) years additional probation from the time he returns to practice in New York.

Kevin C. Roe, Esq., represented the Petitioner on this review.

Barry A. Gold, Esq., represented the Respondent.

CHARGES AND COMMITTEE DETERMINATION

The Petitioner brought a proceeding against the Respondent, pursuant to PHL §230(19), alleging that the Respondent had violated probation. Education Law §6530 (29) defines violating disciplinary probation as professional misconduct for a physician. The Respondent was on probation under an April 1994 Consent Order with the Petitioner. The Respondent admitted in the Order that the Commonwealth of Massachusetts had taken disciplinary action against the Respondent due to his addiction to amphetamines. The Massachusetts action resulted in probation in that state, the site where the Respondent practices. The New York Consent Order suspended the Respondent's New York license for four (4) years, with the suspension stayed to become probation. The probation included terms requiring that the Respondent conduct himself according to the legal and professional standards, that he comply with the Massachusetts probation and that the Respondent cause Massachusetts to submit quarterly reports to New York concerning the Respondent's compliance with the Massachusetts probation.

The Petitioner charged that the Respondent violated his 1994 New York probation, based on a July 26, 1995 Massachusetts Consent Order, which found that the Respondent had violated his Massachusetts probation by:

- failing to disclose the 1994 New York Consent Order on the Respondent's on 1994 Massachusetts Renewal form;
- failing to request that Massachusetts send quarterly compliance reports to New York;
- failing to replace monitoring physicians in a timely fashion;
- failing to comply with Massachusetts monitoring requirements;
- misrepresenting his failure to attempt to obtain quarterly reports from Massachusetts; and
- informing the New York Board that the Massachusetts Board was being difficult in supplying quarterly reports, when the Massachusetts Board possessed no knowledge that such reports were required.

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The Petitioner requested a hearing on the charges.

Three members from the State Board for Professional Medical Conduct, **TERESA S. BRIGGS, M.D., PH. D.**, Chair, **CALVIN J. SIMONS, M.D.**, and **D. MARISA FINN** comprised the Committee which conducted the hearing, with Administrative Law Judge **LARRY G. STORCH** serving as the Committee's Administrative Officer. The Committee determined the evidence from the 1995 Massachusetts Consent Order proved that the Respondent violated his 1994 probation by

- failing to insure that the Massachusetts Board forwarded quarterly compliance reports to New York;
- failing to comply with Massachusetts monitoring provisions; and
- failing to inform Massachusetts officials about the 1994 disciplinary proceeding against him in New York.

In assessing a penalty on the probation violation, the Committee stated that they were concerned about the Respondent's seeming inability to comply with the Massachusetts monitoring provisions and with the Respondent's lack of veracity in dealing with Massachusetts and New York. The Committee concluded, however, that revocation would be too severe a penalty under the circumstances in this case. The Committee noted that there was no evidence demonstrating that the Respondent had relapsed into his previous drug-abusing behavior and the Committee noted that Massachusetts has penalized the Respondent with a Seventy-Five Hundred Dollar (\$7500.00) fine. The Committee voted to suspend the Respondent's license for two (2) years, stay the suspension and place the Respondent on probation for two (2) years in addition to the probation from the 1994 New York Consent Order.

REVIEW HISTORY AND ISSUES

The Petitioner requested this review through a Notice, which the Board received on May 1, 1996. The Notice stayed the Hearing Committee's penalty automatically, pending the Board's final Determination [PHL §230-c(4)(a)]. The record for review contained the Committee's Determination, the transcript and exhibits from the hearing and the review briefs which the parties submitted. The Board received the Petitioner's brief on June 3, 1996 and the Respondent's reply brief on June 11, 1996.

The Petitioner's brief contends that the Hearing Committee imposed an inappropriate penalty which:

- will not deter the Respondent or others from similar misconduct, and
- does not impose any additional burden on the Respondent.

The Petitioner contends that the Respondent's New York probation requires essentially that the Respondent comply with his probation in Massachusetts. That probation expires in 1998. Under the Committee's penalty, the New York penalty would continue for two (2) years after that time, with no terms with which the Respondent must comply. The Petitioner requests that the Board impose a penalty which will protect the public and deter future violations.

The Respondent's brief argues that the Committee ordered an appropriate penalty given the circumstances in this case. The Respondent contends that he complied with the Massachusetts probation initially, but encountered problems when his monitoring physicians failed to keep their promises. The Respondent also admitted that he erred in failing to inform Massachusetts about the disciplinary action in New York. The Respondent contends no evidence demonstrates that the sanction against the Respondent will have any deterrent effect on another probationer.

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 with 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 the 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 Spatalis 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 reviewed the record below and the briefs from the parties. We sustain the Hearing Committee's Determination finding the Respondent guilty for violating probation. Neither party disputed the Committee's finding on the charges. We vote 5-0 to modify the Hearing Committee's Determination penalty, because we feel that the Respondent's misconduct warrants a more severe sanction.

We share the Hearing Committee's concern over the Respondent's difficulties in complying with the Massachusetts probation terms and over the Respondent's dishonesty in dealing with both Massachusetts and New York. The Respondent's 1994 Consent Agreement allowed him to retain an active New York license on condition that he comply with the Massachusetts probation and that he comply with the laws and professional standards. The Respondent has failed on both counts. The Board finds that extending the Respondent's New York probation fails to provide a sanction for the Respondent's misconduct and fails to provide a clear message to the Respondent that he must complete his Massachusetts probation successfully.

The Board votes 5-0 to suspend the Respondent's New York license until the Respondent has completed his Massachusetts probation successfully. Following this suspension the Respondent will be on probation for two (2) years, under the terms we attach as Appendix I. The probation will commence at such time as the Respondent returns to medical practice in New York.

ORDER

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

1. The Board **SUSTAINS** the Committee's April 22, 1996 Determination, which found the Respondent guilty for violating probation.
2. The Board **OVERTURNS** the Hearing Committee's Penalty Determination.
3. The Board **SUSPENDS** the Respondent's license to practice medicine in New York, until such time as the Respondent completes successfully the probation which he is serving currently in Massachusetts.
4. The Board **PLACES THE RESPONDENT** on two (2) years probation in New York, following the suspension. The probation shall commence at such time as the Respondent returns to active medical practice in New York.

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

SUMNER SHAPIRO

EDWARD C. SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF JOHN A. SCORZA, 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. Scorza.

DATED: Schenectady, New York

Aug 9, 1996

Redacted Signature

ROBERT M. BRIBER

IN THE MATTER OF JOHN A. SCORZA, 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. Scorza.

DATED: Delmar, New York

Aug. 10, 1996

Redacted Signature

SUMNER SHAPIRO

IN THE MATTER OF JOHN A. SCORZA, 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. Scorza.

DATED: Roslyn, New York

Aug 8, 1996

Redacted Signature


~~_____~~
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF JOHN A. SCORZA, 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. Scorza.

DATED: Syracuse, New York

8 Aug., 1996

Redacted Signature 

WILLIAM A. STEWART, M.D.

APPENDIX I
TERMS FOR PROBATION

- Respondent will personally meet with a member of the Office of Professional Medical Conduct staff on a quarterly basis at the discretion of the Director of the Office or designee

 - Respondent will conform fully:
 - a. to the professional standards of conduct imposed by law and by his or her profession
 - b. with all civil and criminal laws, rules and regulations.

 - Respondent will notify the Office of Professional Medical Conduct of:
 - a. any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within thirty days of each action;
 - b. any and all charges in personal and professional addresses and telephone numbers and facility affiliations, within 30 days of such changes. This will include any change in practice location, within or outside of the State of New York. The date of departure from the State of New York, and the date of return, if any, must be reported in writing.
- Failure to notify the Office of Professional Medical Conduct of any of the above will be considered a violation of probation.
- Respondent will maintain legible and complete medical records which accurately reflect evaluation and treatment of patients. Records will contain a comprehensive history, physical examination findings, chief complaint, present illness, diagnosis and treatment. In cases of prescribing, dispensing, or administering of controlled substances, the medical record will contain all information required by state rules and regulations regarding controlled substances.

 - During the period of probation, the Director of the Office of Professional Medical Conduct or designee, may review the professional performance of the Respondent. This review may include, but not be limited to, a random selection of office records, patient records or hospital charts, interviews with or periodic visits with the Respondent and his/her staff at the practice location(s) or one of the offices of the Office of Professional Medical Conduct.

 - The Respondent will make available for review by the Office of Professional Medical Conduct, or a physician selected by the Respondent and approved by the Office of Professional medical Conduct, complete copies of any and all medical and office records selected by the Office of Professional Medical Conduct.

- Any deviation from accepted medical practice identified during any of the reviews will be discussed with the Respondent. Any pattern of substandard care identified during the probation period may result in an independent medical review and could lead to a probation violation and/or additional investigation or charges.
- So long as there is full compliance with every term herein set forth, Respondent may continue to practice his or her profession in accordance with the terms of probation. Upon receipt of evidence of non compliance with, or any violation of these terms, the Director of the Office of Professional Medical Conduct and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized by law.
- Respondent shall assume and bear all costs related to compliance with the terms of probation.
- If the Respondent does not practice medicine in the state of New York, the probation period will be tolled and the period will then be extended by the length of the period outside of New York. Any terms of probation which were not fulfilled while Respondent was in New York state, must be fulfilled upon return to New York state.