



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza

RECEIVED

NOV 07 1995 Albany, New York 12237

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

OFFICE OF PROFESSIONAL CONDUCT Karen Spivack Executive Deputy Commissioner

NEW YORK STATE DEPARTMENT OF HEALTH 19

November 7, 1995

CORRECTED LETTER

Peter D. VanBuren, Esq. NYS Department of Health Room 2429 - Corning Tower Empire State Plaza Albany, New York 12237

Carla Hogan, Esq. Whiteman, Osterman & Hanna One Commerce Plaza Albany, New York 12260

Salvatore Finazzo, M.D. 4210 Hearthstone Drive Sarasota, Florida

Effective Date: 11/13/95

RE: In the Matter of Salvatore Finazzo, ~~M.D.~~ ^{D.O.}

Dear Mr. VanBuren, Ms. Hogan and Dr. Finazzo:

Due to a wordprocessing error, the cover letter you received regarding the above referenced matter contained an error.

The first sentence of the letter dated November 6, 1995 should have read "Enclosed is the Determination and Order (95-172) of the Professional Medical Conduct Administrative Review Board in the above referenced matter."

The Determination and Order you received is not a corrected copy.

We are sorry for any inconvenience this may have caused you.

Sincerely yours,

Tyrone T. Butler

Tyrone T. Butler, Director Bureau of Adjudication



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

Karen Schimke
Executive Deputy Commissioner

November 6, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Peter D. VanBuren, Esq.
NYS Dept. of Health
Rm 2429 Corning Tower
Empire State Plaza
Albany, New York 12237

Carla E. Hogan, Esq.
Whiteman, Osterman & Hanna
One Commerce Plaza
Albany, New York 12260

Salvatore Finazzo, D.O.
4210 Hearthstone Drive
Sarasota, Florida 34238

RECEIVED
NOV 07 1995
MEDICAL CONDUCT

RE: In the Matter of Salvatore Finazzo, D.O.

Dear Mr. VanBuren, Ms. Hogan and Dr. Finazzo :

Enclosed please find the corrected Determination and Order (No. 95-172) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This corrected copy is being sent to you due to an error in the first document sent to you on September 13, 1995. 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.

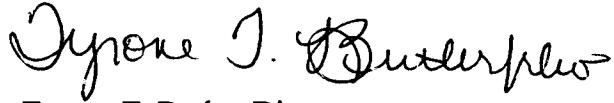
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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,



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
SALVATORE FINAZZO, D.O.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
BPMC 95-172**

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, WINSTON PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.**¹ held deliberations on October 13, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) August 11, 1995 Determination finding Dr. Salvatore Finazzo (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice, which the Review Board received on August 25, 1995. James F. Horan served as Administrative Officer to the Review Board. Carla E. Hogan, Esq. submitted a brief for the Respondent, which the Review Board received on September 27, 1995. Peter D. Van Buren, Esq. submitted a reply brief for the Office of Professional Medical Conduct (Petitioner), which the Board received on October 5, 1995.

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.

¹Sumner Shapiro did not participate in the deliberations in this case.

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 brought this case pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9)(a)(i), which provide an expedited hearing in cases in which professional misconduct charges against a Respondent are based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication which would amount to misconduct if committed in New York State. The expedited proceeding determines the nature and severity of the penalty which the Hearing Committee will impose, based upon the criminal conviction or prior administrative adjudication. The Petitioner charged the Respondent with committing misconduct under Education Law Section 6530(9)(d), by voluntarily or otherwise surrendering his license, after disciplinary action was instituted by an authorized state agency for professional discipline, where the activity from which the action arose would constitute misconduct in New York. The charge arose from the Respondent's surrender of his license in the State of Florida.

The Hearing Committee found the Respondent had left his position at a Veteran's Administration Hospital after being accused of sexual misconduct with three (3) patients. The State of Florida then commenced an action against the Respondent regarding his conduct toward those three (3) patients. The Committee found that on June 10, 1994 the Respondent voluntarily relinquished his Florida license to avoid further administrative prosecution in Florida.

The Hearing Committee found that the Respondent elected to give up his Florida practice under a cloud of charges of extremely serious misconduct and that the matter was never adjudicated. The Committee concluded that in order to protect the public in New York, revocation was the only adequate penalty. The Committee found that the Respondent had created the situation in which he finds himself and the Committee noted that they found no basis for leniency.

REQUESTS FOR REVIEW

The Respondent alleges that the Hearing Committee erred in making their decision, by refusing to consider evidence relating to the violation of the Respondent's due process rights in the underlying Florida disciplinary proceeding, and, by failing to dismiss this action in the interest of justice.

The Petitioner, argues that the Hearing Committee acted properly in refusing to allow the Respondent challenge the underlying surrender in the State of Florida. The Petitioner also argues that this matter should not have been dismissed in the interest of justice. The Petitioner argues that the Hearing Committee's penalty is appropriate in this case in light of the sexual abuse of patients.

REVIEW BOARD DETERMINATION

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

The Review Board votes unanimously to sustain the Hearing Committee's Determination finding the Respondent guilty of professional misconduct. The Petitioner proved, pursuant to Education Law Section 6530, that the Respondent surrendered his license to practice in Florida after the State of Florida had commenced an action against him, charging him with sexual misconduct toward three (3) patients. The surrender in Florida constitutes misconduct in New York. The Review Board sustains the Hearing Committee's Determination to revoke the Respondent's license to practice in New York State. The Committee's Determination is consistent with the Hearing Committee's findings and conclusions and revocation is the appropriate penalty in this case.

Neither the Hearing Committee nor the Review Board can invalidate or reopen the Respondent's license surrender in Florida. The Respondent must petition the courts in Florida to reopen the matter. The Hearing Committee did not err by refusing to consider a collateral attack upon the Florida surrender.

The Review Board denies the Respondent's request to remit this matter to the Hearing Committee, so that the Committee can consider whether or not to dismiss this action in the interest of justice. The Hearing Committee made clear that they felt revocation of the Respondent's New York license was the appropriate penalty in this case. The Review Board agrees. The Respondent relinquished his Florida license rather than face charges of sexual misconduct. The Respondent can not escape responsibilities for his actions in Florida by coming to New York and expecting to practice here. The Hearing Committee and the Review Board are responsible to protect the public health in this state and we can not allow New York to become a haven for physicians trying to escape severe penalties in states where they committed or were accused of committing misconduct. In light of the charges that the Respondent was guilty of sexual misconduct with three (3) patients and in light of the Respondent's surrender of his license rather than facing those charges, the Review Board believes that the only way to guarantee the protection of patients in this state is to revoke the Respondent's license to practice medicine in New York.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's August 11, 1995 Determination finding the Respondent guilty of professional misconduct.

2. The Review Board **SUSTAINS** the Hearing Committee's Determination revoking the Respondent's license to practice medicine in New York State.

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

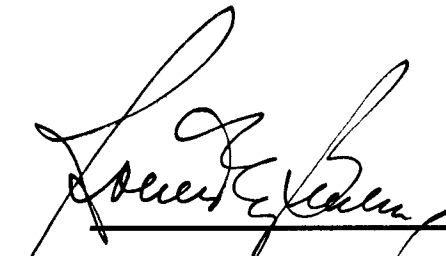
WILLIAM A. STEWART, M.D.

IN THE MATTER OF SALVATORE FINAZZO, D.O.

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. Finazzo.

DATED: Albany, New York

Oct 27, 1995



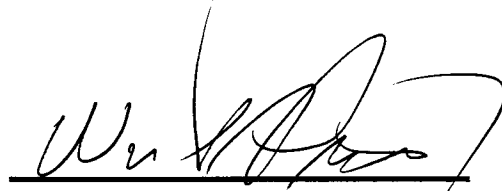
ROBERT M. BRIBER

IN THE MATTER OF SALVATORE FINAZZO, D.O.

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. Finazzo.

DATED: Brooklyn, New York

10/25/, 1995

A handwritten signature in black ink, appearing to read "Winston S. Price", written over a horizontal line.

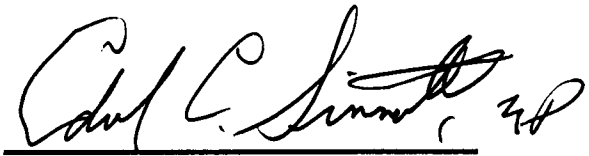
WINSTON S. PRICE, M.D.

IN THE MATTER OF SALVATORE FINAZZO, D.O.

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. Finazzo.

DATED: Roslyn, New York

Oct 27, 1995

A handwritten signature in black ink, appearing to read "Edward C. Sinnott, M.D.", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF SALVATORE FINAZZO, D.O.

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. Finazzo.

DATED: Syracuse, New York

30 Oct, 1995



WILLIAM A. STEWART, M.D.