



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

August 11, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Catherine Cholakis, Esq.
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237

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

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

RECEIVED
AUG 14 1995
OFFICE OF PROFESSIONAL MEDICAL CONDUCT

NEW YORK STATE DEPARTMENT OF HEALTH 19

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

Dear Ms. Cholakis, Ms. Hogan and Dr. Finazzo:

Enclosed please find the Determination and Order (No. 95-172) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "the 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,

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

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

STATE OF NEW YORK :DEPARTMENT OF HEALTH
OFFICE OF PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
-OF-
SALVATORE FINAZZO, D.O.

Respondent

DECISION
AND
ORDER
OF THE
HEARING COMMITTEE
BPMC ORDER NO. 95-172

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated May 10, 1995 which were served upon **SALVATORE FINAZZO, D.O.**, (hereinafter referred to as "Respondent"). **TERESA S. BRIGGS, M.D., Ph.D.** Chairperson, **DAVID T. LYON, M.D., M.P.H.** and **D. MARISA FINN**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on June 28 and July 12, 1995 at the Cultural Education Center, Empire State Plaza, Albany, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "the State" or "Petitioner") appeared by **JEROME J. JASINSKI, Esq.**, Acting General Counsel, by **CATHERINE CHOLAKIS, ESQ.**, Assistant Counsel, Bureau of Professional Medical Conduct, of counsel. Respondent appeared in person and by Whiteman, Osterman and Hanna, **CARLA E. HOGAN, ESQ.**, of counsel. Evidence was received. Testimony was received under oath. Legal arguments were heard. Written submissions were received in evidence or as pleadings. A transcript of these proceedings was made.

After consideration of the entire record, the Hearing Committee issues this Decision and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d)[Having voluntarily or otherwise surrendered his license after disciplinary action was instituted by the authorized state agency for professional discipline, where the activity from which the action arose would constitute misconduct in this state]. The charge herein arises from a license surrender by Respondent in the state of Florida. The allegations in this proceeding and the underlying basis are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

SIGNIFICANT RULINGS BY THE ADMINISTRATIVE LAW JUDGE

Respondent submitted an answer and a closing statement which were not distributed to the Committee. It was the ruling of the Administrative Law Judge that both documents directed themselves, in great measure, to issues of law which were not appropriate for consideration by the trier of fact. Respondent did submit a revised closing statement which was distributed and carefully considered by the Committee.

The Administrative Law Judge made an error during discussion with the panel. It was stated that the question of whether the surrender in issue was voluntary had to be proven by the State. Clearly, section 6530(9)(d) states that the action by the sister state (here, Florida) upon which this proceeding is based, can be "voluntary or otherwise." Therefore, the issue of whether the Florida consent was voluntary is irrelevant. Having established that the authorities in Florida had brought an action against Respondent's license to practice medicine, and that the surrender in evidence arises from the Florida action, the State has met its burden of proof under 6530(9)(d). Respondent was allowed to present evidence with regard to what, if any,

penalty should be imposed by New York state. Evidence or testimony which would tend to undermine the allegations from which the surrender arose, is inadmissible as irrelevant. The Committee was so instructed during deliberations.

The parties have submitted a number of documents which contain arguments regarding the legal issues in this proceeding. Suffice to say that the law in this state is well settled and was summarized in relevant part in the last paragraph. All the documents which were received by the undersigned from either party shall become part of the record in this proceeding and shall be available to Respondent upon further review.

FINDINGS OF FACT

The Committee adopts the factual statement set forth on pages one and two of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

CONCLUSIONS

The Committee members pointed out that throughout this proceeding, Respondent was endeavoring to avoid penalty through the use of what they perceived as technicalities. The basic facts in this matter, which cannot be disputed, are that Respondent left the Veteran's Administration after being accused of sexual misconduct with three female patients. He signed a voluntary relinquishment of his license in Florida, one of the terms of which was that he never apply for re-licensure in that state again. There was some debate whether Respondent "resigned" or was "discharged." As far as this Committee is concerned the debate was irrelevant.

Respondent elected to give up his practice in Florida under a cloud of charges of extremely serious misconduct. That the matter was never adjudicated, was based upon a decision by Respondent to avoid further administrative prosecution. In order to protect the public in this state, only revocation is an adequate penalty. Had this activity occurred in this state and had Respondent been found guilty of these acts in this

state, his license would surely have been revoked. It was Respondent's choice to avoid prosecution in Florida and thereby deny himself the right to confront the charges. Consequently, Respondent has created the situation in which he finds himself and the Committee can find no basis for leniency.

ORDER

WHEREFORE, Based upon the forgoing facts and conclusions,

IT IS HEREBY ORDERED THAT:

1. The Factual allegations in the Statement of Charges are **SUSTAINED**.

Furthermore, it is hereby **ORDERED** that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

3. The license of Respondent to practice medicine in the State of New York is **REVOKED**;

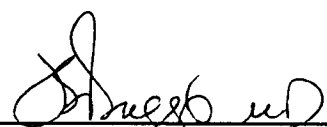
Furthermore, it is hereby **ORDERED** that;

4. This order shall take effect **UPON RECEIPT** or **SEVEN (7) DAYS** after mailing of this order by

Certified Mail.

Dated:
Albany, New York

August 10 1995


TERESA S. BRIGGS, M.D., Chairperson

DAVID T. LYON, M.D., M.P.H.
D. MARISA FINN

TO: **CATHERINE CHOLAKIS, ESQ.**
Assistant Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower Building
Empire State Plaza
Albany, N.Y. 12237

CARLA E. HOGAN, ESQ
Whiteman, Osterman and Hanna
One Commerce Plaza
Albany New York 12260

SALVATORE FINAZZO, D.O.
4210 Hearthstone Dr.
Sarasota, Florida 34238

APPENDIX ONE

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

-----X

IN THE MATTER : NOTICE OF
OF : REFERRAL
SALVATORE FINAZZO, D.O. : PROCEEDING

-----X

TO: SALVATORE FINAZZO, D.O.
4210 Hearthstone Drive
Sarasota, Florida 34238

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1995) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1995). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 28th day of June, 1995 at 10:00 a.m. in the forenoon of that day at Conference Room E, Cultural Education Center, Albany, New York 12237.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the

nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before June 19, 1995.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before June 19, 1995 and a copy of all papers must be served on the same date on the Department of Health attorney indicated 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.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in

writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
May 10, 1995



PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Catherine Cholakis
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X
IN THE MATTER : STATEMENT
OF : OF
SALVATORE FINAZZO, D.O. : CHARGES
-----X

SALVATORE FINAZZO, D.O., the Respondent, was authorized to practice medicine in New York State on July 7, 1958 by the issuance of license number 080567 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about June 10, 1994, Respondent voluntarily relinquished his license to practice Osteopathic Medicine in the State of Florida. Said relinquishment was "to avoid further administrative prosecution" and was deemed by the Florida Board of Osteopathic Medicine as a "disciplinary action that shall be reportable". The action underlying Respondent's relinquishment was sexual misconduct against three female patients.
- B. The conduct upon which the Florida Board found Respondent guilty would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(2) (McKinney Supp. 1995) [practicing

the profession fraudulently] and/or N.Y. Educ. Law §6530(31) (McKinney Supp. 1995) [willfully harassing, abusing, or intimidating a patient either physically or verbally] and/or N.Y. Educ. Law §6530(20) (McKinney Supp. 1995) [conduct in the practice of medicine which evidences moral unfitness to practice medicine].

FIRST SPECIFICATION
HAVING OTHER DISCIPLINARY ACTION TAKEN
OR VOLUNTARILY SURRENDERED LICENSE

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1995) by reason of his having had other disciplinary action taken and/or having voluntarily surrendered his license after a disciplinary action instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the action would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges the facts paragraphs A and B.

DATED: *May 10*, 1995
Albany, New York

Peter D. Van Buren
PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct