



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

July 2, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Edward M. Finck, M.D.
2993 Amboy Avenue
Staten Island, New York 11030

Dennis J. Peterson, Esq.
60 Bay Street - 8th Floor
Staten Island, New York 10301

Daniel Guenzburger, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

RE: In the Matter of Edward M. Finck, M.D.

Dear Dr. Finck, Mr. Peterson and Mr. Guenzburger:

Enclosed please find the Determination and Order (No.97-44) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Hedley Park Place
433 River Street-Fourth Floor
Troy, New York 12180

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 / nm". The signature is written in a cursive style with a vertical line at the end of the name.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

IN THE MATTER

OF

EDWARD M. FINCK, M.D.

**Administrative Review from a Determination by a Hearing
Committee (Committee) from the Board for Professional
Medical Conduct (BPMC)**

COPY

**ADMINISTRATIVE
REVIEW BOARD
DETERMINATION
ARB NO. 97-44**

**BEFORE: ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D.,
EDWARD C. SINNOTT, M.D., and WILLIAM A. STEWART, M.D., Board Members.**

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 1997), the New York State Department of Health asks the Board to revoke the Respondent's New York Medical License (License). After a hearing, a BPMC Committee sustained charges that the Respondent practiced medicine fraudulently, practiced with repeated, and gross, negligence and incompetence and maintained inadequate records. The Committee then imposed a penalty (a stayed suspension, with probation, a fine and a license limitation) that the Petitioner characterizes as inadequate to protect the public. After considering the record and the written submissions from both parties, the Board votes unanimously to overturn the Hearing Committee and to revoke the Respondent's license, because the Respondent's conduct in treating three patients demonstrates that he lacks the skill, judgment and integrity to practice in New York State.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination.

DENNIS J. PETERSON, ESQ. represented the Respondent.

DANIEL GUENZBURGER, ESQ. (Associate Counsel, NYS Department of Health) represented the Petitioner.

COMMITTEE DETERMINATION ON THE CHARGES

Under N.Y. Pub. Health Law § 230(7)(McKinney's Supp. 1997), three member Committees from the State Board for Professional Medical Conduct (BPMC) conduct disciplinary proceedings to determine whether physicians have committed professional misconduct. The Petitioner filed charges with BPMC alleging that the Respondent committed misconduct by violating N.Y. Educ. Law §§ 6530(2)(3)(4)(5)(6)(21)(32) & (35)(McKinney's Supp. 1997) in treating three patients, A-C, for chronic pain. The record refers to the Patients by initials to protect their privacy. The charges alleged that:

- the Respondent practiced with incompetence on more than one occasion, negligence on more than one occasion, failed to maintain adequate records and failed to use acceptable infection control practices in treating patients A-C;
- the Respondent practiced with gross negligence and gross incompetence in treating Patient A;
- the Respondent ordered excessive treatments for Patients A and B; and,
- the Respondent practiced fraudulently and filed a false report concerning treatment for Patients B and C.

During the hearing, the Petitioner withdrew misconduct specifications C.7 and C.8, which formed the basis for the fraud and false reporting charges involving Patient C (Hearing Committee Determination page 2).

Three BPMC Members, **NORTON SPRITZ, M.D. (Chair)**, **GERALD S. WEINBERGER, M.D.** and **RANDOLPH MANNING** conducted the hearing in this matter and rendered the Determination that the Board now reviews. Administrative Law Judge **MARILYN S. READER** served as the Committee's Administrative Officer. The Committee sustained the charges that the Respondent practiced with repeated negligence and repeated incompetence and failed to maintain adequate records for Patients A-C. The Committee found that the Respondent's care for Patients A, B and C fell below the care standard for treating chronic pain patients and that the evidence

demonstrated that the Respondent lacked competence to perform nerve blocks, performed an intercostal nerve block on Patient A that resulted in a pneumothorax, continued to inject all three patients in areas where they developed abscesses and displayed incompetence in recognizing and treating drug dependency. The Committee found that the Respondent practiced with gross negligence in treating Patient A, in placing the Patient at extreme risk by doing a contra-lateral intercostal nerve block shortly after the Patient suffered a pneumothorax on the opposite side, that placed the Patient in a compromised respiratory condition. The Committee sustained the charge that the Respondent ordered excessive treatment for Patients A and B, finding that the Respondent continued inappropriately to use the injectable medications Nubain IM and Phenergan IM for the Patients, although nothing indicated a change in symptoms or any alleviation for the Patients' chronic pain. The Committee sustained the fraud and filing a false report charge, finding that the Respondent concealed, knowingly and intentionally, information concerning Patient B's condition prior to a May, 1992 automobile accident. The Committee found no cause to sustain the charges alleging improper infection control.

The Committee voted to suspend the Respondent's license, stayed the suspension and placed the Respondent on probation for two years. The probation terms required the Respondent to attend a comprehensive course on recognizing and managing drug dependency. The Committee also limited the Respondent's license to preclude him from treating patients for chronic pain and fined the Respondent Ten thousand Dollars (\$10,000.00) for the fraud and false report filing concerning Patient B. Although the Committee found that the Respondent committed serious negligent acts, they chose a penalty other than revocation, because the Petitioner proved only the Respondent's inability to manage difficult chronic pain patients and because no evidence indicated that personal gain motivated the Respondent's fraudulent conduct.

REVIEW HISTORY AND ISSUES

The Committee rendered their Determination on February 24, 1997. The Board received the Petitioner's Review Notice on March 6, 1997. The Notice stayed the Committee's Determination automatically, until the Board rendered this Determination [see N.Y. Pub. Health Law § 230-c(4)(a)]. The Record for review contained the Committee Determination, the hearing transcripts and exhibits, the Petitioner's brief and the Respondent's reply brief. The Board received the Petitioner's brief on April 7, 1997 and the Respondent's reply on April 14, 1997.

The Petitioner requests that the Board sustain the Committee's Determination on the charges, but overturn the Committee's Penalty Determination, because the sanction would provide inadequate public protection. The Petitioner argues that the Respondent's deficiencies extended to the fundamentals of general medicine, and that the Committee's penalty fails to address the Respondent's flawed medical judgment. The Petitioner argues further that the Respondent's decision, to treat Patients A -C without adequate training in pain management and his failure to terminate treatment after overwhelming evidence showed the treatment as inadequate, raise issues about the Respondent's medical judgment. The Respondent also argues that the Respondent's fraudulent conduct supports revocation and that the Respondent shows no indication that retraining would correct his deficiencies.

The Respondent argues that the Committee's Determination resulted from the Committee's singular ability to evaluate each witness's demeanor, sincerity and the overall impression each witness gave. The Respondent contends that the Committee's Determination recognizes methods to correct the Respondent's mistakes and recognizes that the Respondent poses no future threat to patient safety.

THE BOARD'S REVIEW AUTHORITY

In reviewing a Committee's Determination, the Board determines: whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law, and whether the Penalty is appropriate and within the scope of penalties which the law permits [N.Y. Pub. Health Law § 230(10)(i), § 230-c(4)(b)(McKinney's Supp. 1997)]. The Board may remand a case to the Committee for further consideration [N.Y. Pub. Health Law § 230-c(4)(b)(McKinney's Supp. 1997)]. The Board's Determinations result from a majority concurrence among the Board's Members [N.Y. Pub. Health Law § 230-c(4)(c)(McKinney's Supp. 1997)].

The Review Board may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 AD2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 AD2D 940, 613 NYS 2d 759 (Third Dept. 1994), and in determining credibility Matter of Minielly v. Comm. of Health 222 AD2d 750, 634 NYS 2d 856 (Third Dept. 1995).

THE BOARD'S DETERMINATION

The Board considered the record below and the parties' briefs. The Board votes to sustain the Committee's Determination that the Respondent committed repeated and serious professional misconduct. Neither party contested the Committee's findings on the misconduct specifications.

The Board votes to overturn the Hearing Committee's Penalty Determination. The Committee imposed a Penalty less severe than revocation, in part, because they found the Respondent's misconduct involved only pain management. The Board disagrees. We conclude that the Respondent's misconduct demonstrates that the Respondent lacks the judgment and skill necessary to practice medicine generally. The Respondent placed Patients A through C at risk by continuing the Patients on self-injections after the Patients developed abscesses at the injection sites.

The Respondent placed Patient A at grave risk by performing a nerve block on the Patient's right chest, shortly after the Patient suffered a pneumothorax on the left side and with the Patient still in a compromised respiratory condition. The Respondent continued all three Patients on treatments, when evidence showed the treatments failing to improve the Patients' conditions. The Respondent showed incompetence in failing to recognize and manage drug dependence. The Respondent also prescribed medication in contraindicated combinations. The Respondent demonstrated deficiencies in judgment, knowledge and skills that all physicians must possess to practice safely. The Board concludes that the Committee Determination to limit the Respondent's license constituted an inappropriate and inadequate sanction to protect the public health.

The Committee also concluded that the Respondent's fraudulent conduct arose from other than his own monetary gain. Although the Board finds nothing in the record to indicate that the Respondent obtained any monetary gain from writing the intentionally deceptive letter about Patient B, we find the Respondent's acts to merit a punishment more severe than a monetary fine, because the fraudulent conduct involved the Respondent's medical license and betrayed the trust that society places in the medical profession. The Respondent submitted the fraudulent letter concerning Patient B knowing that a jury and judge would consider that letter someday in tort litigation. A physician must deal truthfully with patients, with other physicians, with third party payors and with government regulators. The Board concludes that a physician who would author such a blatantly false letter, for submission to a court and jury, lacks integrity.

The Board determines further that retraining offers no prospect for correcting the Respondent's deficiencies. Retraining can provide no benefit to a physician who lacks judgment or integrity. The Board concludes unanimously that the Respondent poses a danger to patients in general and that no means exists to correct the Respondent's poor judgment or dishonesty. As the Respondent lacks the skill, judgment and integrity that medical practice in this State requires, the Board votes unanimously to revoke the Respondent's New York medical license.

ORDER

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

1. The Board **SUSTAINS** the Hearing Committee's February 4, 1997 Determination finding the Respondent guilty for professional misconduct.
2. The Board **OVERTURNS** the Hearing Committee's penalty.
3. The Board **REVOKES** the Respondent's License to practice medicine in New York State.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF EDWARD M. FINCK, 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. Finck.

DATED: Brooklyn, New York

JUNE 14, 1997

A handwritten signature in black ink, appearing to read 'W. S. Price', is written over a horizontal line.

WINSTON S. PRICE, M.D.

IN THE MATTER OF EDWARD M. FINCK, 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. Finck.

DATED: Roslyn, New York

June 20, 1997

A handwritten signature in black ink, appearing to read "Ed C Sinnott", written over a horizontal line. There is a small mark to the right of the signature.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF EDWARD M. FINCK, M.D.

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board of Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Finck.

DATED: Syracuse, New York

23 June, 1997

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 EDWARD M. FINCK, 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. Finck.

DATED: Delmar, New York
June 24, 1997

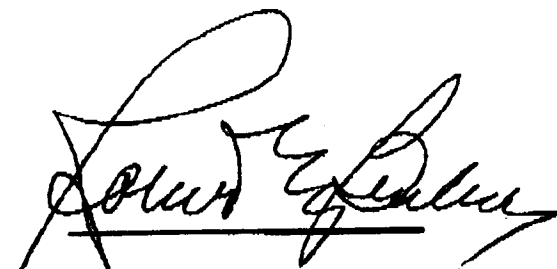

SUMNER SHAPIRO

IN THE MATTER OF EDWARD M. FINCK, 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. Finck.

DATED: Schenectady, New York

June 23, 1997


ROBERT M. BRIBER