
IN THE MATTER
OF
ALBERT GREENWOOD, M.D.

MODIFICATION
ORDER
BPMC No. #96-116

Upon the proposed Application for a Modification Order of **ALBERT GREENWOOD, M.D.**, (Respondent), that is made a part of this Modification Order, it is agreed and ORDERED, that the attached Application and its terms are adopted and it is further ORDERED, that this Modification Order shall be effective upon issuance by the Board, either by mailing, by first class mail, a copy of the Modification Order by first class mail to Respondent at the address in the attached Application or by certified mail to Respondent's attorney or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 3-13-2009

Redacted Signature

KENDRICK A. SEARS, M.D.
Chair
State Board for Professional
Medical Conduct

IN THE MATTER
OF
ALBERT GREENWOOD, M.D.

APPLICATION FOR
MODIFICATION ORDER

ALBERT GREENWOOD, M.D., (Respondent) being duly sworn deposes and says:

That on or about March 1, 1966, I was licensed to practice as a physician in the State of New York, having been issued license number 096143 by the New York State Education Department.

My current address is Redacted Address

I am currently subject to Administrative Review Board Determination and Order ARB No. 96-116, (hereinafter "Original Order"), annexed hereto, made a part, hereof, and marked as Exhibit 1, that was issued on September 19, 1996.

I apply, hereby, to the State Board for Professional Medical Conduct for a Modification Order (hereinafter "Modification Order"), modifying the Original Order, as follows: to delete the paragraph in the Original Order that states:

" 4. The Board LIMITS the Respondent's license to prohibit him from prescribing Schedule II Controlled Substances."

The Modification Order to be issued will not constitute a new disciplinary action against me.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance of the Board of this Application, I knowingly waive the right to contest the Original Order or the Modification Order for which I apply, both administratively and judicially, and ask that the Board grant this Application.

I understand and agree that the attorney for the Bureau of Professional Medical Conduct, the Director of the Office of Professional Medical Conduct, and the Chair of the State Board for Professional Medical Conduct each retain complete discretion to either enter into the proposed Agreement and Modification Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

AFFIRMED:

DATED: March 4, 2009

Redacted Signature

ALBERT GREENWOOD, M.D.
Respondent

The undersigned agree to the attached Application of Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: March 4, 2009

Redacted Signature

ROBERT J. BERNSTEIN
Attorney for Respondent

DATE: 11 March 09

Redacted Signature

ROBERT BOGAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 3/12/09

Redacted Signature

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT 1



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

Daniel Guenzburger, Esq.
NYS Department of Health
5 Penn Plaza - 6th Floor
New York, NY 10001

Albert Greenwood, M.D.

Redacted Address

James Nemia, Esq.
Foley & Nemia
PO Box 3298 - Church Street Station
New York, NY 10008

Due to litigation effective date of the
30 day suspension became November 25, 1996

Effective Date: 09/30/96

RE: In the Matter of Albert Greenwood, M.D.

Dear Mr. Guenzburger, Dr. Greenwood and Mr. Nemia:

Enclosed please find the Determination and Order (No. ARB-96-116) 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

^v
Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw

Enclosure

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

COPY

IN THE MATTER
OF
ALBERT GREENWOOD, M.D.

ADMINISTRATIVE
REVIEW BOARD
DETERMINATION
AND ORDER
ARB NO. 96-116

The Respondent **DR. ALBERT GREENWOOD** (Respondent) requests, pursuant to Public Health Law (PUB.H.L.) §230-c(4)(a) (McKinney's Supp. 1996), that the Administrative Review Board for Professional Medical Conduct (Board) review and vacate a Determination by a Hearing Committee on Professional Medical Conduct (Committee), which censured the Respondent for violating the provisions in PUB.H.L. Article 28, which govern prescribing controlled substances. The Department of Health (Petitioner), in their review brief, requests that the Board increase the sanction against the Respondent. After reviewing this case and conducting deliberations on August 9 and 23, 1996¹, Board Members **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** render this Determination. The Board votes to sustain the Committee's Determination that the Respondent committed professional misconduct and we vote to overturn the Committee's penalty and to increase the sanction against the Respondent. The Board suspends the Respondent's license for thirty days and we limit the Respondent's license thereafter to prohibit him from prescribing Schedule II controlled substances.

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

JAMES NEMIA, ESQ. (Foley & Nemia) represented the Respondent on this review.

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

¹Dr. Price did not participate during the August 9, 1996 Deliberations.

CHARGES AND COMMITTEE DETERMINATION

PUB.H.L. §230(7) authorizes the State Board for Professional Medical Conduct (BPMC) to conduct disciplinary proceedings to determine whether physicians have committed professional misconduct by violating EDUC. L. §6530. The Petitioner filed charges with BPMC alleging that the Respondent had violated EDUC. L. §6530(9)(e) by having been found by the Commissioner of Health to be in violation of PUB.H.L. Article 33. The Petitioner brought this case as an expedited proceeding pursuant to PUB.H.L. §230(10)(p), to determine the nature and severity for the penalty to be imposed for the conduct. The charges arose from a Stipulation the Respondent signed with the New York Health Commissioner concerning prescriptions which the Respondent wrote for Tylenol #4, with codeine, a Schedule II controlled substance.

Three BPMC members, **STEPHEN A. GETTINGER, M.D. (Chair)**, **LAXMI V. BAXI, M.D.** and **REV. JAMES H. MILLER** comprised the Committee who conducted a hearing and rendered a Determination in this case on May 14, 1996. Administrative Law Judge **LARRY STORCH** served as the Committee's Administrative Officer. The Committee determined that:

- the Respondent signed a Stipulation with the Health Commissioner on June 13, 1995 admitting to violating PUB.H.L. §3335(3) and Title 10 NYCRR §80.100(a).
- PUB.H.L. §3335(3) prohibits prescribing controlled substances in quantities which would exceed a thirty day supply, if used in accordance with prescribed directions;
- Title 10 NYCRR §80.100(a), a Health Department regulation, requires a practitioner to maintain a record for controlled substances transactions for five years from the date for each transaction;
- the Respondent, from May 24, 1993 to July 8, 1993, and from January 26, 1994 to July 19, 1994, issued 34 prescriptions for forty tablets each Tylenol #4 with codeine, with each prescription allowing for two refills;
- these prescriptions, if used as directed, would provide more than a thirty day supply of the medication;
- between May 24, 1993 to July 19, 1994, the Respondent failed to maintain a record for a Patient, JM, which would justify treatment with Tylenol #4; and

- the Commissioner of Health imposed a Three Thousand Dollar (\$3,000.00) Civil Penalty, with the penalty suspended on condition that the Respondent commit no further Article 33 violations for two years.

The Committee concluded that the Respondent's Stipulation with the Health Commissioner proved that the Respondent committed professional misconduct in violation of EDUC. L. §6530(9)(e). The Committee voted to censure and reprimand the Respondent. The Committee concluded that the prescriptions represented an isolated incident and that the single patient involved in the incident, JM, suffered significant pain due to excessive injuries he had sustained. The Committee expressed concern, however, that the Respondent acknowledged writing the prescriptions in such a way to hide the amounts prescribed to Patient JM. The Committee characterized such conduct as a clear attempt to circumvent the safeguards against over-prescribing a potentially dangerous addictive drug. The Committee also stated that they found the Respondent's explanation for lacking records to lack credibility. The Committee chose against imposing a fine, because they found no evidence that the Respondent received any wrongful financial gain.

REVIEW HISTORY AND ISSUES

The Respondent filed a Notice requesting a review, which the Board received on June 6, 1996. The Notice stayed the Committee's penalty automatically, pursuant to PUB.H.L. §230-c(4)(a), pending the Board's final Determination on the Review. The record for the review contained the Committee's Determination, the hearing transcript and records and the parties' briefs. The Board received the Respondent's brief on July 7, 1996, the Petitioner's brief on July 10, 1996 and the Petitioner's reply on July 15, 1996.

The Respondent asks that the Board vacate the sanction against the Respondent, because a patent conflict of interest taints the Stipulation which forms the basis for factual findings against the Respondent. The Petitioner contends that the conflict arose because the attorney who represented the Respondent in reaching the Stipulation was the Patient, JM, for whom the Respondent had prescribed the Tylenol #4. The Respondent argues that the Health Department attorneys who negotiated the

Stipulation should have refused to allow JM to represent the Respondent. The Respondent also contends that, due to mitigating circumstances, the penalty that resulted from the Controlled Substances Stipulation constituted a sufficient penalty.

The Petitioner concedes that they requested a censure penalty with a fine at the underlying hearing's commencement, under the mistaken impression that the Respondent's Article 33 violation resulted from negligent conduct in an isolated case. The Petitioner now argues that the Respondent's hearing testimony and the Committee's findings require a more severe sanction, because:

- the Respondent admitted to writing prescriptions in a way that would hide the large amounts prescribed;
- the Committee found that the Respondent intended to circumvent the safeguards against over-prescribing potentially addictive drugs; and
- the Committee found that the Respondent's testimony lacked credibility.

The Petitioner requests that the Board impose a more punitive sanction than censure and reprimand. In reply to the Respondent's brief, the Petitioner argues that the Respondent's contentions, that a conflict of interest tainted the Respondent's prior Stipulation, lacks merit and falls outside the Review Board's authority.

THE BOARD'S REVIEW AUTHORITY

Pub.H.L. §230(10)(i), §230-c(1) and §230-c(4)(b) authorize the Board to review determinations by hearing committees for professional medical conduct and to decide:

- 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.

Pub.H.L. §230-c(4)(b) permits the Board to remand a case to the Committee for further consideration. Pub.H.L. §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

The Board has the authority to 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 Spartalis 205 AD 2d 940, 613 NYS 2d 759 (Third Dept. 1994), and in deciding credibility issues, 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 parties' submissions. We sustain the Committee's Determination that the Respondent committed misconduct in violation of EDUC. L. §6530(9)(e), based on the Commissioner of Health's finding that the Respondent violated the restrictions on controlled substance prescribing that appear at PUB.H.L. Article 33. We reject the Respondent's request that we vacate the Committee's Determination due to the alleged conflict of interest involving JM. The Board lacks the authority to invalidate the Respondent's Stipulation. We leave the Respondent to raise his legal contentions concerning the Stipulation with the Courts.

The Board votes 5-0 to overturn the Committee's penalty because we find the penalty to be inappropriate and to be inconsistent with the Committee's findings that the Respondent:

- lacked credibility in his hearing testimony;
- prescribed Tylenol #4 for Patient JM in such a way to hide the large quantities in which the Respondent prescribed the medication; and,
- intended to circumvent the safeguards against over-prescribing potentially addictive drugs.

The Respondent prescribed Tylenol #4 with codeine, a Schedule II controlled substance, in immense and alarming quantities for Patient JM. By doing so, the Respondent placed Patient JM at risk due to the drug's addictive nature. Rather than seek an alternative treatment for Patient JM or try to reduce the drug dosage, the Respondent instead crafted the prescriptions to avoid detection. The Respondent's actions demonstrate that he constitutes a danger to his patients. The Board finds that the Respondent's intentional attempt to circumvent the over-prescribing safeguards merits a severe

sanction, such as license suspension, to provide the Respondent time to reflect on his serious misconduct. The Board finds further that the Respondent's dangerous and substandard care for Patient JM demonstrates that the Respondent lacks the skill and knowledge to prescribe potentially addictive controlled substances in a safe and effective manner.

The Board votes 5-0 to suspend the Respondent's medical license for thirty days. The Board votes 5-0 to limit the Respondent's license, following the suspension, to prohibit him from prescribing Schedule II controlled substances.

ORDER

NOW, based upon this Determination, the Review Board issues the following

ORDER:

1. The Board **SUSTAINS** the Hearing Committee's May 14, 1996 Determination finding the Respondent guilty for professional misconduct.
2. The Board **OVERTURNS** the Hearing Committee's Penalty.
3. The Board **SUSPENDS** the Respondent's license for thirty days.
4. The Board **LIMITS** the Respondent's license to prohibit him from prescribing Schedule II Controlled Substances.

**ROBERT M. BRIBER
SUMNER SHAPIRO
WINSTON S. PRICE, M.D.
EDWARD SINNOTT, M.D.
WILLIAM A. STEWART, M.D.**

IN THE MATTER OF ALBERT GREENWOOD, 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

DATED: Schenectady, New York

Sept 19, 1996

Redacted Signature

ROBERT M. BRIBER

IN THE MATTER OF ALBERT GREENWOOD, 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.

DATED: Brooklyn, New York

SEPT 14, 1996

Redacted Signature

WINSTON S. PRICE, M.D.

IN THE MATTER OF ALBERT GREENWOOD, 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

DATED: Delmar, New York

Sept 18, 1996

Redacted Signature

SUMNER SHAPIRO

IN THE MATTER OF ALBERT GREENWOOD, 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

DATED: Roslyn, New York

Sept. 13, 1996

Redacted Signature



EDWARD C. SINNOTT, M.D.

IN THE MATTER OF ALBERT GREENWOOD, 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

DATED: Syracuse, New York

16 Sept., 1996

Redacted Signature

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WILLIAM A. STEWART, M.D.