



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

January 30, 1995

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

James G. Eberz, Esq.
Meiselman, Farber, Packman & Eberz, P. C.
118 North Bedford Road
P.O. Box 151
Mt. Kisko, New York 10549

Bernhard H. Lanwehr, M.D.
RFD 3 Box 6AF
Bedell Road
Amawalk, New York 10501

Kevin C. Roe, Esq.
Rm. 2429 Corning Tower
Empire State Plaza
Albany, New York 12237-0032

RE: In the Matter of Bernhard H. Lanwehr, M.D.

Effective Date: 2/6/95

Dear Dr. Lanwehr, Mr. Eberz and Mr. Roe:

Enclosed please find the Determination and Order (No. 94-141) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

A handwritten signature in black ink that reads "Tyrone T. Butler" followed by a stylized flourish.

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**

BERNHARD HERMAN LANWEHR, M.D.

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
BPMC 94-141**

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.** held deliberations on Saturday, November 5, 1994 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) August 11, 1994 Determination finding Dr. Bernhard Lanwehr (Respondent) guilty of professional misconduct. Both the Respondent and the Office of Professional Medical Conduct (Petitioner) requested the reviews, through notices which the Board received from the Respondent on August 30, 1994 and from the Petitioner on August 25, 1994. The Petitioner subsequently withdrew their notice. James F. Horan served as Administrative Office to the Review Board. James G. Eberz, Esq. submitted a brief for Dr. Lanwehr on October 5, 1994. Kevin C. Roe filed a Reply Brief for the Petitioner.

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.

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 Office of Professional Medical Conduct charged that Respondent practiced with negligence on more than one occasion, gross negligence, incompetence on more than one occasion and gross incompetence. The charges arose from the treatment which the Respondent provided to six patients. The Record identifies the patients by the initials A through F to protect their privacy. The Respondent provided the care to Patients A and D in the Emergency Room of Columbia Greene Medical Center, and provided care to patients B,C, E and F in the Emergency Room of St. Francis Hospital in Poughkeepsie.

In the case of Patient A, the Respondent incorrectly diagnosed the Patient, a pedestrian who was hit by a car, with a chip fracture of the hip and ordered the patient discharged. When the patient sat up, he became hypotensive and weak. Upon re-reviewing the x-rays the Respondent identified a major pelvis fracture. The Patient later died of multiple traumatic injuries. The Committee found the Respondent guilty of gross negligence and gross incompetence for his actions and omissions. The

Committee concluded that the Respondent had missed an obvious and severe major fracture of the pelvis, that the Respondent failed to take appropriate steps for resuscitation after discovering life threatening injuries, and that the Respondent had relied totally and inappropriately on a registered nurse to resuscitate the Patient.

In the case of Patient B, the Respondent had treated the Patient for complaints of burning discomfort in the throat and midchest. The Committee found that, despite test results indicating a possible myocardial infarction, the Respondent ordered Mylanta and discharged the patient with a diagnosis of heartburn. The following day the Patient was admitted to St. Francis Hospital with a diagnosis of acute myocardial infarction. The Committee concluded that the Respondent's inappropriate diagnosis and failure to admit the Patient following the test results constituted negligence and gross incompetence.

In the case of Patient C, the Committee found the Respondent guilty of negligence and gross incompetence. The Patient, who had a history of cerebrovascular accident, was examined in the St. Francis Emergency Department complaining of increased weakness and inability to use the left leg. The Respondent discharged the Patient with a diagnosis of back contusion, even though the record disclosed no documentation of a back contusion. On the day following the Respondent's examination and discharge of Patient C, the Patient was admitted to a second hospital to determine whether the Patient had suffered a cerebrovascular accident. The Committee found that the Respondent failed to perform appropriate tests and found that the Respondent should have admitted the Patient to St. Francis with a diagnosis of possible cerebrovascular accident. The Committee stated that they severely questioned the Respondent's judgment in ignoring the Patient's current complaints. The Committee noted serious concerns about the Respondent's lack of skill or judgement in the case.

In the case of Patient D, physical examination indicated congestive heart failure and abnormal laboratory values indicated respiratory failure. The Respondent treated the Patient with Lasix and discharged her to her nursing home. The Committee found the Respondent guilty of gross negligence and gross incompetence for failing to perform additional tests on the Patient and for discharging the Patient, who was in danger of impending respiratory failure.

In the case of Patient E, the Committee found the Respondent guilty of negligence and of gross

incompetence. The Committee found that the Respondent had failed to order adequate IV fluid rehydration and had failed to make a timely diagnosis of diabetic ketoacidosis.

In the case of Patient F, the Patient was admitted to the St. Francis Emergency Department complaining of a sharp chest pain. The Patient had a history of previous cardiac problems. The chest pain had diminished when ambulance personnel gave the patient nitroglycerin. The Respondent discharged the Patient with a diagnosis of atypical chest pain. The following day the Patient was admitted to the hospital with a diagnosis of unstable angina and she required cardiac catheterization and angioplasty. The Committee found that the Respondent's history of the Patient's prior cardiac problems was inadequate, that the Respondent failed to order certain warranted measurements and that the Respondent should have admitted the Patient to the hospital. The Committee noted that once again the Respondent's failure to take an adequate history had missed an obvious diagnosis and delayed the Patient's treatment. The Committee concluded that the Respondent's failure in the case constituted negligence and gross incompetence.

The Committee voted 2-1 to suspend the Respondent's license to practice medicine. The Committee provided that the suspension would be stayed upon the Respondent's entry into an Emergency Room residency program approved by the Accreditation Council for Graduate Medical Education (ACGME). The Committee provided further that upon successful completion of the ACGME program, the Respondent shall be on probation for three years under the terms set out in Appendix II of the Hearing Committee's Determination. The Committee noted that they had serious concerns about the Respondent's medical judgment. The Committee found that the record clearly demonstrated that the Respondent's failure to take adequate patient histories and his misdiagnoses resulted in ineffective and untimely treatment of patients and that some patients were placed in grave risk of harm. The Committee concluded that the retraining and monitoring, which they ordered, would direct Respondent to refocus and re-develop his skills in accurate diagnosis of patients' problems and their subsequent treatment.

REQUESTS FOR REVIEW

The Respondent asks the Review Board to dismiss certain findings of the Hearing Committee as contrary to the weight of the evidence and to amend the penalty recommendation.

The Respondent asserts that the Hearing Committee did not consistently use the same standards in evaluating the Respondent and failed to consider some particular realities of the Emergency Room. The Respondent, on pages 2-3 of his brief, raised five general discussion points: that the Emergency Room is an evolving area of practice, that the Emergency Room clearly is not always accurate, that hospital support service may vary, that attending physicians who respond to the emergency room become responsible for care, and, that medical judgements are not always correct when measured by hindsight.

The Respondent's brief on pages 4-18 challenges findings and conclusions by the Committee as to certain specifications which the Committee sustained. The Respondent notes Dr. Lanwehr did admit to certain errors of judgment and fact at the hearing, but notes the Committee's penalty is excessive considering the nature of the errors. The Respondent asserts that Dr. Lanwehr has developed an expertise in treating multiple problems from working an average of over twenty-five hundred hours over the course of nine years in busy emergency departments. The Respondent contends that it is not reasonable to determine that Dr. Lanwehr is not competent to work in an emergency department because he is not ultra defensive in his charting and testing of patients.

The Respondent notes that the Respondent has worked in Emergency Rooms for nine years and that of all the patients the Respondent has seen, the Petitioner could bring charges in only six. The Respondent contends that since the main problems the Hearing Committee found related to sensitivity to potential cardiac problems and to patient charting, the Respondent asks the Review Board to modify the penalty to reduce its excessive nature and to address the Respondent's needs. The Respondent recommends that the Hearing Committee's suspension should relate to Emergency Room work only and that the suspension should end at the time the Respondent becomes board certified in emergency medicine or actually attends and satisfactorily completes a program in recognition and treatment of cardiac problems in an emergency room environment. The Respondent recommends that the

suspension be stayed if the Respondent works in an emergency room under supervision or while he is in a non-emergency room environment. The Respondent also asks that the Review Board modify the terms of probation by shortening the period to two years and by changing certain conditions.

REVIEW BOARD DETERMINATION

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

The Review Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty of gross negligence, gross incompetence, negligence on more than one occasion and incompetence on more than one occasion. The Determination is consistent with the Committee's findings concerning the Respondent's repeated and severe instances of incompetence and negligence, and his pattern of failing to perform adequate examinations or order appropriate tests and his misdiagnoses of the patients' conditions. The Respondent's substandard pattern of care resulted in a delay in patients receiving proper treatment and placed those patients in danger.

The Review Board finds no merit in the Respondent's request that the Board annul certain factual findings and findings of guilt which the panel made. The Respondent is in effect trying to relitigate the Hearing. The Committee's findings are supported by testimony by the Petitioner's expert, in some instances by the Petitioner's and the Respondent's expert together, and in some instances by both experts and the Respondent. The Committee as the finder of fact weighed the testimony and chose which testimony they found credible and which experts they found reliable. The Review Board finds no need or reason to substitute our judgment for that of the Committee.

The Review Board sustains the Hearing Committee's penalty which suspends the Respondent's license until he completes a residency in Emergency Medicine and which places the Respondent on probation following the successful completion of the residency.

The Respondent was guilty of repeated and severe acts of incompetence and negligence, which placed patients in danger. The Respondent's repeated failure to perform proper tests and his misdiagnoses demonstrate a clear and continuing pattern which poses a continuing danger to the

public. The misconduct calls for a severe penalty. In the absence of any measure to correct the Respondent's pattern of negligence and incompetence, the revocation of the Respondent's license would be appropriate. The Committee in this case, however, felt that with a residency in emergency medicine and with probation, there was an opportunity to correct the Respondent's problems and protect the public. The Review Board accepts the Hearing Committee's judgement and sustains the Committee's penalty.

The Review Board rejects the Respondent's request for a modification in the penalty that would allow the Respondent to practice medicine outside the emergency room, while he does some modified retraining. The Respondent has demonstrated negligence and incompetence in diagnosing patients' conditions. Diagnosis is basic to all medicine. Due to the Respondent's deficiencies, the Review Board feels that the Respondent would continue to constitute a danger to patients, whether in the Emergency room or in some other environment. The Review Board feels that only an intense program such as a residency would be adequate to address the deficiencies in the Respondent's practice. We find further that the Respondent should be monitored for three years following successful completion of retraining to assure that the Respondent's skills have improved to the point that he no longer constitutes a danger to his patients.

ORDER

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

1. The Review Board **sustains** the Hearing Committee's August 11, 1994 Determination finding Dr. Bernhard Herman Lanwehr guilty of professional misconduct.

2. The Review Board **sustains** the Hearing Committee's Determination to suspend the Respondent from practice until he enters an ACGME approved residence program in Emergency Medicine and which places the Respondent on three years probation following the successful completion of the residency program.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD C. SINNOTT, M.D.

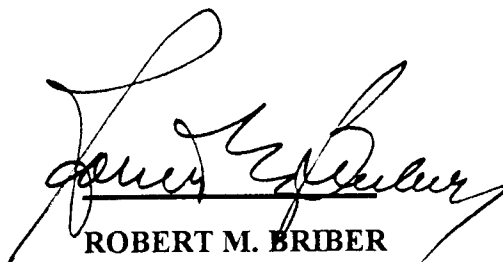
WILLIAM A. STEWART, M.D.

IN THE MATTER OF BERNHARD LANWEHR, 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. Lanwehr.

DATED: Albany, New York

12/16, 1994



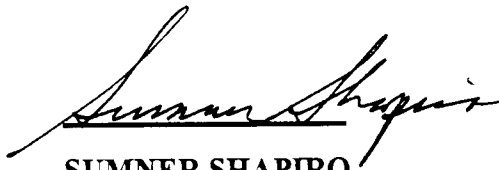
ROBERT M. BRIBER

IN THE MATTER OF BERNHARD LANWEHR, 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. Lanwehr.

DATED: Delmar, New York

Dec 28, 1994


SUMNER SHAPIRO

IN THE MATTER OF BERNHARD LANWEHR, 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. Lanwehr

DATED: Brooklyn, New York

_____, 1994



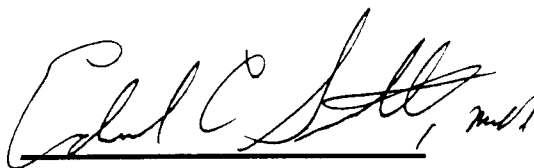
WINSTON S. PRICE, M.D.

IN THE MATTER OF BERNHARD LANWEHR, 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. Lanwehr.

DATED: Roslyn, New York

December 16, 1994

A handwritten signature in cursive script, reading "Edward C. Sinnott, M.D.", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF BERNHARD LANWEHR, 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. Lanwehr.

DATED: Syracuse, New York

16 Dec, 1994

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.