



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

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

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OFFICE OF MEDICAL CONDUCT

April 26, 1995

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Kevin C. Roe, Esq.
NYS Department of Health
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Empire State Plaza
Albany, NY 12237

EFFECTIVE DATE 05/03/95

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

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

The Administrative Review Board for Professional Medical Conduct has modified the penalty in Dr. Lanwehr's case. The modification Order is enclosed.

Very truly yours,

Tyrone T. Butler, Director
Bureau of Adjudication

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

**IN THE MATTER
OF
BERNARD HERMAN LANWEHR**

**ADMINISTRATIVE
REVIEW BOARD
ORDER MODIFYING
PENALTY**

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 February 17 and March 10, 1995¹, at which time the Review Board considered Dr. Bernard Lanwehr's February 15 and February 27, 1995 motion asking that the Board modify its Determination, suspending the Respondent's license until the Respondent enters an approved residency program in emergency medicine.

By Order 94-141, the Administrative Review Board sustained a Hearing Committee on Professional Medical Conduct's August 11, 1994 Determination finding Dr. Lanwehr guilty of gross negligence, gross incompetence, negligence on more than one occasion and incompetence on one occasion. The case involved the Respondent's Emergency room Care for six patients, A through F. The Review Board also sustained the Hearing Committee's Determination to suspend the Respondent's license until the Respondent enters a residency program which the Accreditation Council for Graduate Medical Education (ACGME) have approved, and to place the Respondent on three years probation following successful completion of the retraining.

The Respondent has asked the Review Board to reconsider the penalty against the Respondent,

¹Dr. Stewart participated in the deliberations by telephone.

because the emergency medicine retraining restriction was improper, illegal and arbitrary and because the training is counterproductive. In the Respondent's February 15, 1995 motions, the Respondent's attorney Mr. Eberz informed the Board that Dr. Lanwehr has entered a residency training program in surgery at a senior resident level and had passed the oral certifying examination for Emergency Medicine and was now certified in Emergency Medicine. The Respondent has asked that the Review Board modify our decision in Dr. Lanwehr's case that would allow Dr. Lanwehr to obtain residency/fellowship training in a field other than emergency medicine.

The Respondent proposes that the Review Board modify the Hearing Committee's Determination to accept Dr. Lanwehr's residency training in surgery as a stay on the suspension of the Respondent's license, to accept the surgical training, which focuses on trauma and intensive care, and the board certification in emergency medicine as sufficient remediation, and, to allow the Respondent to begin probation upon the completion of the residency. The Respondent asks in addition that the Review Board modify Condition of Probation #4 to provide that residency training outside New York will not extend the probationary period and that the Board modify Condition of Probation #10 to provide that if the Respondent practices in a field other than emergency medicine, the Respondent's monitoring physician shall come from the field of medicine in which the Respondent is practicing.

Following the Board's February 10, 1995 deliberations, our Administrative Officer contacted the parties and asked for additional information concerning the surgical residency program. Through a letter dated February 22, 1995, Mr. Eberz informed the Review Board that Dr. Lanwehr is enrolled in an ACGME approved program at North General Hospital.

The Petitioner does not object to modification of the Review Board's original Order, if the modification includes the following changes to the conditions of probation. The Petitioner recommends that the Board Order should provide that:

"Respondent's license to practice medicine in New York State is suspended, and that the suspension shall be stayed upon Respondent's entry into an ACGME accredited residency program selected by him and previously approved, in writing, by the Director of OPMC.

Upon satisfactory completion of the ACGME accredited residency program, Respondent shall be monitored by OPMC for an additional three years. In the event that Respondent is not accepted into an ACGME accredited residency program, the suspension of Respondent's medical license shall remain in full force and effect."

The Petitioner recommends that the Respondent's license shall be limited to prohibit the practice of emergency medicine until such time as he enrolls in and successfully completes an ACGME accredited emergency medicine residency program selected by him and previously approved, in writing, by the Director of OPMC.

The Petitioner recommends that certain conditions in the Terms of Probation that appear at Appendix II of the Hearing Committee Determination should be modified. The Petitioner recommends that Paragraphs 4, 6, 7, 8, 10 and 13 should appear as follows:

- "4. Periods of residency training outside New York State shall not extend the probationary period.
- "6. Respondent shall satisfactorily complete a residency program accredited by the Accreditation Council for Graduate Medical Education and previously approved, in writing, by the Director of OPMC.
- "7. The results of the ACGME accredited residency program shall be forwarded to the Office of Professional Medical Conduct.
- "8. Upon completion of a ACGME accredited residency program, Respondent shall remain on probation for an additional three years.
- "10. ...The monitoring physician, who has been in practice for at least five years, shall be board certified in the field which Respondent elects to practice, selected by Respondent and previously approved, in writing, by the Director of OPMC...
- "13. In the event Respondent is not accepted into an ACGME accredited residency program, the suspension of Respondent's medical license shall remain in full force and effect. In the event that Respondent does not enroll in and successfully complete an ACGME accredited emergency room residency program, the limitation of Respondent's license to prohibit emergency room practice shall remain in full force and effect."

The Petitioner argues that the Respondent should not be prohibited from practicing in a field other than emergency medicine after successful completion of an ACGME residency program. The Petitioner, however, opposes the Respondent's contention that the Board certification in emergency medicine and the surgical residency are sufficient remediation to allow the Respondent to return to emergency medicine.

After considering the arguments by both parties, the Review Board votes to modify our earlier Order. The Board will accept the surgical residency program in which the Respondent is now enrolled as a substitute for an emergency residency, as a means to stay the suspension of the Respondent's license, and if the Respondent completes the residency successfully, the Board will accept that as sufficient remediation, other than in emergency medicine, to allow the Respondent to begin probation and practice in a field other than emergency medicine. The Review Board does not, however, accept the surgical residency and the Board certification as an indication that the Respondent will be able to safely return to the practice of emergency medicine. The Review Board feels that the serious deficiencies which the Respondent displayed in emergency medicine, as demonstrated in the cases reviewed during Dr. Lanwehr's hearing, can only be corrected through a retraining program specific to emergency medicine. We, therefore, agree with the Petitioner that the Respondent's license should be limited to prohibit him from performing emergency medicine, until the Respondent completes an ACGME approved residency program in emergency medicine.

NOW, based upon the attached Determination, the Administrative Review Board **MODIFIES** its Order No 94-141, as follows:

- I. Respondent's license to practice medicine in New York State be and hereby is suspended. The suspension shall be stayed upon Respondent's entry into an ACGME accredited residency program selected by him and previously approved, in writing, by the Director of OPMC. Upon satisfactory completion of the ACGME accredited residency program, Respondent shall be monitored by OPMC for an additional three years.
- II. The complete terms of the Respondent's probation are set out in Appendix II of the Hearing Committee's August 11, 1994 Determination, except that paragraphs 3, 4, 6, 7, 8, 10 and 13 are modified as recommended by the Petitioner and set out in our Determination.
- III. The Respondent's license is limited to prohibit the practice of emergency medicine until such time as he enrolls in and successfully complete an ACGME accredited emergency residency program selected by him and previously approved in writing by OPMC.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

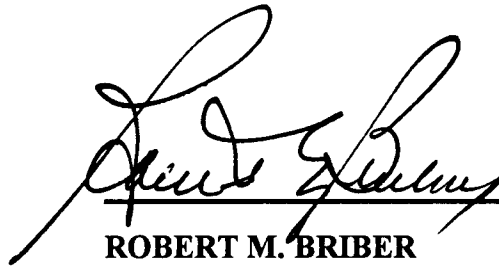
WILLIAM A. STEWART, M.D.

MODIFICATION ORDER

ROBERT M. BRIBER, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the modification of the Order in Dr. Lanwehr's case.

DATED: Albany, New York

March 24, 1995



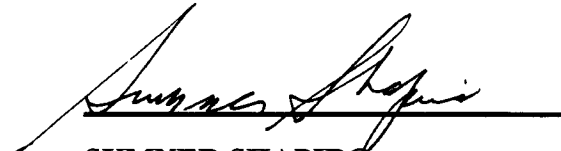
ROBERT M. BRIBER

MODIFICATION ORDER

SUMNER SHAPIRO, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the modification of the Order in Dr. Lanwehr's case.

DATED: Delmar, New York

April 21, 1995


SUMNER SHAPIRO

MODIFICATION ORDER

WINSTON S. PRICE, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the modification of the Order in Dr. Lanwehr's case.

DATED: Brooklyn, New York

_____, 1995



WINSTON S. PRICE, M.D.

MODIFICATION ORDER

EDWARD C. SINNOTT, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the modification of the Order in Dr. Lanwehr's case.

DATED: Roslyn, New York

March 30, 1995

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

MODIFICATION ORDER

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the modification of the Order in Dr. Lanwehr's case.

DATED: Syracuse, New York

24 May, 1995

William A. Stewart

WILLIAM A. STEWART, M.D.