



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

November 21, 1996

Dennis P. Whalen
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Timothy J. Mahar, Esq.
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237

Frederick Beck, M.D.
922 Twelve Oaks
Carmel, Indiana 46032

Dennis J. Bischof, Esq.
Hurwitz & Fine, P.C.
1300 Liberty Building
Buffalo, New York 14202

EFFECTIVE DATE NOVEMBER 28, 1996

RE: In the Matter of Frederick Beck, M.D.

Dear Mr. Mahar, Dr. Beck and Mr. Bischof:

Enclosed please find the Determination and Order (No.96-141) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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". The signature is written in a cursive style with a large initial "T" and "B".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc

Enclosure

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

COPY

IN THE MATTER
OF
FREDERICK BECK, M.D.

ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
BPMC 96-141

Administrative Review from a Determination by a
Hearing Committee on Professional Medical Conduct

The New York State Department of Health (Petitioner) and **FREDERICK BECK, M.D.** (Respondent) both request, 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 modify a June 5, 1996 Determination, by a Hearing Committee on Professional Medical Conduct (Committee), which found that the Respondent had practiced medicine with negligence on more than one occasion and which placed the Respondent's medical license on probation. After reviewing the record and conducting deliberations in this case on August 23, 1996, Board members **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** vote unanimously to sustain the Hearing Committee's Determination on the charges and on the penalty.

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

DENNIS J. BISCHOF, ESQ. (Hurwitz and Fine, P.C.) represented the Respondent.

TIMOTHY J. MAHAR, ESQ. (Associate Counsel) represented the Petitioner.

HEARING COMMITTEE DETERMINATION ON THE CHARGES

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 medical misconduct by violating New York Education Law (EDUC.L.)§6530. The Petitioner filed charges with the BPMC (Petitioner Exhibit 1) alleging that the Respondent committed professional misconduct under the following categories:

- practicing medicine with gross negligence, in violation of EDUC.L. §6530(4);
- practicing medicine with gross incompetence, in violation of EDUC.L. §6530(6);
- abandoning or neglecting a patient, in violation of EDUC.L. §6530(30);
- practicing with negligence on more than one occasion, in violation of EDUC.L. §6530(3);
- practicing with incompetence on more than one occasion, in violation of EDUC.L. §6530(5);

and

- failing to maintain accurate records, in violation of EDUC.L. §6530(32).

The charges involved the care which the Respondent, who maintained a solo practice in Obstetrics/Gynecology, provided for five (5) patients, whom the record refers to as A through E, to protect their privacy,

Three BPMC members, **ANTHONY C. BIONDI (Chair)**, **DONALD F. BRAUTIGAN, M.D.** and **JAMES O. ROBERSON, M.D.**, comprised the Committee who conducted a hearing in this matter pursuant to PUB.H.L. §§230(1)(e) and 230(12), and which rendered the Determination which the Board now reviews. Administrative Law Judge **CHRISTINE C. TRASKOS** served as the Committee's Administrative Officer. The Committee found no grounds to sustain the charges that the Respondent practiced with gross negligence, gross incompetence or incompetence on more than one occasion and no grounds to sustain the charges that the Respondent abandoned Patients A, B and C. The Committee sustained no charges concerning Patient D. The Committee did sustain the charge that the Respondent practiced with negligence on more than one occasion for:

- failing to attend adequately to Patient A (Charge A.2);
- failing to deliver Patient A's infant in a timely manner (Charge A.3.); and
- failing to attend adequately to Patient C.

The Committee found that the Respondent failed to meet acceptable medical standards because he left Patient A at a significant phase in her pregnancy. The Committee also found that the Respondent left Patient E during her labor, despite her high blood pressure and risk for eclampsia. The Committee found that a solo practitioner must provide adequate back-up coverage by another experienced obstetrician to cover situations when significant complications arise during labor.

In reaching their findings and conclusions, the Committee found the Respondent's expert, Dr. Donald Schmidt, to be well qualified as an expert witness and the Committee gave his testimony great weight. The Committee found the Petitioner's expert, Dr. David Gandell, to have appropriate qualifications as an expert, but they noted Dr. Gandell testified based on his experience in a large teaching hospital, while the Respondent practiced in a Community hospital. The Committee also found that Dr. Gandell based his testimony exclusively on group practice experience, while the Respondent worked in a solo practice. The Committee gave minimal weight to Dr. Gandell's testimony.

The Committee voted to suspend the Respondent's license for two (2) years, stayed the suspension and placed the Respondent on probation, under terms which the Committee established in Appendix II to their Determination. The Committee's Order provided that the probation period would be tolled until the Respondent returned to medical practice in New York. The Committee noted that the Respondent currently works in a group practice in Indiana.

REVIEW HISTORY AND ISSUES

The Board received the Petitioner's Review Notice on June 17, 1996, and the Respondent's Review Notice on June 20, 1996. Pursuant to PUB.H.L. §230-c(4)(a), the Notice stayed the Committee's penalty automatically, pending this final Determination from the Board. The Record for Review contained the hearing transcripts, exhibits, both parties briefs and reply briefs. The Respondent

submitted his brief on July 22, 1996 and his reply on July 31, 1996. The Petitioner submitted their brief on July 19, 1996 and their reply on July 30, 1996.

The Petitioner contended that the Committee applied inappropriate standards that fell below the accepted standards for obstetrical care in judging the Respondent's conduct, that the Committee reached conclusions that were inconsistent with the facts and that the Committee imposed a penalty that will fail to protect the public adequately. The Petitioner raised five issues for review which we summarize below.

- Point I - The Committee applied inappropriate standards in rejecting the testimony of Dr. Gandell.
- Point II - Both experts agreed Patient A required further evaluation and the Respondent's failure to perform that evaluation constituted gross negligence.
- Point III - The Respondent's failure to attend and deliver Patient A's child in a timely manner constituted gross negligence, gross incompetence and abandonment.
- Point IV - Expert opinion warranted sustaining the charge that the Respondent practiced with gross negligence and gross incompetence in treating Patient C and that the Respondent abandoned Patient C.
- Point V - The Committee imposed an insufficient penalty. The evidence demonstrated a pattern of deficiencies in caring for high risk patients in the cases of Patients A, C and E. The Petitioner requests that the Board revoke the Respondent's license or at the very least limit the Respondent's license to prohibit him from practicing obstetrics.

The Respondent asks that the Board dismiss all charges against the Respondent. The Respondent raised three issues for review.

- Point I - The evidence does not support the charge that the Respondent practiced with negligence on more than one occasion because:
- the Respondent properly attended Patient A's labor
 - the Respondent did not fail to deliver Patient A's fetus in a timely manner; and
 - the Respondent attended Patient B adequately throughout the course of her labor.
- Point II - The Petitioner introduced evidence of uncharged misconduct which denied the Respondent a fair hearing.
- Point III - The Petitioner abused their discretion by renewing charges involving Patient C, after a 1989 dismissal, resulting in severe prejudice to the Respondent before the Hearing Committee.

THE BOARD'S DETERMINATION

After reviewing the record in this matter and after reading the parties' submissions, the Board finds no reason to modify the Hearing Committee's Determination. The evidence which the Committee cites in their findings of fact support those findings and the Committee's findings and conclusions are consistent with the Committee's Determination on the charges and on the penalty. The Board finds no merit in the issues for review, which the parties raised.

At Point II in his brief, the Respondent argued that the Petitioner denied the Respondent a fair hearing by introducing evidence concerning uncharged misconduct. The Board finds that the Respondent's Point II raised legal issues which are beyond the Board's review authority. We leave the Respondent to raise this issue in the courts.

At Point III in his brief, the Respondent alleged that the Petitioner abused discretion by charging the Respondent with misconduct concerning the care for Patient C, after the Petitioner had dismissed charges relating to Patient C previously. The Respondent contended that these charges caused the Respondent prejudice. The Board sees no prejudice to the Respondent because the Committee sustained no charges relating to Patient C. The Committee sustained charges relating to Patients A and E only, and the evidence before the Committee provided the grounds on which the Committee made the findings relating to Patients A and E.

The Board finds that the evidence before the Committee demonstrated that the Respondent failed to practice by acceptable medical standards when he failed to attend the labor adequately for Patients A and E and when he failed to deliver Patient A's fetus timely. Both the Respondent's expert and the Petitioner's expert agreed that the Respondent failed to adequately attend Patient E by leaving the Patient at the Hospital at 10:30 on January 15, 1994. The Respondent's own witness, Dr. Schmidt, testified that the Respondent failed to deliver Patient A's fetus in a timely manner. Dr Schmidt testified that he would have recommended a Caesarean for Patient C between 12:30 pm and 2 pm on August 1, 1991. The Committee found no documentation in the Respondent's progress notes to indicate that Patient A refused a Caesarean between 12:30 pm and 3:40 pm on that date. The Respondent's solo practice does not excuse failing to attend Patient A during significant phases in her delivery and leaving Patient E to the house officer's care when she was at risk for eclampsia. The Committee's findings and conclusions that the Respondent failed to meet acceptable medical practice standards in those instances, are consistent with the Committee's Determination that the Respondent practiced with negligence on more than one occasion in violation of EDUC.L. §6530(3).

The Board rejects the Respondent's contentions, at Point I in his brief, that the evidence did not support the Committee's Determination on the negligence charge. The Respondent argued that other evidence in the record contradicted the Committee's findings. Contradictory evidence in the record does not, however, invalidate the Committee's findings. Conflicting evidence merely raises questions of fact which the Committee as the fact finder must resolve. In their Determination, the Committee

indicated what evidence or expert testimony they found convincing. That evidence supports the Committee's findings and conclusions and the Board sees no reason to disturb those findings or conclusions.

For the same reasons we mentioned above, the Board rejects the contentions which the Petitioner raises in their Points I-IV. The Board agrees with the Committee that the record demonstrates that the Respondent committed no misconduct in caring for Patients B through D and that the Respondent's care for Patient A did not constitute abandonment or gross incompetence. The Board concludes that the Hearing Committee based no findings on inappropriate standards or on separate standards for solo practitioners. By a 4-1 vote, the Board sustains the Committee's Determination that the Respondent's care for Patient A did not constitute gross negligence.

The Board votes 5-0 to sustain the Hearing Committee's penalty. We reject the Petitioner's request that we revoke or limit the Respondent's license. The Board concludes that a stayed suspension and two (2) years of probation, which includes practice monitoring, will provide adequate supervision and remediation to correct the mistakes and bad judgement which the Respondent made in caring for Patients A and E. We agree with the Committee that the Respondent possesses requisite skills and knowledge to practice obstetrics and we see no need to limit that practice or to order the Respondent to undergo retraining.

ORDER

1. The Board **SUSTAINS** the Committee's June 5, 1996, Determination finding the Respondent guilty of professional misconduct.
2. The Board **SUSTAINS** the Committee's Determination to suspend the Respondent's license for two (2) years, stay the suspension and place the Respondent on probation, under the terms which the Committee established at Appendix II in their Determination.
3. The Committee's penalty shall be tolled until the Respondent recommences his medical practice in New York state.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

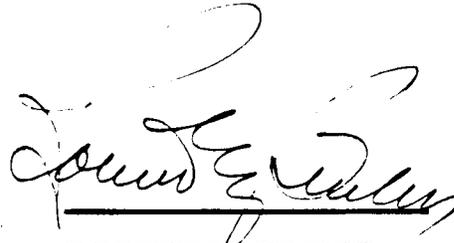
WILLIAM A. STEWART, M.D.

IN THE MATTER OF FREDERICK BECK, 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. Beck.

DATED: Schenectady, New York

Oct 16, 1996

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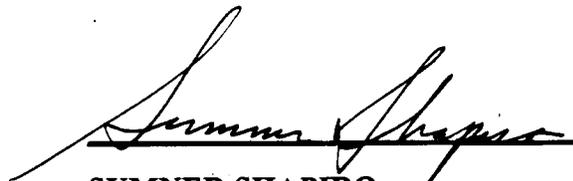
ROBERT M. BRIBER

IN THE MATTER OF FREDERICK BECK, 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. Beck.

DATED: Delmar, New York

OCTOBER 17, 1996


SUMNER SHAPIRO

IN THE MATTER OF FREDERICK BECK, 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. Beck.

DATED: Brooklyn, New York

11/2, 1996

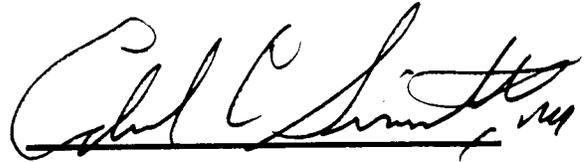
A handwritten signature in cursive script, appearing to read "Winston S. Price", written over a horizontal line.

WINSTON S. PRICE, M.D.

IN THE MATTER OF FREDERICK BECK, 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. Beck.

DATED: Roslyn, New York
Oct 18, 1996

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", with a horizontal line underneath. There are some additional scribbles to the right of the signature.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF FREDERICK BECK, 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. Beck.

DATED: Syracuse, New York

18 Oct, 1996

William A. Stewart

WILLIAM A. STEWART, M.D.