



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

November 18, 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Gary VanGaasbeek, M.D.
368 Broadway
Kingston, New York 12401

Barry A. Gold, Esq.
Thuillez, Ford, Gold &
Conolly, Esqs.
90 State Street
Albany, New York 12207

Kevin P. Donovan, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower - Room 2438
Empire State Plaza
Albany, New York 12237-0028

EFFECTIVE DATE 02/04/94

RE: In the Matter of Gary VanGaasbeek, M.D.

Dear Dr. VanGaasbeek, Mr. Gold and Mr. Donovan:

Enclosed please find the Determination and Order (No. BPMC-92-61-A) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
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)].

Very truly yours,

Tyrone T. Butler nam

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

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

-----X
: IN THE MATTER : ADMINISTRATIVE
: OF : REVIEW BOARD
: : DETERMINATION
: : AND ORDER
GARY VAN GAASBEEK, M.D. : ORDER NO. BPMC-92-61-A
: -----X

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of ROBERT M. BRIBER, MARYCLAIRE B. SHERWIN, EDWARD C. SINNOTT, M.D. AND WILLIAM A. STEWART, M.D.¹ held deliberations on October 4, 1992 to review the Professional Medical Conduct Hearing Committee's (hereinafter the "Hearing Committee") August 4, 1992 Determination placing Dr. Gary VanGaasbeek's license to practice medicine in New York State on two years probation. Both the Department of Health and the Respondent requested the review through Notices of Appeal received by the Board on August 24, 1992. JAMES F. HORAN, ESQ., served as Administrative Officer to the Review Board. Barry Gold, Esq., submitted a brief and response brief on behalf of Doctor VanGaasbeek and Kevin P. Donovan, Esq., submitted a brief and response brief on behalf of the Department of Health.

¹ At the time at which the Administrative Review Board met to deliberate this case, the New York State Senate had confirmed only four members of the five member Administrative Review Board that was created pursuant to Chapter 606 of the Laws of 1991

SCOPE OF REVIEW

New York Public Health Law (PHL) Section 230(10)(i), Section 230-c(1) and Section 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 Section 230-a.

PHL Section 230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

PHL Section 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 Department of Health charged Doctor VanGaasbeek with practicing medicine with gross negligence, gross incompetence and negligence on more than one occasion, incompetence on more than one occasion and with keeping inadequate records arising from his care of six patients designated in the Statement of Charges as A through F. The Department charged the Respondent

in addition with moral unfitness, fraudulent practice and willfully making a false report arising from his answer to a question on his New York State registration application as to whether his privileges had been restricted by any health care facility.

The OPMC Hearing Committee sustained the charges of negligence on more than one occasion, incompetence on more than one occasion and failure to keep adequate records arising from the care of patients B, C, D and F. The Committee also sustained the charges of fraudulent practice and willfully making a false report, upon finding that the Respondent stated on his State registration application that his privileges had not been restricted by any facility when, in fact, Kingston Hospital had placed restrictions on the Respondent's privileges at that facility.

As a penalty for the incompetence, negligence and inadequate recordkeeping, the Hearing Committee placed the Respondent on two years probation and imposed specific terms of probation which appear on pages 47 and 48 of the Hearing Committee Determination. For the Respondent's willfully false answer on his State registration application, the Hearing Committee determined that the Respondent should receive a censure and reprimand.

THE REQUESTS FOR REVIEW

The Department of Health has requested that the Review Board modify the Committee's Determination by sustaining two additional charges against the Respondent and by overruling the Hearing Committee penalty and instead revoking the Respondent's license to practice medicine in New York. The Department argues that the Hearing Committee's Determination to not sustain the charges and specifications set out in paragraphs C.2.b and F.1 in the Amended Statement of Charges is inconsistent with the Hearing Committee's Conclusions and Findings of Fact. Counsel for the Department argues further that the two-year probation penalty on the patient care charges is inadequate to protect the public health, in view of the findings that the Respondent was guilty of negligence on more than one occasion and incompetence on more than one occasion. The Department asks that the Review Board revoke the Respondent's license or, in the alternative, suspend the Respondent from practice for five years.

On the fraud charges, the Department contends that a censure and reprimand is not a sufficient penalty for fraud and willfully filing a false report, because that penalty would fail to deter physicians from committing fraudulent acts in the future. The Department contends that fraud is conduct which requires that the Respondent's license be revoked.

The Respondent requested on September 21, 1992, that the Review Board consider a reduction in the Hearing Committee's penalty of two years probation. In a September 30, 1992, response to the Department of Health's Brief, the Respondent stated the probation penalty was not an inadequate sanction and requested that the Review Board not increase the sanction.

REVIEW BOARD DETERMINATION

The Review Board has considered the entire record below, as well as the briefs and responses which both parties submitted.

A. Fraud

The Review Board votes unanimously to sustain the Hearing Committee's Determination finding the Respondent guilty of fraudulent practice of the profession and willfully making a false report. As to these charges, the Hearing Committee's Determination is consistent with the Findings of Fact and Conclusions of Law.

B. Negligence and Competence

As to the Determination that the Respondent was guilty of negligence on more than one occasion, incompetence on more than one occasion and failure to maintain adequate records, the Review Board finds that the Determination is not consistent with the Hearing Committee's Findings of Fact and Conclusions of Law

as to the two charges which appear in the Statement of Charges (DOH Ex. 1) as paragraphs C.2.b. and F.1.

Paragraph C.2.b. in the Statement of Charges alleged that:

The Respondent, on or about April 21, 1989, performed an exploratory laparoscopy upon Patient C without adequate medical indication.

The Hearing Committee concluded on page 35 of its report that:

"...the preoperative evaluation of patient before her exploratory laparoscopy on April 21, 1989 was adequate but there was no medical indication for the procedure."

and on pp. 35-36:

"The Hearing Committee found that the laparoscopy was done without medical indication and that the most reasonable course of treatment, at that time, would have been to treat her with antibiotics."

The Review Board believes that these and other conclusions set out on pages 35-37 of the Hearing Committee Report support the charge that the Respondent performed the procedure without adequate indication. The Hearing Committee, however, voted not to sustain the charge. The Review Board votes unanimously to amend the Hearing Committee report at page 46 to provide that charge C.2.b. is sustained.

Paragraph F.1. in the Statement of Charges alleged that:

The Respondent, on or about April 26, 1989, ordered induction of Patient F's labor without adequate medical indication.

On page 42 of its report, the Hearing Committee concluded that:

"Respondent's automatic induction of Patient F at 42 weeks, without any testing, was inappropriate. The Hearing Committee accepted Doctor Vinciguerra's testimony that testing of fetal well-being should be done on a weekly basis in a post date pregnancy..."

The Review Board believes that this and other conclusions set out at pages 42-43 of the Hearing Committee Report was sufficient evidence to sustain the charge that the Respondent ordered induction of labor without adequate indication. The Hearing Committee, however, did not sustain the charge. The Hearing Committee stated at page 43 of its Report that it did not think that the induction at forty-two weeks represented the best practice of contemporary obstetrics, but they accepted that the Respondent may have been trained in that school of thought. The Review Board does not accept, as an excuse for failure to conduct appropriate tests, that the Respondent may have been trained that way. The Review Board votes to amend the Hearing Committee's Determination at page 46 to provide that the charge set out in paragraph F.1 of the Amended Statement of Charges is sustained.

The Review Board votes unanimously to sustain the Determination, as now modified, that the Respondent was guilty of negligence on more than one occasion, incompetence on more than one occasion and failure to keep adequate records, arising from the care provided to Patients B, C, D and F.

PENALTY

The Review Board votes unanimously to sustain the Hearing Committee's Determination to Censure and Reprimand Doctor VanGaasbeek for willfully filing a false report and fraudulently practicing medicine. That penalty is consistent with the findings and conclusions relating to those charges and is appropriate.

The Review Board votes unanimously to modify the penalty which the Hearing Committee imposed for the Respondent's negligence on more than one occasion, incompetence on more than one occasion and failure to maintain adequate records arising from the care which the Respondent rendered to Patients B, C, D and F.

The Review Board believes that the probation penalty which the Hearing Committee imposed on the findings relating to patient care was not adequate to safeguard the public health in view of the findings of negligence and incompetence against the Respondent. The Board was especially concerned over the incidents in which the Respondent performed surgery or medical procedures without adequate medical indication. The Board believes that the instances of incompetence and negligence by the Respondent raise a question about the level of the Respondent's medical skills and knowledge and the Board believes that the Respondent should undergo an evaluation and, if necessary, undergo a course of

retraining before he can resume providing patient care. Until the Respondent completes successfully the evaluation and any necessary retraining, the Respondent's license to practice medicine shall be suspended, except to the extent necessary for retraining. Following the evaluation and any necessary retraining, the Respondent shall be on probation for two years. The Review Board believes that, due to the Respondent's youth, he is a good candidate for retraining, and that any necessary retraining followed by the two-year period of probation which the Hearing Committee imposed, will provide adequate protection for the public. The Board does not believe that the Respondent's acts of negligence or incompetence rise to a level to warrant a revocation of Doctor VanGaasbeek's medical license.

The Review Board votes unanimously, pursuant to Public Health law Section 230-a, to suspend the license of Gary VanGaasbeek, M.D., to practice medicine in New York State, except to the limited extent necessary for evaluation and any necessary retraining, until the Respondent:

1. Completes the Phase I Evaluation of the Physician Prescribed Education Program (PPEP) of the Department of Family Medicine, SUNY Health Science Center at Syracuse and the

Department of Medical Education at St. Joseph's Hospital and Health Center Syracuse;² and

2. If the Phase I evaluation indicates that he is a candidate for re-education, then the Respondent must complete Phase II of the PPEP, or an equivalent program, successfully.

Following the successful completion of the PPEP Evaluation and Retraining, the Respondent shall be on probation for two years. During the probation, the Respondent shall be subject to those conditions of probation which the Hearing Committee specified on pages 47-48 of their Determination and designated as 3.a. through j. In addition, due to our concern over the surgery or procedures which the Respondent performed without proper indication, the Review Board imposes an additional condition of probation, 3.k., to read:

k. The Respondent shall submit a written narrative description for every operative procedure he performs during this probation, which shall include the indications for the procedure, to the Office of Professional Medical Conduct.

² Department of Family Medicine, 479 Irving Avenue, No. 200, Syracuse, New York 13210

ORDER

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

1. The August 4, 1992 Determination by the Hearing Committee on Professional Medical Conduct is hereby sustained, in part, and is modified as noted in the Determination to sustain the charges set out at paragraphs C.2.b. and F.1. of the Amended Statement of Charges.

2. The Hearing Committee's Determination placing Doctor VanGaasbeek on probation for two years is modified and the Respondent's license to practice medicine in the State of New York is suspended, except to the extent necessary for retraining, until the Respondent completes successfully the program of evaluation and retraining which is set out in this Determination. After successfully completing the evaluation and any necessary retraining, the Respondent shall be on probation for two years subject to the terms set out in the Review Board's Determination.

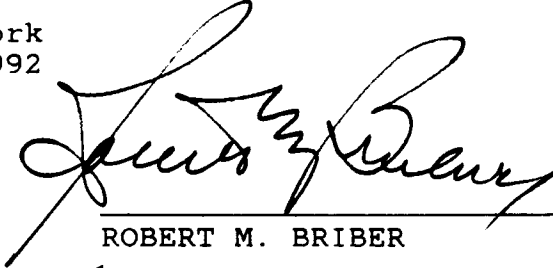
3. The Hearing Committee's Determination to censure and reprimand the Respondent for knowingly making a false statement in his New York State registration application is sustained.

ROBERT M. BRIBER
MARYCLAIRE B. SHERWIN
EDWARD C. SINNOTT, M.D.
WILLIAM A. STEWART, M.D.

IN THE MATTER OF GARY VAN GAASBEEK, 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 Doctor VanGaasbeek.

DATED: Albany, New York
~~October~~ 1992
November 10

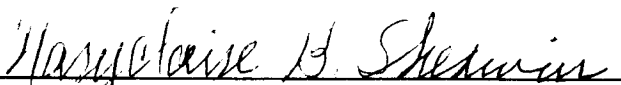


ROBERT M. BRIBER

IN THE MATTER OF GARY VAN GAASBEEK, M.D.

MARYCLAIRE B. SHERWIN, a member of the Administrative Review Board for Professional Medical Conduct concurs in the Determination and Order in the matter of Doctor VanGaasbeek.

DATED: Albany, New York
October 30, 1992



MARYCLAIRE B. SHERWIN

IN THE MATTER OF GARU VAN GAASBEEK, 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 Doctor Van Gaasbeek.

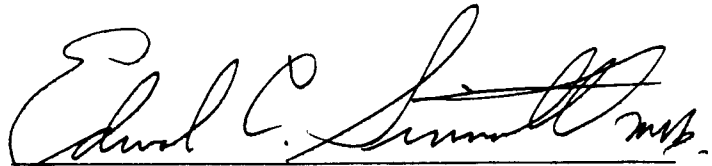
DATED: Syracuse, New York
 October 30, 1992


WILLIAM A. STEWART, M.D.

IN THE MATTER OF GARY VAN GAASBEEK, 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 Doctor VanGaasbeek.

DATED: Roslyn, New York
October 30, 1992

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

EDWARD C. SINNOTT, M.D.