



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

Dennis P. Whalen
Executive Deputy Commissioner

July 1, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marcia E. Kaplan, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Alan Lambert, M.D., J.D.
Lifshutz, Pollard & Associates, P.C.
675 Third Avenue
New York, New York 10017

Allan Weinberg, R.P.A.
2417 Coyle Street
Brooklyn, New York 11235

RE: In the Matter of Allan Weinberg, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 97-161) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties **other than suspension or revocation** until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's
Determination and Order.

Sincerely,

Handwritten signature of Tyrone T. Butler in black ink.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

IN THE MATTER
OF
ALLAN WEINBERG, R.P.A.

DETERMINATION
AND
ORDER

BPMC-97-161

BENJAMIN WAINFELD, M.D., Chairman, **JACK SCHNEE, M.D.** and **MICHAEL J. BROWN, R.P.A.**, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this Determination and Order.

SUMMARY OF THE PROCEEDINGS

Notice of Hearing and Statement of Charges:	February 20, 1997
Pre-Hearing Conference:	April 17, 1997
Hearing Date:	May 16, 1997
Place of Hearing:	NYS Department of Health 5 Penn Plaza New York, New York
Date of Deliberations:	June 18, 1997

Petitioner appeared by:

Henry M. Greenberg, Esq.
General Counsel
NYS Department of Health
By: Marcia E. Kaplan, Esq.

Respondent appeared by:

Lifshutz, Pollard & Associates, P.C.
675 Third Avenue
New York, New York 10017
By: Alan Lambert, M.D., J.D.

WITNESSES

For the Petitioner:

None

For the Respondent:

Manuel Trujillo, M.D.
Allan Weinberg, R.P.A., the Respondent

STATEMENT OF CHARGES

Essentially, the "Statement of Charges" charges the Respondent with having disciplinary action taken against him by the Arizona Joint Board on the Regulation of Physician Assistants and with fraudulent practice.

The charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto and made a part hereof.

FINDINGS OF FACT

Numbers in parenthesis refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous unless otherwise specified.

GENERAL FINDINGS

1. The Respondent is a Physician Assistant duly licensed to practice in the State of New York under license number 001577 issued by the State Education Department on January 16, 1981.

FINDINGS OF FACT ON THE ISSUE OF DISCIPLINARY ACTION BY ANOTHER STATE

2. On February 4, 1994, the Respondent appeared before the Arizona Joint Board on the Regulation of Physician Assistants (Joint Board) for an Informal Interview to discuss patient care issues, including those described in the Complaint and Notice of Hearing, dated February 21, 1995, as well as the Respondent's treatment for bi-polar disorder and his reported previous problem with alcohol (Pet's. Ex. 5).
3. At the February 4, 1994, Informal Interview, Mark R. Speicher, Executive Director of the Joint Board stated, "The stipulation in and of itself is not a disciplinary action and if New York writes us and asks us questions about the stipulation, we will inform them that it's not a disciplinary action, it was taken simply because Mr. Weinberg was not here to enter into a stipulation for concurrent monitoring." (Pet's. Ex. 6, p. 19).
4. On August 21, 1995, the Arizona Joint Board, based upon a Stipulation and Order entered into pursuant to an agreement between the Joint Board and the Respondent, ordered that prior to performing health care tasks in the State of Arizona, the Respondent shall obtain counseling regarding appropriate behavior with female patients from a counselor approved

by Joint Board staff. As part of the Stipulation and Order, the Respondent admitted that the matters stated in the Complaint and Notice of Hearing dated February 21, 1995 were true (Pet's. Ex. 5).

CONCLUSIONS

The issue as to whether or not the Arizona Joint Board proceeding was a disciplinary action was a main source of contention between the parties. That issue might have been readily resolved if either of the parties had contacted the Executive Director of the Arizona Joint Board and requested a clarification as to the nature of the Arizona proceedings and his recorded comments relating to them. Neither party took that initiative.

Therefore, based upon the representations made on the record by Mark R. Speicher, Executive Director, Arizona Joint Board on Regulation of Physician Assistants, at the Informal Interview on February 4, 1994, (see Finding of Fact No. 3), the Hearing Committee concludes that the Respondent was not the subject of a disciplinary action.

FINDINGS OF FACT ON THE ISSUE OF FRAUD

5. On May 31, 1994, the Respondent submitted an Addendum to Pre-Employment Application in connection with his application for clinical privileges at Beth Israel Medical Center, First Avenue at 16th Street, New York, N.Y. 10003, in which he answered "No" to the question, "To the best of your knowledge, have there have been any investigations into or findings of professional misconduct on your behalf" (Pet's. Ex. 8, p. 35).

6. The Respondent submitted a letter to Beth Israel Medical Center, in which he stated in pertinent part, "Last year I was the subject of an investigation in the State of Arizona. This investigation was concluded in August 1995. There were no disciplinary actions taken" (Pet's. Ex. 8, p. 5).

CONCLUSIONS

Given the ambiguity of the Arizona proceedings and the confusion generated therefrom, the Hearing Committee concludes that the Respondent could reasonably rely on the representations of the Executive Director of the Arizona Joint Board, and that in so doing he did not commit fraud.

VOTE OF THE HEARING COMMITTEE

(All Votes Were Unanimous Unless Otherwise Specified)

FIRST SPECIFICATION: (Having Had A Disciplinary Action taken)

NOT SUSTAINED

SECOND AND THIRD SPECIFICATIONS: (Fraudulent Practice)

NOT SUSTAINED

CONCERNS OF THE HEARING COMMITTEE

Despite the fact that the Hearing Committee has voted not to sustain any of the charges against the Respondent, the Hearing Committee has serious concerns about some of the issues in this case that cannot be overlooked and which must be addressed if the Respondent is to practice as a Physician Assistant in the State of New York.

1. The Record indicates that certain charges concerning patient care issues were brought against the Respondent by the Arizona Joint Board (Pet's. Ex. 5 - Complaint and Notice of Hearing, dated February 21, 1995) and that the Respondent has admitted that the matters stated in the Complaint and Notice of Hearing, dated February 21, 1995 are true (Pet's. Ex. 5 - Stipulation and Order, dated August 21, 1995).

Leaving aside the question of the nature of the Arizona Joint Board proceedings, the Hearing Committee finds that the conduct admitted to by the Respondent, if committed in New York State, would constitute professional misconduct under the laws of New York State.

2. The Arizona Joint Board was also concerned about the Respondent's treatment for bi-polar disorder and his reported previous problem with alcohol.

Given the fact that the primary function of the New York State Department of Health is to protect the health of the citizens of this state, the Hearing Committee concludes that there is more than ample justification for mandating that, for a period of three years, the Respondent's practice as a Physician Assistant in New York State be supervised, and that he continue under psychiatric treatment as hereinafter set forth.


ORDER

THEREFORE, IT IS HEREBY ORDERED THAT:

1. This **ORDER** shall be effective for a period of three years.
2. The Respondent shall be supervised in his practice as a Physician Assistant by a practice supervisor approved by the Office of Professional Medical Conduct.
3. The practice supervisor shall submit quarterly reports to the Office of Professional Medical Conduct regarding the quality of the Respondent's practice as a Physician Assistant.
4. A medical professional must be present as a chaperon anytime that the Respondent examines a female patient.
5. The Respondent shall continue psychiatric treatment with a psychiatrist approved by the Board for Professional Medical Conduct.
6. Said treating psychiatrist shall submit quarterly reports to the Office of Professional Medical Conduct certifying compliance with treatment by the Respondent.

7. This **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: *June 25*, 1997
New York, New York


BENJAMIN WAINFELD, M.D.
Chairman

JACK SCHNEE, M.D.
MICHAEL J. BROWN, R.P.A.

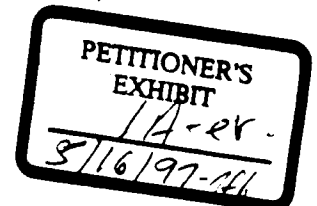
IN THE MATTER
OF
ALLAN WEINBERG, R.P.A.

AMENDED
STATEMENT OF
CHARGES

ALLAN WEINBERG, R.P.A., the Respondent, was authorized to practice as a physician's assistant in New York State on or about January 16, 1981, by the issuance of Registration number 001577 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about August 21, 1995, the Arizona Joint Board on the Regulation of Physician Assistants, based upon a Stipulation and Order entered into pursuant to an agreement between the Board and Respondent, ordered that prior to performing health care tasks in the State of Arizona, Respondent shall obtain counseling regarding appropriate behavior with female patients from a counselor approved by Joint Board staff. As part of the Stipulation and Order, Respondent admitted that the matters stated in the Complaint and Notice of Hearing dated February 2, 1995 were true. In the Complaint, Respondent was charged with unprofessional conduct in violation of A.R.S. Sec. 32-2501(13)(j) (any conduct which is harmful or dangerous to the health of a patient or the public) and A.R.S. Sec. 32-2501(13)(p) (failing or refusing to maintain adequate records on a patient) based in pertinent part upon the following:
1. With regard to Patient D.R., a 22 year old college student, that during her two visits he made inappropriate conversation about her sex life, "hit on" her, and asked her out for a drink;



2. With regard to Patient K.G., a 22 year old female, that during an office visit for a possible yeast infection, Respondent yelled at her, rubbed her shoulder and her leg, "hit on" her, said to her "Your boyfriend probably gave you gonorrhea," and kept her in the examining room for 1-1/2 hours;
3. With regard to a patient allergic to penicillin, that Respondent gave the patient a penicillin derivative although the chart was flagged that the patient was allergic to penicillin;
4. With regard to Patient R.R. a 61-year old male, on June 6, 1993, Respondent saw the patient at a Dr. Boles' office and his entire office note stated as follows : "Wt. 191 Ht. 5'11 T 97.8 P 68 R 16 BP 158/92 CC numbness L side of body. diff speaking x 3 days " and his prescription stated as follows: "CBS[sic] smac (first) thip . [?] prot w/THS"; that the patient was not satisfied and was examined the same day by Dr. Boles who made the assessment that the patient may have had a CVA (cardiovascular accident) and who referred the patient for neurological consultation. The diagnostic impression of the neurologist who examined the patient that same day was "probable ischemic event with or without minimal infarction in the right middle cerebral distribution." He recommended further testing.
5. The Complaint further notes that Respondent appeared before the Joint Board on February 4, 1994 for an Informal Interview to discuss patient care issues as well as his treatment for bi-polar disorder and his reported previous problem with alcohol. At the Informal Interview, Respondent agreed to the terms of a Stipulation and order which he thereafter refused to sign even

though he had agreed to its terms on February 4, 1994.

The conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530(3)and/or (32).

- B. On or about May 31, 1994, Respondent knowingly submitted an Addendum to Pre-Employment Application in connection with his application for clinical privileges at Beth Israel Medical Center, First Avenue at 16th Street, New York, N.Y. 10003, in which he answered "No" to the question, "To the best of your knowledge, have there been any investigations into or findings of professional misconduct on your behalf" when he knew that an investigation into professional misconduct by him was underway in the State of Arizona, and that he had appeared before the Arizona Joint Board in connection with that investigation on February 4, 1994 to discuss patient care issues as well as his treatment for bi-polar disorder and his previous problem with alcohol, and that at that time he had agreed to terms of a Stipulation and Order with representatives of the Arizona Joint Board.
- C. Respondent knowingly submitted a letter to Beth Israel Medical Center, First Avenue at 16th Street, New York, N.Y. 10003, in which he stated in pertinent part, "Last year I was the subject of an investigation in the State of Arizona. This investigation was concluded in August 1995. There were no disciplinary actions taken", when he knew that an investigation into professional misconduct by him concluded with the issuance of a disciplinary Stipulation and Order issued on August 21, 1995, as more fully set forth in Factual Allegation A.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1997) by having his license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530(3) and/or (32)). as alleged in the facts of the following:

1. Paragraph A.

SECOND AND THIRD SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 1997) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

2. Paragraph B.
3. Paragraph C.

DATED: May 6, 1997
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct