



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

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

Karen Schimke  
*Executive Deputy Commissioner*

November 13, 1995

RECEIVED  
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OFFICE OF MEDICAL CONDUCT, P.C.

Cindy M. Fascia, Esq.  
NYS Department of Health  
Corning Tower-Room 2438  
Empire State Plaza  
Albany, New York 12237

Nathan L. Dembin, Esq.  
Nathan L. Dembin & Associates, P.C.  
225 Broadway - Suite 1905  
New York, New York 10007

RE: In the Matter of Stephen Joel Weiss, M.D.

Dear Ms. Fascia and Mr. Dembin:

The Administrative Review Board has remanded this case to the original Hearing Committee for further proceedings, as provided for in the Review Board Determination and Order.

The Hearing Committee's Determination in this manner will remain stayed during the remand, until there is a Final Determination in this case.

Sincerely,

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  
STEPHEN JOEL WEISS**

**ADMINISTRATIVE  
REVIEW BOARD  
REMAND**

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 October 28, 1995 to review the Hearing Committee on Professional Medical Conduct's August 11, 1995 Determination finding Dr. Stephen Joel Weiss (Respondent) guilty of professional misconduct. The Respondent requested the review through a Notice, which the Board received on August 28, 1995. James F. Horan served as Administrative Officer to the Review Board. Nathan L. Dembin, Esq. filed a brief for the Respondent, which the Review Board received on October 2, 1995. Cindy M. Fascia, Esq. filed a reply brief for the Office of Professional Medical Conduct (Petitioner), which the Review Board received on October 10, 1995.

**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 Petitioner brought this case pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon prior disciplinary action or criminal conviction. The scope of the expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee. In this case, the Petitioner charges the Respondent with misconduct pursuant to Education Law Section 6530(9)(b) (having been found guilty of improper practice or professional misconduct by another state disciplinary agency) and Education Law Section 6530(9)(d) (disciplinary action taken by authorized disciplinary action of another state, where the conduct from which the action in the other state arises would amount to misconduct in New York). The charge in this case arises from actions taken upon the Respondent's license by the Texas State Board of Medical Examiners (Texas Board) and the Louisiana State Board of Medical Examiners (Louisiana Board).

The Hearing Committee adopted the factual statement from the Petitioner's statement of charges (DOH Exhibit 1) as the Committee's findings of fact. The Committee determined that the Respondent entered into an Agreed Order with the Texas Board on June 3, 1994. The Agreed Order's findings of fact state that the Respondent committed conduct with regard to numerous patients between approximately November 1988 and approximately September 1992. The Agreed Order listed the conduct as follows:

1. Respondent failed to accurately interpret and record diagnostic findings;
2. Respondent failed to formulate or document appropriate treatment plans or clinical rationale for subsequent testings;
3. Respondent recommended surgical intervention even though patients were poor surgical candidates;
4. Respondent ordered unnecessary referrals for epidural steroid injections, intravenous colchicine injections, and functional capacity evaluations;
5. Respondent ordered physical therapy for periods of more than a year; and
6. Respondent considered chemonucleolysis and performed multiple imaging studies in spite of the absence of sufficient objective physical findings, reproducible radiculopathy and previous negative test results.

The Texas Board found that the Respondent's conduct violated two provisions of the Medical Practice Act of Texas which prohibit "persistently and flagrantly overcharging and over treating patients" and prohibit "professional failure to practice medicine in an accepted manner consistent with public health and welfare". The Texas Board suspended the Respondent's license to practice medicine in Texas, but stayed the suspension and placed the Respondent on probation for five years, under numerous and highly specific terms as set out in the Texas Board's Order. The Hearing Committee found that the Respondent's Texas conduct would amount to misconduct in New York as practicing with negligence on more than one occasion, practicing with incompetence on more than one occasion, and ordering excessive tests, treatment or use of treatment facilities not warranted by the condition of the patient.

The Hearing Committee's findings provide further that on February 6, 1995, the Respondent entered into a Consent Order with the Louisiana Board. In the Louisiana Consent Order, the Respondent waived his right to notice of charges and formal adjudication and acknowledged the substantial accuracy of certain information, including the Agreed Order between Texas and the Respondent. The Respondent further acknowledged that proof of such information upon administrative evidentiary hearing would establish grounds under the Louisiana Practice Act for the

suspension, revocation or other such action as the Board might deem appropriate against his license to practice medicine in Louisiana. The Louisiana Order (in evidence as Petitioner's Exhibit 4) provides that while engaged in the practice of medicine in Texas, the Respondent:

1. failed to accurately interpret and record diagnostic findings;
2. failed to formulate or document appropriate treatment plans;
3. recommended surgical intervention for poor surgical candidates;
4. ordered unnecessary referrals for epidural steroid and other injections and evaluations;
5. ordered physical therapy for extended periods;
6. considered and performed studies in the absence of objective findings and in the presence of negative test results; and
7. on several patients, assessed conflicting impairment ratings.

Under the Louisiana Consent Order, the Respondent received 5 years probation, during which time the Respondent was prohibited from relocating to Louisiana to practice medicine. The Order provided further that if the Respondent chose to return to Louisiana subsequent to the five year period of probation, he would be required to appear before the Louisiana Board at least sixty days in advance of said relocation to demonstrate to the Board his compliance with all other probationary terms and to discuss with the Board his intended plans for the practice of medicine in Louisiana. The Hearing Committee found that the Respondent's action would constitute misconduct if committed in New York as: having disciplinary action taken by another state, having been found guilty of professional misconduct under the laws of another state, practicing with negligence on more than one occasion, practicing with incompetence on more than one occasion, and, ordering excessive tests, treatment or use of treatment facilities not warranted by the condition of the patient.

The Hearing Committee concluded that the Respondent waived his right to testify at the hearing, and noted that both counsel had submitted written legal arguments and closing statements. The Committee found the statement by Petitioner's counsel to be more persuasive and found that the Respondent in his violations exhibited medical incompetence as well as moral turpitude. The

Committee stated that in other words, the Respondent was neither a competent clinician or an honest patient provider. The Committee found no basis for leniency against the Respondent. In assessing a penalty, the Committee noted that the Respondent was not practicing actively in New York and that there was no way in which New York could monitor the probation program for the Respondent in Texas. The Committee found that the only way to protect the public from the Respondent was to revoke his New York license. The Committee made that determination based on their understanding that the Respondent had shown no basis for leniency, and, based on their understanding that should the Respondent improve his level of practice, he will be free to reapply for licensure at a later time.

### **REQUESTS FOR REVIEW**

The Respondent has asked that the Review Board annul or modify the Hearing Committee's Determination or to remand this case to the Hearing Committee for a fair and just determination.

The Respondent argues that the procedures followed at the hearing were prejudicial and unfairly tainted the proceeding against the Respondent. The Respondent specifically cites rulings by the Hearing Committee's Administrative Officer, who interrupted the Respondent's opening statement and ordered the parties to submit arguments in writing rather than before the Hearing Committee. The Respondent also contests the finding by the Hearing Committee that the Respondent waived his right to testify at the hearing. The Respondent contends that he was denied the right to testify at the hearing and the right to offer mitigating evidence to the Hearing Committee.

The Respondent argues that the Hearing Committee's Determination is inconsistent with the Texas Board's findings of fact and that the Texas Board's findings can not be the basis of findings of misconduct in New York. The Respondent argues that the Hearing Committee and/or their Administrative Officer failed to determine whether the Texas and New York misconduct statutes are the same, argues that the Hearing Committee erred in failing to show how they reached their findings of fact and argues that there were no basis for the Committee to find that the Respondent's Texas conduct evidenced moral turpitude.

The Respondent argues that the Hearing Committee's penalty revoking his license to practice medicine in New York State is excessive, unwarranted and inappropriate. The Respondent argues that the State of Texas, site of this misconduct, determined not to interrupt the Respondent's practice for even one single day. The Respondent argues that there is no basis in the Committee's findings of fact to justify the overly severe and excessive penalty.

The Petitioner urges the Review Board to sustain the Hearing Committee's Determination in this case. The Petitioner argues that the Respondent's misconduct, if committed in New York, would constitute professional misconduct. The Respondent argues that the Administrative Officer's ruling concerning written summations applied equally to both parties and was not prejudicial to the Respondent. The Petitioner argues that the Hearing Committee's penalty is appropriate in this case. The Petitioner notes that the Respondent admitted to violating Texas statutes which forbid unprofessional or dishonorable conduct, that is likely to deceive or defraud the public, and which forbid persistently and flagrantly overcharging or overtreating patients. The Petitioner noted that the Committee found that the Respondent was neither a competent clinician nor an honest patient provider. The Petitioner argues that the penalty of revocation is amply justified in this case.

#### **REVIEW BOARD DETERMINATION**

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

The Review Board votes to remand this matter to the Hearing Committee for further proceedings. The Board directs that the Committee conduct an additional hearing to allow the Respondent to testify and to offer any other evidence in mitigation of a possible penalty. The Review Board overturns the Hearing Committee's finding that the Respondent waived his right to testify at the hearing. At page 16 of the hearing transcript, the Committee's Administrative Officer states that the Respondent would have an opportunity to testify at a later time. There is nothing in the transcript

or the hearing record following that statement which indicates that the Respondent waived his right to testify and the Hearing Committee fails to cite to any exhibit or transcript page to support their conclusion that the Respondent failed to testify.

The Respondent's testimony should, in addition to any matters, include a discussion of the current status of the Respondent's probation in Texas, including how much time remains to run on the period of probation. The Petitioner may also offer any relevant evidence in their possession which may relate to the status of the Respondent's Texas probation.

Following the additional proceeding, the Committee shall render a Supplemental Determination. In that Supplemental Determination, the Committee should discuss the grounds for their conclusion that the Respondent was not an honest patient provider.

The Committee shall serve the Supplemental Determination on both parties. Each party shall have fourteen days from the receipt of the Determination to request an additional administrative review. The Committee's Determination in this matter will remain stayed during the remand period, until there is a final Determination in this matter.



**ORDER**

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

This matter is **REMANDED** to the Hearing Committee for further proceedings consistent with the Review Board's Determination.

**ROBERT M. BRIBER**

**SUMNER SHAPIRO**

**WINSTON S. PRICE, M.D.**

**EDWARD SINNOTT, M.D.**

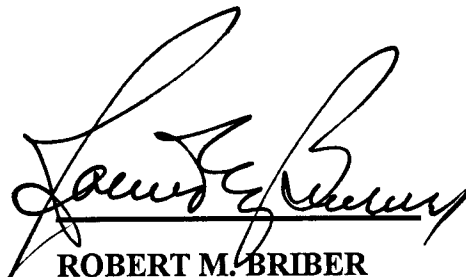
**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF STEPHEN JOEL WEISS, 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. Weiss.

**DATED: Albany, New York**

11/10, 1995



**ROBERT M. BRIBER**

**IN THE MATTER OF STEPHEN JOEL WEISS, 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. Weiss.

**DATED: Delmar, New York**

Nov. 10, 1995



**SUMNER SHAPIRO**

**IN THE MATTER OF STEPHEN JOEL WEISS, 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. Weiss.

**DATED: Brooklyn, New York**

11/9, 1995

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 STEPHEN JOEL WEISS, 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. Weiss.

**DATED: Roslyn, New York**

March 10, 1995

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

**EDWARD C. SINNOTT, M.D.**

**IN THE MATTER OF STEPHEN JOEL WEISS, 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. Weiss.

**DATED: Syracuse, New York**

10 Nov, 1995



**WILLIAM A. STEWART, M.D.**