



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

PUBLIC

July 1, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street – 4th Floor
Troy, New York 12180

Louis Trunzo, M.D.
P.O. Box 30530
Phoenix, Arizona 85046

RE: In the Matter of Louis Trunzo, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-147) 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.

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.

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.

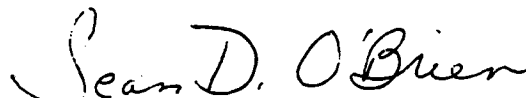
The notice of review served on the Administrative Review Board should be forwarded to:

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,


Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

IN THE MATTER
OF
LOUIS TRUNZO, M.D.

DETERMINATION
AND
ORDER

BPMC #04-147

A hearing was held on June 16, 2004, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated May 24, 2004, were served upon the Respondent, **Louis Trunzo, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Andrew J. Merritt, M.D.**, Chairperson, **James Egnatchik, M.D.**, and **Ms. Jean Krym**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Paul Robert Maher, Esq.**, of Counsel. The Respondent appeared in person and represented himself.

Evidence was received and transcripts of these proceedings were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when 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 a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Louis Trunzo, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to 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.

1. Louis Trunzo, M.D., the Respondent, was authorized to practice medicine in New York State on March 25, 1988, by the issuance of license number 174008 by the New York State Education Department (Petitioner's Ex. 3).

2. On January 14, 2004, the Arizona Medical Board ("Arizona Board"), by a Consent Agreement For Letter of Reprimand ("Arizona Agreement"), issued to the Respondent a Letter of Reprimand and imposed a \$1,000.00 civil penalty, based on the

Respondent's medical care of a newborn patient with abnormal bilirubin levels. The Arizona Board found that the Respondent failed to meet the required standard of care because he failed "to obtain more frequent bilirubin determinations, reticulocyte counts, consultations, and exchange transfusion in a case where the bilirubin counts rose above 20 in the first 24-36 hours of life." (Petitioner Ex. 4). The Arizona Board concluded that the Respondent "deviated from the standard of care by not aggressively evaluating bilirubin and hemolysis levels, resulting in the development of bilirubin encephalopathy (kernicterus)...cerebral palsy, and significant hearing loss." (Petitioner Ex. 4).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to New York Education Law Section 6530(4) - "Practicing the profession with gross negligence on a particular occasion..." The Respondent was also charged with having committed acts which, had they occurred in New York State, would have constituted professional misconduct under New York Education Law Section 6530(3) - "Practicing the profession with negligence on more than one occasion..." The Hearing Committee does not find in favor of this charge. Although the Respondent's negligence was comprised of a series of errors of omission, there was, nonetheless, one incident of failing to understand the potential seriousness of the patient's condition and a single inadequate approach to the situation. Conceptually, this should be seen as a single act of negligence, despite the several necessary steps that the Respondent did not take regarding diagnosis and treatment.

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having disciplinary action taken by a duly authorized disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Arizona Agreement found fault with the Respondent's treatment of a newborn baby born on July 23, 1998. The baby was delivered by the Respondent's Associate Physician. At nine hours of age, the baby was jaundiced and had a bilirubin level of 11.4, a level that is above normal. The Respondent's Associate Physician, who was monitoring the baby's condition, ordered a repeat bilirubin test on July 24, 1998, and also ordered double phototherapy to treat the condition. The result of the repeat test was a bilirubin level of 19.7. On July 25, 1998, the Associate Physician reported the 19.7 bilirubin level to the Respondent and turned over care of the baby to him. The Respondent examined the baby and continued the phototherapy. On July 26, 1998, the baby's bilirubin level was 24.2. The Respondent's only response to this development was the ordering of another bilirubin test to be performed twelve hours later. This subsequent bilirubin test measured 31.6 and the Respondent immediately transferred the baby to another hospital where he could receive specialized treatment.

An abnormally high bilirubin level in a newborn is a serious condition and immediate investigation and treatment is imperative. The Respondent's failure to take more active steps to detect the cause of the elevated bilirubin levels and to initiate necessary therapy

earlier resulted in the child's development of kernicterus, cerebral palsy and significant hearing loss.

The baby's elevated bilirubin level demanded an investigation of the cause. In particular, when the bilirubin measured at 24.2, the Respondent should have done more than order another bilirubin test to be performed twelve hours later. The situation demanded more frequent bilirubin tests as well as the taking of reticulocyte counts and hematocrit counts.

It is difficult to characterize the Respondent's defense against the charges. He testified that at the time of the Arizona disciplinary proceeding, he was experiencing a difficult period in his life and that he signed the Arizona Agreement because it was the path of least resistance. He stated that he should have contested the Arizona charges. This appears to be a denial of the findings against him in the Arizona Agreement. However, pursuant to New York Public Health Law Section 230(10)(p), a hearing committee cannot allow a respondent to relitigate disciplinary findings from another State. Those findings must be accepted as true. The hearing is limited to a determination of the penalty to be imposed for the professional misconduct described in the other State's findings.

The Respondent also testified that he "probably" should have transferred the baby earlier to another hospital for specialized care, which appears inconsistent with a denial of the Arizona Board's findings. The Respondent also made some arguments about the care that he provided to the baby that can be interpreted both as denials of wrongdoing and as arguments in mitigation. Because of the restricted nature of this hearing pursuant to Public Health Law Section 230(10)(p), these arguments will be considered arguments in mitigation.

The Respondent argued in mitigation that he was monitoring the situation closely and providing phototherapy. This is an unpersuasive position. Even if he was monitoring the situation closely, he did so in an ineffectual and passive manner. He did not take the steps necessary to identify the cause of the elevated bilirubin level and initiate the type of therapy that would address the cause and protect the baby. The Respondent also testified in defense of his delay that the baby appeared stable when his Associate Physician turned over care of the baby to the Respondent. This argument is rejected. Regardless of how the baby appeared, the constantly worsening bilirubin levels should have alerted the Respondent to the existence of a deteriorating situation requiring more aggressive action on his part. With a bilirubin level of 24.2 in a newborn baby, it is indefensible to do nothing to determine the cause of the high bilirubin level other than ordering another bilirubin test to be performed twelve hours later. This is gross negligence.

The Petitioner recommended that the Respondent receive a censure and reprimand and that he be required to practice with a practice monitor for two years if he should return to the practice of medicine in New York State. The Respondent introduced into evidence two letters attesting to the high quality of his medical care (Respondent Ex. B and C) and evidence of his dedication to receiving continuing medical education (Respondent Ex. D and E). Respondent Ex. E demonstrates that the Respondent has received continuing medical education on a subject related to the health problem that is the subject of this hearing. These exhibits, however, do not provide any reason to reject the Petitioner's recommended penalty, given the serious nature of the Respondent's act of gross negligence. The Petitioner's recommendation will be adopted with one difference. The Petitioner recommended a practice monitor without probation. Public Health Law Section 230-a, which lists the penalties that can be imposed, does not include

a practice monitor requirement as a penalty that can be imposed independent of probation. Therefore, the Respondent must be placed on probation in order to require him to practice medicine with a practice monitor.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent is censured and reprimanded for the commission of an act of gross negligence in the practice of medicine.

2. The Respondent is placed on probation for two years. The probation is stayed until the Respondent returns to the active practice of medicine in New York State. The terms of probation are stated in paragraphs 3 through 14 of this Order.

3. The Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.

4. The Respondent shall submit to the Office of Professional Medical Conduct ("OPMC") (NYS Department of Health, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street, Suite 303, Troy, New York 12180-2299), written notification of any change in employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.

5. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of the Respondent's compliance with the terms of this Order and shall personally meet with a person designated by OPMC when so requested.

6. The period of probation shall be tolled during periods in which the

Respondent is not engaged in the active practice of medicine in New York State. After the period of active probation begins, the Respondent shall notify OPMC, in writing, if the Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of 30 consecutive days or more. The Respondent shall notify OPMC again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon the Respondent's return to practice in New York State.

7. The Respondent's professional performance may be reviewed by OPMC. This review may include, but shall not be limited to, a review of office records, patient records and hospital charts, interviews with or periodic visits with the Respondent and his staff at practice locations or OPMC offices.

8. The Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State regulations regarding controlled substances.

9. During the period of probation, the Respondent shall practice medicine only when monitored by a practice monitor, who must be a licensed physician, board certified in an appropriate specialty, proposed by the Respondent and subject to the written approval of OPMC. An approved practice monitor must be in place prior to the Respondent's resumption of the active practice of medicine in New York State.

10. The Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The monitor shall visit the Respondent's medical practice at each and every location, on a random, unannounced basis at least monthly and shall examine at least twenty records maintained by the Respondent, including patient records, prescribing information and office records. The purpose of this review is to determine whether the Respondent's

medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation from accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

11. The Respondent shall be solely responsible for all expenses associated with monitoring, including fees to the monitoring physician.


12. The Respondent shall cause the practice monitor to report quarterly, in writing, to OPMC.

13. The Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2,000,000.00 per occurrence and \$6,000,000.00 per policy year, in accordance with Public Health Law Section 230(18)(b). Proof of coverage shall be submitted to OPMC prior to the Respondent's resumption of the active practice of medicine in New York State.

14. Upon receipt of evidence of noncompliance with the terms of probation, OPMC or the State Board for Professional Medical Conduct may initiate a violation of probation proceeding and/or any other proceeding against the Respondent as may be authorized by law.

15. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

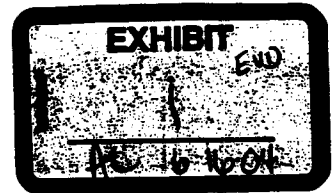
DATED: Marcellus, New York
6/30, 2004


Andrew J. Merritt, M.D.
Chairperson

James Egnatchik, M.D.
Jean Krym

APPENDIX I

ORIGINAL



STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

LOUIS TRUNZO, M.D.
CO-04-02-0695-A

NOTICE OF

REFERRAL

PROCEEDING

TO: LOUIS TRUNZO, M.D.
P.O. Box 30530
Phoenix, AZ 85046

LOUIS TRUNZO, M.D.
North Valley Pediatrics
702 East Bell Road
Suite 117
Phoenix, AZ 85022

LOUIS TRUNZO, M.D.
26224 North Tatum Blvd.
Phoenix, AZ 85022

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 16th day of June 2004, at 10:00 in the forenoon of that day at Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York state. The

Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before June 7, 2004.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before June 7, 2004, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

May 24, 2004


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

LOUIS G. TRUNZO, M.D.
CO-04-02-0695-A

STATEMENT

OF

CHARGES

LOUIS G. TRUNZO, M.D., the Respondent, was authorized to practice medicine in New York state on March 25, 1988, by the issuance of license number 174008 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 14, 2004, the Arizona Medical Board (hereinafter "Arizona Board"), by a Consent Agreement For Letter of Reprimand (hereinafter "Arizona Agreement"), issued Respondent a Letter of Reprimand and imposed a \$1,000.00 civil penalty, based on failing to order serial blood studies, obtain a consultation, and order a transfusion where the bilirubin level rose above 20 in an infant in the first 24 to 36 hours.

B. The conduct resulting in the Arizona Board disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
- and/or
2. New York Education Law §6530(4) (gross negligence).

SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

DATED: *May 24*, 2004
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct