

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

-----X
IN THE MATTER : DETERMINATION
OF :
GABRIEL COVO, M.D. : OF THE
: HEARING COMMITTEE
: BPMC 92-12
-----X

IRWIN J. COHEN, M.D. (Chair), MORTON KLEINMAN, and EDMUND O. ROTHSCHILD, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

After consideration of the entire record, the Hearing Committee issues this determination.

SUMMARY OF PROCEEDINGS

Date of Service of Notice
of Hearing and Statement of
Charges against Respondent: October 23, 1991

Answer to Statement of Charges: None

Pre-Hearing Conference: None

Date of Hearing: November 14, 1991

Adjournments Granted: None

Department of Health
appeared by: Roy Nemerson, Esq.,
Deputy Counsel

Respondent appeared by: Thurm & Heller
26 Broadway
New York, New York 10004

Nathan L. Dembin, Esq.,
of Counsel

Witness for Department
of Health:

Gabriel Covo, M.D.

Witnesses for Respondent:

None

Deliberations Held:

November 14, 1991

STATEMENT OF CASE

Respondent's license to practice medicine in the state of New York was suspended by an Order of the Commissioner of Education dated April 3, 1989 and effective as of May 8, 1989. Respondent has been charged with practicing medicine in New York during the period of suspension. Respondent denied the allegation.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses 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.

1. Gabriel Covo, M.D. was authorized to practice medicine in New York State on May 24, 1956 by the issuance of license number 077893 by the New York State Education Department. (Not Contested).

2. By an Order of the Commissioner of Education of the State of New York (No. 7974), Respondent's license to practice medicine in the State of New York was suspended for three years. Execution of the suspension was stayed, and Respondent was placed on probation for three years. (Dept. Exhibit #2).

3. By an Order of the Commissioner of Education of the State

of New York (No. 9125), Respondent was found to be in violation of the terms of probation contained within the original consent Order (No. 7974). More specifically, it was found that Respondent had failed to comply with the term of probation which mandated that he undergo psychiatric counselling. Respondent had alleged that he was unable to comply, due to financial difficulties. (Dept. Exhibit #3).

4. The original consent Order (No. 7974) was held in abeyance, and Respondent's license to practice medicine in the State of New York was suspended until such time as Respondent submitted written proof that he had been evaluated and treated, if necessary, by a psychiatrist who found that Respondent was fit to practice. (Dept. Exhibit #3).

5. Beginning in or about February, 1989, and continuing until on or about June 27, 1991, Respondent was employed by Martin Barandes, M.D., P.C. on a limited, part-time basis. (Dept. Exhibit #4).

6. Respondent testified that he assisted in the performance of nuclear medicine studies of the cardiovascular system. He took blood pressure readings while a nuclear medicine technician supervised the patients during a bicycle exercise tolerance test. (36, 67).

7. Respondent further testified that such blood pressure readings were necessary because the test may need to be terminated if the patient's blood pressure falls. He stated that he was able to make such a judgement based upon his thirty-three years of experience practicing medicine, but that the job could have been

done by a technician. (39, 72).

8. Respondent testified that he did not diagnose any patients, did not treat any patients, nor did he write prescriptions for any patients. He further testified that he did not prepare any reports based on the results of the exercise tolerance tests. (37, 68).

9. Respondent testified that Dr. Barandes was always on-site during these tests. (73).

10. Respondent was paid \$100.00 per session, irrespective of the number of patients tested. If no patients were seen, he was not paid. (42, 69).

11. Respondent never informed Dr. Barandes that his license to practice medicine had been suspended. (35).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

Respondent has been charged with practicing the profession of medicine while his license was suspended, in violation of Education Law §6530(12). The practice of medicine is defined as "...diagnosing, treating, operating or prescribing for any human disease, pain, injury, deformity or physical condition." Education Law §6521. By a vote of 2-1, the Hearing Committee concluded that the preponderance of the evidence demonstrated that Respondent's conduct did not constitute the practice of medicine. As a result, the Committee determined that the charge against Respondent should be dismissed.

Respondent's testimony, which was not contradicted by any witness, can be summarized as follows: Respondent was hired, on a part-time basis, to take blood pressure readings on patients while they underwent exercise tolerance tests at a private nuclear medicine laboratory. Although Respondent did observe the patients for signs of distress during the tests, his primary function was to take blood pressure readings at regular intervals. Respondent did not diagnose, treat, or operate on any of the patients which he saw at the laboratory, nor did he prescribe any medications for them.

The Hearing Committee considered this testimony in light of the statutory definition of the practice of medicine set forth in Education Law §6521. A majority of the members of the Committee found that the evidence adduced at the hearing did not permit a conclusion that the activities of Respondent while in the employ of Dr. Barandes constituted the practice of medicine.

The dissenting member of the Hearing Committee placed greater emphasis upon the affidavit of Dr. Barandes (Dept. Exhibit #4). In paragraph four of the affidavit, Dr. Barandes states, in pertinent part: "In or about February of 1989, Gabriel Covo, M.D., ... was retained by Martin Barandes M.D., P.C. to provide professional medical services...." (Emphasis added). The dissenting member interpreted this statement as proof that a physician needed to be present during the exercise tolerance tests and that Respondent was hired to provide such medical services.

DETERMINATION

Based upon the foregoing, the Hearing Committee hereby

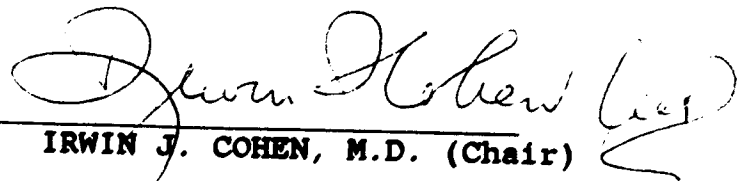
orders that:

1. The specification of professional misconduct contained within the Statement of Charges (Dept. Exhibit #1) is **NOT SUSTAINED**, and

2. The case is **DISMISSED**.

DATED: Albany, New York

Jan 2 , 1992


IRWIN J. COHEN, M.D. (Chair)

Morton Kleinman

Edmund O. Rothschild, M.D.

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

-----X
IN THE MATTER : DETERMINATION
OF :
GABRIEL COVO, M.D. : OF THE
: HEARING COMMITTEE
: BPMC 92-12
-----X

IRWIN J. COHEN, M.D. (Chair), MORTON KLEINMAN, and EDMUND O. ROTHSCHILD, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

After consideration of the entire record, the Hearing Committee issues this determination.

SUMMARY OF PROCEEDINGS

Date of Service of Notice
of Hearing and Statement of
Charges against Respondent: October 23, 1991

Answer to Statement of Charges: None

Pre-Hearing Conference: None

Date of Hearing: November 14, 1991

Adjournments Granted: None

Department of Health
appeared by: Roy Nemerson, Esq.,
Deputy Counsel

Respondent appeared by: Thurm & Heller
26 Broadway
New York, New York 10004
Nathan L. Dembin, Esq.,
of Counsel

Witness for Department
of Health:

Gabriel Covo, M.D.

Witnesses for Respondent:

None

Deliberations Held:

November 14, 1991

STATEMENT OF CASE

Respondent's license to practice medicine in the state of New York was suspended by an Order of the Commissioner of Education dated April 3, 1989 and effective as of May 8, 1989. Respondent has been charged with practicing medicine in New York during the period of suspension. Respondent denied the allegation.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses 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.

1. Gabriel Covo, M.D. was authorized to practice medicine in New York State on May 24, 1956 by the issuance of license number 077893 by the New York State Education Department. (Not Contested).

2. By an Order of the Commissioner of Education of the State of New York (No. 7974), Respondent's license to practice medicine in the State of New York was suspended for three years. Execution of the suspension was stayed, and Respondent was placed on probation for three years. (Dept. Exhibit #2).

3. By an Order of the Commissioner of Education of the State

of New York (No. 9125), Respondent was found to be in violation of the terms of probation contained within the original consent Order (No. 7974). More specifically, it was found that Respondent had failed to comply with the term of probation which mandated that he undergo psychiatric counselling. Respondent had alleged that he was unable to comply, due to financial difficulties. (Dept. Exhibit #3).

4. The original consent Order (No. 7974) was held in abeyance, and Respondent's license to practice medicine in the State of New York was suspended until such time as Respondent submitted written proof that he had been evaluated and treated, if necessary, by a psychiatrist who found that Respondent was fit to practice. (Dept. Exhibit #3).

5. Beginning in or about February, 1989, and continuing until on or about June 27, 1991, Respondent was employed by Martin Barandes, M.D., P.C. on a limited, part-time basis. (Dept. Exhibit #4).

6. Respondent testified that he assisted in the performance of nuclear medicine studies of the cardiovascular system. He took blood pressure readings while a nuclear medicine technician supervised the patients during a bicycle exercise tolerance test. (36, 67).

7. Respondent further testified that such blood pressure readings were necessary because the test may need to be terminated if the patient's blood pressure falls. He stated that he was able to make such a judgement based upon his thirty-three years of experience practicing medicine, but that the job could have been

done by a technician. (39, 72).

8. Respondent testified that he did not diagnose any patients, did not treat any patients, nor did he write prescriptions for any patients. He further testified that he did not prepare any reports based on the results of the exercise tolerance tests. (37, 68).

9. Respondent testified that Dr. Barandes was always on-site during these tests. (73).

10. Respondent was paid \$100.00 per session, irrespective of the number of patients tested. If no patients were seen, he was not paid. (42, 69).

11. Respondent never informed Dr. Barandes that his license to practice medicine had been suspended. (35).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

Respondent has been charged with practicing the profession of medicine while his license was suspended, in violation of Education Law §6530(12). The practice of medicine is defined as "...diagnosing, treating, operating or prescribing for any human disease, pain, injury, deformity or physical condition." Education Law §6521. By a vote of 2-1, the Hearing Committee concluded that the preponderance of the evidence demonstrated that Respondent's conduct did not constitute the practice of medicine. As a result, the Committee determined that the charge against Respondent should be dismissed.

Respondent's testimony, which was not contradicted by any witness, can be summarized as follows: Respondent was hired, on part-time basis, to take blood pressure readings on patients while they underwent exercise tolerance tests at a private nuclear medicine laboratory. Although Respondent did observe the patient for signs of distress during the tests, his primary function was to take blood pressure readings at regular intervals. Respondent did not diagnose, treat, or operate on any of the patients which he saw at the laboratory, nor did he prescribe any medications for them.

The Hearing Committee considered this testimony in light of the statutory definition of the practice of medicine set forth in Education Law §6521. A majority of the members of the Committee found that the evidence adduced at the hearing did not permit a conclusion that the activities of Respondent while in the employ of Dr. Barandes constituted the practice of medicine.

The dissenting member of the Hearing Committee placed greater emphasis upon the affidavit of Dr. Barandes (Dept. Exhibit #4). In paragraph four of the affidavit, Dr. Barandes states, in pertinent part: "In or about February of 1989, Gabriel Covo, M.D., ... was retained by Martin Barandes M.D., P.C. to provide professional medical services...." (Emphasis added). The dissenting member interpreted this statement as proof that a physician needed to be present during the exercise tolerance tests and that Respondent was hired to provide such medical services.

DETERMINATION

Based upon the foregoing, the Hearing Committee hereby

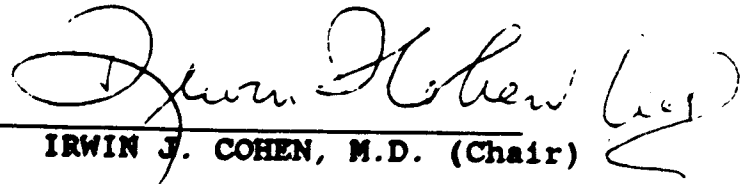
orders that:

1. The specification of professional misconduct contained within the Statement of Charges (Dept. Exhibit #1) is **NOT SUSTAINED**, and

2. The case is **DISMISSED**.

DATED: Albany, New York

Jan 2, 1992


IRWIN J. COHEN, M.D. (Chair)

Morton Kleinman

Edmund O. Rothschild, M.D.