



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

July 21, 1995

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Irene M. Koch, Esq.
NYS Dept. of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Eugene R. Scheiman, Esq.
Baer, Marks & Upham
805 Third Avenue
New York, New York 10022

Irving I. Dardik, M.D.
RD 1 Box 253
Hillcrest Avenue
Great Meadows, New Jersey 07838

RE: In the Matter of Irving I. Dardik, M.D.

Effective Date: 07/28/95

Dear Ms. Koch, Mr. Scheiman and Dr. Dardik :

Enclosed please find the Determination and Order (No. 95-65) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Empire State Plaza
Corning Tower, Room 438
Albany, New York 12237

RECEIVED

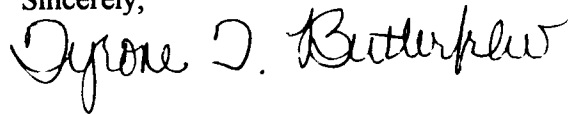
JUL 21 1995

OFFICE OF
MEDICAL CONDUCT

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)].

Sincerely,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:

Enclosure

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

**IN THE MATTER
OF
IRVING I. DARDIK, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 95-65**

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.**¹ held deliberations on June 13, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) March 24, 1995 Determination finding Dr. Irving I. Dardik (Respondent) guilty of professional misconduct. Both the Respondent and Office of Professional Medical Conduct (Petitioner) requested the Review through Notices which the Board received on April 5, 1995 and April 10, 1995. James F. Horan served as Administrative Officer to the Review Board. Irene M. Koch, Esq. filed a brief for the Petitioner, which the Review Board received on May 9, 1995 and a reply brief which the Board received on May 22, 1995. Eugene R. Scheiman, Esq. filed a brief for the Respondent, which the Review Board received on May 12, 1995 and a reply brief which the Board received on May 22, 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.

¹Sumner Shapiro recused himself from participating in this case. Dr. Winston Price participated in the deliberations by telephone.

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 charged the Respondent with practicing medicine fraudulently; exercising undue influence and exploiting patients for his own financial gain; revealing personally identifiable facts, data, or information without consent; engaging in conduct evidencing moral unfitness; and failing to maintain adequate records. The charges involve the Respondent's treatment for five persons, Patients A through E. All five persons suffered from Multiple Sclerosis (MS).

The Committee found that the Respondent had developed a wave energy theory and a treatment program to create wave patterns of behavior designed to optimize the body's normal health patterns. The Committee found that the treatment involved amplifying the range of the patient's heartwave over time. The Respondent testified that the program could lead to the reversal of such chronic disorders as multiple sclerosis.

The Committee found that the Respondent held himself out to Patients A through E as a physician with a record in vascular surgery and Olympic Sports Medicine. The Committee found that the Respondent's reputation was an important factor for Patients A, C, D and E in choosing to participate in the wave energy program². The Committee found that the Respondent told all the Patients that he would cure their multiple sclerosis through his wave energy program, for which he charged the Patients sums ranging from Thirty Thousand (\$30,000.00) Dollars for Patients C and E, to Fifty Thousand (\$50,000.00) Dollars for Patient D and One Hundred Thousand (\$100,000.00) Dollars for Patients A and B³. The Committee found that the Respondent told all the Patients that the

²Patient B was a private investigator, who also suffered from multiple sclerosis, who was hired by Patient A's family to pose as a patient (HC. Findings B 1-2).

³Patient B never paid any fee to the Respondent.

fee was based on the fact that the Respondent would be treating the patient intensively or personally overseeing and/or treating the patient. The Committee concluded that the Respondent intentionally misrepresented to all the Patients the extent to which he would be involved in their care, and did not devote the amount of time to the Patients that the Patients expected, based on the statement the Respondent made to the Patients. The Committee concluded that Patients A, C, D and E were not cured of MS. The Committee concluded that the Respondent did not take an adequate medical history nor conduct an adequate examination of the Patients and did not maintain adequate medical records for the Patients. The Committee concluded that these failures represented a departure from competent medical practice. The Committee concluded that the Respondent was severely deficient in following the standards of patient care, that the Respondent had no physician back up, that the Respondent failed to respond to Patients' telephone calls and to the Patients' repeated requests for personal intervention in their care that the Respondent had promised them. The Committee noted that they had had some concerns during the hearing about the Respondent's mental fitness, but the Committee determined that there was no evidence from the Respondent's demeanor and hearing testimony to indicate that the Respondent was not mentally fit.

The Committee determined that the Respondent was not guilty of moral unfitness in the practice of medicine and not guilty of revealing personally identifiable facts, data or information without prior patient consent.

The Committee found that the Respondent was guilty under the First through Fifth Specifications of Charges for practicing the profession fraudulently in caring for Patients A through E. The Committee found the Respondent guilty under the Sixth through Tenth Specifications for exerting undue influence and exploiting patients in his treatment for Patients A through E. The Committee found the Respondent guilty for guaranteeing that satisfaction or cure would result from performance of professional services as charged under the Eleventh through Sixteenth Specifications for his promises to Patients A through E. The Committee found the Respondent guilty of failing to maintain adequate patient records for Patients A through E.

The Hearing Committee voted to revoke the Respondent's license to practice medicine in New York State.

REQUESTS FOR REVIEW

PETITIONER: The Petitioner has asked that the Review Board modify the Hearing Committee's Determination and find the Respondent guilty of moral unfitness in the practice of medicine. The Petitioner asks further that the Review Board modify the Hearing Committee's penalty and impose a fine against the Respondent in addition to the revocation of the Respondent's license.

The Petitioner argues that the Respondent's inappropriate, unethical, insensitive and unconscionable conduct is consistent with a finding of moral unfitness and that the facts that support the Committee's Determination that the Respondent guaranteed a cure, committed fraud, exerted undue influence, exploited patients and failed to maintain adequate records are sufficient to sustain the charge of moral unfitness.

The Petitioner argues that the Hearing Committee's penalty is inappropriate because the Committee failed to impose a fine against the Respondent. The Petitioner recommends a fine of One Hundred Thousand (\$100,000.00) Dollars, to both punish the Respondent for his misconduct and to send a message to the public that conduct such as the Respondent's is not acceptable.

RESPONDENT: The Respondent asks that the Board overturn the Hearing Committee's Determination of guilt against the Respondent, or if the Review Board does sustain the Determination, that the Board overturn the Hearing Committee's penalty.

The Respondent alleges that the Hearing Committee did not have jurisdiction over the cases of Patients A, C, D and E because the patients were not treated in New York State. The Respondent alleges that the testimony of Patient B should have been excluded, as Patient B was not really a patient, her testimony was highly prejudicial and that the testimony was tainted by unethical and unlawful conduct. The Respondent also argues that the Hearing Committee was biased against Dr. Dardik.

As to the Committee's Determinations of guilt, the Respondent argues that the evidence did not support any of the specifications on which the Committee found the Respondent guilty. The Respondent contends that he did keep adequate records and that the graphs of the wave energy therapy were records of his treatment, and, that the Respondent was not required to keep the same

type of records as a primary treating physician. The Respondent asserts that he did not offer the patients a cure for MS and challenges the testimony of all five patients as inconsistent, contradictory, equivocal and self-serving. The Respondent alleges that there was no support for the fraud determination, because the evidence revealed no facts from which one could infer that the Respondent intended to lead the Patients to believe that he would spend any amount of time with the Patients, while knowing he would not do so in the future. As to the undue influence charge, the Respondent contends that there was no showing that the Respondent intended to or could exercise control over the Patients.

The Respondent contends further that the Committee's penalty is unheard of for conduct such as that involved in this case. The Respondent argues that revocation is a penalty for improper, repulsive and/or criminal conduct. The Respondent argues that he acted in good faith with a genuine desire to improve the health of patients and that the Respondent should not lose his license as a result of certain Patients' dissatisfaction with what could prove to be a "new paradigm in medicine."

In reply to the Petitioner's brief, the Respondent argues that there was no evidence from the hearing to support a finding of moral unfitness and the Respondent argues that there is no basis for which to impose a civil penalty against the Respondent.

REVIEW BOARD DETERMINATION

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

The Review Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty of fraud, exercising undue influence, guaranteeing satisfaction or a cure and failing to maintain adequate records. The Committee's Determination on those Specifications is consistent with the Committee's findings and conclusions.

First as to the Respondent's argument that the Hearing Committee had no jurisdiction over Patients A, C, D and E because there was no treatment in New York, the Board finds that this is a legal issue beyond our authority and is a matter for the courts.

As to the Respondent's arguments that Patient B's testimony was tainted, that was a matter for the Hearing Committee, as finder of fact, to decide in assessing the Patient B's credibility. The Committee found the patient to be a credible witness.

As to the Respondent's arguments concerning bias, the Review Board considered the record and the Committee's Determination and found no bias. The Committee stated specifically that they did not make judgements or assess the Respondent's wave energy theory. The record demonstrates that the Committee made their Determination based on the testimony of five witnesses whom the Committee found to be highly credible. The Respondent asserted in his brief that the Hearing Committee's discussion of the Respondent's mental status⁴ showed the Committee's bias. The Review Board disagrees. The Hearing Committee has the authority to assess all witnesses for their credibility. A review of a witness' behavior on the stand would properly be included in such an assessment. Further, upon observation of a Respondent, a Committee may direct a Respondent to submit to an examination, if the Committee has reason to believe the Respondent is impaired⁵. In this case the Committee mentioned they had a question over the Respondent's mental state, but after review found no reason for concern.

The Hearing Committee's Determination that the Respondent failed to maintain adequate records was consistent with the Committee's findings and conclusion and supported by the record. The evidence demonstrated that the Respondent failed to maintain a record that conveys "objectively meaningful medical information concerning the patient treated to other physicians⁶." There is not a different less strict record keeping standard that applies to the Respondent than there is for a primary care physician.

The Hearing Committee's findings and conclusion that the Respondent promised his patients that he would cure their MS was consistent with the Committee's Determination that the Respondent was guilty under the specifications charging that the Respondent guaranteed that satisfaction or cure

⁴Hearing Committee Determination page 30.

⁵N.Y. Public Health Law §230 (7) McKinney's Supplement 1995

⁶Matter of Bogdan, 195 AD2d 86, 606 NYS 2d 381 (Third Dept. 1993).

would result from the performance of medical services. The determination was also supported by the record and by the Committee's conclusion that the five Patients gave highly credible testimony demonstrating the Respondent's guilt.

The Committee's findings and conclusions are consistent with and the record supports the Hearing Committee's Determination that the Respondent exercised undue influence or exploited people for financial gain. The evidence demonstrated that the Respondent guaranteed a cure and made promises that he would treat personally or supervise personally the treatment of five people suffering from an incurable disease, in exchange for large fees ranging from Thirty Thousand (\$30,000.00) Dollars to One Hundred Thousand (\$100,000.00) Dollars.

The Committee's findings and conclusions are consistent with and the record supports the Committee's Determination that the Respondent committed fraud in the practice of medicine. In five strikingly similar instances, the Respondent promised satisfaction or cure to five people suffering from an incurable disease. The Respondent also promised to personally treat or supervise the treatment of the patients. In exchange for these promises the Respondent requested payment of large fees. In the cases of Patients A, C, D and E, who paid the fees, the Respondent failed to provide the attention to the Patients, which he had promised and failed to answer phone calls from the Patients. For five Patients, the Respondent failed to take an adequate history, perform a physical examination or maintain an adequate medical record. When the Respondent's treatment program did not produce a cure, the Respondent blamed the failure on the Patients or the Patients' families. The Board finds that this repeated conduct demonstrates a clear pattern from which the Hearing Committee and the Board can infer that the Respondent intentionally misled these patients concerning his involvement in their treatment and the guarantee of a cure, in order to obtain the large fees that he charged to the Patients. The Review Board notes that the Respondent's pattern of fraudulent conduct was established sufficiently by the evidence in the cases of Patients A, C, D and E.

The Review Board does not find sufficient reason to overturn the Hearing Committee's Determination finding the Respondent not guilty of moral unfitness in the practice of medicine.

The Review Board sustains the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State. The Board modifies the penalty, however, to include a civil penalty, because we feel such a penalty is appropriate in the case of a physician who practiced fraudulently and who exploited patients.

The Review Board concludes that revocation is an appropriate penalty for practicing medicine fraudulently. The Board also believes that revocation is the appropriate penalty for a physician who exploits several patients. The Respondent's pattern of conduct involving five patients, or four patients excluding Patient B, demonstrate a pattern of improper and intentional mistreatment of his Patients that deserves the most severe sanction possible. Since the Respondent's actions involved fraud and exploitation of patients, the Review Board finds that a civil penalty is appropriate in addition to revocation, to punish the Respondent for his actions towards his patients and to deter other such schemes in the future. After much discussion, the Review Board determined to assess the Respondent a penalty of Forty Thousand (\$40,000.00) Dollars. The sum represents a penalty of Ten Thousand (\$10,000.00) Dollars for the Respondent's treatment of patients A, C, D and E. The Review Board will not assess a civil penalty in Patient B's case, because the Respondent collected no fee from Patient B.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's March 24, 1995 Determination finding the Respondent guilty of professional misconduct.
2. The Review Board **SUSTAINS** the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State.
3. In addition, the Review Board **VOTES** to impose a civil penalty against the Respondent amounting to Forty Thousand (\$40,000.00) Dollars.

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

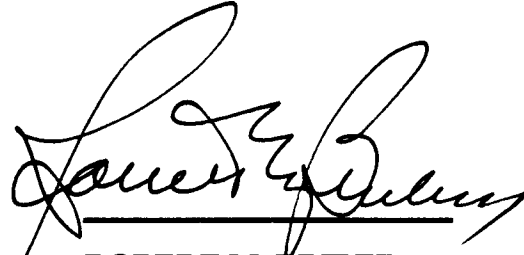
WILLIAM A. STEWART, M.D.

IN THE MATTER OF IRVING I. DARDIK, 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. Dardik.

DATED: Albany, New York

7/18, 1995



ROBERT M. BRIBER

IN THE MATTER OF IRVING I. DARDIK, 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. Dardik.

DATED: Brooklyn, New York

_____, 1995

A handwritten signature in black ink, appearing to read "Winston S. Price", is written over a solid horizontal line.

WINSTON S. PRICE, M.D.

IN THE MATTER OF IRVING I. DARDIK, 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. Dardik.

DATED: Roslyn, New York

June 29, 1995

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

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF IRVING I. DARDIK, 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. Dardik.

DATED: Syracuse, New York

30 June, 1995

William A. Stewart

WILLIAM A. STEWART, M.D.