



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

March 13, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kevin P. Donovan, Esq.
NYS Dept. of Health
Rm. 2438 Corning Tower
Albany, New York 12237

Kenneth L. Freeman, Esq.
Freeman & Galie
507 Polk Street - Suite 350
San Francisco, California 94102

Ronald P. Gruber, M.D.



Effective Date March 20, 1996

RE: In the Matter of Ronald P. Gruber, M.D.

Dear Mr. Donovan, Mr. Freeman and Dr. Gruber:

Enclosed please find the Determination and Order (No. 95-292) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. The 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

NEW YORK STATE DEPARTMENT OF HEALTH 19

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 large black rectangular redaction box covering the signature of Tyrone T. Butler.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw

Enclosure

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

ORIGINAL

IN THE MATTER
OF
RONALD P. GRUBER, M.D.

ADMINISTRATIVE
REVIEW BOARD
DETERMINATION
AND ORDER
NO. 95-292

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 February 16, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) December 1, 1995 Determination, finding Dr. Ronald P. Gruber (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Review Board received on December 11, 1995. James F. Horan served as Administrative Officer to the Review Board. Kenneth L. Freeman, Esq. filed a brief for the Respondent on December 11, 1995 and on January 16, 1996. Kevin P. Donovan, Esq. filed a reply for the Office of Professional Medical Conduct (Petitioner) on January 29, 1990.

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) and Education Law Section 6530(9)(a)(i), which provide an expedited hearing in cases in which professional misconduct charges against a Respondent are based upon a prior criminal conviction in New York or another jurisdiction or upon a prior administrative adjudication which would amount to misconduct if committed in New York State. In this case, the Petitioner charged that the Respondent committed misconduct based upon a May 20, 1994 Order by the Medical Board of California (California Board). The Petitioner alleged that the Respondent's California misconduct would constitute fraud in the practice of medicine if committed in New York¹. The expedited hearing determines the nature and severity of the penalty which the Hearing Committee will impose based upon the criminal conviction or prior administrative adjudication.

The Hearing Committee in this case found that the Petitioner had met its burden of proof in establishing that the California Board issued an Order on December 20, 1994, finding that the Respondent wrote prescriptions for Demerol, a controlled substance, for two persons with the intent that the Demerol would be used for the Respondent's wife, and that the Respondent wrote prescriptions for Demerol for three other patients, who then gave the Demerol to the Respondent, who gave the Demerol to the Respondent's wife. The California Board found that such conduct constituted acts involving dishonesty and prescribing inappropriately. The California Board revoked the Respondent's license, stayed the revocation and placed the Respondent on three years probation, with probation terms that include continuing medical education and on oral examination.

¹Statement of Charges, DOH Exhibit 1.

The Hearing Committee adopted the Petitioner's Statement of Charges (DOH Exhibit 1) as their Findings of Fact. The Committee concluded that the Respondent's California conduct was extremely serious². The Committee found that each of the California Board's findings of guilt would constitute misconduct in New York and that had the event occurred in New York, the Respondent's license would have been revoked. The Committee concluded, however, that the state wherein the Respondent practices opted to allow the Respondent to prove that he could practice within accepted bounds. The Committee stated that they did not believe that they had a greater duty than California.

The Committee voted to revoke the Respondent's license, but stayed the revocation, provided that the Respondent satisfied certain conditions set out in Paragraph 4 of the Committee's Order. The Committee provided that if the Respondent chose to practice in New York before completing either of the conditions of the stay, the Respondent would be on probation for not less than three years, under conditions which the Hearing Committee set down in Paragraph 5 of their Order.

DENIAL OF MOTION TO LIMIT REVIEW

In his December 11, 1995 brief, the Respondent requested a review of certain conclusions in the Committee's Determination, which the Respondent alleged were inaccurate and not based on the record. The Respondent claimed that the errors appeared in the Committee's conclusions at the top of page 3 in the Determination, at which point the Committee stated that the California authorities found the Respondent guilty of, among other charges, gross negligence, repeated acts of negligence or incompetence, and fraud. The Respondent pointed out that the California decision concerning the Respondent, (DOH Exhibit 3) found no cause for disciplinary action for gross negligence and repeated acts of negligence or incompetence and no cause for disciplinary action for altering a record with fraudulent intent.

²The Committee's Determination states that the California Board found the Respondent guilty of professional dishonesty, improper administration of controlled substances to an addict, gross negligence, repeated negligence and incompetence and fraud. The California Order (DOH Exhibit 3), however, indicated that California found the Respondent not guilty of gross negligence, repeated acts of negligence and incompetence, and altering a record with fraudulent intent.

The Respondent asked that the Review Board correct the record and strike the language from page 3 indicating that the Respondent was found guilty of gross negligence, repeated acts of negligence and incompetence and fraud. The Respondent stated that he would stipulate to the correction of the clerical error in the decision and abandon the appeal if the issue could be resolved in that manner.

In their December 13, 1995 letter, the Petitioner stated that they did not object to the requested corrections to conform the New York Order with the California findings and requested that the Review Board clarify whether Paragraph 4 in the Committee's Order meant that the Respondent was presently on probation in New York.

In a January 7, 1996 Decision, the Review Board denied the parties' request to limit this Review to correcting the Committee's Determination, and to clarifying whether the Respondent is currently serving probation in New York. The Board found that a full review was necessary in this case (Appendix I). The Board then provided each party thirty days to submit further briefs.

REQUESTS FOR REVIEW

RESPONDENT: In his January 16, 1996 Appeal brief, the Respondent continues to object to the Hearing Committee's finding that the California Board found the Respondent guilty of gross negligence, repeated acts of negligence and incompetence and fraud, and the Respondent continues to seek correction of that portion of the Order only. The Respondent contends that the California Board found that cause did not exist to find the Respondent guilty on those charges.

The Respondent does not contest the Hearing Committee's penalty. The Respondent argues that the Hearing Committee's penalty addresses any issue of public protection which might arise in the future in the event that the Respondent chooses to return to practice in New York.

PETITIONER: The Petitioner does not oppose the Respondent's request that the Board correct the Hearing Committee's Determination to reflect that California found that the Respondent was not guilty of gross negligence, repeated acts of negligence or incompetence and altering a record with fraudulent intent.

The Petitioner requests that the Review Board clarify the Committee's penalty, to indicate whether the Respondent is on probation, while the penalty in Paragraph 4 of the Committee's Order is in effect.

REVIEW BOARD DETERMINATION

The Review Board has considered the record in this case and the briefs which the parties have submitted. The Review Board sustains the Hearing Committee's Determination that the Respondent was guilty of professional misconduct as defined by Education Law §§6530(9)(b) and 6530(9)(d). The evidence before the Hearing Committee indicated that the California Board had taken disciplinary action against the Respondent and that the California Board had found the Respondent guilty of misconduct. The Review Board modifies the Hearing Committee's Determination concerning the Committee's findings and conclusions that the Respondent's California misconduct would constitute misconduct in New York.

Education Law §§6530(9)(b) and 6530(9)(d) both require that conduct from another state that forms the basis for a disciplinary action or a misconduct finding must also constitute misconduct if committed in New York. The Petitioner's Statement of Charges (DOH Ex. 1) alleged that the Respondent was guilty of professional misconduct because his conduct in California would constitute fraud if committed in New York. Fraud as defined by Education Law §6530(2), requires a showing that a Respondent misrepresented or concealed a known fact, Matter of Adler, 211 AD2d 990, 622 NYS 2d 609 (Third Dept. 1995).

The Review Board finds that the Respondent's conduct in California would constitute misconduct if committed in New York. The California Board at Determination of Issues, Paragraph VIII³, concluded that cause for disciplinary action did not exist pursuant to the provision of California law or regulation pertaining to altering a record with fraudulent intent. Clearly, that finding would not provide a basis for discipline in New York. The California Board did conclude, however, that

³DOH Ex. 3, page 9.

cause for disciplinary action existed for false certification, false prescription and prescription by the concealment of a material fact⁴. In addition to these Determinations, the California Board found that the Respondent had, on several occasions, written prescriptions dispensing controlled substances to certain individuals, for the purpose of obtaining those substances not for the named individual, but for the Respondent's wife⁵. The California Board also found that the Respondent had submitted a reconstructed controlled substances inventory, which the Respondent had initially represented to be an inventory that was contemporaneous to the matter set forth in the Document⁶. The Boards finds that the California Board's findings and conclusions provide sufficient evidence to demonstrate that the Respondent's California conduct, would constitute fraud in New York, if the Respondent had committed those acts in New York State.

The Review Board amends the portion of the Hearing Committee's Determination, at the first paragraph on page 3, that stated that the California Board found the Respondent guilty of gross negligence and/or repeated acts of negligence or incompetence and which stated that those acts would constitute misconduct if committed in New York State. First, those conclusions go beyond the Statement of Charges, which alleged only that the Respondent's misconduct in California would constitute fraud in New York⁷. Second, contrary to the Hearing Committee's statement⁸ to the contrary, the California Board concluded that the findings against the Respondent in California did not support findings of gross negligence or repeated acts of negligence or incompetence⁹.

The Review Board sustains the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York. The Board also sustains the Committee's Determination to stay the revocation permanently. In place of the revocation, the Review Board

⁴DOH Ex. 3, paragraph V, pages 8-9.

⁵Findings of Fact V, VI, VII; DOH Ex. 3, pages 2-3.

⁶DOH Ex. 3, paragraph XIII, page 4.

⁷DOH Ex. 1.

⁸Hearing Committee Determination, page 3, first paragraph.

⁹DOH Ex. 3; Determination on the Issues, paragraph VII, page 9.

places the Respondent on probation from the effective date of this Determination, until such time as the Respondent completes successfully the requirements from the California Board's probation. A condition of probation shall be that the Respondent shall successfully complete the terms of the California probation. The following permanent condition of probation shall also be attached to the Respondent's license: if at any time the Respondent intends to return to practice in New York State, the Respondent shall provide the Director of the Office of Professional Medical Conduct, with thirty days notice of his intent to return, and shall provide the Director with proof that the Respondent's license is in good standing in all other jurisdictions in which the Respondent maintains a license.

The Review Board overrules the condition which the Hearing Committee's Order set out at Sections 4 and 5, on page 4 of the Committee's Order. The Review Board agrees with the Hearing Committee's conclusion that the Respondent's misconduct in California was serious in nature. We defer to the Committee's judgement that the Respondent should be allowed to retain his license if he can satisfy the conditions of probation that California established. The Review Board does not see the point, however, of placing different penalty conditions on the Respondent, depending on whether he satisfies the California probation and maintains his license in good standing for another five years, or whether he chooses to return to New York practice prior to satisfying those terms. Under the penalty which the Review Board now imposes, the Respondent must satisfy his California probation, or else he would be in violation of probation in New York. The Review Board finds no reason to impose a separate requirement that the Respondent comply with statutes and regulations for five years following the end of the California probation. Physicians are already under a duty to comply with relevant statutes and regulations, of this state and of all other states in which they practice. Further, the Review Board finds that alternative conditions which the Hearing Committee imposed at Paragraphs 4 and 5 of their Order were confusing as to the current status of the Respondent's license in New York.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's December 1, 1995 Determination finding the Respondent guilty of professional misconduct.
2. The Review Board **AMENDS** those provisions of the Hearing Committee's Determination as we discussed in our Determination.
3. The Review Board **SUSTAINS** the Committee's penalty revoking the Respondent's license to practice medicine in New York, and **SUSTAINS** the Committee's Determination staying that revocation permanently.
4. The Review Board **OVERRULES** the conditions set out in Sections 4 and 5 of the Hearing Committee's Order.
5. The Review Board **PLACES** the Respondent on probation, under the conditions that the Board sets out in our Determination.

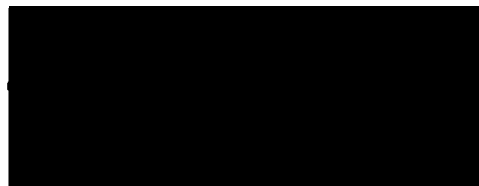
ROBERT M. BRIBER
SUMNER SHAPIRO
WINSTON S. PRICE, M.D.
EDWARD SINNOTT, M.D.
WILLIAM A. STEWART, M.D.

IN THE MATTER OF RONALD P. GRUBER, 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. Gruber.

DATED: Schenectady, New York

3/1, 1996



ROBERT M. BRIBER

IN THE MATTER OF RONALD P. GRUBER, 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. Gruber.

DATED: Delmar, New York

March 1, 1996



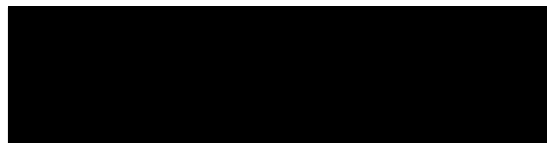
SUMNER SHAPIRO

IN THE MATTER OF RONALD P. GRUBER, 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. Gruber.

DATED: Brooklyn, New York

3/1, 1996



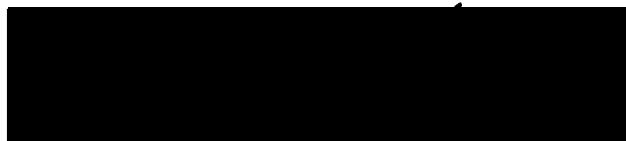
WINSTON S. PRICE, M.D.

IN THE MATTER OF RONALD P. GRUBER, 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. Gruber.

DATED: Roslyn, New York

March 1, 1996

A large black rectangular redaction box covers the signature of Edward C. Sinnott, M.D.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF RONALD P. GRUBER, 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. Gruber.

DATED: Syracuse, New York

8 May, 1996



WILLIAM A. STEWART, M.D.