



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

April 12, 1996

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel Guenzburger, Esq.
NYS Dept. of Health
5 Penn Plaza-6th Floor
New York, New York 10001

Howard Bushin, Esq.
251 West 93rd Street
New York, New York 10025

Shafi Bezar, M.D.
241 Ardsley Road
Scarsdale, New York 10583

RE: In the Matter of Shafi Bezar, M.D.

Effective Date: 04/22/96 JUNE 22, 1996

Dear Mr. Guenzburger, Mr. Bushin and Dr. Bezar:

Enclosed please find the Determination and Order (No. 95-298) 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.

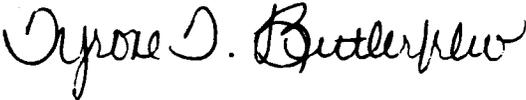
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either certified 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

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 cursive script that reads "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

COPY

-----X
IN THE MATTER : ADMINISTRATIVE
: REVIEW BOARD
OF : DECISION AND
: ORDER NUMBER
SHAFI A. BEZAR, M.D. : BPMC 95-298
-----X

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of SUMNER SHAPIRO, ROBERT M. BRIBER, WINSTON S. PRICE, M.D., EDWARD SINNOTT, M.D., and WILLIAM A. STEWART, M.D. held deliberations on March 1, 1996 to review the Hearing Committee on Professional Medical Conduct's (hereinafter the "Hearing Committee") December 9, 1995 Determination finding Dr. Bezar guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on December 22, 1995. Larry G. Storch served as Administrative Officer to the Review Board. Howard I. Bushin, Esq. filed a brief for the Respondent which the Review Board received on February 15, 1996. Daniel Guenzburger, Esq. filed a reply brief for the Petitioner which the Review Board received on February 23, 1996.

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 charged the Respondent with twenty-four specifications of professional misconduct, including allegations of the fraudulent practice of medicine, negligence on more than one occasion, incompetence on more than one occasion, filing false reports, ordering excessive tests or treatment, and failing to maintain adequate medical records. These allegations concern the Respondent's medical care and treatment of six patients, as well as statements made by the Respondent on two applications for reappointment to the staff of Harlem Hospital.

The Hearing Committee sustained all of the twenty-four specifications of professional misconduct. The Hearing Committee found that the Respondent was authorized to practice medicine in New York on or about January 5, 1972 by the issuance of license number 111154 by the New York State Education Department. The Respondent is currently registered to practice medicine for the period January 1, 1995 through September 30, 1997.

The Hearing Committee further found that the Respondent treated all the patients cited in the Amended Statement of Charges on either February 26 or 27, 1988 at a clinic located at 2270 Third Avenue, Bronx, New York.

The Hearing Committee found that Patient A, a 46 year old male, presented to Respondent on February 26, 1988 with complaints of back pain, shortness of breath, and nervousness. The Committee further found that the Respondent failed to take both an adequate history of the patient's complaints and an adequate medical history. In addition, the Committee found that he failed to perform an adequate physical examination. The Committee further found that Respondent inappropriately ordered abdominal and hepatic sonograms, failed to follow up on abnormal laboratory tests, and inappropriately diagnosed peptic ulcer. The Hearing Committee further found that the Respondent's chart for Patient A was illegible and failed to record sufficient details of Patient A's history and physical examination.

The Hearing Committee found that Patient B, a thirty-seven year old male, presented to the Respondent on February 26, 1988 with complaints of pain in the abdomen and back, shortness

of breath and nervousness. The Hearing Committee further found that the Respondent failed to take an adequate medical history, and failed to perform an adequate physical examination. The Committee further found that the Respondent inappropriately ordered abdominal and hepatic sonograms and failed to maintain an adequate record for this patient.

The Hearing Committee found that Patient C, a forty year old female, presented to the Respondent on February 26, 1988, with complaints of pain in the abdomen and back, asthma, and seizures. The Hearing Committee further found that the Respondent failed to appropriately explore Patient C's chief complaints and medical history. He further inappropriately ordered abdominal and hepatic sonograms, failed to follow up on abnormal laboratory test results, and failed to maintain an adequate record for this patient.

The Hearing Committee found that Patient D, a forty-one year old female, also presented to the Respondent on February 26, 1988, with complaints of pain in the abdomen and back, nervousness, and shortness of breath. The Hearing Committee further found that the Respondent failed to perform an adequate physical examination, inappropriately ordered abdominal and hepatic sonograms, and failed to maintain an adequate record for the patient.

The Hearing Committee found that Patient E, a forty-nine year old male, presented to the Respondent on February 27, 1988, with complaints of pain in the abdomen, back and knee, shortness of breath and nervousness. The Hearing Committee

further found that the Respondent failed to take an adequate history, failed to perform an adequate physical examination, inappropriately ordered abdominal and hepatic sonograms, and failed to appropriately follow up on abnormal laboratory results. The Committee further found that the Respondent failed to maintain an adequate medical record for the patient.

The Hearing Committee found that Patient F, a forty-five year old female, presented to the Respondent on February 27, 1988, with complaints of pain in the abdomen, shortness of breath, anxiety, and trouble sleeping. The Committee further found that the Respondent took an incomplete history, and failed to perform an adequate physical examination. In addition, the Committee found that he inappropriately ordered abdominal and hepatic sonograms, failed to appropriately follow up on abnormal laboratory results, and failed to maintain an adequate medical record for the patient.

The Hearing Committee also found that the Respondent fraudulently stated that he did not have a malpractice action pending against him on two separate applications for reappointment to the Harlem Hospital medical staff.

The Committee voted to suspend the Respondent's license to practice medicine in New York State for twenty-four months. Twenty-one months of that suspension was stayed, with the Respondent placed on probation, subject to periodic review of his patient charts by the Department. In addition, the Committee imposed a \$10,000 fine on Respondent.

REQUEST FOR REVIEW

RESPONDENT: On his appeal, the Respondent has asked that the Review Board reverse the Hearing Committee's Determination and Order as to all findings made against the Respondent, along with all necessary and further relief that the Review Board deems just and proper. The Respondent presented his interpretation of the facts adduced at the hearing and also argues that the Petitioner's case is based upon a utopian view of the duty of care owed by a physician.

PETITIONER: In an answering brief, the Petitioner argues that the Respondent's brief raises issues which are beyond the scope of the Review Board's jurisdiction and that his arguments lack merit. The Petitioner notes that the bulk of the Respondent's appeal is devoted to arguments that the Hearing Committee's findings and conclusions were erroneous. The Petitioner argues that the Respondent's request that the Review Board substitute its findings for those of the Hearing Committee must be denied as being beyond the scope of administrative review.

The Petitioner also argues that the Respondent has not been held to an unrealistic or utopian standard of care. He argues that by failing to take adequate histories, perform adequate physical examinations, and adequately provide for continuity of care, Respondent's treatment of these patients was essentially meaningless.

Given the Hearing Committee's Determination that the

Respondent practiced medicine with negligence and incompetence, ordered excessive tests, maintained inadequate records, engaged in fraud and filed false reports, the Petitioner requests that the Review Board confirm the Hearing Committee's Findings of Fact and Conclusions of Law, overturn the Committee's sanction, and at a minimum, impose a larger monetary fine.

REVIEW BOARD DETERMINATION

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

The Review Board votes 5-0 to sustain the Hearing Committee's Determination that the Respondent was guilty of practicing with negligence on more than one occasion, practicing with incompetence on more than one occasion, practicing the profession fraudulently, ordering excessive tests or treatment, and filing false reports, and failing to maintain adequate medical records. This Determination was consistent with the Committee's factual findings.

The Review Board votes 5-0 to overturn the Committee's Determination to suspend the Respondent's license to practice medicine in New York State for twenty-four months, with twenty-one months of that suspension stayed, with the Respondent placed on probation, and the imposition of a \$10,000.00 fine. The Review Board finds that the penalty is not consistent with the Committee's findings and that the penalty is not appropriate for the serious misconduct which the Respondent committed. The Review Board votes to revoke the Respondent's license to practice

medicine in New York State.

The findings of the Hearing Committee clearly demonstrate serious flaws in the Respondent's medical care of the cited patients. These findings alone would warrant revocation of his license. More significant, however, are the findings of fraud and the willful filing of false reports.

Fraud in the practice of medicine is serious misconduct and making false statements on applications for hospital staff privileges is grounds for revoking a physician's license. Matter of Glassman, 208 AD2d 1060, 617 N.Y.S. 2d 413 (Third Dept. 1994). Integrity is essential to the practice of medicine. Physicians must deal truthfully with patients, with other physicians, with facilities, with third-party insurers and with regulators. The Respondent's fraudulent conduct demonstrates that he is not fit to be licensed as a physician by the State of New York. Neither retraining nor continuing medical education can correct this condition. The Review Board unanimously finds that the Respondent's fraudulent conduct is serious enough to call for the revocation of the Respondent's license to practice medicine.

The Review Board recognizes that our penalty goes beyond the penalty which the Petitioner has sought. The Board, however, has the authority to determine whether a penalty is appropriate and to substitute our judgment for the judgment by the Hearing Committee. Matter of Bogdan, 195 AD2d 86, 606 N.Y.S. 2d 381 (Third Dept. 1993); Matter of Wapnick, 203 AD2d 728, 611 N.Y.S. 2d 41 (Third Dept. 1994). If we are not bound by the Hearing Committee's judgment, then we are certainly not bound by

the judgments of either party as to the proper penalty.

ORDER

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

1. The Review Board SUSTAINS the Hearing Committee's December 9, 1995 Determination finding the Respondent guilty of professional misconduct.
2. The Review Board OVERTURNS the penalty which the Hearing Committee imposed through their Determination.
3. The Review VOTES 5-0 to revoke the Respondent's license to practice medicine in New York State.

SUMNER SHAPIRO

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF SHAFI A. BEZAR, 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. Bezar.

DATED: Delmar, New York

April 3, 1996


SUMNER SHAPIRO

IN THE MATTER OF SHAFI A. BEZAR, 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. Bezar.

DATED: Brooklyn, New York

4/5/, 1996

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

WINSTON S. PRICE, M.D.

IN THE MATTER OF SHAFI A. BEZAR, 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. Bezar.

DATED: Roslyn, New York

April 3, 1996

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

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF SHAFI A. BEZAR, M.D.

WILLIAM A. STEWART, M.D., a member of the
Administrative Review Board for Professional Medical Conduct,
concurrs in the Determination and Order in the Matter of Dr.
Bezar.

DATED: Syracuse, New York

2 April, 1996

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in dark ink and is positioned above the printed name.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF SHAFI A. BEZAR, 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. Bezar.

DATED: Syracuse, New York

Apr 4, 1996



ROBERT M. BRIBER