

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

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IN THE MATTER : ADMINISTRATIVE  
OF : REVIEW BOARD  
JUSTIN CHARLES TERRA, M.D. : DETERMINATION  
: AND  
: ORDER  
-----X ORDER NO. BPMC 92-21-A

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of Robert M. Briber, Maryclaire B. Sherwin, Edward C. Sinnott, M.D. and William A. Stewart, M.D.<sup>1</sup> held deliberations on May 20, 1992 to review the Professional Medical Conduct Hearing Committee's (hereinafter the "Hearing Committee") March 10, 1992 Determination (attached) to revoke Dr. Justin Charles Terra's license to practice medicine in New York State. James F. Horan, Esq., served as Administrative Officer to the Review Board. Dr. Terra requested the review through a Notice of Appeal received on March 23, 1992. Iannuzzi and Iannuzzi submitted a brief on behalf of Dr. Terra and Roy C. Nemerson, Esq. submitted a brief on behalf of the Department of Health.

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

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<sup>1</sup> At the time at which the Administrative Review Board met to deliberate this case, the New York State Senate had confirmed only four members of the five member Administrative Review Board that was created pursuant to Chapter 606 of the Laws of 1991.

- 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.

PHL §230-c(4)(b) permits the Review Board to remand a case to the hearing committee for further consideration.

PHL §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 Hearing Committee sustained charges that Dr. Terra was guilty of:

- gross negligence;
- negligence on more than one occasion;
- incompetence on more than one occasion;
- ordering treatment or use of treatment facilities not warranted by the condition of the patient; and
- failure to maintain adequate records.

The Hearing Committee did not sustain charges of fraudulent practice. The case arose from the Respondent's alleged treatment of 24 patients who came to the Respondent for terminations of pregnancy. The Respondent failed to testify at the hearing or offer evidence. The Hearing Committee voted to revoke the Respondent's license. The Hearing Committee noted that the Respondent's failure to appear at the hearing prevented the Hearing Committee from considering whether a penalty less severe

than revocation would have been possible in this case.

The Respondent's Brief (attached) asserts that the Hearing Committee did not have sufficient evidence on which to base its findings. The Respondent argues that there was no proof that the records offered at the Hearing (DOH Ex. A-Y) were Dr. Terra's records, that the records merely indicate inadequate record keeping and that the Respondent's failure to appear at the hearing could not lead to any negative inferences against Dr. Terra.

#### **SIGNIFICANT LEGAL RULINGS**

The Administrative Officer advised the Review Board that:

1. In the absence of expert testimony, a finder of fact may compare a disputed writing and a certified sample of writing of a person whose handwriting is in dispute; and
2. Records in a State agency's possession, of which the agency wishes to avail itself, shall be offered and made a part of the record in an adjudicatory proceeding before that agency.

#### **REVIEW BOARD'S DETERMINATION**

The Review Board votes unanimously to sustain the Hearing Committee's Determination, except as to the finding of guilt on the charges involving Patient O. The Review Board votes

unanimously to sustain the penalty of revocation which the Hearing Committee imposed.

The Respondent contends that the Hearing Committee's conclusion that Dr. Terra rendered care to Patients A-X (Finding of Fact No. 3) is unsupported by any evidence because there is no proof that the records (DOH Ex. A-X) introduced at the hearing were Dr. Terra's records. The Hearing Committee reached their conclusion that Exhibits A-X were Dr. Terra's records, and that Dr. Terra provided the care involved in this case, by comparing the physician's signature on Exhibits A -X with Dr. Terra's signature from his New York State Education Department licensure file (DOH Ex. Z, Committee Determination p. 14).

As a finder of fact, the Hearing Committee may make a determination about the authenticity of the signature on the medical records by comparing the signature on Exhibits A-X with Dr. Terra's signature from the certified records of the Education Department. The Review Board has compared the signatures on Exhibits A-X with Dr. Terra's signature on Exhibit Z and has determined that the Hearing Committee's conclusion that the exhibits were Dr. Terra's medical records is supported by substantial evidence from the Exhibits relating to Patients A-N and P-X. The record for Patient O (DOH Ex. O) does not contain a signature and the Review Board does not believe that the Hearing Committee had sufficient evidence before them to connect this record to Dr. Terra and, therefore, to conclude that Dr. Terra provided care to Patient O.

The Review Board has determined further that Exhibits A-N, P-X, and the testimony by the Department of Health's expert, Dr. Borgatta, provided the Hearing Committee with sufficient evidence to determine that Dr. Terra was guilty of:

- incompetence on more than one occasion;
- fraudulent practice; and
- ordering treatment not warranted by the condition of the patient.

Exhibits A-N, P-X and Dr. Borgatta's testimony, also provided the Hearing Committee sufficient evidence to find Dr. Terra guilty of:

- gross incompetence, except as that finding relates to Patient O;
- negligence on more than one occasion, except as that finding relates to Patient O; and
- failure to maintain adequate records, except as that finding relates to Patient O.

In reaching its determination on these charges, the Hearing Committee concluded that in the instances in which the Respondent's records did not contain necessary documentation, the inadequacy was due to the Respondent's failure to obtain such information or perform the necessary physical examination (Hearing Committee Determination, p. 16). The Respondent argues that the absence of such information indicates only that the records are inadequate. (Respondent's Brief, p. 6-8). The Review Board sustains the Hearing Committee's conclusion. All of the

information in the records concerning necessary medical tests, information and examinations must be included in the medical record and the failure to include such data leads to the conclusion that tests were not performed or that adequate information was not obtained by the Respondent or under his supervision. If there is information from Dr. Terra's medical records that is not included in the Department's exhibits, such as a separate record relating to anesthesia for these patients (Respondent's Brief p. 20-21), then the Respondent could have easily overcome that conclusion by presenting such information at the hearing.

The Review Board determines unanimously that the penalty of revocation is justified in light of the Hearing Committee's findings that the Respondent was guilty of six categories of misconduct, including gross negligence and both incompetence and negligence on more than one occasion. The Hearing Committee's Determination states that the Hearing Committee was unable to assess whether the Respondent was a candidate for rehabilitation rather than revocation because the Respondent did not appear and testify at the hearing (Hearing Committee Determination, p. 25). The Review Board believes it is totally appropriate for the Hearing Committee to consider other options before imposing the penalty of revocation and to assess whether a respondent is a candidate for rehabilitation or retraining based upon the respondent's testimony at the hearing. The Respondent's failure to appear prevented the Hearing Committee from making a judgement

as to the Respondent's potential for retraining.

The penalty of revocation is appropriate in view of the Hearing Committee's findings on the charges against the Respondent and is within the scope of the penalties permitted by PHL §230-a.

**ORDER**

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

1. The March 10, 1992 Determination by the Hearing Committee on Professional Medical Conduct is hereby sustained, with the exception that the findings that the Respondent was guilty of gross negligence and negligence in the treatment of Patient O and failure to maintain adequate medical records for Patient O are not sustained; and
2. The Hearing Committee's Determination revoking the license of Justin Charles Terra, M.D. to practice medicine in the State of New York is sustained.

**DATED: Albany, New York**

June \_\_\_\_\_, 1992

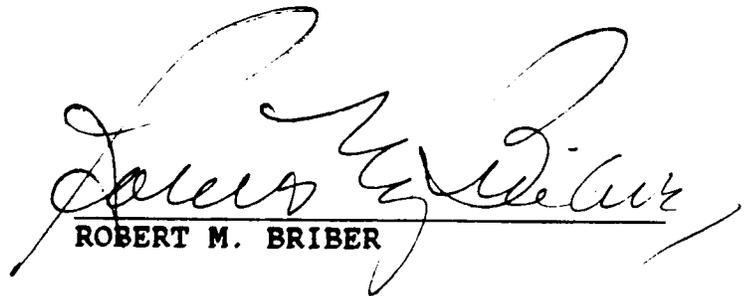
**ROBERT M. BRIBER  
MARYCLAIRE B. SHERWIN  
EDWARD C. SINNOTT, M.D.  
WILLIAM A. STEWART, M.D.**

IN THE MATTER OF JUSTIN CHARLES TERRA, 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. Terra.

DATED: Albany, New York

June 1, 1992

  
ROBERT M. BRIBER

IN THE MATTER OF JUSTIN CHARLES TERRA, M.D.

MARYCLAIRE B. SHERWIN, a member of the Administrative Review Board for Professional Medical Conduct concurs in the Determination and Order in the matter of Dr. Terra.

DATED: Albany, New York

June 2, 1992

*Maryclaire B. Sherwin*  
MARYCLAIRE B. SHERWIN

IN THE MATTER OF JUSTIN CHARLES TERRA, 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. Terra.

DATED: Albany, New York

June 1, 1992

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott M.D.", written in black ink.

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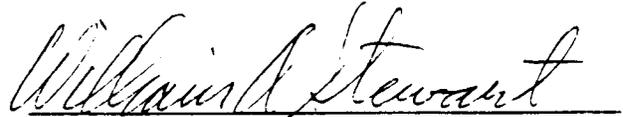
EDWARD C. SINNOTT, M.D.

IN THE MATTER OF JUSTIN CHARLES TERRA, 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. Terra.

DATED: Albany, New York

June 1, 1992

  
WILLIAM A. STEWART