



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

July 15, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jonathan M. Frost, Esq.
Ainsworth-Sullivan
403 New Karner Road
Albany, New York 12212-2849

Bret Lusskin, M.D.
1920 E. Hallandale Beach Blvd.
Suite 502
Hallandale, Florida 33509

Kevin P. Donovan, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building - Room 2429
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Bret Lusskin, M.D.

Dear Mr. Frost, Dr. Lusskin and Mr. Donovan:

Enclosed please find the Determination and Order (No. ARB-93-42) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
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 than 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)].

Very truly yours,

Tyrone T. Butler, nam

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

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
BRET LUSSKIN, M.D. : DETERMINATION
: AND ORDER
: ARB NO.93-42

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The Administrative Review Board for Professional Medical Conduct (Review Board), consisting of **ROBERT M. BRIBER, MARYCLAIRE B. SHERWIN, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** held deliberations on June 1, 1993 to review the Professional Medical Conduct Hearing Committee's (Committee) March 24, 1993 Determination finding Dr. Bret Lusskin guilty of Professional Misconduct. The Office of Professional Medical Conduct (OPMC) requested the review through a Notice which the Review Board received on April 9, 1993. James F. Horan served as Administrative Officer to the Review Board. Kevin P. Donovan, Esq. submitted a brief for OPMC on May 10, 1993. Fred Chikovsky, Esq. submitted a reply for Dr. Lusskin on May 17, 1993.

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 Office of Professional Medical Conduct brought this proceeding against Dr. Lusskin pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9), which provide an expedited hearing in cases in which professional misconduct charges against a physician 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. 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 determined that the Respondent had committed professional misconduct based upon a December 19, 1991 determination by the Florida Board of Medicine, which concluded that the Respondent 1.) failed to keep records to justify the course of treatment for a patient, 2.) inappropriately prescribed valium for a patient, and 3.) committed behavior that was unethical, inappropriate and below the standard of care when he

had his pants down and held his exposed penis while in an examining room with a female patient. The Florida Board reprimanded the Respondent and required that the Respondent undergo a psychiatric evaluation approved by the Physician Recovery Network and complete a continuing medical education course at the University of South Florida. The Florida Board also forbid the Respondent from examining or treating a female patient without a licensed female health professional present in the room.

The Hearing Committee found that the Respondent's conduct would constitute negligence on more than one occasion and moral unfitness in the practice of the profession if committed in New York State. The Hearing Committee found that the Respondent's conduct represented a serious breach of the public trust and placed a patient at risk through the indiscriminate prescription of controlled substances. The Hearing Committee voted to suspend the Respondent's license to practice in New York State for five years. The Committee also imposed the same three conditions as the Florida Board, ordering that the Respondent undergo a psychiatric evaluation, complete the continuing medical education course at the University of South Florida and employ a female health professional to be present in the room when the Respondent examines or treats female patients.

REQUESTS FOR REVIEW

The Office of Professional Medical Conduct has asked that the Review Board overturn the Hearing Committee's penalty and

revoke the Respondent's license to practice medicine in New York State. OPMC contends that revocation is the only effective penalty which will adequately protect the public.

The Respondent asks that the Review Board sustain the Hearing Committee's five year suspension penalty, noting that the Respondent is sixty-three years old and currently practices exclusively in Florida. The Respondent contends that the five year suspension and the requirement that the Respondent employ a female health professional to be present when the Respondent treats or examines female patients is a sufficient penalty to protect the public in this case.

REVIEW BOARD DETERMINATION

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

The Review Board votes unanimously to sustain the Hearing Committee's Determination that the Respondent was guilty of professional misconduct, based upon the December 19, 1991 Determination by the Florida Medical Board. The Review Board further sustains the Hearing Committee's Determination that the Respondent's conduct in Florida would constitute negligence on more than one occasion and conduct which evidences a moral unfitness to practice medicine if committed in New York State.

We vote to modify the penalty which the Hearing Committee imposed, to provide an additional measure to assure that the public is protected.

The Hearing Committee determined that the patient designated as C.F. from the Florida disciplinary proceeding had partially undressed the Respondent to expose his penis and had told the Respondent "hold this". The Review Board believes that the Respondent's failure to stop the patient as she was doing this was a serious lapse of judgement that amounts to moral unfitness. There were no findings or conclusions, however, by the Hearing Committee or by the Florida Board that the Respondent had sexually abused Patient C.F. or that the Respondent had been the aggressor in the incident. The Review Board does not believe, therefore, that the Respondent may present an ongoing danger to the public that would require the revocation of his New York license. The Review Board agrees with the Hearing Committee that the Respondent's conduct, in the incident involving Patient C.F. and in inappropriately prescribing Valium for a second patient, requires a more severe penalty than the Florida Board imposed.

The Review Board sustains that portion of the Hearing Committee's penalty which suspends the Respondent's license to practice in New York for five years and requires that the Respondent comply with the provisions of the Florida penalty which order the Respondent to undergo a psychiatric evaluation and complete a continuing medical education course at the University of South Florida. To assure that the public is protected, we impose two additional penalty conditions. At the conclusion of the five year suspension, the Respondent may not receive back his New York license until he demonstrates that his license is in good

standing in any state in which he is practicing medicine. Upon the end of his suspension, the Respondent shall be on permanent probation. The sole condition of that probation shall be that the Respondent shall not examine or treat any female patient, unless a licensed female health care professional is present in the room.

ORDER

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

1.) The Hearing Committee's March 24, 1993 Determination, finding Bret Lusskin, M.D. guilty of professional misconduct, is sustained.

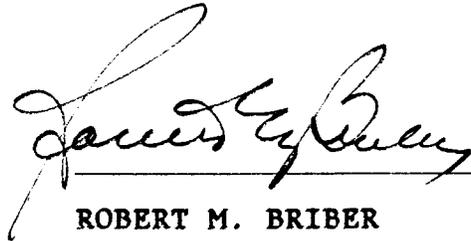
2.) The Hearing Committee's Penalty, placing the Respondent's license to practice medicine on suspension for five years is sustained, except that the penalty is modified to place the Respondent on limited probation following the completion of the suspension.

IN THE MATTER OF BRET LUSSKIN, 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. Lusskin.

DATED: Albany, New York

June 15, 1993



ROBERT M. BRIBER

IN THE MATTER OF BRET LUSSKIN, M.D.

WINSTON S. PRICE, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the result in the Determination and Order in the Matter of Dr. Lusskin.

DATED: Brooklyn, New York

June 22, 1993



WINSTON S. PRICE, M.D.

IN THE MATTER OF BRET LUSSKIN, 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. Lusskin.

DATED: Albany, New York

June 15, 1993

Maryclaire B. Sherwin
MARYCLAIRE B. SHERWIN

IN THE MATTER OF BRET LUSSKIN, 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. Lusskin.

DATED: Albany, New York

July 1, 1993

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

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF BRET LUSSKIN, 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. Lusskin.

DATED: Albany, New York

10 June, 1993

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.