



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

September 23, 1992

Ralph Bavaro, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

Joseph Saltiel, M.D.
462 East 135th Street
Bronx, New York 10451

Martin Gallin, Esq.
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860 Grand Concourse
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RE: IN THE MATTER OF JOSEPH SALTIEL, M.D.

Dear Mr. Bavaro, Mr. Gallin and Doctor Saltiel:

The Order accompanying the Administrative Review Board's September 15, 1992 Determination in this case contains an error.

The Order states incorrectly that the Hearing Committee's Determination revoking Doctor Saltiel's license is sustained. The Order should state that the Hearing Committee penalty placing Doctor Saltiel's license on three years probation is sustained. A corrected Order is attached.

Very truly yours,

A handwritten signature in cursive script that reads "James F. Horan".

James F. Horan
Administrative Officer for the
Professional Medical Conduct
Administrative Review Board

Enc.
sjd

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

-----X
IN THE MATTER : ADMINISTRATIVE
OF : REVIEW BOARD
JOSEPH SALTIEL, M.D. : DETERMINATION
AND
ORDER
-----X ORDER NO. BPMC-92-57-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.¹ held deliberations on September 2, 1992 to review the Professional Medical Conduct Hearing Committee's (hereinafter the "Hearing Committee") July 6, 1992 Determination concerning Dr. Joseph Saltiel's license to practice medicine in New York State. Dr. Saltiel requested the review through a Notice of Appeal received by the Board on July 23, 1992. James F. Horan, Esq., served as Administrative Officer to the Review Board. Martin Gallin, Esq. submitted a brief on behalf of Dr. Saltiel and Ralph J. Bavaro, Esq. submitted a response on behalf of the Department of Health.

¹ 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.

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.

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 Department of Health charged Dr. Saltiel with practicing medicine with negligence on more than one occasion and with keeping inadequate records. The OPMC Hearing Committee sustained the negligence charges upon finding that the Respondent saw patients without establishing an adequate record and saw patients in an office which was unsanitary and unsafe. The

Committee also sustained the charge that the Respondent did not maintain adequate medical records, finding that the records submitted to the Committee failed in any meaningful way to record either the care rendered by the Respondent or the basis for rendering that care.

The Hearing Committee found several mitigating factors in the Respondent's favor and for a penalty voted to suspend the Respondent's license for one year, but stayed the suspension and in its place imposed three years probation. The terms of the probation include record review, consultation and monitoring and require that the Respondent comply with the malpractice insurance provisions set out in Public Health Law §230(18)(b).

THE RESPONDENT'S REQUEST FOR REVIEW

The Respondent served a Notice of Review on July 23, 1992, which included the specific grounds for the review request. The Notice asked that the penalty be modified to four years probation rather than one year suspension and three years probation. Mr. Bavaro submitted a letter on July 24, 1992 stating

that he interpreted the Hearing Committee's penalty to have stayed the one year suspension and have imposed probation in place of the suspension. His letter suggested a clarification of the penalty might avoid the need for a review. Mr. Gallin agreed with that suggestion, and on August 6, 1992 the Review Board considered the joint application for clarification.

The Board concluded that the Hearing Committee imposed as a penalty a one year stayed suspension with three year probation and authorized the Administrative Officer to advise the parties (see August, 1992 letter attached).

The Petitioner subsequently withdrew his request for a review of the three year probation, and in his Brief has limited the scope of the review to a request that the Review Board waive the provisions of Public Health Law §230(18)(B) from the Respondent's penalty. Public Health Law §230(18)(B) requires that any physician who is subject to monitoring must maintain malpractice insurance coverage with limits no less than two million dollars per occurrence and six million dollars for policy

year. The Respondent is unable to comply with this requirement because the current quoted price for such a policy is \$11,209.00 per year, while the Respondent's income from his limited practice, is only \$16,000. The Department of Health opposes any modification in the Respondent's penalty, asserting that the existing penalty is generous, that probation with a monitor is the minimum required in this case to protect the public health and that the Respondent has failed to cite any legal authority to justify exempting the Respondent from the mandatory provisions of Public Health Law §230(18)(b).

REVIEW BOARD DETERMINATION

The Review Board lacks the legal authority to waive the requirements of Public Health Law §230(18)(b). The statute provides that any physician subject to monitoring must obtain the mandated malpractice insurance coverage, with no exceptions. The only way that Dr. Salteil could be excused from obtaining the mandated coverage would be to eliminate monitoring as a condition of protection. The Board, therefore, considered the Respondent's