



STATE OF NEW YORK DEPARTMENT OF HEALTH

19

Coming 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

August 11, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

RECEIVED
AUG 14 1995
OFFICE OF
MEDICAL CONDUCT

Cindy M. Fascia, Esq.
NYS Department of Health
Coming Tower-Room 2438
Empire State Plaza
Albany, New York 12237

Stephen Joel Weiss, M.D.
Suite 100
7333 North Freeway
Houston, Texas 77076

Nathan L. Dembin, Esq.
Nathan L. Dembin & Associates, P.C.
225 Broadway Suite 1905
New York, New York 10007

RE: In the Matter of Stephen Joel Weiss, M.D.

Dear Ms. Fascia, Mr. Dembin and Mr. Weiss:

Enclosed please find the Determination and Order (No. 95-171) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

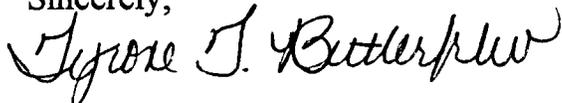
All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,


Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

IN THE MATTER
-OF-
STEPHEN JOEL WEISS, M.D.
Respondent

DECISION

AND

ORDER

OF THE

HEARING

COMMITTEE

BPMC ORDER NO. 95- 171

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated April 17, 1995 which were served upon **STEPHEN JOEL WEISS, M.D.**, (hereinafter referred to as "Respondent"). **TERESA S. BRIGGS, M.D., Ph.D.** Chairperson, **DAVID T. LYON, M.D., M.P.H.**, and **D. MARISA FINN**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on July 12, 1995 at the Cultural Education Center, Empire State Plaza, Albany, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "the State" or "Petitioner") appeared by **CINDY M. FASCIA, ESQ.**, Associate Counsel, Bureau of Professional Medical Conduct, of counsel to **JEROME J. JASINSKI, Esq.**, Acting General Counsel. Respondent appeared in person and by Nathan L. Dembin & Associates, **NATHAN L. DEMBIN, ESQ.**, of counsel Evidence was received. Legal arguments were heard. The parties submitted written closing statements and arguments of law. A transcript of these proceedings was made.

After consideration of the entire record, the Hearing Committee issues this Decision and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) [Having been found guilty of improper practice or professional misconduct by another state disciplinary agency] and Education Law Section 6530 (9)(d) [disciplinary action taken by the authorized disciplinary agency of another state, where the conduct from which the action in the other state arises would amount to misconduct in this state]. The charge herein arises from suspension (stayed in lieu of probation) of Respondent's license to practice medicine by the Texas State Board of Medical Examiners and probation by the Louisiana State Board of Medical Examiners. Respondent entered into an Agreed Order with the Texas board. The Agreed Order arose from acts of medical incompetence, negligence, overcharging patients and over-treating patients. The Louisiana Board took action against Respondent's license based upon the findings by the Texas board. The allegations in this proceeding and the underlying decision by the Texas and Louisiana authorities are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

**SIGNIFICANT RULINGS
BY THE
ADMINISTRATIVE LAW JUDGE**

The Administrative Law Judge ruled that written summations rather than verbal ones were to be submitted. The reason for this ruling was twofold: First, despite several warnings and a side-bar conference, Respondent insisted upon arguing law before the Committee, which in this matter is the trier of fact. Rather than continue to disrupt the presentations of counsel, it was deemed advisable by the Administrative Law

Judge to require that writings be submitted. Second, Respondent's counsel waived his client's right to testify. Therefore, there was nothing for the Committee to hear.

The closing statements of the parties were delivered to and studied by the Committee. As the State points out in correspondence to the Administrative Law Judge, legal arguments did find their way to Respondent's closing statement. Therefore, during deliberations, the Committee was instructed that issues of law were the province of this writer and issues of fact and penalty were their domain. The Committee was instructed to ignore the legal arguments presented by either party. This writer has reviewed each of the documents and finds that the issues presented by Respondent have been well settled by relevant court decision. In summary, the case law in this area establishes that the events upon which the disciplinary acts by the other states were based cannot be disputed by Respondent. Furthermore, any argument that would tend to undermine the prior determinations by the other bodies cannot be considered by the trier of fact.

Therefore, the Committee was instructed that under Section 6509 (9)(b) and (d), it had authority to review the findings and resultant actions of the Texas and Louisiana authorities. Based solely upon the findings of those states, which Respondent is prohibited from denying, the Committee must decide what, if any, penalty or action New York should take against this Respondent's license. Furthermore, since the Texas authorities issued findings of fact and conclusions, those findings and conclusions were binding upon Respondent and could be relied upon by this body. The sole question presented to the Committee then, was as follows: Given the facts presented by the Texas and Louisiana authorities and the action taken by them, what, if any, action should New York take with reference to this practitioner's license. The response of the Committee is set forth below.

FINDINGS OF FACT

The Committee adopts the factual statement set forth on pages one through five of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

CONCLUSIONS

Respondent waived his right to testify in this proceeding. Counsel for both parties submitted written legal arguments and closing statements. The Committee finds the Statement by Counsel for the State to be far more persuasive. The Committee finds that Respondent in his violations exhibits both medical incompetence as well as moral turpitude. In other words, Respondent is neither a competent clinician nor an honest patient provider. Having so found, the Committee simply cannot find any basis for leniency.

In trying to establish a fair penalty which will adequately protect the citizens of this state, the Committee notes that Respondent's license is not presently active in this state. He resides and practices in Texas. The Texas authorities have established a program of probation under which Respondent is allowed to practice. The difficulty with probation in this situation is that there is no way this state can monitor Respondent's practice habits. Therefore, the only practical way to protect the public from this practitioner is to revoke his New York State license. This is done with the understanding that Respondent has shown no basis for leniency and, more important, should Respondent improve his level of practice, he will be free to re-apply for licensure in this state at a later time. The Committee wishes to point out that under the facts presented, if this practitioner had committed the acts found in Texas and Louisiana in this State, they would have revoked his license.

ORDER

WHEREFORE, Based upon the forgoing facts and conclusions,

IT IS HEREBY ORDERED THAT:

1. The Factual allegations in the Statement of Charges are **SUSTAINED**.

Furthermore, it is hereby **ORDERED** that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

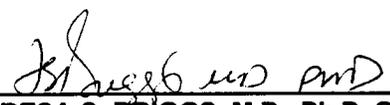
3. The license of Respondent to practice medicine in this state is **REVOKED**.

Furthermore, it is hereby **ORDERED** that;

4. This order shall take effect **UPON RECEIPT** or **SEVEN (7) DAYS** after mailing of this order by Certified Mail.

Dated:
Albany, New York

August 10 1995



TERESA S. BRIGGS, M.D., Ph.D. Chairperson

DAVID T. LYON, M.D., M.P.H.
D. MARISA FINN

TO: **CINDY M. FASCIA, ESQ.**
Associate Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower Building
Empire State Plaza
Albany, N.Y. 12237

JOEL STEPHEN WEISS, M.D.
Suite 100
7333 North Freeway
Houston, Texas 77076

NATHAN L. DEMBIN, ESQ.,
Nathan L. Dembin & Associates, P.C.
225 Broadway Suite 1905
New York, N.Y. 10007

APPENDIX ONE

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

-----X
IN THE MATTER : NOTICE
OF : OF
STEPHEN JOEL WEISS, M.D. : HEARING
-----X

TO: STEPHEN JOEL WEISS, M.D.
Suite 100
7333 North Freeway
Houston, Texas 77076

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1995) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1995). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 14th day of June, 1995, at 10:00 in the forenoon of that day at the Cultural Education Building, Room E, Concourse Level, Empire State Plaza, Albany, New York and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and

NEW YORK STATE DEPARTMENT OF HEALTH 19
Petitioner's
Exhibit
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7/11/95 MET

you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Administrative Law Judge's Office, Empire State Plaza, Tower Building, 25th Floor, Albany, New York 12237, (518-473-1385), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990 and Supp. 1995), you may file an answer to the Statement of Charges not less than ten days prior to the date of the hearing. If you wish to raise an affirmative defense, however, N.Y. Admin. Code tit. 10, Section 51.5(c) requires that an answer be filed, but allows the filing of such an answer until three days prior to the date of the hearing. Any answer shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

At the conclusion of the hearing, the committee shall make

findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO THE OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW SECTION 230-a (McKinney Supp. 1995). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
April 17, 1995



PETER D. VAN BUREN
Deputy Counsel

Inquiries should be directed to:

Cindy M. Fascia
Associate Counsel
Division of Legal Affairs
Bureau of Professional
Medical Conduct
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237-0032
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
STEPHEN JOEL WEISS, M.D. : CHARGES

-----X

STEPHEN JOEL WEISS, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1972 by the issuance of license number 112493 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in New York State.

FACTUAL ALLEGATIONS

1. Respondent, on or about June 3, 1994, entered into an Agreed Order with the Texas State Board of Medical Examiners, which ratified said Order on or about June 22, 1994.
2. Respondent, in the Findings of Fact of said Order, was found to have committed the following conduct with regard to "numerous patients between approximately November, 1988 and approximately September 1992":
 - Respondent failed to accurately interpret and record diagnostic findings;

- Respondent failed to formulate or document appropriate treatment plans or clinical rationale for subsequent testing.
 - Respondent recommended surgical intervention even though patients were poor surgical candidates;
 - Respondent ordered unnecessary referrals for epideral (sic) steroid injections, intravenous colchicine injections, and functional capacity evaluations;
 - Respondent ordered physical therapy for periods of more than a year; and
 - Respondent considered chemonucleolysis and performed multiple imaging studies in spite of the absence of sufficient objective physical findings, reproducible radiculopathy and previous negative test results.
3. Respondent, in the Texas Board's Conclusions of Law in said Order, was found to have violated the Medical Practice Act of Texas, V.A.C.S., Article 4495b, Section 3.08(4)(G), in that Respondent was "persistently and flagrantly overcharging and overtreating patients"; and Section 3.08(18), by reason of Respondent's "professional failure to practice medicine in an acceptable manner consistent with public health and welfare."
4. Respondent, under the terms of said Order, had his license to practice medicine in Texas suspended, which suspension was stayed. Respondent was placed on probation for five years, under the numerous and highly specific terms and conditions set forth in the Board's Order.
5. Respondent's conduct upon which the Texas Board's findings of misconduct were based would, if committed in New York State, constitute professional misconduct under the laws of

New York State, specifically N.Y. Educ. Law §6530(3) [practicing with negligence on more than one occasion]; and/or N.Y. Educ. Law §6530(5) [practicing with incompetence on more than one occasion]; and/or N.Y. Educ. Law §6530(35) [ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient].

6. Respondent, on or about February 6, 1995, entered into a Consent Order with the Louisiana State Board of Medical Examiners, which issued said Order on or about March 2, 1995.

7. Respondent, in said Consent Order, waived his right to notice of charges and formal adjudication of this matter before the Louisiana Board, which had recommended that Respondent be charged with violation of the Louisiana Practice Act. Respondent, in said Consent Order, acknowledged "the substantial accuracy" of certain information, including the Agreed Order between Respondent and the Texas Board. Respondent further acknowledged that "proof of such information upon administrative evidentiary hearing would establish grounds under the [Louisiana Practice] Act for the suspension, revocation, or such other action as the Board might deem appropriate against his license to practice medicine in the state of Louisiana."

8. Respondent, under the terms of the Louisiana Consent Order, was placed on a five year period of probation, during which time he was prohibited from relocating to Louisiana to practice medicine. In the event that Respondent chooses to return to Louisiana subsequent to that five year period of prohibition, he is required to appear before the Board at least sixty (60) days in advance of said relocation to demonstrate to the Board his compliance with all other probationary terms and discuss with the Board his intended plans for the practice of medicine in Louisiana.

9. The conduct upon which the Louisiana Board's disciplinary action was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, specifically N.Y. Educ. Law §6530(9) (d) [having disciplinary action taken by another state]; and/or N.Y. Educ. Law §6530(9) (b) [having been found guilty of professional misconduct under the laws of New York State]; and/or N.Y. Educ. Law §6530(3) [practicing with negligence on more than one occasion]; and/or §6530(5) [practicing with incompetence on more than one occasion]; and/or N.Y. Educ. Law §6530(35) [ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient].

FIRST SPECIFICATION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(b), by reason of his having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York state, in that Petitioner charges;

1. The facts in Paragraphs 1 through 5.

SECOND SPECIFICATION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(d), by reason of having his license to practice medicine revoked, suspended or having other disciplinary action taken, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in Paragraphs 1 through 9.

DATED: *April 17*, 1995
Albany, New York

Peter D. Van Buren

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct