



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

Karen Schimke
Executive Deputy Commissioner

February 2, 1996

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Peter D. Van Buren, Esq.
Deputy Counsel
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237

Robert Mitchell Scovner, M.D.
2803 Raleigh Road
Walkersville, Maryland 21793

RE: In the Matter of Robert Mitchell Scovner, M.D.

Dear Mr. Van Buren and Dr. Scovner:

Attached is the Hearing Committee's Supplemental Determination in the above named case (BPMC-95-149R). As provided in the Administrative Review Board's Remand Order, either the Respondent or Petitioner have 14 days from the time you receive this Determination to request a review of the Determination by the Administrative Review Board. Any Notice requesting review should be sent to the Review Board by certified mail, with a copy to the other party.

Requests should be sent to:

James F. Horan, Esq.
Administrative Law Judge
Corning Tower-Room 2505
Empire State Plaza
Albany, New York 12237

Sincerely,

Tyrone T. Butler, Director
Bureau of Adjudication

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

IN THE MATTER

-OF-

ROBERT MITCHELL SCOVNER, M.D.

Respondent

DECISION
AND
ORDER
OF THE
HEARING
COMMITTEE
ON
REMAND

BPMC ORDER
NO. 95-149R

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated April 18, 1995 which were served upon **ROBERT MITCHELL SCOVNER, M.D.**, (hereinafter referred to as "Respondent"). **JOSEPH G. CHANATRY, M.D.**, Chairperson, **PAUL M. DeLUCA, M.D.**, and **SISTER MARY THERESA MURPHY**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (hereinafter referred to as "the 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 (hereinafter referred to as the "ALJ"). A hearing was held on June 28, 1995 at the Cultural Education Center, Empire State Plaza, Albany, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "PMC") appears in this proceeding by **PETER D. VAN BUREN, ESQ.**, Deputy Counsel, Bureau of Professional Medical Conduct, of counsel to **HENRY M. GREENBERG, ESQ.**, General Counsel.¹ Respondent did not appear in person or by counsel. However, Respondent did

¹At the time this matter was originally captioned and heard, PMC appeared by **JERRY JASINSKI, ESQ.**, Acting General Counsel, **CATHERINE CHOLAKIS, ESQ.**, of counsel.

submit documents for consideration by the Committee. Evidence was received. A transcript of these proceedings was made.

A Decision and Order, dated July 17, 1995, was issued. Respondent, by a Notice of Appeal to the Administrative Review Board for Professional Medical Conduct (hereinafter referred to as the "ARB") appealed the said Decision and Order. The appeal was received by the ARB on August 7, 1995. By an order designated ARB. No 95-149R, the ARB remanded this matter to the Committee for further deliberations. The Committee met on December 8, 1995. Upon review of the entire record to date, the Committee hereby issues this Decision And Order On Remand.

STATEMENT BY THE ADMINISTRATIVE LAW JUDGE

This matter was remanded by the ARB with instructions to the Committee. The Committee has reconsidered the entire matter in light of the original evidence available to it on June 28, 1995, as well as post-hearing submissions by PMC and Respondent and in compliance with the instructions of the ARB. To facilitate understanding of the Decision and Order of the Committee On Remand, a brief history will be recited.

Prior to June 28, 1995, the date the Committee first heard this matter, Respondent submitted documents to PMC over his own signature. Respondent wanted the documents he submitted to be considered by the Committee in this proceeding. Prior to the hearing, PMC forwarded the documents to the ALJ for distribution to the Committee. The cover letter which accompanied the documents mentioned that Respondent had an attorney. Therefore, the ALJ ruled that it would be inappropriate to distribute the documents in the absence of authorization from counsel for Respondent. PMC was informed that the materials should be submitted by Respondent or his attorney on the date of the hearing. The documents were returned to the prosecutor. On the date of the hearing, neither Respondent nor counsel for Respondent appeared. The ALJ no longer had a record of Respondent's submission. In pre-hearing discussions with PMC, it had been anticipated that in the event Respondent made no appearance on June 28, PMC would

bring the documents to the attention of the Committee. PMC made no reference to Respondent's documents on June 28. Consequently, The Committee decided this matter in the absence of certain documents submitted by Respondent. Furthermore, because Respondent did not appear in person, by counsel or, it was thought, by submission of documents, the Committee concluded that Respondent was in default. The fact is however that Respondent was not in default. The documents which should have been considered for receipt on June 28, 1995, are referred to by the ARB on page 4 of its decision. Upon remand, the Committee has received the documents referred to by Respondent and the ARB. The analysis of Respondent's submissions by the Committee is discussed later in this Decision and Order.

The ARB remanded the matter to the the Committee. In its decision, the ARB issued five directions which can be briefly summarized as follows:

1. Clarify the original Determination;
2. Review the evidence submitted by Respondent;
3. Resolve the difference between the wording of the Statement of Charges and the Conclusions of the Committee with regard to "potent analgesics";
4. Recognize Respondent was not in default;
5. Allow Petitioner to address Respondent's documents.

Prior to deliberations on Remand, PMC submitted written objections to the documents submitted by Respondent being considered by the Committee. PMC cited the documents as inadmissible on the grounds that the documents tend to re-litigate issues that have already been decided. The ALJ ruled that for the benefit of Respondent, it would be more appropriate to err on the side of inclusion. The documents were received as a part of the record herein. However, the ALJ also ruled that instructions regarding collateral estoppel and weight would be issued to the Committee in deference to PMC's objections².

²This ruling is intended to fulfill the fifth instruction issued by the ARB.

By letter of November 1, 1995, the information submitted by Respondent was distributed to the Committee³. At the time of deliberations on remand, instructions were issued to the Committee, by the ALJ, regarding the legal theory of Collateral Estoppel and what weight should be given to the documents. It was within that context that the Committee reviewed Respondent's submissions. The trier of fact will now address each of the points raised by the ARB.

PREAMBLE
TO THE
DECISION ON REMAND

Respondent has been charged with professional misconduct pursuant to Education Law Section 6530 (9)(b) [having been found guilty of improper professional practice or professional misconduct by the authorized disciplinary agency of another state, where the conduct resulting in the discipline would amount to misconduct in this state] and (9)(d) [disciplinary action taken by the authorized disciplinary agency of another state, where the conduct resulting in the discipline would amount to misconduct in this state]. The charge herein arises from a Consent Order issued by the Maryland Board of Physician Quality Assurance. The Consent Order was based upon a finding that Respondent failed to meet the applicable standards of care. The allegations in this proceeding and the underlying decision by the Maryland authorities are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached hereto as Appendix One.

FINDINGS OF FACT

The Committee adopts the factual statement set forth on page one through three of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein. In addition, the Committee adds the following findings:

³This ruling is intended to fulfill the second instruction issued by the ARB.

1. On June 28, 1995, Respondent did not appear in person nor did he appear by counsel. Respondent did submit documents. At the time of the original hearing, the Committee was unaware of the existence of the submission by Respondent.
2. Respondent was not in default in this proceeding. Respondent made the effort to state his position to the Committee through documents which have now been received in evidence.⁴ (Ex. A through D)
3. The documents submitted by Respondent were received by the Committee on December 8, 1995, the date of the latest deliberations. The documents were received as Exhibits A through D inclusive. Exhibits A through D are part of the record in this proceeding. A copy of exhibits A through D are attached hereto as Appendix Two. A description of exhibits A through D and all other post-hearing exhibits is attached hereto as Appendix Three.
4. The State Board of Physician Quality Assurance in the State of Maryland, charged Respondent with:

Fail[ure] to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in [Maryland].(Ex. 4, part 1, p. 1)
5. Under the procedures in Maryland, a Peer Review Committee reviewed the evidence against Respondent. This Committee found Respondent to have provided sub-standard care to three patients. (Ex. 4, Part 2, pp.2-7 [patient specific allegations])
6. The Peer Review Committee found that Respondent had failed to keep adequate records, had prescribed narcotic substances for pain, without attempting non-narcotic therapy and without attempting to learn the cause of the pain. Respondent was also found to have over prescribed

⁴Findings of fact one and two are intended to fulfill the fourth instruction issued by the ARB.

narcotics and to have prescribed addictive substances to patients he knew were present or former narcotic addicts. (Ex. 4, Part 2, pp.2-7 [patient specific allegations])

7. The Peer Review Committee Report concluded and this Committee finds:

Dr. Scovner is an empathetic but naive person. He sincerely believes that he is only attempting to keep five or six of his patients functioning, when in reality, he is maintaining addicts. In addition, *the committee believes that Dr. Scovner's basic medical knowledge may be deficient.* (Emphasis supplied, Ex. 4, Part 2, p. 2)

8. Respondent was represented by counsel in the Maryland proceeding. Counsel for Respondent reviewed the Consent Order and signed it. (Ex. 4, Part 1, p. 5)

CONCLUSIONS

In its earlier Decision, this Committee found that Respondent had been disciplined in the State of Maryland, and that the discipline arose from irregularities associated with "potent analgesics". The Committee based its findings upon the allegations in the Statement of Charges and the Consent Order (with attachments) upon which the Statement of Charges was based. Both the Statement of Charges and the Consent Order, with attachments, were available to the Committee on June 28, 1995. A review of all the documents, both those available at the hearing and those submitted after the hearing, serves only to reinforce the Committee's earlier Decision.

The ARB notes that "their (sic) is no statement in the Statement of Charges...involving inappropriate prescriptions for potent analgesics". While it is true that the Statement of Charges does not use the specific words "potent analgesics", the Statement of Charges alleges, and the evidence confirms, that the Maryland authorities cited Respondent for inappropriate record-keeping associated with the administration of controlled substances including Stadol. Since appropriate record-keeping is essential to the appropriate prescribing of

controlled substances, the Committee summarized the Maryland findings by stating Respondent had been found guilty of inappropriate prescribing of "potent analgesics." (Ex. 1, pp. 2).

Moreover, of greater importance to the original decision of this Committee, is the fact that the Consent Order, which was before the Committee as Exhibit 4, reveals the Maryland Peer Review Committee to have cited Respondent for inappropriate prescribing or administering of Dilaudid, Percocet, Fiorinal # 3, Hydroxyzine, Hydrocet, and Roxicet. The Consent Order does not use the specific words "potent analgesics" in reference to these substances, however, the Consent Order does refer to the substances as scheduled "controlled dangerous substance[s]", (Ex. 4⁵, part 2, pp.3-8) and "narcotic analgesic[s]". (Ex. 4, part 2, p.4). Hence, the Committee does not find it injudicious to take notice that the substances listed above, the use of which underpinned the Consent Order, constitute potent analgesics.⁶

The Committee now turns its attention to the documents submitted by Respondent. With reference to the letter of February 15, 1994, to Ms. Christina Moore from James N. Campbell, M.D., Professor of Neurosurgery at Johns Hopkins Hospital (exhibit C), the Committee has given it the same weight as if Dr. Campbell had testified before it under oath and been subject to cross-examination. Even in this light, which is far more favorable to Respondent than would ordinarily be warranted, the views expressed by Dr. Campbell are unconvincing. Dr. Campbell would appear to accept the practices of Respondent as described in the Consent Order (Ex. 4, Part 2). The Committee finds the administration of Schedule II narcotic substances in the quantity and for the duration undertaken by Respondent to constitute unacceptable medical practice in any context. The generally accepted standards of medicine with regard to pain management, insofar as the standard was relevant to the patients reviewed, was outlined by the Peer Review Committee in part 2 of Exhibit 4. Briefly summarized, the standards require a full diagnosis, an exploration of the cause of the pain,

⁵Exhibit 4, the Maryland Consent Order has two parts: The Consent Order itself, runs from the first page of the exhibit to page 5. Attached to, and part of, the Consent Order is a document entitled "Charges Under The Maryland Medical Practice Act." This second document begins after page 5 of the Consent Order and ends at page 9. References to Exhibit 4 will be noted as Ex.4, part 1, pp__ or Ex. 4, part 2, pp.__

⁶This paragraph and the one directly preceding it are intended to fulfill the first and third instructions issued by the ARB.

as well as a trial of modalities of relief other than narcotics. The fact that Respondent made no effort to meet these standards, did not refer the patients to pain management clinics and prescribed addictive drugs to those who were addicts or habitués serves to amplify what this Committee finds to be clear and definitive departures from accepted standards of medicine, all of which were described by the Maryland Peer Review Committee.

The letter of March 13 to Dr. Scovner from Stephen A. Hirsch, M.D., Chairman, Committee on Drugs, Maryland Medical and Chirurgical Faculty (Exhibit D) is, to say the least, equivocal. Dr. Hirsch states that one patient should be referred to a pain management clinic. While the care rendered to other patients was apparently found to be acceptable by Dr. Hirsch, this Committee cannot know if the patients referred to by Dr. Hirsch are the same as those referred to in exhibit 4. If the patients reviewed by Dr. Hirsch are the same as those summarized in Exhibit 4, the Committee strenuously disagrees with Dr. Hirsch, for the reasons set forth above in reference to Dr. Campbell.

In his letters of June 12 (Exhibit A) and August 28 (exhibit 103), Respondent refers to a first and second proceeding in Maryland. The only information available to this Committee is that contained in the exhibits reviewed herein. These exhibits make reference to only one proceeding from which the Consent Order and attachment arises. If, as Respondent suggests, he was subsequently exonerated of some charges, there is no evidence of same in the record before this Committee. The letters to the parties of October 6 and November 1, 1995, from Judge Brandes, make it clear that Respondent is offered the opportunity to submit documentation in support of his assertion that he was exonerated. Respondent made no such submission. Finally, turning to exhibit B, a letter from Respondent to the Board of Quality Assurance, the Committee finds no information that would cause it to diverge from its earlier conclusions.

In reaching its conclusions regarding this matter, this Committee has limited itself solely to the submissions before it. Those submissions, particularly exhibit 4, show that Respondent settled a disciplinary action with the State of Maryland with a document which mentions only record-keeping violations. However, the unequivocal evidence in this proceeding shows that the activities from which the discipline arose were not

merely record-keeping errors. This Committee wishes to stress that the second part of the Consent Order was duly before it. Hence, the information in the second part of the Consent Order can be considered herein. Based upon the full array of evidence before it, the Committee concludes Respondent was supplying quantities of schedule II and other scheduled controlled substances to addicts and habitués. Addicts and those who are habituated to controlled substances are, by definition, persons who should have no access to controlled substances (except in the most limited of programs which are inapplicable to the facts herein). Moreover, Respondent made no effort to try other modalities of pain relief other than narcotics. Respondent also made no effort to find out the underlying causes for the complaints of the patients.

Perhaps the most important factor in leading the Committee to its eventual conclusion regarding penalty herein is the quotation from the Peer Review Committee Maryland, which is quoted in finding of fact seven:

Dr. Scovner is an empathetic but naive person. He sincerely believes that he is only attempting to keep five or six of his patients functioning, when in reality, he is maintaining addicts. In addition, *the committee believes that Dr. Scovner's basic medical knowledge may be deficient.* (Emphasis supplied) (Ex. 4, Part 2, p. 2)

The Committee finds that the above assessment is entitled to significant weight because it was generated by a committee of Respondent's peers. This assessment, coupled with the patient summaries included in the Consent Order, leads the Committee to a finding that Respondent is a menace to the community. It has long been established in this state that the indiscriminate use of controlled substances will not be tolerated, even in the case where a knowledgeable practitioner makes treatment errors. The situation presented by Respondent is far more grave because, based upon the Maryland findings, Respondent's acts reflect a deviation from acceptable levels of practice and the facts elicited herein are indicative of a pattern demonstrating fundamental incompetence. The question raised by Respondent amounts to, "why was the New York penalty so stringent?" The more appropriate question, given the incontrovertible facts before this Committee is, "why was the Maryland penalty so lenient?" The above

findings serve to fortify the original conclusion of this Committee: Revocation is the only appropriate remedy in this case.

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. Respondent's license 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** by Certified Mail.

**Dated:
Utica, New York**

January 26, 1996

Joseph G. Chanatry
JOSEPH G CHANATRY, M.D., Chairperson

**PAUL M. DeLUCA, M.D.
SISTER MARY THERESA MURPHY**

TO: **PETER D. VAN BUREN, ESQ.**
Deputy Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, New York 12237

ROBERT MITCHELL SCOVNER, M.D.
2803 Raleigh Road
Walkersville, Maryland 21793

APPENDIX ONE
(STATEMENT OF CHARGES)

PETITIONER'S
EXHIBIT

1 FOR ID
TMB 6/8/95

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

-----X

IN THE MATTER : NOTICE OF
OF : REFERRAL
ROBERT MITCHELL SCOVNER, M.D. : PROCEEDING

-----X

TO: Robert M. Scovner, M.D.
2803 Raleigh Road
Walkersville, Maryland 21793

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1995) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1995). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 28th day of June, 1995 at 10:00 a.m. in the forenoon of that day at Conference Room E, Cultural Education Center, Albany, New York 12237.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the

nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before June 19, 1995.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before June 19, 1995 and a copy of all papers must be served on the same date on the Department of Health attorney indicated 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.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in

writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
April 18, 1995



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

Inquiries should be addressed to:

Catherine Cholakis
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
ROBERT MITCHELL SCOVNER, M.D. : CHARGES

-----X

ROBERT MITCHELL SCOVNER, M.D., the Respondent, was authorized to practice medicine in New York State by the issuance of license number 090802 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 9, 1994, the Maryland State Board of Physician Quality Assurance found Respondent had failed to meet appropriate standards of care for the delivery of quality care in the State of Maryland, in violation of Maryland State statute H.O. §14-404(a)(22).

1. On or about June 29, 1993, Respondent was charged by the State Board of Physician Quality Assurance in Maryland, with the inappropriate prescribing of controlled substances to three separate patients.

2. By the issuance of a Consent Order dated March 22, 1993, Respondent was found to have "failed to meet the standard of care ... in that the medical

records d[id] not contain adequate information for another health professional to assume the patient's medical care and the medical records contain insufficient information regarding injections of Stadol...given by the Respondent to some patients". This was in violation of Maryland statute H.O. §14-404(a)(22).

3. As a result of this finding, Respondent was placed on probation for a period of two years. As part of this probation, Respondent was expected to cooperate with Med-Chi Peer Review Committee which "shall have a specialist in the area of pain management review any" chronic pain patient's records, complete a course in medical record keeping and not use injectable narcotics or injectable Stadol in treatment "unless the use of such injectable narcotics or injectable Stadol has been approved for use in the treatment of each such patient by a physician who is a specialist in pain management".

- B. The conduct upon which the Maryland Board found Respondent failed to meet appropriate standards would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(32) (McKinney Supp. 1995) [failing to maintain a record for each patient which accurately reflects the evaluation and

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY
OF IMPROPER PROFESSIONAL PRACTICE
OR PROFESSIONAL MISCONDUCT

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1994) by reason of his having been found guilty of 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 facts in paragraphs A, A1, A2, A3 and/or B.

SECOND SPECIFICATION

HAVING HIS LICENSE TO PRACTICE MEDICINE
REVOKED, SUSPENDED OR HAVING OTHER
DISCIPLINARY ACTION TAKEN

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1994) by reason of his having had disciplinary action taken by a duly authorized professional disciplinary agency of another state where the conduct resulting in this action would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges facts in paragraphs A, A1, A2, A3 and/or B.

DATED: *April 18*, 1995
Albany, New York

Peter D. Van Buren

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

**APPENDIX TWO
(COPY OF EXHIBITS A THROUGH D)**

P. O. Box 217
Walkersville, Md. 21793
June 12, 1995

A

Catherine Cholakis, Assistant Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237

Dear Sir:

I am answering your notice of April 18, 1995 concerning my professional conduct.

Basically, I was originally charged with treating drug addicts. There was no attempt to verify this, and it was dropped. I was eventually charged with substandard records. I consented to this reluctantly due to reasons mentioned in the enclosed letter.

On your Factual Allegations, Section A-1, you refer to the original charges of June 29, 1993, which were dropped. I have already served over one-half of my two year probation and have completed the medical records course specified by the State of Maryland.

I hope you will see the unfairness of the proceeding of the State of Maryland and will not pursue further action against me. If you decide to go on with the adjudicatory proceedings, please let me know so I can discuss it with my attorney.

Of the three letters enclosed, two concern the recent charges and the other is from an official of a drug agency several years ago complimenting the quality of my records that he reviewed.

Sincerely yours,



Robert M. Scovner, M.D.

RMS/lms

Enclosures

B

Copy of Letter

2803 South Raleigh Road
Walkersville, Md. 21793
May 4, 1994

Israel Weiner, M.D.
Chairman, Board of Quality Assurance
4201 Patterson Avenue
Baltimore, Maryland

Dear Dr. Weiner:

In the last several years I have been involved with a series of peer reviews and legal proceedings which resulted in my being put on probation for two years by the Board of Quality Assurance. As you may not be familiar with the details, I will review them.

I had an inspection of my office and peer reviews twice in the past few years. These were brought about, as far as I am aware, by my use of controlled substances for pain relief on a few patients. After the review in 1988 no admonition or advice was given to me, as far as I remember. In 1989 my office was inspected and I went to the Peer Review Committee in 1991. I did not think there were any serious problems until I was charged with treating drug addicts in July, 1993.

I went with my attorney to a Resolution Conference where I was given a proposal of probation for two years, of having my narcotic prescriptions reviewed, of not being allowed to give injectable narcotics and of having to take courses on record keeping, and on pain treatment and drug addiction. I did not accept this.

The Assistant District Attorney agreed to reconsider the charges if an expert would support my use of narcotics in the cases under consideration. James Campbell, Director of the Pain Clinic at Johns Hopkins Hospital, and President of the American Pain Society, reviewed my records. In a conference with the Assistant Attorney General and my attorney, Dr. Campbell defended my use of narcotics in the five patients for whom I was accused of treating drug addicts.

This charge was dropped, and I agreed to take a course in record keeping and to have approval by a specialist for injectable narcotics I would use. I did not realize this meant I would be given probation. I accepted this at the Resolution Conference as I would be at risk for even further penalties as well as for larger expenses if I would go to trial before a judge, who most likely would be ill informed on medical issues. These penalties were given because of a few alleged poor records.

Even this later charge, I feel is unwarranted. When I was last investigated, sixteen charts were reviewed by two members of the Peer Review Committee. Both of them made no complaints except for the five patients treated with narcotics. One reviewer only had problems with use of narcotics. The other reviewer gave an almost totally inaccurate report on these five records and these were the basis of the charges about my records. I had no opportunity to oppose this charge.

Johns Hopkins
Neurosurgery

577 North Wolfe Street / Baltimore, MD 21237
Meyer 5-109
Patient Care Office: (410) 955-2058
Administrative Office: (410) 955-5810
FAX: (410) 955-1032

James N. Campbell, M.D.
Professor of Neurosurgery
Director, Eisenstein Pain Treatment Center
Co-Director, Peripheral Nerve Surgery Unit
Vice Chairman, Department of Neurosurgery

February 15, 1994

DRAFT

Ms. Christine J. Moore
Chair
Case Resolution Conference
4206 Patterson Avenue
Baltimore, MD 21215

RE: Robert N. Scovner, M.D.

Dear Ms. Moore:

I have reviewed in detail the medical records of Dr. Scovner. In particular, I have reviewed the records of those patients where it was alleged Dr. Scovner had "maintained drug addicts."

It was noted in my review that the patients indeed were recognized by subsequent treating doctors to have difficult intractable pain problems. It is my understanding that in at least two of the cases the patients went on to have ongoing opiate therapy by other pain experts.

It should be understood that merely taking opiates for pain control does not constitute a criterion for addiction. Addiction is a psychiatric diagnosis and refers to a compulsive need for a drug which leads to harm of the person and which is not associated with medical benefit. In one of the cases I reviewed there is a possible issue of substance abuse, but this is far from clear in reviewing the records. In any case, once Dr. Scovner recognized the potential of substance abuse opiate therapy for the patient was discontinued, I believe appropriately.

It should be recognized by the panel that opiates are being use increasingly for non-malignant pain conditions. It is recognized by experts in the field that opiate therapy frequently provides excellent pain control in certain chronic, non-cancer



MEDICAL and CHIRURGICAL FACULTY
of the STATE OF MARYLAND

1211 Cathedral Street

Baltimore, Maryland 21201

(301) 539-0872 • Toll Free 1-800-492-1056

March 13, 1986

Robert M. Scovner, M.D.
1-A West Frederick St.
Walkersville, MD 21793

PERSONAL & CONFIDENTIAL

Dear Doctor Scovner:

Thank you for your response to our earlier letter with regard to several of your patients.

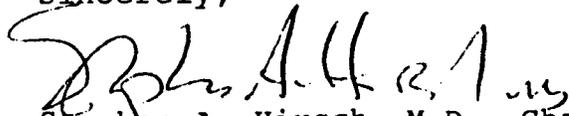
We agree with your handling of the cases in question with the exception of ~~Mr. [redacted]~~. We suggested in our letter of December 20, 1985, that he be referred to a pain clinic and your subsequent information has not changed our opinion.

We believe ~~Mr. [redacted]~~ should have a complete pharmacologic evaluation made so that his pain can be assessed in conjunction with other factors. You have made appropriate referrals in the past and we believe you are sincere in your desire to help this patient. On the other hand, he seems to be using delaying tactics in putting off compliance with your suggestions, and this gives us a great deal of concern. We suggest that if surgery is performed, he thereafter be referred to a pain clinic, if pain is still a problem, so that an appropriate evaluation can be made.

* The care of your other patients seems well documented and we compliment you on those records. However, we do urge you to find further consultation for ~~Mr. [redacted]~~ rather than allowing him to continue to receive addictive drugs from you.

If we can be of any assistance to you, please do not hesitate to call on us.

Sincerely,


Stephen A. Hirsch, M.D., Chairman
Committee on Drugs

SAH:CT:clk

APPENDIX THREE
(DESCRIPTION OF POST-HEARING EXHIBITS)

EXHIBIT LIST

RESPONDENT'S EXHIBITS - RECEIVED AFTER REMAND

Exhibit A	Letter dated June 12, 1995 to Ms. Cholakis
Exhibit B	Letter dated May 4, 1994 to Dr. Weiner
Exhibit C	Letter dated February 15, 1994 (draft) to Ms. Moore
Exhibit D	Letter dated March 13, 1986 to Dr. Scovner

PMC'S EXHIBITS - RECEIVED AFTER REMAND

[Exhibits 1 through 4 were received on the record on June 28, 1995]

Exhibit 5	Letter dated October 17, 1995 to Judge Brandes From Mr. Van Buren
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ADMINISTRATIVE LAW JUDGE EXHIBITS - RECEIVED AFTER REMAND

Exhibit 101	Letter dated October 6, 1995 to litigants
Exhibit 102	Letter dated November 1, 1995 to litigants
Exhibit 103	Letter dated August 28, 1995 to Judge Horan