

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  
DONALD PIRODSKY, M.D. : REMAND  
AND  
-----X ORDER  
ORDER NO. BPMC-92-59-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 September 2, 1992 to review the Professional Medical Conduct Hearing Committee's (hereinafter the "Hearing Committee") July 7, 1992 Determination revoking Dr. Donald Pirodsky's license to practice medicine in New York State. Dr. Pirodsky requested the review through a Notice of Appeal received by the Board on July 24, 1992. James F. Horan, Esq., served as Administrative Officer to the Review Board. Barry Gold, Esq. submitted a brief on behalf of Dr. Pirodsky and Kevin Donovan, Esq. submitted a reply brief on behalf of the Department of Health.

<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.

### SCOPE OF REVIEW

New York Public Health Law (PHL) §230(10)(1), §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 brought this proceeding pursuant to Public Health Law §230(10)(p) and Education Law §6530(9), which provide a expedited hearing when the misconduct charges against the licensee are based upon a prior criminal conviction in New York State or another jurisdiction or upon a prior administrative adjudication concerning conduct which would

amount to misconduct if committed in New York State. The expedited hearing determines the nature and severity of the penalty which the Hearing Committee will impose based upon the criminal conviction or prior adjudication.

The Hearing Committee in this case consisted of Charlotte Buchanan, Esq., Chair, Bernard Pollara, M.D. and Lyon Greenberg, M.D. Larry Storch served as Administrative Officer. The Committee determined that the Department had met its burden of proof in establishing that the Respondent was convicted on August 2, 1990 of second degree assault, a Class D Felony, upon pleading guilty to stabbing his wife Susan Pirodsky in the back on November 14, 1989. Based upon the conviction, Respondent was sentenced to five years probation and ordered to perform 520 hours of community service.

The Hearing Committee voted unanimously to revoke Dr. Pirodsky's license because they felt the Respondent's act of violence means that he cannot be entrusted with the care of another human being. The Committee characterized the stabbing as

such egregious misconduct to render Dr. Pirodsky unfit to practice medicine and found that the Respondent had failed in his duty to protect the public trust placed in the medical profession by committing such an act of violence.

The Respondent's brief argues that the revocation penalty is excessive given the Respondent's uninterrupted record of high quality patient care. The Respondent challenges the penalty further because the Hearing Committee was not allowed to review certain essential relevant evidence relating to the stabbing. Dr. Pirodsky requests that the Review Board either reduce the penalty or remand the case to the Hearing Committee.

#### **REVIEW BOARD DETERMINATION**

The Review Board finds unanimously that the Hearing Committee's Penalty is not consistent with nor supported by its Findings of Fact and Conclusions of Law. Three members of the Board vote to remand the case to the Hearing Committee for further limited proceedings and reconsideration. One member of the Board votes to overturn the penalty as inappropriate.

The Respondent's conviction for an act of physical violence, which was the basis for the Hearing Committee's three Findings of Fact, does not lead automatically to the conclusion that the Respondent is morally unfit to practice medicine.

Further, the Hearing Committee failed to make Findings of Fact concerning what aspects of the Respondent's criminal activity make the Respondent untrustworthy to care for another human being. The crime did not involve patient care or the practice of medicine.

The Board notes that the sentencing court did not feel the Respondent to be a sufficient danger to society to include imprisonment in his sentence. The Court did feel that the Respondent's former wife bore some responsibility for the domestic strife which eventually culminated in the stabbing (Exhibit G). The Court also included community service as part of its sentence. The Review Board would like to know whether any of the Respondent's community service has included providing health care.

Twice in its conclusion the Hearing Committee characterized the Respondent as being unable to control his

behavior or most base human instincts. If the Respondent is indeed unable to control his behavior in times of stress, did the Committee consider whether there was a problem which would respond to psychiatric treatment or counselling? Did the Committee consider placing the Respondent on probation and requiring a psychiatric evaluation to determine whether the Respondent has an ongoing problem with behavioral control in time of stress?

The majority of the Review Board remands this case not only for reconsideration by the Committee but for a further limited day of hearing. The additional hearing should not amount to a new trial on whether the Respondent stabbed his wife or whether the act constituted a crime in New York. The additional proceeding should explore mitigating factors which the Respondent wishes to argue or the Department wishes to dispute, including the details of the stabbing and Dr. Pirodsky's attempts to obtain emergency aid for his wife.

Following the limited hearing, the Hearing Committee should conduct further deliberations. If the Hearing Committee

still feels that the Respondent is not fit to practice medicine they should set out whatever additional Findings of Fact or conclusions they feel support that penalty. They should make their conclusions in a Supplemental Determination, signed by the Committee Chair.

The Review Board authorizes our Administrative Officer to contact Mr. Storch prior to the time that we issue this Determination, to advise him that this matter will be remanded so that Mr. Storch may plan to reassemble the Committee for further proceedings and deliberations. The Hearing Committee may communicate any questions about or requests for clarification of this order to the Review Board by letter from Mr. Storch to Mr. Horan. The parties will receive copies of all such correspondence.

The Review Board does not place any time limits on how long the Hearing Committee will have for the additional proceeding and deliberation. The Hearing Committee's penalty shall remain stayed until the final Review Board Determination in this matter.

**ORDER**

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

- 1. The July 7, 1992 Determination by the Hearing Committee on Professional Medical Conduct is hereby remanded to the Hearing Committee for further proceedings and reconsideration as provided for in this Determination.**
- 2. The Hearing Committee's Determination revoking the license of Donald Pirodsky, M.D. to practice medicine in the State of New York remains stayed until the Review Board issues its final Determination in this case.**

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

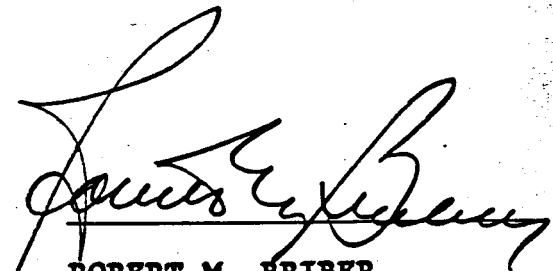


IN THE MATTER OF DONALD PIRODSKY, M.D.

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. Pirodsky.

DATED: Albany, New York

September 2, 1992



ROBERT M. BRIBER

**IN THE MATTER OF DONALD PIRODSKY, 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. Pirodsky.**

**DATED: Syracuse, New York**

**September 16, 1992**

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.**

**IN THE MATTER OF DONALD PIRODSKY, 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. Pirodsky.

**DATED: Malone, New York**

**September 16, 1992**

*Maryclaire B. Sherwin*

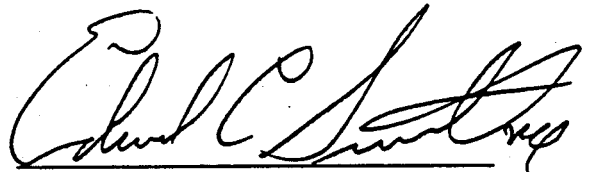
**MARYCLAIRE B. SHERWIN**

IN THE MATTER OF DONALD PIRODSKY, 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. Pirodsky.

DATED: Roslyn, New York

September \_\_, 1992

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

EDWARD C. SINNOTT, M.D.