

PROHIBITION

SEP 16 1987

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

BEFORE THE HEARING EXAMINER FOR THE
STATE BOARD OF MEDICINE
Docket Number 86490360

IN THE MATTER OF THE SUSPENSION OR
REVOCATION OF THE LICENSE TO PRACTICE MEDICINE

MD-028340-L

ISSUED TO:

HARVEY WEINTRAUB, M.D.

ADJUDICATION AND ORDER

Robert F. Claraval, Esquire
Hearing Examiner

Joseph T. Marconis, M.D., Chairperson
State Board of Medicine

George L. Shevlin, Acting Commissioner
Bureau of Professional and
Occupational Affairs

HISTORY

This case comes before the State Board of Medical Education and Licensure on the Commonwealth's Administrative Complaint and Order to Show Cause to determine whether Harvey Weintraub, M.D., Respondent herein, violated the Pennsylvania Medical Practice Act, the Act of December 20, 1985, P.L. 457, No. 341, Section 41, 63 P.S. Sections 422.41(4) or 422.41(8), or the Regulations of the State Board of Medicine, 49 Pa. Code 16.61, or all of the foregoing.

The Complaint and Notice of Hearing were issued and served upon Respondent in accordance with the Administrative Agency Law, the Act of April 28, 1978, P.L. 202, No. 53, 2 P.S. Section 501 et seq.

The Respondent is charged in the Complaint with having had his license to practice the profession suspended by the proper licensing authority of another state; having made misleading, deceptive, untrue, or fraudulent representations in the practice of medicine; and having acted with immoral or unprofessional conduct in the practice of medicine.

As to the previously mentioned charges, Section 422.41(4) of the Pennsylvania Medical Practice Act provide in pertinent part:

The board shall have the authority to impose disciplinary or corrective measures on a board-regulated practitioner for any of the following reasons:

. . . .
. . . (4.) [h]aving a license or other authorization to practice the profession revoked or suspended or having other disciplinary action taken, . . . by a proper licensing authority of another state.

. . . by a proper licensing authority of another state.
63 P.S. Section 422.21(4)(Purdon supp. 1986).

Section 422.41(8) of the Medical Practice Act empowers the State Board of Medical Education and Licensure to effect disciplinary or corrective measures on a board-regulated physician when he is guilty of immoral or unprofessional conduct. 63 P.S. 422.41(8)(Purdon supp. 1986). Such conduct is defined accordingly:

Unprofessional conduct shall include departure from or failing to conform to an ethical or quality standard of the profession.

(i) The ethical standards of a profession are those ethical tenets which are embraced by the professional community of this Commonwealth.

(ii) A practitioner departs from, or fails to conform to, a quality standard of the profession when the practitioner provides a medical service at a level beneath the accepted standard of care.

63 P.S. Section 422.41(8)(Purdon supp. 1986).

Section 16.61 of Regulations of the State Board of Medicine states that immoral conduct includes, but is not limited to "[t]he commission of an act involving moral turpitude, dishonesty, or corruption when the act directly or indirectly affects the health, welfare or safety of citizens of this Commonwealth." 49 Pa. Code Section 16.61 (19__).

The Commonwealth's Complaint was filed March 11, 1987, at which time a hearing was scheduled for April 17, 1987. Respondent requested and was granted a continuance until May 7, 1987. The formal hearing was held on said date before Hearing Examiner Robert F. Claraval, Esquire. Mark W. Richard, Esquire, was in

attendance on behalf of the Commonwealth. Respondent Harvey
Weintraub and William C. Anderson, Esquire were in attendance on
behalf of the Respondent.

FINDINGS OF FACT

1. Respondent Harvey Weintraub, M.D., is and at all times relevant and material hereto has been licensed to practice medicine and surgery in the Commonwealth of Pennsylvania, holding license number MD-028340-L.

2. Respondent is and at all times relevant and material hereto has been licensed to practice medicine and surgery in the State of New Jersey, holding license number 21200.

3. The New Jersey Board of Medical Examiners entered into a Consent Order with Respondent on February 21, 1986, in light of Respondent's prescribing Controlled Dangerous Substances to himself, as well as his family.

4. In the Order entered into by the New Jersey Board and Respondent, the following sanctions were imposed upon Respondent's license to practice medicine and surgery within the State of New Jersey:

a. Respondent's license to practice medicine and surgery in the State of New Jersey was suspended for a period of three (3) years retroactive to March 15, 1985, the approximate date on which Dr. Weintraub left the State of New Jersey and ceased practicing therein. Nine months of the three year suspension was to be served as an active suspension; the balance was to be served as a period of probation;

b. Respondent was required to successfully complete a mini-residency in drug abuse offered by the University of Medicine and Dentistry, or such other courses which would be found to be acceptable by the Board prior to Respondent's resumption of practice in New Jersey;

c. Respondent was to participate in the New Jersey Impaired Physicians Program or some comparable rehabilitative program available in the state in which he was residing;

d. Respondent was required to pay to the Board penalties in the sum of \$2,500.00 within 30 days of the entry of said Order or in accordance with such schedule as the Board would allow;

e. Respondent was to pay to the Board costs of the investigation of this matter in the sum of \$3,830.65 within 30 days of the entry of said Order or in accordance with such schedule as the Board would allow;

f. During the period of probation, Respondent's license was to be limited to permit him to work only in a supervised setting;

g. Respondent was to file with the Board, quarterly reports prepared by his supervisor regarding his professional progress and performance;

h. Prior to the resumption of active practice in the State of New Jersey or at the conclusion of the period of

probation, whichever were to come first, Respondent was to appear before the New Jersey Board or a committee thereof and demonstrate his capacity and competence to resume active practice.

5. Respondent has or is in the process of conforming to all of the New Jersey Board of Medical Examiners' sanctions.

6. Respondent held emergency privileges at the Soldiers and Sailors Memorial Hospital, Wellsboro, Pennsylvania during the period between on or about December 4, 1985 through on or about February 10, 1986, which such privileges to be in psychiatry on the associate active staff of the Soldiers and Sailors Hospital.

7. Respondent, during his association with the Soldiers and Sailors Hospital, did on six separate occasions dictate physicals for charting without having performed physical examinations upon such patients.

8. Respondent suffers from a bi-polar affective disorder; he is presently under the care and prescription of a psychiatrist.

9. Respondent is presently employed with Counseling Services of Pennsylvania, Towanda, Pennsylvania; his work load at Counseling Services is not as cumbersome as had been at Soldiers and Sailors.

10. Respondent does not work with in-patients in his present employment.

11. Respondent actively prescribes Controlled Dangerous

Substances in his present employment; there have been no repercussions concerning his prescription activities.

12. There have been no disciplinary actions taken or complaints by Respondent's present employer.

CONCLUSIONS OF LAW

1. Respondent was adequately and properly serviced by certified mail with the Commonwealth's Complaint and Notice of Hearing.
2. The State Board of Medical Education and Licensure has jurisdiction over the Respondent in and subject matter of this case.
3. Suspension of Respondent's license to practice medicine and surgery in another state by the proper licensing authority of said state for a period of three years, with nine months of such suspension to be served as an active suspension, and the balance to be served as a period of probation, constitutes a violation of the Pennsylvania Medical Practice Act, the Act of December 20, 1985, P.L. 457, No.341, Section 41, 63 P.S. 422.41(4), and mandates the State Board of Medical Education and Licensure take disciplinary action against said Respondent.
4. Respondent's dictation of physical examinations for patients' charts on six occasions, with the truth being Respondent never conducted said physical examinations on such patients, constitutes a violation of the Pennsylvania Medical Practice Act, the Act of December 20, 1985, P.L. 457, No.341, Section 41, 63 P.S. 422.41(2), and mandates the State Board of Medical Education and Licensure take disciplinary action against said Respondent.
5. Respondent's dictation of physical examinations for patients' charts, with the truth being that Respondent had not

conducted said physical examinations on such patients constitutes a violation of the Pennsylvania Medical Practice Act, the Act of December 20, 1985, P.L. 457, No.341, Section 41, 63 P.S. 422.41(2) and the Regulations of the State Board of Medicine, 49 Pa. Code Section 17.61, and mandates the State Board of Medical Education and Licensure take disciplinary action against said Respondent.

6. Where Respondent suffered from a psychological disorder, misdiagnosis of said disorder, malprescription relating to said disorder, and complications violating the Pennsylvania Medical Practice Act and the Regulations of the State Board of Medicine resulted, in part, therefrom, such extenuating circumstances are proper considerations in mitigating disciplinary actions taken by the State Board of Medical Education and Licensure.

7. Where Respondent has conformed or is in the process of conforming to disciplinary sanctions issued against him by the proper licensing authority of another state, has sought effective psychological care on his own volition, has had no other formal or informal disciplinary actions taken against him, and is a valued practitioner in his present employment, such extenuating circumstances are proper considerations in mitigating disciplinary actions taken by the State Board of Medical Education and Licensure.

DISCUSSION

Respondent Harvey Weintraub, M.D., a licensed practitioner in the Commonwealth and the State of New Jersey, entered into a Consent Order with the New Jersey Board of Medical Examiners on February 21, 1986, in light of the Respondent's prescribing of controlled dangerous substances to himself, as well as to other members of his family. In the Order entered into by the New Jersey Board, the following sanctions were imposed upon the Respondent's license to practice medicine and surgery in the State of New Jersey:

a. Respondent's license to practice medicine and surgery in the State of New Jersey was suspended for a period of three (3) years retroactive to March 15, 1985, the approximate date on which Dr. Weintraub left the State of New Jersey and ceased practicing therein. Nine months of the three year suspension was to be served as an active suspension; the balance was to be served as a period of probation;

b. Respondent was required to take and successfully complete a mini-residency in drug abuse offered by the University of Medicine and Dentistry, or such other courses which would be found to be acceptable by the Board prior to Respondent's resumption of practice in New Jersey;

c. Respondent was to participate in the New Jersey Impaired Physicians Program or some comparable rehabilitative

program available in the state in which he was residing;

d. Respondent was required to pay to the Board penalties in the sum of \$2,500.00 within 30 days of the entry of said Order or in accordance with such schedule as the Board would allow;

e. Respondent was to pay to the Board costs of the investigation of this matter in the sum of \$3,830.65 within 30 days of the entry of said Order or in accordance with such schedule as the Board would allow;

f. During the period of probation, Respondent's license was to be limited to permit him to work only in a supervised setting;

g. Respondent was to file with the Board, quarterly reports prepared by his supervisor regarding his professional progress and performance;

h. Prior to the resumption of active practice in the State of New Jersey or at the conclusion of the period of probation, whichever was to come first, Respondent was to appear before the New Jersey Board or a committee thereof and demonstrate his capacity and competence to resume active practice.

The Respondent has conformed or is in the process of conforming to the aforementioned sanctions.

On or about December 4, 1985, through on or about February 10,

1986, the Respondent held emergency privileges at the Soldiers and Sailors Memorial Hospital in Wellsboro, Pennsylvania. Such privileges were held in psychiatry on the associate active staff of the Soldiers and Sailors Hospital. The Respondent, during his association with the Soldiers and Sailors Hospital, did on six separate occasions dictate physical examinations for charting without having performed said physical examinations on such patients.

Respondent testified in his own behalf that the previously discussed infractions were the result, in part, of a psychological disorder, a misdiagnosis of said disorder, and malprescription to aid in the cure of said disorder. Furthermore, Respondent testified that in light of his psychological disorder, his previous workload worked as a detriment to his professional capabilities and resultant actions.

Presently, Respondent is under the effective care of a psychiatrist. Respondent's present practice does not include the extensive workload he experienced during prior employment. Respondent's current employer has had no complaints about, nor taken any disciplinary action against his practice of medicine. Respondent's licensed authority to prescribe medicine is highly valued by his current employer and the surrounding community serviced. Hearing Examiner Claraval commented on the likelihood of

no harm to the public should Respondent be permitted to practice, in a limited scope, psychiatry.

On the basis of the foregoing Findings of Facts, Conclusions of Law, and Discussion, the following Order is hereby entered:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

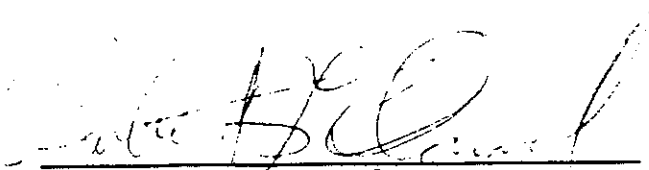
STATE BOARD OF MEDICINE)
 :
)
 : No. 86-49-0360
v.)
HARVEY WEINTRAUB, M.D.,)
 : Respondent :

AND NOW, this 18th day of September, 1987, after having carefully reviewed the transcript of testimony, exhibits, and briefs of the parties, and based upon the Findings of Fact, Conclusions of Law, and Discussion:

IT IS HEREBY ORDERED that the license to practice medicine and surgery in the Commonwealth of Pennsylvania of the Respondent, Harvey Weintraub, M.D., is hereby circumscribed by the following limits:

1. Respondent is not permitted to prescribed controlled dangerous substances to himself nor anyone in his immediate family;
2. Respondent is permitted to prescribe controlled dangerous substances to bona fide patients;
3. Respondent is under a two-year period of probation;
4. Respondent or Respondent's supervisors will provide the State Board of Medicine with periodic evaluation reports of Respondent's professional progress; and

5. Respondent's practice is limited to the practice of psychiatry and those physical problems relating to the psychiatric problems Respondent is treating.


Robert F. Claraval
Hearing Examiner

Adler, Jameson & Claraval
125 Locust Street, P.O. Box 11933
Harrisburg, PA 17108
(717) 234-3289

Respondent's Address:

Harvey Weintraub, M.D.
Counseling Services of Pennsylvania
R.D. 1, Box 179B
Tiwanda, PA 18848

Respondent's Counsel's Address:

William C. Anderson, Esq.
1423 East Market Street
York, PA 17403

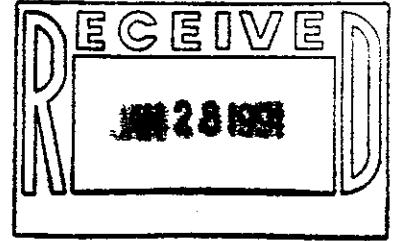
Commonwealth's Counsel:

Mark A. Richmond, Esq.
Professional & Occupational Affairs
619 Transportation and Safety Bldg.
Harrisburg, PA 17120

MAILING DATE: September 18, 1987



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF MEDICINE
P.O. BOX 2849
HARRISBURG, PENNSYLVANIA 17105-2849
(717) 783-1400



January 28, 1991

Ms. Dorothy Tomassi
Quality Assurance Analyst
The Federation of State Medical
Boards of the United States, Inc.
6000 Western Place, Suite 707
Fort Worth, TX 76107-4618

RE: Harvey Weintraub, M.D.

Dear Ms. Tomassi:

The records of the Pennsylvania State Board of Medicine reflect that Dr. Harvey Weintraub's probation terminated on September 18, 1989. No Order to this effect was issued.

Board records further reflect that Dr. Weintraub is currently registered through December 31, 1992.

Sincerely,

Loretta M. Frank
Administrative Assistant
State Board of Medicine