



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

December 20, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Timothy Mahar, Esq.
NYS Department of Health
Corning Tower - Room 2438
Empire State Plaza
Albany, New York 12237

Frederick Zimmer, Esq.
NYS Department of Health
Corning Tower - Room 2438
Empire State Plaza
Albany, New York 12237

Naresh Kumar Gupta, M.D.
1602 Pataudi House
Darya Gang
New Delhi, India 110002

RE: In the Matter of Naresh Kumar Gupta, M.D.

Dear Mr. Mahar, Mr. Zimmer and Dr. Gupta:

Enclosed please find the Determination and Order (No.96-203) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Hedley Park Place
433 River Street-Fourth Floor
Troy, New York 12180

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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

Handwritten signature of Tyrone T. Butler in black ink, followed by the initials "nm".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

COPY

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IN THE MATTER : ADMINISTRATIVE
: REVIEW BOARD
OF : DECISION AND
: ORDER NUMBER
NARESH KUMAR GUPTA, M.D. : ARB# 96-203
-----X

Naresh Kumar Gupta, M.D. (Respondent) requests, pursuant to New York Public Health Law (Pub. H.L.) §230-c(4)(a) (McKinney's Supp. 1996), that the Administrative Review Board for Professional Medical Conduct (Board) review and modify a Determination by a Hearing Committee on Professional Medical Conduct (Committee) which determined that the Respondent committed professional misconduct in violation of New York Education Law (Educ. L.) § 6530(9)(d). Board Members **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** conducted deliberations in this case on November 2, 1996 and the Board now renders this Determination. Administrative Law Judge **LARRY G. STORCH** served as the Board's Administrative Officer. The Board votes 5-0 to sustain the Hearing Committee's penalty in this case. We vote to revoke the Respondent's license to practice medicine in New York State. The Board discusses the reasons for this Determination below after summarizing the Committee's

Determination on the charges, the issues the parties raised on review and the Board's review authority.

NARESH KUMAR GUPTA, M.D. appeared *pro se* on this review.

FREDERICK ZIMMER, ESQ., Assistant Counsel for the New York State Department of Health, represented the Petitioner.

CHARGES AND COMMITTEE DETERMINATION

Pub. H.L. §230 authorizes three member committees from the State Board for Professional Medical Conduct (BPMC) to conduct disciplinary proceedings to determine whether physicians have committed professional misconduct by violating Educ. L. §6530. The Petitioner filed charges with BPMC alleging the Respondent violated Educ. L. §6530(9)(d) by:

- having disciplinary action taken by a duly authorized professional agency for another state;

- for conduct which would constitute professional misconduct if committed in New York State.

The Petitioner alleged that the Respondent's conduct, if committed in New York would have constituted:

- practicing the profession with negligence on more than one occasion, in violation of Educ. L. §6530(3);
- practicing the profession with gross negligence, in violation of Educ. L. §6530(4);
- conduct in the practice of medicine which

evidences moral unfitness to practice the profession, in violation of Educ. L. §6530(20);

- abandoning or neglecting a patient under and in need of immediate professional care, in violation of Educ. L. §6530(30);
- willfully harassing, abusing or intimidating a patient either physically or verbally, in violation of Educ. L. §6530(31).

The Petitioner brought this case as an expedited proceeding pursuant to Pub. H.L. §230(10)(p). The purpose for such a proceeding is to determine the nature and severity for the penalty to be imposed for the misconduct, Matter of Wolkoff, 1996 N.Y. LEXIS 3165. The charges arose from a Stipulation, Decision and Order, dated August 31, 1995 through which the Division of Medical Quality of the Medical Board of California (California Board) revoked the Respondent's California medical license, stayed the revocation and placed the Respondent on probation for five years.

Three BPMC Members, **ARSENIO G. AGOPOVICH, M.D. (CHAIR)**, **LEO FISHEL, JR., M.D. AND TIMOTHY TRUSCOTT** comprised the Committee which conduct a hearing pursuant to Pub. H.L. §230(10) and which rendered the August 31, 1996 Determination that the Board now reviews. Administrative Law Judge **JONATHAN M. BRANDES** served as the Committee's Administrative Officer. The Committee determined that the Respondent entered into a consent agreement with the California Board which formed the basis for the Decision

and Order. By the consent agreement, the Respondent chose not to contest allegations that the Respondent:

- on or about February 10, 1992, under the pretext of a breast examination for a 22 year-old female patient, proceeded to rub, stroke and painfully compress the patient's breasts for approximately one-half hour. The Respondent also pinched and pulled the patient's nipples repeatedly, and straddled her right leg and pressed and rubbed his genital area against her leg;

- on or about June, 1992, the Respondent closed his medical offices and removed the medical records of his patients. On or about June 23, 1992, V.L. attempted to place a prescription renewal with her attending pharmacist. She was informed by the pharmacist that the Respondent's phone was disconnected. The Respondent did not inform V.L. of his intended departure so that she might arrange for a transfer of care without interruption of treatment and medications, nor did he inform her of the location of her medical records;

- the Respondent left numerous items unsecured and or in plain view at his medical offices, including syringes, needles, and sharps collectors with used syringes and needles inside. He also left ampules of medications, including, but not limited to Mellaril, Desyrel, Halcion, Restoril, Pamelor, Buspar, Ativan, Tegretol, Xanax and Valium.

The California Board revoked the Respondent's California medical license. The California Board then stayed the revocation and placed the Respondent on probation for five years.

The Committee concluded that the Respondent's conduct in California would, if committed in New York State, constitute gross negligence, negligence on more than one occasion, patient abandonment, willful abuse of patients, and conduct evidencing moral unfitness to practice the profession. The Committee noted that the Respondent now resides in India, and that he

presented no evidence that could be considered in mitigation of the penalty.

The Committee voted to revoke the Respondent's New York medical license. The Committee noted that the Respondent violated the standards relating to virtually every aspect of medical practice. The Respondent was found to be lacking in scruples as well as lacking in technical ability. The Committee stated that the Respondent is a danger to any potential patient and that revocation is the only appropriate sanction.

RECORDS AND ISSUES ON REVIEW

The Respondent filed a letter, received by the Board on September 23, 1996, which the Board has interpreted as a Notice requesting a review on the Committee's Determination. The Notice did not stay the Committee's penalty, pending the Board's final Determination on the review (Pub. H.L. §230-c(4)(a)). The Record on review contained the hearing transcript and exhibits. Neither the Respondent nor the Petitioner filed briefs with the Board.

THE BOARD'S REVIEW AUTHORITY

Pub. H.L. §230(10)(i), §230-c(1) and §230-c(4)(b) authorize the Board to review determinations by hearing committees for professional medical conduct and to decide:

- 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 Pub. H.L. §230-a.

Pub. H.L. §230-c(4) (b) permits the Board to remand a case to the Committee for further consideration. Pub. H.L. §230-c(4) (c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

The Board has the authority to substitute our judgement for that of the Hearing Committee, in deciding upon a penalty, Matter of Bogdan, 195 AD2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, Matter of Spartalis, 205 AD2d 940, 613 NYS2d 759 (Third Dept. 1994), and deciding credibility issues, Matter of Minielly, 222 AD2d 750, 634 NYS 2d 856, 1995.

THE BOARD'S DETERMINATION

The Board renders this Determination after reviewing the hearing record and the Committee's Determination and Order. The Board sustains the Committee's Determination finding the Respondent guilty of professional misconduct. The record clearly established that the Respondent was disciplined by the California Board for conduct which, if committed in New York State, would constitute misconduct under the laws of New York. The Respondent

presented no argument on appeal which would convince this Board that the findings of fact and conclusions of law rendered by the Hearing Committee are not supported by the evidence.

The Board votes to sustain the Committee's penalty. We vote unanimously to revoke the Respondent's license to practice medicine in New York State. The Board agrees with the Hearing Committee that the Respondent has demonstrated that he is completely unfit to practice medicine. Revocation is the only sanction which will protect the people of New York.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's August 31, 1996 Determination finding the Respondent guilty of professional misconduct.
2. The Review Board **SUSTAINS** the Hearing Committee's Determination revoking the Respondent's New York medical license.
3. The Board **REVOKES** the Respondent's license to practice medicine in New York State.

SUMNER SHAPIRO

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

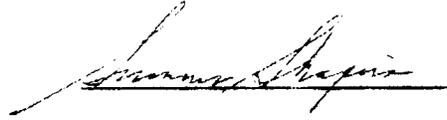
WILLIAM A. STEWART, M.D.

IN THE MATTER OF NARESH KUMAR GUPTA, M.D.

SUMNER SHAPIRO, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Gupta.

DATED: Balmar, New York

Dec 16, 1996

A handwritten signature in cursive script, appearing to read "Sumner Shapiro", written over a horizontal line.

SUMNER SHAPIRO

IN THE MATTER OF NARESH KUMAR GUPTA, 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. Gupta.

DATED: Roslyn, New York

Dec 13, 1996

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

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF NARESH KUMAR GUPTA, M.D.

WILLIAM A. STEWART, M.D., a member of the
Administrative Review Board for Professional Medical Conduct,
concurrs in the Determination and Order in the Matter of Dr.
Gupta.

DATED: Syracuse, New York

16 Dec, 1996

William A Stewart

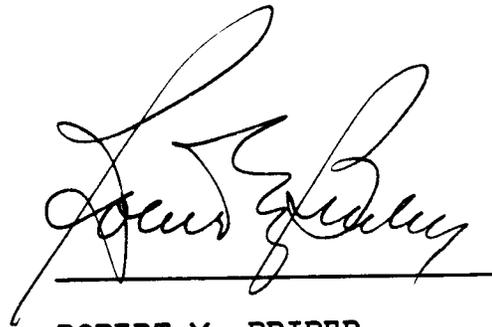
WILLIAM A. STEWART, M.D.

IN THE MATTER OF NARESH KUMAR GUPTA, 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. Gupta.

DATED: Schenectady, New York

12/13, 1996

A handwritten signature in cursive script, appearing to read "Robert M. Briber", written over a horizontal line.

ROBERT M. BRIBER