



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

May 12, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Koshi Padnani, M.D.
47-00 99th Street
Corona, New York 11368

Jeffrey Rubin, Esq.
Rubin & Shang
515 Madison Avenue
New York, New York 10022

David W. Smith, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

EFFECTIVE DATE 05/19/95

RE: In the Matter of Koshi Padnani, M.D.

Dear Dr. Padnani, Mr. Rubin and Mr. Smith:

Enclosed please find the Determination and Order (ARB No. 93-19) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

RECEIVED

MAY 21 1993

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

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 than 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)].

Very truly yours,

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

bcc: Dr. Vacanti
Mr. Briber
Mr. Millock
Mr. Osten
Ms. Tanner
Ms. Bohenek
Ms. Schottenfeld
Mr. Horan
SAPA File
Case File
ARB Decision Binder
Horan Reading File

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

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IN THE MATTER	:	<u>ADMINISTRATIVE</u>
	:	<u>REVIEW BOARD</u>
OF	:	<u>DETERMINATION</u>
	:	<u>AND ORDER</u>
KOSHI PADNANI, M.D.	:	<u>ARB NO. 93-14</u>

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A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, MARYCLAIRE B. SHERWIN, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** held deliberations on March 27, 1993 to review the Professional Medical Conduct Hearing Committee's (Hearing Committee) February 4, 1993 Determination finding Koshi Padnani, M.D. guilty of negligence on more than one occasion, ordering excessive medical tests and failure to maintain adequate medical records. James F. Horan, Esq. served as Administrative Officer to the Review Board. Both the Respondent and the Office of Professional Medical Conduct (OPMC) requested the review through notices of review which the Board received on February 18, 1993 and February 19, 1993. Rubin and Shang Esqs. submitted a brief on Dr. Padnani's behalf on March 19, 1993 and a response brief on March 25, 1993 and David Smith, Esq. submitted a brief on OPMC's behalf on March 17, 1993 and a response on March 22, 1993.

SCOPE OF REVIEW

New York Public Health Law (PHL) §230(10)(i), §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.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

Public Health Law §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 Office of Professional Medical Conduct charged Dr. Padnani with practicing medicine with negligence on more than one occasion, incompetence on more than one occasion, ordering excessive tests and failing to maintain adequate records. The charges involved the treatment which the Respondent rendered to four persons, Patients A through D.

The Hearing Committee sustained the charges of practicing with negligence on more than one occasion, ordering excessive tests and failing to maintain adequate records. The Committee did not sustain the charge that the Respondent practiced with incompetence on more than one occasion. The Hearing Committee found that the Respondent committed negligence on more than one

occasion by prescribing controlled substances inappropriately for Patients A through D, who were all substance abusers. The Hearing Committee found that the Respondent had committed negligence by inappropriately storing prescriptions, but found this to be a single recurring violation, rather than negligence on more than one occasion, as alleged in the Statement of Charges. The Hearing Committee found the Respondent guilty of failing to maintain adequate records and ordering excessive tests as separate counts involving the treatment of each of the four patients.

The Hearing Committee concluded that the Respondent's misconduct did not rise to the level of being gross or shocking in nature and determined that the acts did not warrant revocation of the Respondent's license. The Hearing Committee voted to suspend the Respondent's license fully for four months and to fine her Three Thousand Dollars (\$3,000.00) for the nine acts of misconduct.

REQUESTS FOR REVIEW

The Respondent's brief raises three main points for the Review Board's review:

- that in imposing its sanction, the Hearing Committee did not consider as mitigating factors that the misconduct occurred six or seven years ago, in an extremely difficult environment, in which the Respondent no longer practices;
- that the Hearing Committee's penalty was unfair in

view of its finding that none of Dr. Padnani's conduct constituted incompetence; and

- that OPMC failed to prove its allegations by a preponderance of the evidence.

The Department's brief argues that the Hearing Committee's penalty of suspension with a fine is inappropriate because the penalty fails to protect the public. The Department asks that the Review Board revoke the Respondent's license. The Department notes that the Hearing Committee found the Respondent guilty of providing sub-standard care and asserts that there is no evidence that the Respondent will practice medicine any differently at the end of her suspension than at the beginning.

REVIEW BOARD DETERMINATION

The Review Board has considered the entire record below and the briefs which counsel have submitted.

The Review Board votes unanimously to sustain the Hearing Committee's Determination and Order that the Respondent committed negligence on more than one occasion by prescribing controlled substances inappropriately for Patients A through D, that the Respondent maintained inadequate records and that the Respondent ordered excessive tests. The Hearing Committee's conclusions on these charges are consistent with their findings of fact.

The Review Board votes unanimously to modify the Hearing Committee's Determination and Order, to place the Respondent on

four months probation and fine her, because that penalty is not consistent with the Hearing Committee's finding that the Respondent had provided substandard medical care and because that penalty will not be an appropriate remedy to correct the Respondent's pattern of poor practice.

The Hearing Committee found the Respondent guilty of misconduct for prescribing controlled substances inappropriately, ordering excessive tests or treatment and maintaining inadequate medical records. The Review Board is uncertain whether the Respondent's misconduct and poor practice patterns in these three areas resulted from inadequate medical skills or knowledge on her part, or from a desire for monetary gain from the unnecessary procedures and inappropriate prescriptions. The Hearing Committee's findings and conclusions do not indicate whether the Hearing Committee believed that the Respondent's misconduct resulted from a desire for monetary gain or from a lack of skill or knowledge necessary to practice medicine safely and effectively. The suspension and the fine which the Hearing Committee imposed as penalty would serve as a punishment for and a deterrent to misconduct motivated by monetary gain, but would provide no aid to the Respondent if her misconduct resulted from the lack of the requisite knowledge or skills to practice the profession.

The Review Board believes that an appropriate Hearing Committee penalty must protect the public health by assuring that the Respondent will not repeat a pattern of misconduct or poor

patient care. In the absence of evidence of a finding that the Respondent has corrected the past deficiencies in her practice, or that the Respondent's past pattern of substandard care did not result from the lack of sufficient knowledge or skill to practice the profession safely and effectively, the Review Board believes it is necessary to refer the Respondent for an assessment of her skills as a physician at the Physician Prescribed Education Program (PPEP) in Syracuse. The Review Board votes to impose the PPEP Evaluation in place of the Hearing Committee's penalty. We believe that ordering the Respondent to undergo and pay for the PPEP Evaluation should provide some deterrent to the pattern of misconduct present in this case in addition to assessing whether the Respondent is now capable of practicing medicine safely and effectively.

The Review Board modifies the Hearing Committee's penalty as noted below. We vote to overturn the Three Thousand Dollar (\$3,000.00) dollar fine and the four month suspension which the Hearing Committee imposed. We vote to suspend the Respondent's license to practice medicine pending an assessment of her skills as a physician, and we vote further to stay this suspension and we place the Respondent on probation. As a condition of probation, we order that the Respondent undergo the PPEP Phase I Evaluation at the Department of Family Medicine, SUNY Health Science Center at Syracuse, and the Department of Medical Education at St. Joseph's Hospital and Health Center, Syracuse,

New York.¹

If the PPEP Phase I determines that the Respondent does not need retraining, then the Respondent's probation shall cease. If the Phase I Evaluation determines that retraining is necessary in the Respondent's case, then the Respondent shall remain on probation until she successfully completes the retraining. If retraining is necessary, the Respondent may complete the retraining in the PPEP Retraining Phase in Syracuse, or in any of the New York City Metropolitan Region Hospitals associated with the PPEP Program or in such other program as the Phase I Evaluation indicates is necessary. The Respondent shall undergo the Phase I Evaluation within three months from the date she receives a copy of this Determination and Order, and shall commence any needed retraining within six months from the receipt of the Determination and Order, unless the delay is the fault of the PPEP. The Respondent's failure to comply with either the three month or the six month time limits set out in this paragraph, unless the failure is the PPEP's fault, or the Respondent's failure to complete the Phase I Evaluation or any necessary retraining, will constitute a violation of her probation and her license shall be suspended immediately until she is again in compliance with the terms of probation.

¹ Department of Family Medicine, 479 Irving Avenue, No. 200, Syracuse, New York 13210.

ORDER

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

1. The February 4, 1993 Determination by the Hearing Committee on Professional Medical Conduct, finding Koshi Padnani, M.D. guilty of professional misconduct is **sustained**.
2. The Hearing Committee's Determination and Order suspending the Respondent's license for four months and fining the Respondent Three Thousand Dollars (\$3,000. 00) is overturned. The Review Board votes to suspend the Respondent's license until the Respondent completes an Evaluation of her skills as a physician. The Review Board votes further to stay the suspension and place the Respondent on probation until the Respondent completes successfully the PPEP Phase I Evaluation in Syracuse, New York, as required by the terms of this Determination. If the Phase I Evaluation indicates that the Respondent must undergo retraining as a physician, the Respondent shall remain on probation until she successfully completes such retraining.

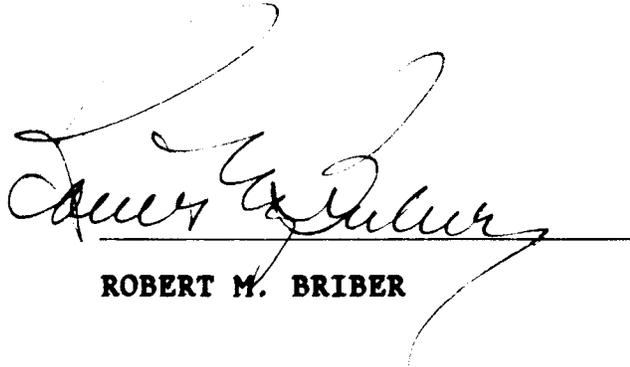
**ROBERT M. BRIBER,
WINSTON S. PRICE, M.D.
MARYCLAIRE B. SHERWIN
EDWARD C. SINNOTT, M.D.
WILLIAM A. STEWART, M.D.**

IN THE MATTER OF KOSHI PADNANI, 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 Koshi Padnani, M.D.

DATED: Albany, New York

April 21, 1993



Handwritten signature of Robert M. Briber, written in cursive over a horizontal line.

ROBERT M. BRIBER

IN THE MATTER OF KOSHI PADNANI, 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 Koshi Padnani, M.D.

DATED: Malone, New York

~~April~~^{May 3}, 1993

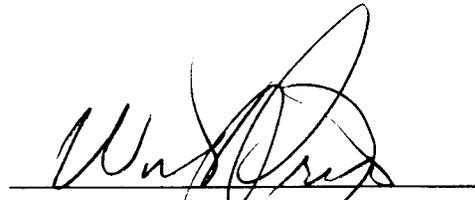

MARYCLAIRE B. SHERWIN

IN THE MATTER OF KOSHI PADNANI, M.D.

WINSTON S. PRICE, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Koshi Padnani, M.D.

DATED: Brooklyn, New York

April 22, 1993



WINSTON S. PRICE, M.D.

IN THE MATTER OF KOSHI PADNANI, 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 Koshi Padnani, M.D.

DATED: Roslyn, New York

April 15, 1993

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", with a horizontal line underneath. The signature is written in black ink on a white background.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF KOSHI PADNANI, 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 Koshi Padnani, M.D.

DATED: Syracuse, New York

April 22, 1993

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in black ink and is positioned above a horizontal line.

WILLIAM A. STEWART, M.D.