



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

May 13, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dianne Abeloff, Esq.
NYS Department of Health
5 Penn Plaza-6th Floor
New York, New York 10001

Harshad Bhatt, M.D.
9454 Lefferts Boulevard
Richmond Hill, New York 11419

Amy T. Kulb, Esq.
Jacobson and Goldberg
585 Stewart Avenue
Garden City, New York 11530

Effective Date: 05/20/96

RE: In the Matter of Harshad Bhatt, M.D.

Dear Ms. Abeloff and Dr. Bhatt:

Enclosed please find the Determination and Order (No.95-316) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Empire State Plaza
Corning Tower, Room 438
Albany, New York 12237

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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T' and a long, sweeping underline.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw

Enclosure

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

COPY

IN THE MATTER
OF
HARSHAD BHATT, M.D.

ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 95-316

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** held deliberations on March 15, 1996 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) January 2, 1996 Determination finding Dr. Harshad Bhatt (Respondent) guilty of professional misconduct. The Office of Professional Medical Conduct (Petitioner) requested the Review through a Notice which the Board received on January 16, 1996. James F. Horan served as Administrative Officer to the Review Board. Dianne Abeloff, Esq. filed a brief for the Petitioner, which the Board received on February 23, 1996. Amy T. Kulb, Esq. filed a brief for the Respondent on February 23, 1996.

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 Petitioner brought this case pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9)(a)(i), which provide an expedited hearing in cases in which professional misconduct charges against a Respondent are based upon a prior criminal conviction in New York or another jurisdiction or upon a prior administrative adjudication 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 administrative adjudication. In this case, the Petitioner charged that the Respondent was guilty of misconduct based upon a criminal conviction for knowingly submitting false Medicare claims.

The Hearing Committee in this case found that the Petitioner had met its burden of proof in establishing that the Respondent had been convicted upon a guilty plea in New York Supreme Court for Queens County on one count for Insurance Fraud in the Fourth Degree, an E Felony. The Respondent admitted to intentionally defrauding the U.S. Government by knowingly submitting a false Medicare claim form for Thirty-Four Thousand Thirty-Seven 77/100 Dollars (\$34,037.77), claiming to have performed a bipolar right prosthesis, when the Respondent knew that he had never performed the surgery. The Committee found that the Court had sentenced the Respondent to probation, a Ten Thousand Dollar (\$10,000.00) fine and had ordered the Respondent to pay restitution. The Committee found that the Respondent had made full payment of the fines and the restitution which the Court had ordered.

The Committee cited to the Respondent's testimony that the Respondent's son had been partially paralyzed in an October, 1989 accident, which left the Respondent's life and medical practice chaotic. The Respondent indicated that he kept no real records during the period and that in December, 1991 the Respondent prepared and submitted hundreds of bills for reimbursement in one night. The Respondent testified at the hearing that approximately twenty-seven of the bills were fraudulently submitted.

The Committee voted to suspend the Respondent's license to practice for three years, stayed the suspension and placed the Respondent on five years probation. As a probation condition, the Committee required that the Respondent retain an accountant at his own expense, to monitor the Respondent's billing practices for compliance with state and federal laws and regulations. The Committee found that the Respondent's conduct was serious, but the Committee gave credence to the Respondent's testimony concerning the extreme circumstances under which the Respondent submitted the false bills. The Committee also found that the Respondent was genuinely remorseful for his past misdeeds and that the Respondent willingly provides care in underserved areas and that there were no allegations concerning the Respondent's medical skills.

REQUESTS FOR REVIEW

PETITIONER: The Petitioner argues that the Hearing Committee's penalty is too light given the severity of the Respondent's misconduct. The Petitioner asks that the Review Board send a message to the medical community that submitting false Medicare claims will not be condoned. The Petitioner contends that a stayed suspension is not a sufficient penalty to send that message.

The Petitioner contends that even the extenuating circumstances in the Respondent's case is not sufficient as mitigation to outweigh the need for a stiffer sentence in this case. The Petitioner contends that the Respondent abused his medical license and placed his needs above anyone else's needs, when he intentionally submitted a false Medicare claim.

RESPONDENT: The Respondent argues that the record supports the Hearing Committee's penalty determination and that the Respondent's contribution to underserved population outweighs the mistake which the Respondent made. The Respondent argues further that four years have passed since the Respondent's mistake occurred and there has been no subsequent billing problems. The Respondent argues that the Hearing Committee's Determination demonstrates that the Committee gave the Respondent's felony conviction serious consideration and that there is no basis for the Review Board to modify the penalty or remand the case due to Committee failure to give full weight.

The Respondent notes that the Hearing Committee limited the Respondent to presenting only two of the Respondent's four character witnesses. The Respondent asks that if the Review Board considers modifying the penalty against the Respondent, that the Board should remand the case, with directions that the Hearing Committee allow the other two character witnesses to testify.

The Respondent argues that the consequences from the Respondent's criminal conviction have included a Ten Thousand Dollar (\$10,000.00) Fine, his exclusion from the Medicare and Medicaid Program, and his suspension from hospital privileges due to the Medicare/Medicaid exclusion. The Respondent contends that these consequences provide sufficient punishment and will deter similar conduct by the Respondent and others. The Respondent also contends that there are no public safety concerns in this case. The Respondent's brief then discussed and distinguished the Respondent's case from cases in which the Review Board modified previous Hearing Committee penalties in cases involving fraudulent billing.

REVIEW BOARD DETERMINATION

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

The Review Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty of professional misconduct. The Respondent entered a guilty plea to submitting Medicare claims forms for surgery which the Respondent did not perform. The Respondent also

admitted in his testimony before the Hearing Committee that he had fraudulently submitted approximately twenty-seven bills in one night in 1991.

The Review Board votes to overturn the Hearing Committee's Determination on penalty, because the penalty is not consistent with the Committee's findings concerning the Respondent's fraudulent activity and is not an appropriate penalty for misconduct in which a Respondent has used his medical license to commit fraud.

The Board is not overruling the Hearing Committee's penalty because we believe the Hearing Committee failed to consider properly all the evidence from the Hearing. The Board is exercising our authority to substitute our judgement for the Hearing Committee's judgement as to what is the appropriate penalty in this case Matter of Spartalis, 205 AD2d 940, 613 NYS2d 759 (Third Dept. 1994). We reject the Respondent's contention that we may only modify a Hearing Committee Determination if we find that the Committee has not adequately weighed all the issues in the case.

The Board rejects the Respondent's request that the Board remand this case to allow for testimony by two additional, scheduled, witnesses. A Hearing Committee must consider mitigating evidence such as character testimony, and clearly this Hearing Committee considered and relied upon mitigating evidence in determining the penalty to impose. The Hearing Committee, however, is not obligated to hear every witness who wishes to offer character testimony on the Respondent's behalf. The Committee may limit character evidence by restricting the number of character witnesses and receiving other character evidence by affidavit or letter.

The Review Board finds that the Respondent's criminal activity outweighs the service that the Respondent has provided in his career. The Respondent's fraudulent activities arose directly from his practice of medicine and the Respondent himself prepared and submitted the billings. The Respondent was not forced into a fraudulent scheme unwillingly by a party who could exercise leverage over him and was not duped into signing billings which were prepared fraudulently by another person. The Respondent admitted to twenty-seven fraudulent billings. The Respondent contends that the amount involved in the criminal plea, approximately Thirty-Six Thousand Dollars (\$36,000.00) was much less money than was involved in other fraud cases in which the Review Board overruled the Hearing Committee and revoked a Respondent's license. The Review Board concludes,

however, that the sum of money involved in this case is still a substantial amount, and that fraudulent billing drains the limited resources of the government payor systems which help to fund the medical services for underserved populations. The Review Board feels that deterrence justifies revocation as a penalty in this case, so that errant physicians will realize that integrity is essential to the practice of medicine and to realize that the Board of Professional Medical Conduct will not tolerate fraud at any level.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's Determination finding the Respondent guilty of professional misconduct.
2. The Review Board **OVERRULES** the Hearing Committee's Penalty.
3. The Review Board **VOTES** unanimously to **REVOKE** the Respondent's license to practice medicine in New York State.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

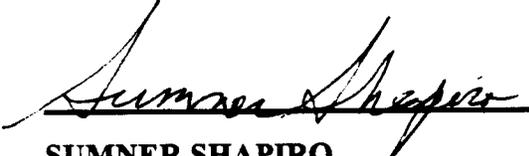
WILLIAM A. STEWART, M.D.

IN THE MATTER OF HARSHAD BHATT, 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. Bhatt.

DATED: Delmar, New York

May 1, 1996

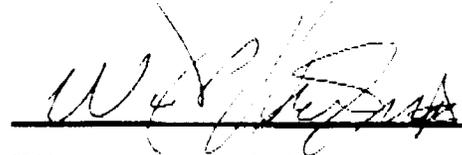

SUMNER SHAPIRO

IN THE MATTER OF HARSHAD BHATT, 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 Dr. Bhatt

DATED: Brooklyn, New York

5/3/96, 1996

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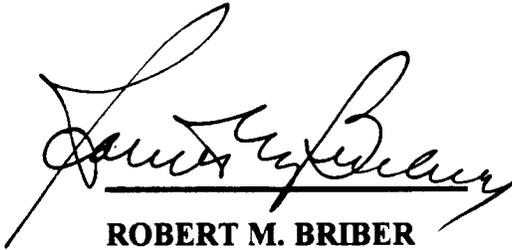
WINSTON S. PRICE, M.D.

IN THE MATTER OF HARSHAD BHATT, 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. Bhatt.

DATED: Schenectady, New York

May 2, 1996



ROBERT M. BRIBER

IN THE MATTER OF HARSHAD BHATT, 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. Bhatt.

DATED: Roslyn, New York

May 7, 1996

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", with a horizontal line underneath. To the right of the signature, the year "1996" is written.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF HARSHAD BHATT, 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. Bhatt.

DATED: Syracuse, New York

25 April, 1996

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

WILLIAM A. STEWART, M.D.