



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

December 1, 1992

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Susan L. Bogdan, M.D.
37 Second Street
Geneseo, New York 14454-1245

Anthony Z. Scher, Esq.
Wood & Scher
The Harwood Building
Scarsdale, New York 10583

Michael A. Hiser, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower - Room 2438
Empire State Plaza
Albany, New York 12237-0028

RE: In the Matter of Susan L. Bodgan, M.D.

Dear Dr. Bogdan, Mr. Scher and Mr. Hiser:

Enclosed please find the Determination and Order (No. BPMC-92-72-A) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

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,

A handwritten signature in black ink that reads "Tyrone T. Butler, nam". The signature is written in a cursive style.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

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

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: **ADMINISTRATIVE**
: **REVIEW BOARD**
: **DETERMINATION**
: **AND ORDER**
: **NO. BPMC-92-72-A**
:
X

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 B. STEWART, M.D.**¹ held deliberations on November 12, 1992 to review the Professional Medical Conduct Hearing Committee's (hereinafter the "**HEARING COMMITTEE**") September 8, 1992 Determination finding Susan Bogdan, M.D. guilty of negligence on more than one occasion and failure to maintain adequate medical records. Both the Office of Professional Medical Conduct (hereinafter "**OPMC**") and Dr. Bogdan requested the Review through Notices of Review which the Review Board received on September 25 and 28, 1992. **JAMES F. HORAN, ESQ.** served as Administrative Officer to the Review Board. Anthony Z. Scher, Esq. and Michael P. Barnes, Esq. submitted a brief on behalf of Dr. Bogdan and Michael A. Hiser, Esq. submitted a brief on behalf of the Department of Health.

¹ 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)(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 Section 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. Bogdan with practicing medicine with gross negligence, with negligence on more than one occasion, with gross incompetence, with incompetence on more than one occasion, with failing to maintain adequate medical records and with abandoning a patient.

The Hearing Committee found Dr. Bogdan guilty of negligence on more than one occasion:

- for failing to document information in the medical records of Patients designated during the hearing as A, B, D, E and F;

- for leaving Patient A without checking for vital signs and assuring the patient was stable; and
- for anesthesia care rendered to Patients B and D.

The Hearing Committee also found Dr. Bogdan guilty of failing to maintain adequate medical records for Patients A, B, D, E and F.

The Hearing Committee did not impose a penalty on Dr. Bogdan. The Hearing Committee found that the deficiencies in Dr. Bogdan's practice resulted from carelessness and a willingness to cut corners. The Committee felt that the proper remedy for those deficiencies would be to require remediation and re-training. The Hearing Committee found that the record established that Dr. Bogdan had already successfully undertaken a period of remediation and the Committee determined that no further penalty was warranted.

REQUESTS FOR REVIEW

Dr. Bogdan has asked that the Review Board overturn the Hearing Committee's Determination finding her guilty of both negligence and failure to maintain adequate records. Her attorneys' brief asserts that none of Dr. Bogdan's actions which the Hearing Committee found to be negligent involved patient harm, and that five of the negligence findings relate to record keeping. The brief argues that inadequate record keeping is not negligence ipso facto.

The Department has asked that the Review Board overturn the Hearing Committee Determination for being inconsistent with the Committee's Findings and Conclusions. The Department's brief also argues that the lack of penalty is inappropriate and has asked the Review Board to impose a penalty including a license suspension and some probation.

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 finding that Dr. Bogdan was guilty of negligence on more than one occasion and failure to maintain adequate records. The Determination was consistent with the Committee's Findings of Fact and Conclusions and was supported by sufficient evidence from the record.

The Review Board votes unanimously to overturn the Hearing Committee's Determination that no penalty is warranted in this case. We agree with the Hearing Committee's Conclusion that deficiencies apparent in Dr. Bogdan's practice arose from carelessness and a willingness to cut corners rather than from a lack of knowledge about appropriate anesthesia practice. We agree further that a proper penalty in such a case is to require a course of remediation and retraining to allow Dr. Bogdan to re-qualify herself in anesthesia. The Board, however, believes that in addition to the remediation, some limited monitoring of

Dr. Bogdan's practice is necessary to assure that she has corrected the past deficiencies in her practice.

The Review Board agrees with the Hearing Committee's Conclusion that the evaluation and remediation program which Dr. Bogdan undertook at Einstein College and Montefiore Medical Center under Dr. Paul Goldiner's direction was sufficient remediation in this case. In addition to this remediation however, the Board feels that Dr. Bogdan's anesthesia records should be reviewed for a two year period, at her expense, to demonstrate that her record keeping continues to meet proper medical standards.

The Review Board, therefore, votes to impose the following penalty:

Dr. Bogdan shall be on limited probation for a period of two years. The sole condition of the probation is that she submit to OPMC on a quarterly basis the records of all anesthesia procedures which she performs.

Dr. Bogdan shall be responsible to pay the costs which OPMC incurs in having an expert review the records.

ORDER

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

1. The September 8, 1992 Determination by the Hearing Committee on Professional Medical Conduct finding Susan Bogdan M.D. guilty of negligence on more than one occasion for failure to maintain adequate medical records is hereby **sustained**.
2. The Hearing Committee's Determination imposing no penalty against Susan Bogdan's license to practice medicine in the State of New York is modified. Dr. Bogdan shall be on limited probation, only to the extent indicated in this Determination, for two years.

ROBERT M. BRIBER

MARYCLAIRE B. SHERWIN

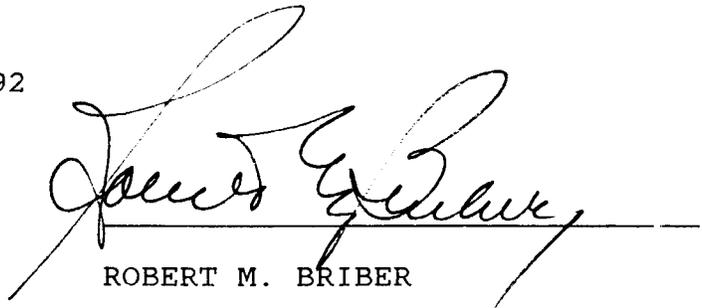
EDWARD C. SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF SUSAN BOGDAN 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. Bogdan.

DATED: Albany, New York
November 24, 1992



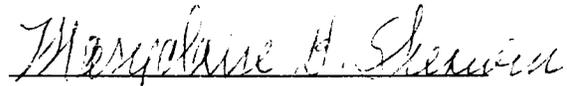
ROBERT M. BRIBER

IN THE MATTER OF SUSAN BOGDAN, 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. Bogdan.

DATED: Albany, New York

November 24, 1992



MARYCLAIRE B. SHERWIN

IN THE MATTER OF SUSAN BOGDAN, 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. Bogdan.

DATED: Albany, New York
November 23, 1992

A handwritten signature in cursive script, reading "Edward C. Sinnott, M.D.", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF SUSAN BOGDAN, 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. Bogdan.

DATED: Albany, New York

November 27, 1992

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in black ink and is positioned above the printed name.

WILLIAM A. STEWART, M.D.