



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

October 12, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Timothy Gibbons, Esq.
Shapiro, Uchman & Myers
220 Old Country Road
Mineola, New York 11501-4280

Inez Diana Monti, M.D.
2863 Buhre Avenue
Bronx, New York 10461

Roy Nemerson, Esq.
NYS Department of Health
5 Penn Plaza-Sixth Floor
New York, New York 10001

RECEIVED
OCT 16 1995
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

RE: In the Matter of Inez Diana Monti, M.D.

Effective Date: 10/19/95

Dear Mr. Gibbons, Dr. Monti and Mr. Nemerson:

Enclosed please find the Determination and Order (No. 94-17) 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.

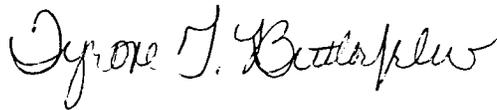
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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 cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

**IN THE MATTER
OF
INEZ DIANA MONTI, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DETERMINATION
FOLLOWING REMAND
ARB NO. 94-17R**

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D.** and **EDWARD C. SINNOTT, M.D.**¹ held deliberations on September 8, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) Supplemental Determination revoking Dr. Inez Monti's (Respondent) license to practice medicine in New York State. The Review Board had remanded this case to the Hearing Committee following an Evaluation upon the Respondent in the Phase I of the Physician Prescribed Education Program (PPEP). In addition to the Hearing Committee's Supplemental Determination and the prior record in this proceeding, the Review Board considered briefs from both parties concerning the Supplemental Determination. Timothy K. Gibbons, Esq. filed a brief for the Respondent on August 11, 1995 and a Reply Brief, which the Board received on August 21, 1995. Roy Nemerson, Esq. filed a brief for the Office of Professional Medical Conduct (Petitioner), which the Board received on August 18, 1995.

¹Dr. William Stewart did not participate in this case.

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.

INITIAL HEARING DETERMINATION AND REVIEW

The Petitioner charged the Respondent originally with gross negligence, with negligence on more than one occasion, incompetence on more than one occasion and failure to maintain adequate records. The charges arose from the care which the Respondent, a gynecologist provided to three patients, A through C.

The Hearing Committee found the Respondent practiced with gross negligence in treating Patients A through C. In the case of Patient A, the Committee found the Respondent had failed to perform an appropriate history or physical and had chosen an inappropriate procedure that placed the Patient at risk of misdiagnosis of a squamous cell carcinoma. In the case of Patient B, the Committee found that the Respondent failed to act immediately or permit a second physician to act expeditiously to treat severe multiple cervical lacerations after the Patient had given birth. The Committee also found that the Respondent refused to appreciate that Patient B was effectively bleeding to death. In the case of Patient C, the Committee found that the Respondent had failed to diagnose the Patient as suffering from amenorrhea, and had misdiagnosed the Patient as being pregnant for approximately six months.

The Committee found that the Respondent noted fetal heart tones that could not have existed and failed to reconcile the inconsistency of her evaluation with a pathology report in Patient C's case.

The Committee found the Respondent guilty of negligence on more than one occasion in the treatment of all three patients, failing to obtain basic histories and physical information, failing to order appropriate laboratory studies, refusing to act in an emergency situation in which her patient's condition was severely compromised and misdiagnosing a medical condition.

The Committee found that the Respondent failed to maintain adequate records for all three patients, because the records lacked basic information required for the most fundamental medical care.

The Committee recommended that the Respondent's license to practice medicine in New York State be revoked, but that the revocation be stayed if the Respondent would undergo an evaluation of her medical skills at the Physician Prescribed Education Program (PPEP Program), in Syracuse. The Committee provided further that if the evaluation indicated that the Respondent could be retrained that she be accepted in PPE Program and that the stay of the revocation be limited to the extent necessary for evaluation and retraining. The Committee provided that if the Respondent could successfully complete the evaluation and retraining, she would be on probation for two years.

Following the Committee's Determination, the Petitioner appealed to the Review Board and asked the Review Board to overturn the Hearing Committee's Determination and revoke the Respondent's license. The Petitioner alleged that the penalty was not appropriate in view of the Respondent's misconduct and that the penalty, a conditional stay of a revocation, was not a sanction permitted by Public Health Law §230-a. The Petitioner contended that the facts did not support any significant chance for retraining. The Respondent asked that the Hearing Committee's finding of misconduct against the Respondent be overturned, and in the alternative opposed the Petitioner's request that the Board revoke the Respondent's license. The Respondent argued that the Respondent could address her mistakes through retraining.

Following our initial review, the Administrative Review Board sustained the Hearing Committee's Determination finding Dr. Monti guilty of negligence and incompetence on more than one occasion and failure to maintain adequate records. The Board also sustained the Committee's Determination to revoke the Respondent's license to practice medicine, to stay the revocation, and to order the Respondent to undergo PPEP Phase I Evaluation and, if indicated, PPEP Phase II retraining. The Review Board found that the Respondent's conduct was so severe in nature as to warrant revocation, but we deferred to the Committee's judgement and sustained their Determination to refer the Respondent for an Evaluation to see if the Respondent could be a candidate for retraining. The Board's Determination provided that the Respondent would be on probation during the PPEP process, if the Respondent complied with certain time frames in arranging for the entrance into PPEP. The Board's Determination provided further that if the PPEP Evaluation indicated that the Respondent was not a candidate for retraining, then the matter would be remanded to the Hearing Committee for deliberations to determine a new penalty. The Board's Order 94-17 provided that Dr. Monti would remain on probation during any additional deliberations and any additional administrative review following the Hearing Committee's Supplemental Determination.

THE PPEP EVALUATION

Following an Evaluation on the Respondent, PPEP issued a Report on December 20, 1994. In the Report, PPEP referred the decision on educational alternative for Dr. Monti back to the Administrative Review Board. The Evaluation, at page 6, noted that at times during the Evaluation's test activities, Dr. Monti put forth the minimum amount of effort. The Evaluation noted that Dr. Monti presented a mixed picture with unclear or unknown seriousness of purpose and attention to the educational activities which would be required for retraining and the Evaluation noted that the

retraining educational program would be lengthy and extensive. The Evaluation concluded that the findings indicated that Dr. Monti would be able to participate in a highly structured educational retraining program, although the Evaluation found that it was unclear whether such a program would provide maximum benefit to Dr. Monti.

REMAND ORDER

Upon receiving the PPEP Report, both parties submitted letters to the Review Board commenting on the Report. After reviewing the PPEP Report and the parties' comments, the Review Board remanded this case to the Hearing Committee.

The Review Board found that the PPEP Report was at best ambiguous as to whether the Respondent could be retrained so that she could safely and effectively practice medicine, because the Report concluded that the Respondent could participate in a highly structured retraining program, but the Report could not say whether such a program could provide a maximum benefit to Dr. Monti.

The Board remanded for further deliberations on two issues. First, to determine whether, based on the findings of the PPEP Report, Dr. Monti would be a candidate for retraining. Second, if the Hearing Committee determined that Dr. Monti was not a candidate for retraining, then what is the appropriate penalty to impose in place of retraining. The Board ordered that at the conclusion of the deliberations the Committee render a Supplemental Determination. The Board also provided the parties with an opportunity to request a further review of the Hearing Committee's Supplemental Determination.

SUPPLEMENTAL DETERMINATION AND REQUEST FOR REVIEW

The Hearing Committee reviewed the testimony from the hearing and the PPEP Evaluation, most significantly the Respondent's test scores. The Committee found that the Respondent demonstrated serious cognitive and behavioral deficiencies, both at the hearing and at the PPEP Evaluation, and the Committee found that the depth of those deficiencies were demonstrated by the

Respondent's low scores in all areas in the PPEP Evaluation. The Committee concluded that the Respondent lacks the cognitive ability to benefit from any retraining to correct her deficiencies. The Committee determined that, based on its original Order and the Respondent's failure to comply with the terms in the Order, the Respondent's license to practice in New York State should be revoked.

Upon receiving the Supplemental Determination, the Respondent filed a Notice of Review. The Respondent's August 11, 1995 Brief contends that the Hearing Committee's Determination was arbitrary and capricious, because the Committee revoked the Respondent's license without hearing any testimony on the methodology used to determine the PPEP Evaluation scores. The Respondent also argues that Dr. Monti was not given an opportunity to provide input in designing a second phase program, that the Evaluation Report contradicts the Committee's conclusions that Dr. Monti lacks cognitive ability and that some test categories were not significant in view of the Respondent's practice. The Respondent states that Dr. Monti's practice is now limited to gynecological screening and that it is arbitrary and irrational to end her career, with its limited goals, because of an evaluation of her skills in specialty areas of medicine. The Respondent also objects to the Hearing Committee and the Review Board acting beyond the scope of their authority in reopening final administrative decisions in this case and in delaying the Respondent's opportunity to raise these issues with the courts.

The Petitioner argues that there is ample record in this matter to support revocation in the case of the Respondent. The Petitioner argues that the Respondent committed egregious misconduct for which revocation would be an appropriate sanction. The Petitioner contends that the Respondent demonstrated a lack of insight into her own incompetence and the Petitioner contends that the Respondent testified inappropriately, evasively and untruthfully before the Hearing Committee.

The Respondent's reply to the Petitioner's brief contests the Petitioner's characterization of the Respondent as dishonest and contests the Petitioner's contention that the Respondent waived any due process right at any time in this proceeding. The Respondent contends that Dr. Monti must be allowed to complete the PPEP Phase II retraining as provided in the Hearing Committee's Original Order.

REVIEW BOARD DETERMINATION

The Review Board has considered the record below, the PPEP Report and the parties' most recent briefs.

The Review Board votes to sustain the Hearing Committee's Determination, revoking the Respondent's license. We find nothing in the record of this proceeding to demonstrate that the Respondent has the insight or motivation to be a successful candidate for retraining and we find evidence in the record from the hearing and from the PPEP Report that the Respondent is not motivated to participate successfully in a retraining program. Due to the serious nature of the Respondent's conduct and in the absence of any evidence to demonstrate that the Respondent could successfully undergo retraining so that she could be able to practice medicine safely and effectively, the Review Board concludes that the revocation of the Respondent's license is the only penalty in this case that is appropriate to protect the public.

The evidence that a Respondent could complete a retraining course successfully consists of proof that a Respondent possesses the ability, insight and motivation to participate in and benefit from a retraining program. The record from this hearing shows no such proof of ability, insight or motivation on the Respondent's part. The Hearing Committee concluded that the Respondent does not take responsibility for her conduct, but instead views herself as a victim. The Committee was critical that the Respondent failed to appreciate the effect her omissions had on the Patients in this case. The Committee also found that the Respondent was evasive and untruthful in her testimony and refused to answer relevant questions². These conclusions demonstrate lack of insight into her deficiencies. The PPEP Report indicated that the Respondent showed displeasure at being tested or at the possibility of retraining and showed unknown or unclear seriousness of purpose and attention to educational activities³. This finding in addition to the Respondent's evasive answers at the hearing demonstrate a lack of motivation to correct deficiencies. The lack of motivation demonstrated by the

²Hearing Committee Report pages 17-18.

³PPEP Report page 6.

PPEP Report is troubling in that the Review Board and Hearing Committee Determinations made clear that successfully completing the PPEP Evaluation and then successfully completing retraining was the only alternative the Respondent had to losing her license. Finally, the Respondent's egregious misconduct which the Hearing Committee points out at pages 18-19 of their initial Determination demonstrates that the Respondent lacks the ability to undergo successfully a retraining program.

The Board considered the Respondent's request to impose a less severe sanction than revocation. The Respondent contended that her practice is now limited to gynecological screenings. The Review Board determines that the Respondent's demonstrated deficiencies implicate her competence to practice medicine in general. The Board does not believe that we can protect the public's health by limiting the Respondent to gynecological screening. The Hearing Committee's Determination on the Specifications charging the Respondent with gross negligence⁴, found serious deficiencies in the Respondent's pattern of diagnosis. The Committee concluded that the Respondent failed to conduct an appropriate history or physical on Patient A; that the Respondent chose an inappropriate diagnostic procedure that put Patient A at risk for misdiagnosis; that the Respondent misdiagnosed Patient C's amenorrhea for six months; that the Respondent noted a fetal heart tone in Patient C that did not exist; that the Respondent failed to reconcile the inconsistency of her evaluation for Patient C with the pathology report in that case; and, that the Respondent failed to appreciate that Patient B was in effect bleeding to death. These conclusions by the Committee concerning the Respondent's deficiencies in diagnosing patients' conditions demonstrate that the Respondent could pose a risk to patients even if her practice is limited to gynecological screenings. The Board can see no alternative to revoking the Respondent's license to practice medicine in New York State.

⁴Hearing Committee Determination pages 18-19.

ORDER

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

1. The Administrative Review Board **SUSTAINS** the Hearing Committee on Professional Medical Conduct July 5, 1995 Determination to revoke Dr. Inez Diana Monti's license to practice medicine in New York State.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

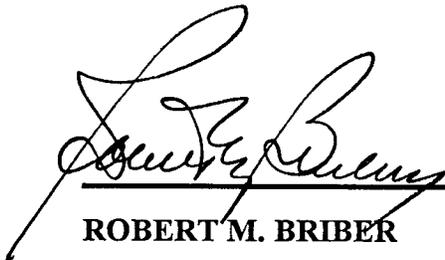
EDWARD SINNOTT, M.D.

IN THE MATTER OF INEZ DIANA MONTI, 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. Monti.

DATED: Albany, New York

Sept 22, 1995


ROBERT M. BRIBER

NEW YORK STATE DEPARTMENT OF HEALTH 19

IN THE MATTER OF INEZ DIANA MONTI, 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. Monti.

DATED: Delmar, New York

SEPT. 21, 1995

A handwritten signature in cursive script, reading "Sumner Shapiro", is written over a solid horizontal line.

SUMNER SHAPIRO

IN THE MATTER OF INEZ DIANA MONTI, 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. Monti.

DATED: Brooklyn, New York

OCT 4, 1995



WINSTON S. PRICE, M.D.

IN THE MATTER OF INEZ DIANA MONTI, 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. Monti.

DATED: Roslyn, New York

Sept 21, 1995



EDWARD C. SINNOTT, M.D.