



# 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*

July 29, 1997

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Robert H. Harris, Esq.  
Schneider, Harris & Harris  
1015 Broadway  
Woodmere, New York 11598

Moon Ho Huh, M.D.  
Econo-Surgical Center  
87-08 Justice Avenue  
Elmhurst, New York 11373

### **RE: In the Matter of Moon Ho Huh, M.D.**

Dear Mr. Stein, Mr. Harris and Dr. Huh:

Enclosed please find the Determination and Order (No.97-75) 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.

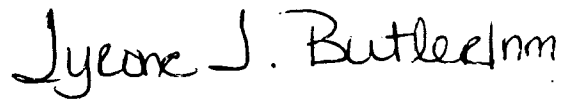
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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 (BOARD)**

**COPY**

**IN THE MATTER  
OF**

**MOON HO HUH, M.D. (Respondent)**

**Proceeding to review a Determination by a Hearing Committee  
(Committee) from Board for Professional Medical Conduct  
(BPMC)**

**ADMINISTRATIVE  
REVIEW BOARD  
DECISION AND  
ORDER NUMBER  
ARB NO. 97-75**

**BEFORE: ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D.,  
EDWARD C. SINNOTT, M.D. and WILLIAM A. STEWART, M.D.**

After a hearing into charges that the Respondent, an anesthesiologist, committed professional misconduct, a BPMC Committee sustained charges that the Respondent practiced medicine fraudulently and with repeated negligence, permitted an unlicensed person to perform activities requiring a license and delegated professional responsibilities to an unlicensed person. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1997), the Respondent asks the Board to overturn the Committee's Penalty revoking the Respondent's New York Medical License, characterizing the Penalty as unnecessarily harsh and unsupported by the law. The New York State Department of Health (Petitioner) also requests that the Board modify the Committee's Determination, to find that the Respondent committed gross negligence in treating a patient. After considering the hearing record and the parties' briefs, the Board modifies the Committee's Determination on the charges, because we conclude that the Committee's findings also support a determination that the Respondent treated one patient with gross negligence and that he maintained inaccurate records. We sustain the Penalty revoking the Respondent's license, due to the Respondent's fraudulent conduct and his disregard for his patients' safety.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination.

**ROBERT H. HARRIS** and **LISA S. LEVENSON, ESQS.** (Schneider, Harris and Harris) represented the Respondent.

**PAUL STEIN, ESQ.** represented the Petitioner.

## COMMITTEE DETERMINATION ON CHARGES

Pursuant to N.Y. Pub. Health Law § 230(7)(McKinney's Supp. 1997), three member BPMC Committees conduct disciplinary proceedings to determine whether physicians have committed professional misconduct. The Petitioner filed charges with BPMC alleging that the Respondent violated N.Y. Educ. Law §§ 6530(2-6), (11), (25) & (32) by:

- practicing medicine with fraud, gross and repeated incompetence and gross and repeated negligence;
- permitting an unlicensed person to perform acts requiring a license;
- delegating professional responsibilities to an unqualified person; and
- failing to maintain accurate patient records.

The charges involved the care that the Respondent provided in 1992 to thirteen persons, Patients B through N, the Respondent's billing for those services, and a 1993 application the Respondent filed to participate in Group Health Incorporated (GHI). The Respondent denied each charge.

Three BPMC Members, **KENNETH KOWALD, Chair, KENNETH J. FREESE, M.D. and RALPH LEVY, D.O.** comprised the Committee who conducted the hearing in this matter and who rendered the Determination which the Board now reviews. Administrative Law Judge **JONATHAN M. BRANDES** served as the Board's Administrative Officer and drafted the Determination. The Committee sustained the charge that the Respondent practiced fraudulently by submitting an application for GHI participation, that the Respondent knew to contain false statements. The Committee found further that the Respondent committed fraud by fabricating patient records and billing falsely for services rendered. The Committee also sustained charges that the Respondent committed negligence on more than one occasion, permitted unlicensed persons to perform functions requiring licensure and delegated professional responsibilities to unlicensed persons. The Committee based that conclusion upon their finding that the Respondent employed unlicensed persons to attend and monitor patients for post-anesthesia complications.

The Committee dismissed charges that the Respondent practiced with incompetence or gross incompetence, gross negligence or that the Respondent maintained inadequate records. In a Determination at issue in this review, the Committee determined that the Respondent committed no gross negligence in treating Patient B, despite concluding that the Respondent took an unnecessary and unwarranted risk in administering anesthesia to a patient who may have been suffering a cardiac disorder. The Committee characterized such conduct as dangerous, unacceptable and a grave deviation from accepted standards [see Committee Determination page 22-23]. The Committee determined also that the Respondent maintained minimally acceptable records, even though they noted that the Respondent admitted to maintaining substandard and inaccurate records and even though the Committee found that the Respondent intentionally created inaccurate records and intentionally created records with false vital signs.

The Committee voted to revoke the Respondent's License. The Committee concluded that greed motivated the Respondent to increase patient risk by providing the patients with less expensive, non-professional care. The Committee found the Respondent showed no remorse and showed no recognition that he needed to provide better medical care.

### **REVIEW HISTORY AND ISSUES**

The Committee rendered their Determination on March 25, 1997. The Respondent then commenced this proceeding on April 9, 1997, when the Board received the Notice requesting a Review pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1997). The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and reply brief and the Petitioner's brief and reply brief. The Board received the Respondent's brief on May 9, 1997, the Petitioner's brief on May 12, 1997, the Respondent's reply on May 15, 1997 and the Petitioner's reply on May 19, 1997.

**Petitioner's Issues:** The Petitioner asks that the Board modify the Committee's Determination and find that the Respondent committed gross negligence in treating Patient B. The Petitioner describes the Committee's Determination to dismiss the charge as inconsistent with their conclusion that the Respondent's care for the Patient constituted a grave deviation from accepted standards.

In reply, the Respondent asks why the Board should resolve such inconsistency in the Petitioner's favor.

**Respondent's Issues:** The Respondent contends that:

- The Committee applied the wrong criteria in judging the Respondent.
- Poor record keeping provides no basis for revoking the Respondent's License.
- The Committee made no distinction between the anesthesia cases that the Respondent handled at his small outpatient facility and the complex procedures at a hospital such as Beth-Israel, where the Petitioner's expert witness practices.
- The Petitioner failed to offer any evidence indicating that the Respondent constitutes a danger to patients.
- The Committee imposed an excessively harsh penalty, as the Respondent treated all his patients successfully and constitutes no danger to his patients.
- N.Y. Educ. Law § 6527(4)(e) prohibits any disciplinary action against the Respondent, because the Respondent treated patients effectively.

In reply, the Petitioner argues that the Hearing Committee imposed a penalty commensurate with the Respondent's offense and that N.Y. Educ. Law § 6527(4)(e)(McKinney's Supp. 1997) has no relevance to this proceeding.

### **REVIEW BOARD AUTHORITY**

In reviewing a Committee's Determination, the Board determines: whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law, and whether the Penalty is appropriate and within the scope of penalties which the law permits [N.Y. Pub. Health Law § 230(10)(i), § 230-c(4)(b)(McKinney's Supp. 1997)]. The Board may remand a case to the

Committee for further consideration [N.Y. Pub. Health Law § 230-c(4)(b)(McKinney's Supp. 1997)]. The Board's Determinations result from a majority concurrence among the Board's Members [N.Y. Pub. Health Law § 230-c(4)(c)(McKinney's Supp. 1997)].

The Review Board may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 Ad 2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 AD 2d 940, 613 NYS 2d 759 (Third Dept. 1994), and in determining credibility Matter of Minielly v. Comm. of Health 222 AD 2d 750, 634 NYS 2d 856 (Third Dept. 1995).

### **REVIEW BOARD DETERMINATION**

The Board has considered the record and the parties' briefs. We conducted deliberations in this case on May 30, 1997. Dr. Stewart and Dr. Price participated in the deliberations by telephone. The Board votes 5-0 to sustain the Committee's Determination finding the Respondent guilty for negligence on more than one occasion, permitting unlicensed persons to perform acts requiring licensure, delegating professional responsibilities to unqualified persons and practicing medicine fraudulently. We modify the Committee's Determination to find that the Respondent practiced with gross negligence in treating Patient B and to find that the Respondent failed to maintain accurate patient records. We modify the Determination further by amending one Finding of Fact. The Board sustains the Committee's Penalty revoking the Respondent's License.

We reject the Respondent's contention that the Committee erred, by failing to recognize separate criteria for the Respondent's practice in an outpatient facility with less complex anesthesia cases. The Respondent's own expert, Dr. Podroza, noted that an anesthesiologist can care for only one patient at a time, until they give over the patient's care to a licensed professional with proper qualifications and training. Dr. Podroza also noted that leaving a person recovering from anesthesia in an unlicensed person's care failed to meet accepted standards [see Committee Determination page 17]. Further, no matter what the setting, lying on an application, fabricating records and billing falsely for care constitutes fraud.

The Board agrees with the Petitioner that the Respondent's care for Patient B constituted gross negligence. Despite noting that Patient B reported preoperative chest pain, the Respondent administered anesthesia without a cardiac workup or medical clearance. The Committee found such dangerous and unacceptable conduct constituted a grave deviation from accepted care standards and that the record disclosed no mitigation [see Committee Determination pages 22-23]. The Board finds such conclusions consistent with a Determination that the Respondent committed gross negligence in administering anesthesia to Patient B. The Respondent's brief questioned the legal authority for modifying the Determination concerning Patient B. As we noted above, the Board may substitute our judgment for the Hearing Committee's in making guilt determinations, Matter of Spartalis v. State Bd. for Prof. Med. Cond. (supra). We do so here.

The Board may substitute our judgment for the Committee's even when neither party to a review requests a specific modification in a Committee's Determination, Matter of Kabnick v. Chassin, 223 AD 2d 935, 636 NYS 2d 920, affd. 89 NY 2d 250 (1996). The Board exercises that authority now in finding that the Respondent failed to maintain accurate records. The Committee noted at page 5 in their Determination that an accurate medical record must provide a subsequent treating physician with an understanding about a patient's treatment and the basis for the treatment. The Respondent admitted to maintaining substandard and inaccurate records and the Committee found that the Respondent intentionally created inaccurate records and intentionally created records with false vital signs [see Committee Determination page 33]. The Committee's findings about the Respondent's admissions and his intentional fabrications demonstrate that the Respondent failed to maintain accurate patient records.

The Board also amends the Committee's Finding of Fact 18 to change the wording from "Respondent performed surgery . . ." to "Respondent administered anesthesia...". The Board finds such amendment consistent with the charges, the record, Finding of Fact 17 and with the Committee's discussion about Patient B at pages 22-23 in their Determination.



The Board concludes that the Committee acted appropriately and consistently with their findings and conclusions in revoking the Respondent's License. In arguing in his brief that the Committee or the Board may revoke a license only when the Respondent provides care causing serious patient harm or creating serious patient risk, the Respondent ignores the cases that have held that fraudulent conduct in practicing medicine, standing alone, provides the basis for revoking a physician's license Matter of Glassman v. Comm. of Dept. of Health of State of N.Y., 208 AD 2d 1060, 617 NYS 2d 413, lv. denied 85 NY 2d 801 (1995), Matter of Siddiqui v. New York State Dept. of Health, 228 AD 2d 735, 644 NYS 2d 64 (Third Dept. 1996). In addition to betraying the trust the public places in the medical profession by using his License to commit fraud, the Respondent betrayed the trust his patients placed in him specifically and showed his disregard for his patients by employing lower-paid, unlicensed and unqualified persons to monitor his patients while they recovered from anesthesia. The Committee found no mitigating factors, no remorse on the Respondent's part and no hope for rehabilitation. The Board finds nothing excessive or harsh in the Committee's Determination to revoke the Respondent's License.

07/18/97 18:33 010 027 0021 E.C. Sinnott MD 001

**IN THE MATTER OF MOON HO HUH, 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. Huh.

**DATED: Roslyn, New York**

*July 18*, 1997

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 MOON HO HUH, 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. Huh.

**DATED:** Delmar, New York

July 19, 1997

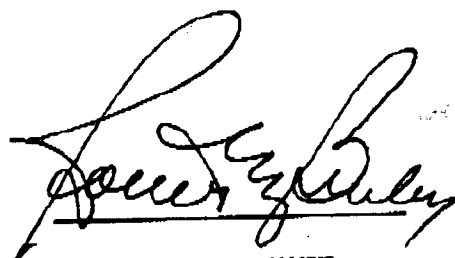
  
**SUMNER SHAPIRO**

**IN THE MATTER OF MOON HO HUI, 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. Hui.

**DATED:** Schenectady, New York

July 20 , 1997




**ROBERT M. BRIBER**

**IN THE MATTER OF MOON HO HUH, 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. Huh.

**DATED: Brooklyn, New York**

7/25, 1997

  
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**WINSTON S. PRICE, M.D.**