



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

August 18, 1994

REC'D
AUG 19 1994
METROPOLITAN REGIONAL OFFICE

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Maximo Chua, M.D.
373 Route 11
Smithtown, New York 11787

Ann Hroncich, Esq.
NYS Department of Health
Metropolitan Regional Office
5 Penn Plaza - Sixth Floor
New York, New York 10001

James F. Farrel, Jr., Esq.
888 Veterans Memorial Highway
Hauppauge, New York 11788-2919

Effective Date: November 11, 1994

RE: In the Matter of Maximo Chua, M.D.

Dear Dr. Chua, Mr. Farrel and Ms. Hroncich :

Enclosed please find the Determination and Order (No. 94-46) 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.

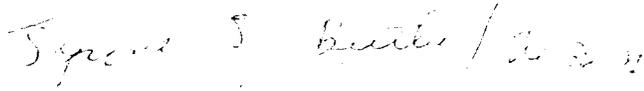
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

**IN THE MATTER
OF
MAXIMO CHUA, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 94-46**

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 June 24, 1994 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) March 28, 1994 Determination finding Dr. Maximo Chua (Respondent) guilty of professional misconduct, restricting his license to practice medicine in New York State and ordering that he undergo an evaluation of his skills as a physician, to determine whether he must undergo retraining. The Office of Professional Medical Conduct (Petitioner) requested the review through a Notice which the Review Board received on April 21, 1994. James F. Horan, Esq., served as Administrative Officer to the Review Board. Anne Hroncich, Esq., submitted a brief to the Review Board on the Petitioner's behalf on May 19, 1994. James F. Farrell, Jr., Esq., submitted a reply brief on the Respondent's behalf on May 26, 1994.

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 charged the Respondent with negligence and incompetence on more than one occasion, gross negligence and gross incompetence. The charges involved the Respondent's intravenous administration of certain mixtures to three patients, A through C. The Petitioner began the proceeding through a Summary Order, in which the Commissioner of Health determined that the Respondent's continued practice of medicine constituted an imminent danger to the public health. The Hearing Committee issued an Interim Order on January 14, 1994, in which they recommended that the Commissioner allow the Respondent to practice acupuncture, because there were no charges concerning the Respondent's practice of acupuncture.

The Hearing Committee sustained the charge that the Respondent was guilty of gross negligence in the treatment of Patients A through C, gross negligence in the treatment of Patient A, incompetence on more than one occasion in the treatment of Patients A and B, and gross incompetence in the treatment of Patient A.

The Hearing Committee found that the Respondent had administered inappropriately a mixture of vitamins and magnesium sulfate to Patient A. The Committee found that the magnesium sulfate and one of the vitamins were expired, and that the magnesium and some of the vitamins were clearly marked to indicate that the substances were not for intravenous use. The Committee found that upon receiving the mixture, the Patient developed a severe acute allergic reaction, suffered respiratory arrest and subsequently expired. The Committee found that the Respondent, who had practiced as an Anesthesiologist from 1963 to 1983, failed to take appropriate action in response to the arrest, by failing to administer epinephrine, failing to establish a proper airway before administering oxygen or mouth to mouth, failing to use an Ambu bag, and administering oxygen by

an inappropriate means. The Committee also found that the use of vitamins intravenously was inappropriate and increased the risk of allergic reaction. The Committee found that the risk also increased in light of the Patient's allergies and asthma.

The Hearing Committee found that the Respondent inappropriately administered a mixture of vitamins and other substances to Patient B intravenously. The Committee found that the intravenous administration was an inappropriate mode, which increased the risk of allergic reaction. The Committee found that, due to Patient B having asthma, the risk to the Patient due to the inappropriate mode of administration increased. The Committee found further that the Respondent had administered streptomycin and gentamicin, separately and in combination, intramuscularly to the Patient without indication.

The Hearing Committee found that the Respondent inappropriately administered a mixture of vitamins, magnesium sulfate and potassium chloride to Patient C intravenously, inappropriately administered a combined dose of streptomycin and gentamicin to Patient C intramuscularly and inappropriately administered a dose of streptomycin to Patient C intramuscularly. The Committee found that the intravenous administration of vitamins was an inappropriate mode of administration, which unjustifiably increased the risk of an allergic reaction. The Committee found further that the treatment of the Patient with gentamicin and streptomycin was not indicated for the Patient's condition.

The Committee voted to restrict the Respondent's license to the practice of acupuncture and ordered that the Respondent undergo an evaluation of his knowledge and ability to practice medicine at the Physician Prescribed Educational Program (PPEP) at Syracuse. The Committee ordered further that, if the evaluation indicates that the Respondent can be retrained, that he undergo retraining in the PPEP. The Committee provided that if the Respondent undergoes retraining, that the restriction on his license be modified to the extent necessary for evaluation and retraining. The Committee provided further that if the Respondent completed the evaluation and retraining successfully, the Respondent would be on probation for two years.

REQUESTS FOR REVIEW

The Petitioner has asked that the Review Board review the Hearing Committee's Penalty to clarify whether the Hearing Committee intended to permanently restrict the Respondent to only the practice of acupuncture, or whether the Committee intended to limit the Respondent to the practice of acupuncture only during the time during which the Respondent undergoes PPEP Evaluation and possible retraining. The Petitioner argues that the Committee intended to limit the Respondent to the practice of acupuncture permanently, and that the Committee ordered the PPEP Evaluation and Retraining because, even if the Respondent is restricted to acupuncture, the Respondent must still continue to evaluate patients and must be able to make proper referrals to other physicians. The Petitioner argues that permanent limitation is the appropriate penalty in this case in light of the Committee's conclusions concerning the Respondent persistent and gross acts of negligence and incompetence in treating Patients A, B and C.

The Respondent argues that the Committee intended to limit the Respondent's license to acupuncture only during the period during which the Respondent undergoes PPEP Retraining.

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 repeated and gross acts of negligence and incompetence. The Determination is consistent with the Committee's findings concerning the Respondent's treatment of patients with mixtures through improper modes, without proper indication and with substances which were past their expiration date. The Determination is also consistent with the findings concerning the allergic reaction to the mixture which Patient A suffered and with the findings and conclusions concerning the Respondent's failure to take appropriate action in response to Patient A's allergic reaction.

The Committee votes to overturn the Hearing Committee's penalty limiting the Respondent's license and ordering him to undergo an Evaluation and Retraining at the Physician

Prescribed Education Program. The Review Board finds that penalty is not consistent with the Committee's findings and conclusions concerning the extensive and serious nature of the Respondent's misconduct, that the penalty is not appropriate for the Respondent's negligent and incompetent practice and is not appropriate to protect the public from a physician who constitutes a clear danger to his patients. The penalty is also inappropriate and inconsistent in that the Hearing Committee's Determination contains no findings to demonstrate that the respondent is a fitting candidate for retraining, even if the Respondent's misconduct had not been of such a serious nature. The Review Board finds that the only appropriate penalty in this case is to revoke the Respondent's license to practice medicine in New York State.

The Respondent practiced for some time as an anesthesiologist. Any physician, but especially an anesthesiologist, must be aware of the proper mode by which to administer a substance to a patient. Any physician, but especially an anesthesiologist, should be aware of the indications and contraindications for administering medications to patients. Any physician, but especially an anesthesiologist, should be able and prepared to deal with an allergic reaction which a patient suffers to a substance which the physician administers to the patient. Any physician, but especially an anesthesiologist, should know not to administer a substance to a patient after the expiration date marked on the container for that substance.

The Respondent's acts of negligence and incompetence are not the mistakes of a physician who has failed to stay current with new trends or new information available in medicine, nor are the acts of negligence and incompetence the result of the Respondent trying procedures for which the Respondent lacks adequate training or preparation. The Respondent's acts of negligence and incompetence demonstrate such ignorance and carelessness as to prove that the Respondent lacks the requisite knowledge, skill and care to safely and effectively practice medicine.

The Review Board finds nothing in this record to indicate that the Respondent merits a second chance to continue in the practice of medicine or that the serious deficiencies in the Respondent's knowledge, skills and patterns of practice can be corrected by the course of retraining available through PPEP. A physician should not need retraining to be able to read the expiration date on a bottle, to read directions which tell the proper or improper modes for administering a drug, to

know not to give medication when there is a contraindication or to know how to deal with an allergic reaction by a patient. If the Respondent has not acquired such knowledge or skills by this time, especially after his years in practice in a specialty, anesthesiology, in which the administration of drugs is the main element of the specialty, then the Review Board does not believe that the Respondent will obtain that knowledge in the PPEP retraining.

We find further that limiting the Respondent merely to practicing acupuncture is not appropriate because of the Respondent's obvious deficiencies in knowledge and practice that the Respondent has demonstrated in his care for Patients A through C. The Respondent is not competent to practice medicine in this State, so he should not be allowed to practice acupuncture through the exemption which allows licensed physicians to practice that discipline in New York. If the Respondent is to practice acupuncture in this State, he should prove his competency in that discipline to the body responsible for certifying those who practice acupuncture.

ORDER

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

ORDER:

1. The Review Board **sustains** the Hearing Committee on Professional Medical Conduct's Determination finding Dr. Maximo Chua guilty of professional misconduct.
2. The Review Board **overturns** the Hearing Committee's penalty limiting the Respondent's license to practice medicine and ordering that the Respondent undergo retraining.
3. The Review Board votes unanimously to **revoke** the Respondent's license to practice medicine in New York State.

ROBERT M. BRIBER

MARYCLAIRE B. SHERWIN

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

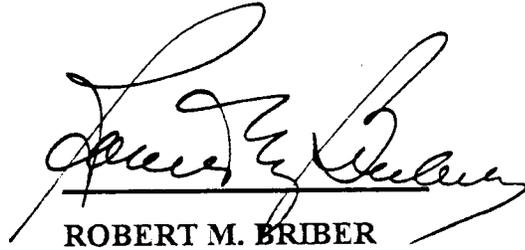
WILLIAM A. STEWART, M.D.

IN THE MATTER OF MAXIMO CHUA, 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. Chua

DATED: Albany, New York

7/27, 1994



ROBERT M. BRIBER

IN THE MATTER OF MAXIMO CHUA, 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. Chua.

DATED: Malone, New York

July 13, 1994

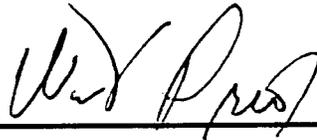
Maryclaire B. Sherwin
MARYCLAIRE B. SHERWIN

IN THE MATTER OF MAXIMO CHUA, 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. Chua. .

DATED: Brooklyn, New York

_____, 1994

A handwritten signature in cursive script, appearing to read "Winston S. Price", written over a solid horizontal line.

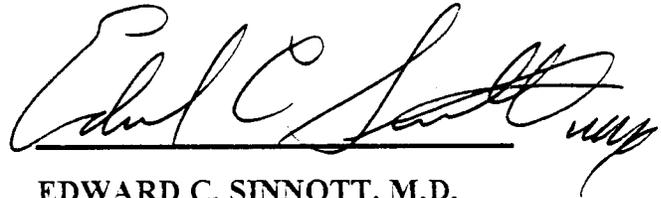
WINSTON S. PRICE, M.D.

IN THE MATTER OF MAXIMO CHUA, 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. Chua.

DATED: Albany, New York

July 12, 1994

A handwritten signature in cursive script, reading "Edward C. Sinnott", written over a horizontal line. The signature is positioned to the right of the typed name.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF MAXIMO CHUA, 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. Chua.

DATED: Syracuse, New York

11 July, 1994

William A. Stewart

WILLIAM A. STEWART, M.D.