



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

January 31, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Yang E Lee, M.D.
82 Dartmouth Street
Forest Hills, New York 11375

Arnold J. Goldstein, Esq.
Goldstein & Goldstein
26 Court Street - 20th Floor
Brooklyn, New York 10001

David W. Smith, Esq
NYS Dept. of Health
5 Penn Plaza - Sixth Floor
Albany, New York 12237

RE: In the Matter of Yang E. Lee, M.D.

Effective

Dear Dr. Lee, Mr. Goldstein and Mr. Smith:

Enclosed please find the Determination and Order (No. 94-139) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

RECEIVED
JAN 31 1995
MEDICAL CONDUCT DIV.

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" followed by a stylized flourish or initials.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:

Enclosure

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

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
BPMC 94-139**

**IN THE MATTER
OF
YANG E. LEE, M.D.**

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 Saturday, November 5, 1994 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) August 10, 1994 Determination finding Dr. Yang E. Lee (Respondent) guilty of professional misconduct. The Office of Professional Medical Conduct requested the review through a Notice which the Board received on August 30, 1994. James F. Horan Esq., served as Administrative Officer to the Review Board. David W. Smith filed a brief for the Respondent, which the Review Board received on October 3, 1994 and a Reply Brief, which the Board received on October 13, 1994. Arnold J. Goldstein, Esq. submitted a brief for the Respondent, which the Board received on October 4, 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 Office of Professional Medical Conduct charged the Respondent with negligence on more than one occasion, ordering excessive tests and/or treatment not warranted by the patient's condition and failing to maintain records which accurately reflect the patient's treatment and condition. The charges arise from the Respondent's treatment for eight patients, whom the record refers to by the initials A through H.

The Committee did not sustain the charge of failure to maintain adequate medical records for the patients.

The Committee found the Respondent practiced with negligence on more than one occasion in treating patients A through H and found that the Respondent ordered excessive tests for Patients A,B,D,E,F,G,H. The evidence on which the Committee based their findings were the Respondent's office charts for the eight patients and the testimony of the Petitioner's expert witness Dr. Vanderbush. The Respondent did not testify.

The Committee found that the Respondent failed to order hemoglobin tests for all the patients and failed to order a urinalysis for Patient A. The Committee found that the Respondent inappropriately ordered blood work for Patient A and inappropriately prescribed Valium and Elavil concurrently for Patients A, B and D. The Committee found no basis for the Respondent to order sonographies for Patients B, D and F, and no basis for pulmonary function tests for Patients F and G. The Committee also found no basis for the Respondent to order the antibiotics Ceclor or Keflex for Patients E, F, G and H.

The Committee voted to censure and reprimand the Respondent and ordered that the Respondent's practice be monitored for two years by a physician nominated by Dr. Lee and approved by the Office of Professional Medical Conduct.

REQUESTS FOR REVIEW

The Petitioner has asked that the Review Board modify the Hearing Committee's Penalty because the Penalty is inadequate. The Petitioner asks that the Penalty be changed to a two year suspension, stayed, with an evaluation and retraining, if necessary, at the Physician Prescribed Educational Program (PPEP)¹, followed by two years of monitoring by a physician approved by the Office of Professional Medical Conduct. The Petitioner asserts that since the Respondent did not testify, the Committee could not determine whether the Respondent understood his mistakes, the negligence and inappropriate tests, and whether the Respondent wanted to change.

The Respondent contends that there is no basis to disturb the Hearing Committee's Penalty (which the Respondent refers to as Censure and Reprimand). The Respondent notes that the Hearing Committee dismissed a great number of the Petitioner's charges against the Respondent, and that there was no showing of patient harm, deception or fraud. The Respondent points to the five and one-half year delay between the charged conduct and the hearing and notes that the Respondent practices in

¹Department of Family Medicine, SUNY Health Science Center and the Department of Medical Education at St. Joseph's Hospital and Health Center, 479 Irving Avenue, No.200, Syracuse, New York 13210

an inner- city clinic.

REVIEW BOARD DETERMINATION

The Review Board has considered the 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 negligence on more than one occasion and ordering excessive tests. The Determination is consistent with the Hearing Committee's findings and conclusions, and there was no challenge to the Determination on the charges.

The Review Board votes to modify the Hearing Committee's Penalty and order that the Respondent undergo the Phase I PPEP Evaluation. The purpose of the Evaluation will be to determine whether the Respondent possesses basic medical knowledge to practice safely and effectively. If the evaluation determines that the Respondent possesses the knowledge to practice safely and effectively, then the Respondent's practice shall be monitored for three years, under the terms which the Hearing Committee established in their Determination. If the Phase I Evaluation indicates that the Respondent does not possess sufficient knowledge to practice medicine safely and effectively, this case is remanded to the Hearing Committee for further deliberations on an appropriate penalty. The Respondent shall be on probation pending the Phase I Evaluation and during any subsequent remand. The sole condition of the Probation shall be that the Respondent arrange to undergo the Phase I Evaluation within thirty days from the date of this determination.

The Review Board has modified the Hearing Committee's Determination because we do not believe that the Penalty of Censure and Monitoring is appropriate to protect the public in this case. The Hearing Committee determined that the Respondent ordered unnecessary tests and committed negligence on more than one occasion. The negligence included three instances over the course of ninety days in which the Respondent inappropriately prescribed Valium and Elavil concurrently to three separate patients. The Respondent ordered sonographies without proper indication for three patients and pulmonary function tests without indication for two more. Again, all the orders for these

inappropriate tests were within a ninety day span. The negligence and unnecessary tests indicate a pattern of substandard practice by the Respondent which the Penalty must correct in order to assure that the public is protected.

The Respondent did not testify at the Hearing, and the Review Board and the Hearing Committee have no sense as to the reason for the Respondent's pattern of substandard care. If the Respondent's misconduct arose solely from problems associated with a busy inner-city practice, then his mistakes in his care for these patients could be corrected under the supervision of a monitoring physician. If the Respondent's mistakes resulted from an underlying lack of knowledge or skill, then a more formal retraining program would be necessary. The Review Board finds that it is necessary to refer the Respondent to the Phase I PPEP Evaluation for an assessment of the Respondent's knowledge. If the Evaluation determines that the Respondent has the knowledge to practice safely and effectively, then the two year monitored practice which the Hearing Committee imposed in their Penalty will be sufficient to address the problems in the Respondent's practice and protect the Public.

If the Phase I Evaluation determines that the Respondent is deficient in basic medical knowledge, then the case will be remanded to the Hearing Committee to reassess the Penalty. In the event of a Remand, the Hearing Committee shall issue a Supplemental Determination. Each party shall have fourteen days from receipt of the penalty to request a review of the new penalty. Each party and the Hearing Committee will receive a copy of PPEP Evaluation.

ORDER

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

1. The Review Board **sustains** the Hearing Committee's August 10, 1994 Determination finding Dr. Lee guilty of professional misconduct.
2. The Review Board **modifies** the portion of the Hearing Committee's penalty which ordered that the Respondent's practice should be monitored for two years and which censured and

reprimanded the Respondent.

3. The Review Board REFERS the Respondent to the Physician Prescribed Education Program at Syracuse for the Phase I Evaluation to determine whether the Respondent possesses the basic medical knowledge to practice medicine safely and effectively.
 - a. If the PPEP Evaluation determines that the Respondent possesses the basic medical knowledge to practice medicine safely and effectively, then the Respondent's practice shall be monitored for two years under the terms which the Hearing Committee set down in their Determination.
 - b. If the PPEP Evaluation determines that the Respondent does not possess sufficient knowledge to practice medicine safely and effectively, then the case is remanded to the Hearing Committee under the terms set out in this Determination.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD C. SINNOTT, M.D.

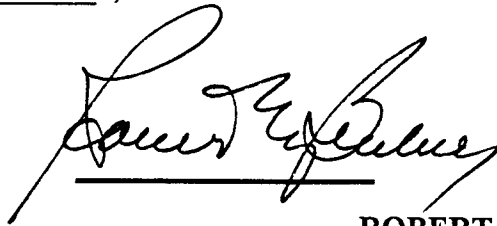
WILLIAM A. STEWART, M.D.

IN THE MATTER OF YANG LEE, 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. Lee.

DATED: Albany, New York

12/16, 1994

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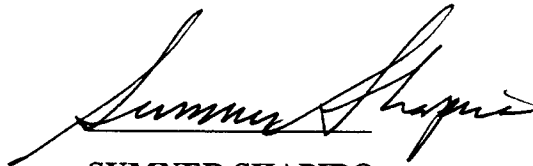
ROBERT M. BRIBER

IN THE MATTER OF YANG LEE, 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. Lee.

DATED: Delmar, New York

Dec 28, 1994

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

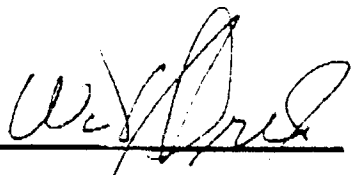
SUMNER SHAPIRO

IN THE MATTER OF YANG LEE, 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. Lee.

DATED: Brooklyn, New York

_____, 1994



WINSTON S. PRICE, M.D.

IN THE MATTER OF YANG LEE, 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. Lee.

DATED: Roslyn, New York

December 16, 1994

A handwritten signature in black ink, appearing to read "Edward C. Sinnott, M.D.", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF YANG LEE, 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. Lee.

DATED: Syracuse, New York

16 Dec. , 1994



WILLIAM A. STEWART, M.D.