



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

April 10, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Irene Koch, Esq.
NYS Dept. of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Tharwat Hamamcy, M.D.
925 Santa Isabel
Laguna Vista, Texas

RECEIVED

APR 10 1995

RE: In the Matter of Tharwat Hamamcy, M.D.

Effective Date: 04/17/95

MEDICAL CONDUCT

Dear Ms. Koch and Dr. Hamamcy :

Enclosed please find the Determination and Order (No. 95-08) 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.

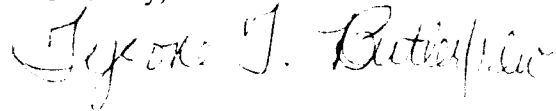
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Enclosure

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

**IN THE MATTER
OF
THARWAT HAMAMCY, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 95-08**

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.**¹ held deliberations on March 24, 1995 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) January 11, 1995 Determination finding Dr. Tharwat Hamamcy (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on February 3, 1995. James F. Horan served as Administrative Officer to the Review Board. The Respondent filed a brief on his own behalf on February 21, 1995 and March 7, 1995. Irene Koch, Esq. filed a brief for the Office of Professional Medical Conduct (Petitioner) on March 3, 1995.

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.

¹Dr. Sinnott and Mr. Shapiro participated in the deliberations by conference call.

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 brought this case pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9)(a)(i), which provide an expedited hearing in cases in which professional misconduct charges against a Respondent are based upon a prior criminal conviction in New York or another jurisdiction or upon a prior administrative adjudication which would amount to misconduct if committed in New York State. The expedited hearing determines the nature and severity of the penalty which the Hearing Committee will impose based upon the criminal conviction or prior administrative adjudication.

The Hearing Committee in this case found that the Petitioner had met its burden of proof in establishing that the Respondent committed professional misconduct based upon the findings of a disciplinary proceeding in another state and based on his conviction for an act constituting a crime under Federal Law.

The Committee found that the Texas State Board of Medical Examiners (Texas Board) issued an Order in 1994 revoking the Respondent's medical license for misconduct arising from his treatment for nine patients. The Texas Board found that the Respondent had engaged in conduct which constituted professional failure to practice medicine in an acceptable manner consistent with the public health, engaged in unprofessional conduct which is likely to damage the public health and engaged in unprofessional conduct which is likely to injure the public by prescribing a drug and treatment which is non-therapeutic in nature.

The Committee also found that the Respondent was convicted after a jury trial in the United State District Court for the Southern District of Texas for bribery of a bank official, a Class D Felony.

The Federal Court sentenced the Respondent to five years probation and fined the Respondent Twenty Thousand (\$20,000) Dollars.

The Committee concluded that the Respondent's conduct involving the patients, if committed in New York, would constitute negligence on more than one occasion and failure to maintain adequate records.

The Committee concluded that either the Respondent's negligence in treating the patients or his conviction for a Federal felony would, considered separately, support the revocation of the Respondent's license to practice in New York. The Committee found that the Respondent, who has not been registered to practice in New York since 1983, has demonstrated that he is not fit to be licensed as a physician in this state. The Committee also found that the Respondent failed to appear at the hearing and present evidence which might mitigate any sanction against him.

REQUESTS FOR REVIEW

The Respondent has asked the Review Board to set this case aside while the Respondent has appeals pending from the Texas Board proceeding and from the Federal conviction. The Respondent alleges that New York's action is premature and should not be based on what the Respondent alleges to be illegal activity by the Texas Board.

The Petitioner urges the Review Board to sustain the Hearing Committee's Determination based upon the Texas Board's decision , and upon the Federal felony conviction. The Petitioner argues that the Committee's Determination is consistent with the Hearing Committee's findings and conclusions, and is appropriate in view of the Committee's conclusions.

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 that the Respondent was guilty of professional misconduct. The Hearing Committee's Determination is consistent with their finding that the Respondent's license was revoked by the Texas Board due to negligent patient care and is consistent with the Committee's finding that the Respondent was convicted for a Federal felony, involving bribery of a bank official.

The Review Board will not set aside the Hearing Committee's Determination. Neither the Hearing Committee nor the Review Board must delay action in this case during the pendency of the Respondent's appeals. The Review Board and the Hearing Committee have the responsibility to protect the people of New York, and that responsibility can not be ignored because the Respondent is seeking to overturn the Texas findings that formed the basis for this action.

The Review Board sustains the Hearing Committee's Determination revoking the Respondent's license to practice medicine in New York State. The Committee's Determination is appropriate and is consistent with their findings. The Review Board agrees that either the Texas Board's findings concerning the Respondent's repeated negligence in providing patient care or the Federal felony conviction would be grounds standing alone to revoke the Respondent's license.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's January 11, 1995 Determination finding Dr. Tharwat Hamamcy guilty of professional misconduct.

2. The Review Board **SUSTAINS** the Hearing Committee's Determination revoking the Respondent's license to practice medicine in New York State.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

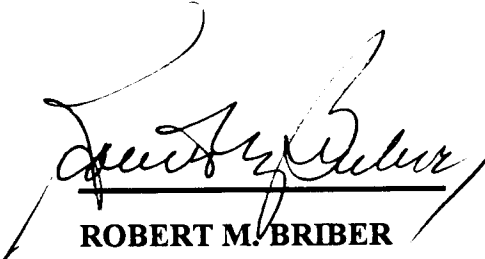
WILLIAM A. STEWART, M.D.

IN THE MATTER OF THARWAT M. HAMAMCY, 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. Hamamcy.

DATED: Albany, New York

April 3, 1995

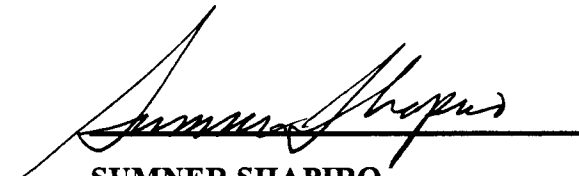

ROBERT M. BRIBER

IN THE MATTER OF THARWAT M. HAMAMCY, 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. Hamamcy.

DATED: Delmar, New York

April 4, 1995

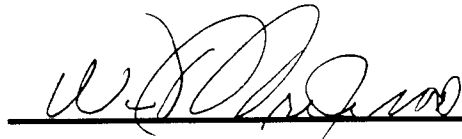

SUMNER SHAPIRO

IN THE MATTER OF THARWAT M. HAMAMCY, 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. Hamamcy.

DATED: Brooklyn, New York

APRIL 4, 1995

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


WINSTON S. PRICE, M.D.

IN THE MATTER OF THARWAT M. HAMAMCY, 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. Hamamcy.

DATED: Roslyn, New York

March 30, 1995

A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", is written over a solid horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF THARWAT M. HAMAMCY, 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. Hamamcy.

DATED: Syracuse, New York

30 May, 1995

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

WILLIAM A. STEWART, M.D.