



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

June 23, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kesho Nath Hurria, M.D.
3347 West Ball Road
Anaheim, California, 92804

Keith A. Weaver, Esq.
Rinos & Packer
550 North Parkcenter Drive, Suite 100
Santa Ana, California, 92705

Denise Lepicier, Esq.
Assistant Counsel
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

RE: In the Matter of Kesho Nath Hurria, M.D.

Dear Dr. Hurria, Mr. Weaver and Ms. Lepicier :

Enclosed please find the Determination and Order (No. 94-42) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 / TTB".

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

KESHO NATH HURRIA, M.D.

ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO 94-42

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 by telephone conference on May 31, 1994 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) March 21, 1994 Determination finding Dr. Kesho Hurria guilty of professional misconduct. Dr. Hurria (Respondent) requested the Review through a Notice which the Board received on April 7, 1994. James F. Horan served as Administrative Officer to the Review Board. Keith A. Weaver, Esq. filed a brief for the Petitioner on May 9, 1994. Denise Lepicier, Esq. filed a brief for the Office of Professional Medical Conduct (Petitioner) on May 17, 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 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 Petitioner had entered into a Stipulation with the Medical Board of California, in which the Respondent agreed not to contest numerous allegations of gross negligence, incompetence and excessive treatment concerning his surgical care of four patients. The Committee concluded that this conduct would amount to misconduct if committed in New York. The Committee found further that the California Board had revoked the Respondent's medical license, stayed the revocation and placed the Respondent on five years of monitored probation.

The Hearing Committee voted to revoke the Respondent's license to practice in New York State. The Committee stated that the record from the California proceeding established that there were serious deficits in the Respondent's medical knowledge and judgement. The Committee felt that they could not stay the revocation as California had done, because the Respondent does not practice in New York and there would be no meaningful way to monitor his practice or enforce any probationary terms.

REQUESTS FOR REVIEW

The Respondent has asked that the Review Board overturn the Hearing Committee's penalty and allow the Respondent to surrender his New York license. The Respondent's brief argues that the revocation could make it virtually impossible to obtain professional liability insurance, and

could, in fact end the Respondent's career.

The Petitioner opposes the offer to surrender. The Petitioner argues that a surrender is feasible only prior to a Hearing Committee Determination and is not one of the penalties the Hearing Committee or Review Board may impose under Public Health Law Section 230-a.

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 that the Respondent was guilty of professional misconduct, based upon his Stipulation with the California Medical Board.

The Review Board votes to sustain the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State. The Committee's penalty is appropriate in view of the serious deficits in the Respondent's judgement and medical knowledge that are apparent following the action by the California Board. The Committee is also correct that there would be no way that New York could monitor the Respondent's practice.

As to the Respondent's request that he be allowed to surrender his license, the Board feels that the Respondent had the opportunity to surrender his license prior to the hearing and we will not accept a surrender merely so the Respondent can avoid the revocation, which we believe to be the appropriate penalty in this case. The Review Board also disagrees with the statement by Respondent's counsel, that this revocation will make it impossible to obtain professional liability insurance.

ORDER

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

ORDER:

1. The Review Board **sustains** the March 21, 1994 Determination by the Hearing Committee on Professional Medical Conduct, finding Dr. Kesho Hurria guilty of professional misconduct.
2. The Review Board **sustains** the Determination by the Hearing Committee 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.

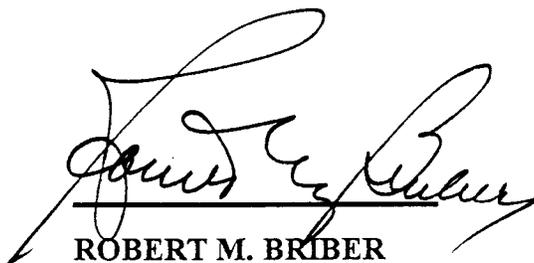
WILLIAM A. STEWART, M.D.

IN THE MATTER OF KESHO HURRIA, 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. Hurria.

DATED: Albany, New York

June 7, 1994


ROBERT M. BRIBER

IN THE MATTER OF KESHO HURRIA, 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. Hairy.

DATED: Malone, New York

June 7, 1994

Maryclaire B. Sherwin
MARYCLAIRE B. SHERWIN

IN THE MATTER OF KESHO HURRIA, 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. Hurria,

DATED: Brooklyn, New York

_____, 1994



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 KESHU HURRIA, 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. Hurria.

DATED: Roslyn, New York

June 7, 1994

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 KESHO HURRIA, 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. Hurria..

DATED: Syracuse, New York

2 June, 1994

William A. Stewart

WILLIAM A. STEWART, M.D.



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

March 21, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Denise Lepicier, Esq.
Assistant Counsel
NYS Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

Kesho Nath Hurria, M.D.
3347 West Ball Road
Anaheim, California, 92804

RE: In the Matter of Kesho Nath Hurria, M.D.

Dear Ms. Lepicier and Dr. Hurria:

Enclosed please find the Determination and Order (No. 94-42) of the Hearing Committee 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:

New York State Department of Health
Office of Professional Medical Conduct
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
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 than be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law, §230, subdivision 10, paragraph (p), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he determination of a committee on professional medical conduct may be reviewed by the administrative review board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Corning Tower -Room 2503
Empire State Plaza
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the
Administrative Review Board's Determination and Order.

Very truly yours,

A handwritten signature in cursive script that reads "Tyrone T. Butler/mm n". The signature is written in dark ink and is positioned above the typed name.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn
Enclosure

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

-----X
IN THE MATTER : DETERMINATION
: :
OF : AND
: :
KESHO NATH HURRIA, M.D. : ORDER
-----X
BPMC 94-42

A Notice of Hearing and Statement of Charges, both dated January 27, 1994, were served upon the Respondent, Kesho Nath Hurria, M.D. **EDMUND O. ROTHSCHILD, M.D. (Chair), VICTOR B. MARROW, and PASCUAL SANCHEZ-MUNOZ, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. A hearing was held on March 9, 1994. The Department of Health appeared by Denise Lepicier, Esq., Assistant Counsel. The Respondent failed to appear in person and was not represented by counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a

licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered rejected in favor of the cited evidence.

1. Kesho Nath Hurria, M.D. (hereinafter "Respondent"), was authorized to practice medicine in New York State on January 22, 1973, by the issuance of license number 115608 by the New York State Education Department. Respondent is not currently registered

with the New York State Education Department to practice medicine in this State. (Pet. Ex. #2).

2. On July 3, 1991, Respondent entered into a Stipulation in Settlement and Order with the Medical Board of California, (hereinafter "California Board"), after having been charged with incompetence, gross negligence and excessive treatment in his care of five patients, in violation of California Business and Professions Code Sections 725, 2234(b) and 2234(d). (Pet. Ex. #3).

3. Pursuant to the Order of the California Board, Respondent's license to practice medicine in the State of California was revoked. The revocation was stayed and Respondent was placed on five years of monitored probation pending Respondent's successful completion of an oral/clinical examination related to orthopedic surgery and 40 additional hours of continuing medical education per year, including at least one course in medical ethics. (Pet. Ex. #3).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that on July 3, 1991 Respondent entered

into a Stipulation in Settlement and Order with the California Board. As a result of the Stipulation, Respondent's California medical license was revoked. The revocation was stayed, and Respondent was placed on five years of monitored probation.

As a condition of settlement, Respondent, an orthopedic surgeon, agreed not to contest numerous allegations of gross negligence, incompetence and excessive treatment concerning his surgical care and treatment of four patients. (See, Pet. Ex. #3). The Hearing Committee unanimously concluded that Respondent's conduct would constitute professional misconduct pursuant to Education Law Sections 6530(4) [gross negligence], 6530(5) [incompetence on more than one occasion], and 6530(35) [ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient], if committed in New York State. As a result, the Committee voted to sustain the Specification of professional misconduct contained in the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute,

including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The record of the California disciplinary proceeding established the fact that Respondent demonstrated serious deficits in his medical knowledge and judgment. The Hearing Committee takes note of the fact that the California Board chose to stay the revocation of Respondent's California medical and place him on monitored probation. However, such an approach is not feasible in this case. Given that Respondent does not practice medicine in New York, there is no meaningful way for the Department to enforce any probationary terms which might be imposed by this Committee. The Hearing Committee determined that revocation of Respondent's medical license was the only sanction which adequately protects the people of New York.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct set forth in the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED**;
2. Respondent's license to practice medicine in New York State be and is hereby **REVOKED**.

DATED: Albany, New York

15 March, 1994



EDMUND O. ROTHSCHILD, M.D. (Chair)

VICTOR B. MARROW
PASCUAL SANCHEZ-MUNOZ, M.D.

TO: Denise Lepicier, Esq.
Assistant Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

Kesho Nath Hurria, M.D.
3347 West Ball Road
Anaheim, California 92804

APPENDIX I

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: KESHO NATH HURRIA, M.D. : PROCEEDING
: :
-----X

TO: KESHO NATH HURRIA, M.D.
3347 West Ball Road
Anaheim, CA 92804

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 9th day of March, 1994 at 10:00 o'clock in the forenoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before February 25, 1994 .

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before February 25, 1994 and a copy of

all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT SUSPENDS OR REVOKES YOUR
LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE

AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED.
YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT
YOU IN THIS MATTER.

DATED: New York, New York

January 27, 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Denise Lepicier
Assistant Counsel
(212) 613-6117

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

-----X
IN THE MATTER : STATEMENT
OF : OF
KESHO NATH HURRIA, M.D., : CHARGES
-----X

KESHO NATH HURRIA, M.D., the Respondent, was authorized to practice medicine in New York State on January 22, 1973, by the issuance of license number 115608 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in this State.

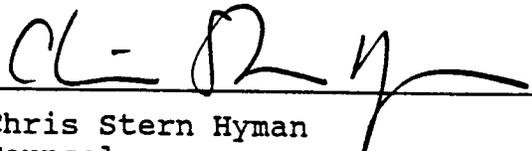
SPECIFICATION

Respondent is charged with professional misconduct, within the meaning of N.Y. Educ. Law Section 6530 (9)(d) (McKinney's Supp. 1994), in that he has had his license to practice medicine revoked, suspended or has had other disciplinary action taken against him by the State of California, on the basis of conduct which would constitute professional misconduct under the laws of the State of New York, including but not limited to N.Y. Educ. Law Section 6530, Subsections (4), (5) and/or (35) (McKinney's Supp. 1994), had the conduct occurred here, as is hereinafter stated:

1. On July 3, 1991, Respondent entered into a Stipulation In Settlement and Order with the Medical Board of California, after having been charged with incompetence, gross negligence and excessive treatment in his care of five patients, in violation of the California Business and Professions Code Sections 725, 2234(b) and 2234(d), which order revoked Respondent's license to practice medicine in the State of California; stayed the revocation; and placed Respondent on five years of monitored probation pending Respondent's successful completion of an oral/clinical examination related to orthopedic surgery and 40 additional hours of continuing medical education per year, including at least one course in medical ethics.

DATED: New York, New York

January 27, 1994



Chris Stern Hyman
Counsel
Bureau of Professional
Medical
Conduct