



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

January 30, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anthony D. Denaro, Esq.
91 Franklin Street
Suite 301
Hempstead, New York 111550

Young Ho Kwon, M.D.
12 Lyons Court
Woodcliff Lake, New Jersey

Ralph J. Bavaro, Esq
NYS Dept. of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

RE: In the Matter of Young Ho Kwon, M.D.

EFFECTIVE DATE 02/06/95

Dear Dr. Kwon, Mr. Denaro and Mr. Bavaro:

Enclosed please find the Determination and Order (No. 94-188) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 black ink that reads "Tyrone T. Butler" with a stylized flourish at the end.

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

YOUNG HO KWON, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
BPMC 94-188**

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 December 9, 1994 to review the September 20, 1994 Determination by the Hearing Committee on Professional Medical Conduct finding Dr. Young Ho Kwon (Respondent) guilty of Professional Misconduct. The Respondent requested the Review through a Notice which the Board received on October 11, 1994. James F. Horan served as Administrative Officer to the Review Board. Anthony P. Denaro, Esq. submitted a brief for the Respondent which the Board received on November 16, 1994. Ralph J. Bavaro, Esq. submitted a Motion to Dismiss the Respondent's appeal which the Board received on December 2, 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

¹Dr. Stewart participated in the deliberations by telephone conference.

- 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 gross negligence, negligence on more than one occasion, gross incompetence, incompetence on more than one occasion, practicing the profession fraudulently, failing to maintain adequate records, willfully making a false statement, failing to use appropriate barrier precautions and infection control procedures and failure to comply with state law governing the practice of medicine. The charges arise from the Respondent's treatment of twenty-five patients for vacuum abortions. The procedures for Patients 1-20 and 25 took place between June and September, 1993. The procedures on Patients 21-23 took place in February and March 1994.

The Committee sustained all the Specifications of Charges, except they did not find the Respondent guilty of gross incompetence.

The Committee found that the Respondent was guilty of gross negligence, negligence on more than one occasion and incompetence on more than one occasion for failure to perform adequate examinations or testing; failure to monitor patients under anesthesia and post-operatively; performing abortions on patients despite negative pregnancy tests or on patients when subsequent tests or specimens did not indicate pregnancy; failure to maintain appropriate sanitary conditions; failure to maintain adequate emergency equipment at his office, despite the nature of his practice; failure to follow proper procedures in administering anesthesia in his office; failure to document evaluation and treatment of the patients; and using forms for examinations which contained pre-printed findings.

The Committee found the Respondent guilty of fraud in the practice of medicine for performing abortions despite negative in-office urine pregnancy tests, fabricating medical records and utilizing reports that contained pre-printed findings. Based on some of the same findings that supported the fraud, negligence and incompetence charges, the Committee also found the Respondent guilty of wilfully making a false statement, failing to maintain adequate records, failing to maintain appropriate sanitary conditions and wilful and gross negligence in failing to comply with rules and regulations within the meaning of the New York Education Law.

In making the Determination, the Committee found gross inconsistencies in Dr. Kwon's testimony at the Hearing and found that the Respondent had further undermined his credibility by attempting to influence the witnesses and by his fabrication of extra pages for his patient charts. The Committee also found that the Respondent's description of the procedure in which he simultaneously performs abortion procedures and administers anesthesia demonstrates a blatant lack of concern for his patients' welfare and demonstrated that the Respondent's practice was substandard in many ways.

The Committee considered a penalty that would have suspended the Respondent's license and ordered him to undergo retraining. The Committee found that option unacceptable, however, due to their concerns about the Respondent's ethics and deceptive practices. The Committee voted to revoke the Respondent's license to practice medicine in New York State.

REQUESTS FOR REVIEW

The Petitioner has moved to dismiss the Respondent's request for a Review because the Respondent did not serve his brief within thirty days from the time he served his Notice of Review upon the Review Board. The Petitioner contends that the Respondent's brief should have been served by November 10, 1994. The brief was mailed on November 14, 1994 and the Petitioner received the brief on November 22, 1994.

The Respondent has asked that the Review Board reverse or amend the Hearing Committee's Determination. The Respondent challenges the Committee's findings on the sustained charges, largely by reference to the Respondent's testimony at the Hearing. As to the charges that the Respondent

performed abortions on patients despite negative pregnancy tests or in cases in which subsequent pathology was negative for pregnancy, the Respondent contends that these procedures were not performed as abortions, but rather were menstrual regulations. The Respondent contends that the charges concerning substituting a specimen for one patient from another patient, failure to use sterile instruments and failure to properly dispose of infectious waste are based on fabricated testimony by a disgruntled former employee.

The Respondent disputes the findings that his office did not contain proper emergency equipment, that he performed abortions unassisted by suitably trained personnel and that he did not properly supervise patients post-operatively. The Respondent contends that these charges are based on the incorrect assumption that the Respondent used general anesthesia on the patients. The Respondent contends that he used Brevital, which only sedated the patient to a state of grogginess. The Respondent contends that emergency equipment, assistance and a close post-operative watch was unnecessary.

As to the Hearing Committee's finding concerning fabrication of records, fraudulent use of pre-printed forms and failure to properly document patient evaluation, the Respondent alleges that the charge was not supported by any evidence.

The Respondent argues that the Hearing Committee's punishment is not appropriate. The Respondent asserts that if there are areas of his practice which could stand some improvement, that "DSS" should have given the Respondent suggestions on how to improve his practice or enforced a suspension to ensure the completion of whatever changes are necessary.

REVIEW BOARD DETERMINATION

The Review Board has considered the record below and the briefs which counsel have submitted.

The Review Board rejects the Petitioner's motion to dismiss this appeal. Our Administrative Officer has determined that the Respondent's brief was served on time. Even if the brief had been a day or two late as the Petitioner asserts, that would not be grounds to dismiss the Petitioner's appeal.

The Petitioner was not prejudiced in any way. The Petitioner had the full seven days allowed under Public Health Law §230-c(4)(b) to file a reply.

The Review Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty of practicing with negligence and incompetence on more than one occasion, practicing with gross negligence, practicing the profession fraudulently, failing to maintain adequate records, wilfully filing a false statement, failing to use scientifically accepted barrier precautions and infection control practices and failure to comply with rules and regulations. The Committee's Determination on the charges is consistent with their findings concerning the Respondent's repeated and egregious failure to conform to the standards of medicine, his repeated acts that demonstrate a lack of skill and knowledge to practice medicine and his intentional misrepresentation of facts and his filing of false documents .

The Respondent 's challenge to the Committee's Determination amounts to an attempt to relitigate the Committee's Finding of Fact relying on the Respondent's testimony from the Hearing. The Hearing Committee did not find the Respondent credible at the Hearing and the Review Board finds no reason to substitute our judgement for the Committee's.

The Review Board sustains the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State. The Committee's Determination was consistent with the Committee's Findings and Conclusions and is appropriate. The Committee found that the Respondent demonstrated a blatant lack of concern for the welfare of his patients. The Committee also found that the Respondent was guilty of willful fabrications. Revoking the Respondent's license would be appropriate based either upon the Respondent's grossly substandard practice or on his fraudulent activity. The fraud and substandard practice together make revocation the only appropriate penalty in this case.

ORDER

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

1. The Review Board **rejects** the Petitioner's motion to dismiss the appeal.

2. The Review Board **sustains** the Hearing Committee on Professional Medical Conduct's September 20, 1994 Determination finding Dr. Young Ho Kwon guilty of professional misconduct.

3. 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.

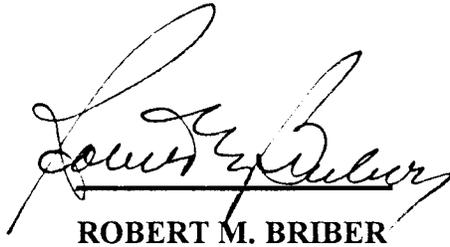
WILLIAM A. STEWART, M.D.

IN THE MATTER OF YOUNG HO KWON, 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. Kwon.

DATED: Albany, New York

12/29, 1994



ROBERT M. BRIBER

IN THE MATTER OF YOUNG HO KWON, 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. Kwon.

DATED: Delmar, New York

Dec. 22, 1994

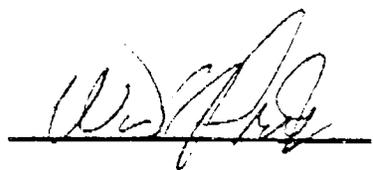

SUMNER SHAPIRO

IN THE MATTER OF YOUNG HO KWON, 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. Kwon.

DATED: Brooklyn, New York

_____, 1994

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

WINSTON S. PRICE, M.D.

IN THE MATTER OF YOUNG HO KWON, 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. Kwon.

DATED: Roslyn, New York

December 23, 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 YOUNG HO KWON, 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. Kwon.

DATED: Syracuse, New York

27 Dec, 1994

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in black ink and is positioned above a horizontal line.

WILLIAM A. STEWART, M.D.