



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Coming 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

OFFICE OF PUBLIC HEALTH
Lloyd F. Novick, M.D., M.P.H.
Director
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Executive Deputy Director

June 2, 1994

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180 Maiden Lane
New York, New York 10038-4996

Ziyad A. Mansur, M.D.
400 Main Street
Oneonta, New York 13820

Sylvia Pastor Finkelstein, Esq.
NYS Dept. of Health
5 Penn Plaza - Sixth Floor
New York, N. Y. 10001

Re: Ziyad Mansur, M.D.

Dear Parties:

The Administrative Review Board for Professional Medical Conduct has issued the enclosed Determination and Order remanding this case to the Original Hearing Committee, for the reasons stated in the Determination.

The Procedures for the Remand are set out in the Determination. Any penalty imposed by the Hearing Committee in this case shall remain stayed during the course of the Remand, through such time as the Administrative Review Board issues a Final Determination in this case.

Sincerely,

Tyrone T. Butler
Director
Bureau of Adjudication

Enclosure

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

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IN THE MATTER	:	<u>ADMINISTRATIVE</u>
	:	<u>REVIEW BOARD</u>
OF	:	<u>REMAND ORDER</u>
ZIYAD MANSUR, M.D.	:	<u>ARB-93-215</u>

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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 April 5, 1994¹ to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) December 31, 1993 Determination finding Dr. Ziyad Mansur guilty of professional misconduct. Both the Office of Professional Medical Conduct (Petitioner) and Dr. Mansur (Respondent) requested the Review through notices which the Board received on January 19, 1994 and January 20, 1994. James F. Horan served as Administrative Officer to the Review Board. Sylvia Pastor Finklestein, Esq. submitted a brief on the Petitioner's behalf on February 4, 1994 and a reply brief on March 4, 1994. Walter P. Loughlin, Esq., and Mark D. Beckett, Esq. submitted a brief on behalf of the Respondent on February 14, 1994 and a reply brief on March 8, 1994.

¹Dr. Sinnott and Dr. Stewart participated in the deliberations by telephone.

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 Dr. Mansur with moral unfitness in the practice of medicine, gross negligence, negligence on more than one occasion, practicing the profession fraudulently, ordering excessive tests or treatments and failure to maintain adequate records. The moral unfitness charge related to the Respondent's actions toward a woman, whom the Petitioner alleged to be the Respondent's student. This Determination will refer to that woman as Student A. The charges alleging gross negligence and negligence on more than one occasion, related to medical

procedures performed on eighteen patients, B through S. The charges alleging practicing the profession fraudulently, ordering excessive tests or treatment and failure to maintain adequate records related to the procedures which the Respondent performed on Patients C through S.

The Hearing Committee did not sustain the moral unfitness charge. The Committee found that the Respondent committed non-consensual sexual conduct, including sodomy, against Student A without her consent. The Committee determined, however, that the Respondent's conduct did not occur in the practice of medicine and that Student A was not the Respondent's student.

The Committee found that the Respondent was guilty of negligence for failure to perform an adequate evaluation of patient B for an ectopic pregnancy and failure to warn Patient B of the possibility of an ectopic pregnancy. The Committee found that the Respondent was not guilty of gross negligence because the evidence did not demonstrate a conscious disregard of the possible consequences and indifference to the patient's rights.

The Committee found that the Respondent was guilty of negligence on more than one occasion, ordering excessive tests and failure to maintain adequate records arising from the Respondent's treatment of Patients C through S. In all these cases the Respondent performed laser vaporization of the patient's cervix.

The Committee found that the Respondent was not guilty of gross negligence in the treatment of Patients C through S, because the evidence did not demonstrate that the Respondent's conduct was egregious or conspicuously bad, or that there was consciousness on the Respondent's part of impending dangerous

consequences.

The Committee found that the Respondent was not guilty of fraud because the evidence did not prove that the Respondent intended to misrepresent or conceal a known fact.

As to penalty, the Committee voted to suspend that Respondent's license partially to prevent the Respondent from treating cervical disease, until the Respondent successfully completes retraining in that area of medical practice. The Committee specified that the retraining should be a Personalized Education Program offered as a post-graduate course by the American College of Obstetricians and Gynecologists, or a retraining program sponsored by the Department of Family Practice at SUNY Syracuse. The Committee provided that upon entering the training program, the Respondent will be on probation for one year, during which time he will not be allowed to practice medicine in the area of cervical disease except as related to his retraining.

REQUESTS FOR REVIEW

Petitioner: The Petitioner has cited three grounds on which the Hearing Committee's Determination is in error.

1. The Petitioner contends that, due to error by the Hearing Committee's Administrative Officer, the Hearing Committee's conclusion that the Respondent was not guilty of moral unfitness was inconsistent with the Committee's Findings of Fact.

2. The Petitioner contends that, due to error by the Hearing Committee's Administrative Officer, the Hearing Committee inappropriately considered consciousness of impending danger as a condition for finding gross negligence.

3. The Petitioner contends that the Hearing Committee's penalty is inappropriate, even as to the conclusions the Committee has made. The Petitioner argues the Committee's findings that the Respondent performed unnecessary surgical procedures is misconduct sufficient to require revocation of the Respondent's license to practice medicine in New York State. The Petitioner argues in addition, that should the Review Board overturn the Hearing Committee's Determination and find the Respondent guilty of moral unfitness, that finding of moral unfitness would require revocation.

Respondent: The Respondent asks the Review Board to vacate Findings of Fact 2-9 and 12-19, which determined that the Respondent had engaged in non-consensual sexual conduct with Student A. The Respondent alleges that these findings were outside the Committee's jurisdiction to make once the Committee determined that Student A was not the Respondent's student and that the conduct did not involve the practice of medicine. The Respondent argues that the Findings 2-9 and 12-19 are, therefore, null and void.

REMAND ORDER

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

The Review Board finds that several portions of the Hearing Committee's Report do not contain specific information or explanations as to why the Committee made some of their Determinations on the charges and their Determination as to the Penalty. The Review Board votes to remand this case to the Hearing Committee for the limited purpose of conducting additional deliberations, during which we direct the Hearing Committee to answer the questions set out below, and issue a Supplemental Determination.

1. In it's Determination concerning the moral unfitness charge, the Committee Determined that student A was not the Respondent's student.

Please discuss that determination in greater detail.

Do Findings of Fact 3, 4, 5, 7, 8, 10, 11, 14, (HCDET. pp. 3-8)² indicate that the Respondent's access to Student A's apartment resulted from the Respondent's agreement to allow Student A to observe the Respondent perform surgical procedures?

²HCDET pp. refers to the page number from the Hearing Committee Determinations.

2. The Committee found that the Respondent did not commit gross negligence in treating Patient's C through S, because the evidence at the hearing did not demonstrate that the Respondent's negligence was egregious or conspicuously bad, or that the Respondent was conscious of the impending dangerous consequences of his act. The Committee found that the Respondent was not guilty of gross negligence in treating Patient B because the evidence did not demonstrate that the Respondent consciously disregarded the possible consequences and was indifferent to the patient's rights.

Was the Respondent's failure to perform an adequate evaluation of Patient B for the possibility of ectopic pregnancy (FF 34, HCDet. pp. 12-13), and/or, the Respondent's failure to warn Patient B of the possibility of ectopic pregnancy (FF 39, HCDet p. 13) negligence that was egregious or conspicuously bad?

Was the Respondent's failure to warn Patient B of the possibility of ectopic pregnancy (FF 39, HCDet p. 13) a conscious disregard of the consequence of the act or indifference to Patient B's rights.

3. The Committee concluded as to Patients C through S, excluding Patient G, that the Respondent had stated in the patients admission records that the Patients were suffering from dysplasia when the Respondent knew that the pathologist had not found dysplasia in the biopsy (FF 74, HCDet p. 19).

Did these statements in the patients' records demonstrate an indifference to each Patient's rights or a conscious disregard of the consequences of this act?

Did these statements demonstrate intent to misrepresent or conceal a known fact?

4. The Hearing Committee suspended the Respondent partially so he may not treat cervical disease (HCDet p. 27).

Is the Committee's penalty limiting the Respondent from treating cervical disease, in fact, limiting the Respondent from any practice as an Obstetrician/Gynecologist during the period of the suspension?

If the Respondent is permitted to practice general medicine during the period of the limited suspension, how is the Penalty to be enforced? Would the Respondent be banned from even performing an examination which could lead to a determination of cervical disease?

5. The Hearing Committee indicated in the first paragraph of its penalty section (HCDet p. 22) that the Respondent will be partially suspended until he completes retraining in investigating, diagnosing and treating cervical disease. In the second paragraph of that section (HCDet pp. 27-28), the Hearing Committee indicated that the Respondent would be on probation for one year but would not be allowed to practice medicine in the area of cervical disease.

How does the one year probation relate to the partial suspension?

REMAND PROCEDURE

The Review Board will set no time limit on this remand. The Committee may meet by telephone conference to conduct deliberations, if they feel that would expedite matters. If the Hearing Committee has questions for the Review Board concerning this Remand Order, the Committee may transmit the questions to the Review Board in writing, by a letter from the Committee's Administrative Officer to our Administrative Officer, with a copy of all such correspondence to the parties. At the end of the deliberations, the Committee should submit their answers to the Review Board in a Supplemental Determination, signed by the Committee Chair. A copy of the Supplemental Determination shall be served on the parties.

Since the information contained in the Supplemental Determination will consist of an addition to the record in this case, each party will have thirty days from their receipt of the Supplemental Determination to submit additional briefs to the Review Board addressing the Hearing Committee's Supplemental Determination.

The Hearing Committee's penalty shall remain stayed during the time of the remand, to the time when the Review Board issues a final determination in this case.

ORDER

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

1. This case is remanded to the Hearing Committee to hold additional deliberations and answer the questions that are set out in this Determination.

2. The Hearing Committee shall issue a Supplemental Determination and serve that Supplemental Determination upon the Review Board and the parties.

3. The Parties shall have thirty days from the receipt of the Supplemental Determination to submit additional briefs to the Review Board, addressing only those issues covered in the Supplemental Determination.

4. The penalty against the Respondent shall remain stayed until the Review Board issues a final Determination in this matter.

ROBERT M. BRIBER

MARYCLAIRE B. SHERWIN

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

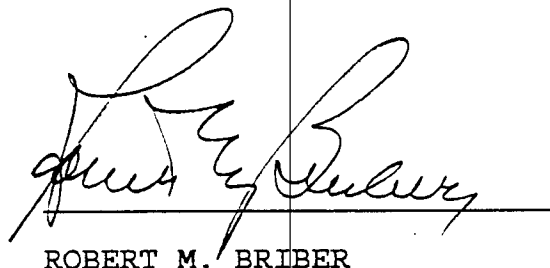
WILLIAM A. STEWART, M.D.

IN THE MATTER OF ZIYAD MANSUR, 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. Mansur.

DATED: Albany, New York

May 2, 1994



A handwritten signature in cursive script, appearing to read "Robert M. Briber", is written over a horizontal line.

ROBERT M. BRIBER

IN THE MATTER OF ZIYAD MANSUR, 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. Mansur.

DATED: Albany, New York

May 17 , 1994

Maryclaire B. Sherwin

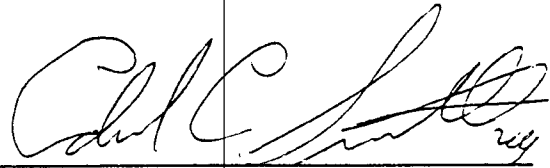
MARYCLAIRE B. SHERWIN

IN THE MATTER OF ZIYAD MANSUR, 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. Mansur.

DATED: Albany, New York

May 26 , 1994

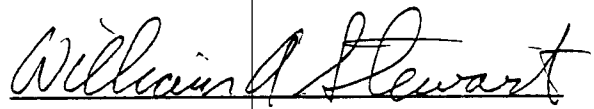
A handwritten signature in cursive script, appearing to read "Edward C. Sinnott", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF ZIYAD MANSUR, 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. Mansur.

DATED: Albany, New York
, 1994

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

WILLIAM A. STEWART, M.D.