



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

June 17, 1996

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David W. Smith, Esq.
NYS Department of Health
5 Penn Plaza-6th Floor
New York, New York 10001

Rachel Danielov, Esq.
63-61 99th Street
Suite #G1
Rego Park, New York 11374

Moshe Mirilashvili, M.D.
90 Woodcrest Drive
Syosset, New York 11791

Effective Date: 06/24/96

RE: In the Matter of Moshe Mirilashvili, M.D.

Dear Mr. Smith, Ms. Danielov and Dr. Mirilashvili:

Enclosed please find the Determination and Order (No.96-12) 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.

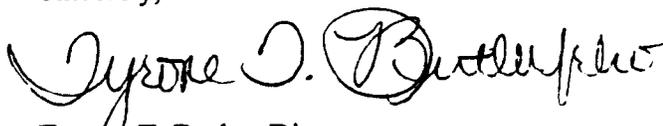
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T" and "B".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw

Enclosure

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

COPY

IN THE MATTER
OF
MOSHE MIRILASHVILLI, M.D.

ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 96-12

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 April 19, 1996 to review the Hearing Committee on Professional Medical conduct's (Hearing Committee) January 26, 1996 Determination finding Dr. Moshe Mirilashvilli (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on February 9, 1996. James F. Horan served as Administrative Officer to the Review Board. **RACHEL D. DANIELOV, ESQ.** filed a brief for the Respondent, which the Review Board received on March 22, 1996. **DAVID W. SMITH, ESQ.** filed a brief for the Office of Professional Medical Conduct (Petitioner), which the Review Board received on March 28, 1996.

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 the Respondent with practicing medicine with negligence on more than one occasion, gross negligence, failure to maintain records and violating a state regulation. The charges arose from the Respondent's treatment of six patients, A through F, from 1990 to 1992 and from a Department of Social Services determination that the Respondent had violated that Department's regulations relating to the Medicaid Program. The Respondent treated all six patients for severe pain. The Hearing Committee sustained all the Specifications of Misconduct.

In the case of Patient A, the Committee found that the Respondent gave the Patient six sciatic nerve blocks, which treated only the Patient's symptoms, but did not address the etiology of her condition. In the case of Patient B, the Committee found that the Respondent gave the Patient a brachial plexus block, although her presenting symptoms indicated her problem was originating in her neck and such treatment would have no effect on the patient's neck. In the case of Patient C, the Committee found that the Respondent gave the Patient thirty-three brachial plexus blocks, although in his initial complaint, the Patient indicated his medical problem originated in his neck and such treatment would have no effect on the condition of the Patient's neck. In the case of Patient D, the Committee found that the Respondent failed to investigate or follow-up the Patient's complaint of numbness in both upper extremities. In the case of Patient E, the Respondent administered sixteen sciatic nerve blocks, which included cortisone injections. The Committee concluded that the patient history and examination did not include enough information about the etiology of the Patient's medical condition to justify the treatment. In the case of Patient F, the Committee found that the Respondent did not follow-up on the Patient's initial complaint and did not follow-up abnormal findings from test results.

The Committee also found that test results for Patient F indicated that the Patient's problem was not located in the sciatic nerve, but that, nevertheless, the Respondent gave the Patient sciatic nerve blocks. The Committee also found that the Respondent was expelled from participation in the Medicaid Program for five years for committing fraud, in violation of New York State regulations.

In reaching their findings, the Committee relied on testimony by the Petitioner's expert witness Dr. Ramesh H. Gidumal, who testified that the Respondent's treatment to Patients A through F did not meet acceptable standards of medical care. The Committee found that the testimony by the Respondent's own expert witness, Dr. Subrananian E. Khanthan, identified many instances in which the Respondent's medical practice was lacking. Dr. Khanthan testified that he would not have provided the same treatment as the Respondent. The Committee found that the Respondent's records were of such poor quality that Dr. Khanthan could not testify as to what treatment the Respondent had provided.

The Committee concluded that the Respondent's pattern of practice could not identify clinical entities and did not collect enough historical and analytical data to support a diagnosis. The Committee concluded that the Respondent only treated symptoms and never sought nor treated causes. The Respondent's own expert testified that a major reason for the poor care which the Respondent provided was that the Respondent did not spend enough time with Patients A through F, because they were on Medicaid and the low rate of Medicaid reimbursement necessitated a high volume practice. The Committee noted that they did not draw a negative inference from the Respondent's failure to testify at the hearing. The Committee also noted that the Respondent was informed before the hearing that he had the right to be represented by an attorney and the Committee's Chair and Administrative Officer advised the Respondent that it would be in his best interest to obtain such representation.

The Hearing Committee voted to revoke the Respondent's license to practice in New York State. The Committee stated that the Respondent placed his patients at risk by inappropriately administering nerve blocks and failing to diagnose his patients before administering potentially dangerous treatment. The Committee also stated that the Respondent had forfeited his right to the public trust placed in the medical profession, by the manner in which the Respondent conducted his medical practice.

REQUESTS FOR REVIEW

The Respondent's brief raises three issues concerning the Hearing Committee's Determination. The Respondent contends that:

- the Respondent's treatment for Patients A through F does not constitute negligence or gross negligence;
- the Respondent did not fail to maintain adequate records; and
- revocation was not commensurate with the Hearing Committee's findings.

The Respondent also notes that he had to proceed without counsel at the first hearing day and was unable to cross-examine the Petitioner's expert in an adequate fashion. The Respondent also faulted the Petitioner's counsel for asking the Hearing Committee to draw an adverse inference from the Respondent's failure to testify.

The Petitioner urges the Review Board to sustain the Hearing Committee's Determination, because the Committee found substandard medicine and negligence in regard to all patients and gross negligence in regard to four [sic]. The Petitioner notes that the Committee also found that the Respondent had been expelled from the Medicaid Program for five years. The Petitioner contends that the Committee's conclusions support revocation as the appropriate penalty.

REVIEW BOARD DETERMINATION

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

First, the Review Board notes that the Respondent had adequate notice of the date of his hearing and that the Respondent had an adequate opportunity to obtain counsel in a timely manner. It was the Respondent's own fault that he did not have counsel for the first hearing day and his fault that there was no one to conduct an adequate cross-examination of the Petitioner's expert. Also, we

note that the Hearing Committee did not draw an adverse inference from the Respondent's failure to testify, so that the Petitioner's counsel's request that the Committee draw such an inference obviously did not affect the Committee's Determination.

The Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty of professional misconduct. The Committee's Determination is consistent with their findings of fact and with the evidence from the record, including the testimony by the Petitioner's expert, that the Respondent's treatment for Patients A through F failed to meet acceptable standards. The Respondent did not contest the Committee's finding that he violated a State Regulation, based on the Respondent being expelled from the Medicaid Program for committing fraud.

The Board rejects the Respondent's contention that there was no proof that the Respondent was guilty of gross negligence or negligence on more than one occasion and the Board rejects the Respondent's assertion that Dr. Khanthan's testimony established that there were acceptable alternative methods to provide treatment to Patients A through F. The Hearing Committee, as finder of fact, can and did determine that one expert's testimony was more credible as to the proper standard of care. In assessing the testimony by the Respondent's expert, the Committee noted that the Respondent's expert often stated that the Respondent's medical practice was lacking and the expert stated he would not provide the same treatment as the Respondent. In some instances the Respondent's expert could not testify as what treatment the Respondent actually provided because the Respondent's records were of such poor quality. The testimony by the Petitioner's expert Dr. Gidumal established that the Respondent's treatment for Patients A through F constituted negligence on more than one occasion, and gross negligence in the cases of Patients A, C, D, E and F.

The Review Board rejects the Respondent's contention that the Respondent maintains adequate medical records. The Respondent's own expert was unable to testify as to care which the Respondent provided in some cases, due to the poor quality of the Respondent's records. The Board finds no validity in the assertion that the Respondent had to streamline his charting due to the demands of his practice or in the assertion that the Hearing Committee could not compare record keeping between a physician who sees only insured patients and a physician who sees a large number of Medicaid patients. The basic standard for physician record keeping is that a record should reflect the condition

and treatment of the patient, so that the record would be sufficient to inform a subsequent treating physician about the patient's history and treatment by the Respondent. The Respondent's expert's testimony establishes that the Respondent's record keeping did not satisfy that standard. Further, the standard for record keeping does not vary depending on the economic circumstances of the patients, just as the standard of care does not vary due to the patient's economic circumstances.

The Review Board votes unanimously to sustain the Hearing Committee's Determination revoking the Respondent's license to practice medicine in New York State. That Determination is consistent with the Committee's findings and conclusions in this case and the penalty is appropriate to protect the public from the Respondent's repeated substandard care. Based on the evidence in this case, the Committee was justified in finding that the Respondent placed his patients at risk. The Respondent's fraudulent conduct in filing false claims with the Medicaid Program would, standing alone, warrant the revocation of the Respondent's license to practice medicine. The Respondent's gross negligence, in placing his patients at risk, by inappropriately administering nerve blocks, would standing alone, also warrant the revocation of the Respondent's license. The Respondent's fraudulent and grossly negligent practice demonstrate that the Respondent lacks the skill and care and the integrity that are necessary to the practice of medicine.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee on Professional Medical Conduct's January 26, 1996 Determination finding the Respondent, **MOSHE MIRILASHVILLI**, 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.

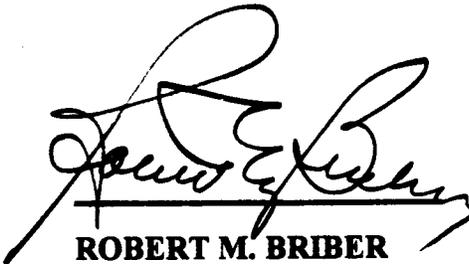
WILLIAM A. STEWART, M.D.

IN THE MATTER OF MOSHE MIRILASHVILLI, 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. Mirilashvili.

DATED: Schenectady, New York

June 7, 1996

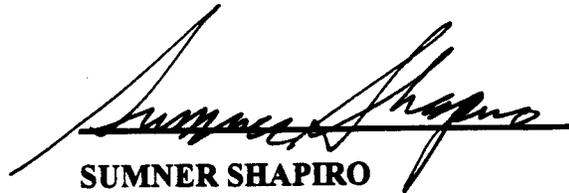

ROBERT M. BRIBER

IN THE MATTER OF MOSHE MIRILASHVILLI, 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. Mirilashvilli.

DATED: Delmar, New York

June 7, 1996


SUMNER SHAPIRO

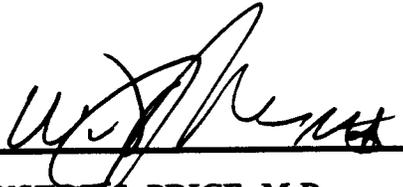
IN THE MATTER OF MOSHE MIRILASHVILLI, M.D.

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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. Mirilashvilli.

DATED: Brooklyn, New York

JUNE 7, 1996



WINSTON S. PRICE, M.D.

IN THE MATTER OF MOSHE MIRILASHVILLI, 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. Mirilashvilli.

DATED: Roslyn, New York

June 7, 1996

A handwritten signature in black ink, appearing to read "Edward C. Sinnott", with the year "1996" written at the end of the signature.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF MOSHE MIRILASHVILLI, 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 Mirilashvilli.

DATED: Syracuse, New York

7 June, 1996



WILLIAM A. STEWART, M.D.