



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

October 6, 1995

RECEIVED

OCT 10 1995

OFFICE OF
MEDICAL CONDUCT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hei Young Oh, M.D.
789 Walt Whitman Road
Melville, New York 11747

John Kase, Esq.
Kase & Druker
1325 Franklin Avenue
Garden City, New York 11530

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

RE: In the Matter of Hei Young Oh, M.D.

Effective Date: 10/13/95

Dear Dr. Oh, Mr. Kase and Mr. Smith:

Enclosed please find the Determination and Order (No. 95-151) 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.

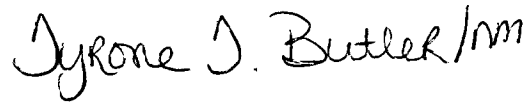
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

IN THE MATTER
 OF
 HEI YOUNG OH, M.D.

ADMINISTRATIVE
 REVIEW BOARD
 DECISION AND
 ORDER NUMBER
 ARB NO. 95-151

A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.**¹ held deliberations on September 22, 1995 to review the Hearing Committee on Professional Medical Conduct's July 19, 1995 Determination finding Dr. Hei Young Oh (Respondent) guilty of professional misconduct. The Respondent requested the review through a Notice which the Board received on August 4, 1995. James F. Horan served as Administrative Officer to the Review Board. John Laurence Kase and Paula Schwartz Frome submitted a brief for the Respondent which the Review Board received on September 11, 1995. David W. Smith, Esq. submitted a brief for the Office of Professional Medical Conduct (Petitioner), which the Review Board received on September 14, 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. Winston Price did not participate in the deliberations in this case.
 Dr. William Stewart participated in the deliberations by telephone.

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 negligence one more than one occasion, failing to maintain adequate records and violating Public Health Law Article 33. Article 33 deals with prescribing controlled substances. The negligence and records charges arose from the treatment which the Respondent provided to five (5) patients whom the record refers to as "A" through "E".

The Hearing Committee sustained all three (3) charges. The Committee found that the Respondent had violated Public Health Law Article 33 based upon a September 2, 1994 stipulation in which the Respondent admitted prescribing controlled substances in a manner inconsistent with the provisions of Article 33 and with failing to maintain proper patient records.

The Committee found that the Respondent had failed to maintain adequate records. In addition to the Stipulation in which the Respondent admitted to failing to maintain proper records, the Hearing Committee found that the Respondent failed to maintain a record which accurately reflected the evaluation and treatment of each Patient, A through E.

The Hearing Committee found that the Respondent was negligent in his treatment of all five (5) patients, A through E. In each of the cases, the Committee found that the Respondent did not obtain an adequate medical history or perform an adequate physical examination and in each case the Committee found that the Respondent failed to meet acceptable medical standards in treating Patients A through E. The Committee also found in each case, that the Respondent repeatedly prescribed medication without justification and in excessive amounts. In the case of Patient A, during the eleven (11) months the Respondent treated Patient A, he gave her 47 prescriptions for controlled substances, including Percocet and Valium totalling about 2,400 pills. In the case of Patient B, during a nine month period, the Respondent gave Patient B 32 prescriptions for various narcotics including

Hycodan. These prescriptions totalled approximately 256 ounces of liquid narcotics. In the case of Patient C, the Committee found that during 33 months of treatment the Respondent gave Patient C 56 prescriptions resulting in a total of about 5,400 pills. In the case of Patient D, the Committee found that during 19 months of treatment the Respondent gave Patient D 21 prescriptions totalling approximately 2, 100 pills. In the case of Patient E, the Committee found that during 19 months of treatment, the Respondent gave Patient E 79 prescriptions resulting in over 7,000 pills. The Committee found that the Respondent diagnosed Patient C with migraine headaches without any laboratory workups, tests or physical examinations and repeatedly prescribed Tylenol with Codeine without proper justification. The Committee found that in the case of Patient D, the Respondent made an unsupported diagnosis of migraine headaches and repeatedly prescribed Tylenol with Codeine without justification. The Committee found that in the case of Patient E, the Respondent made an unsupported diagnosis of Patient E ranging from headache to neck pain. The Committee found that the in treatment of Patients B and E the Respondent continued to prescribe narcotics for those patients even though the Respondent knew that these patients were addicted to the narcotics.

The Committee concluded that the Respondent failed to demonstrate any competence in the practice of medicine, nor any understanding of the principals of the practice of medicine beyond the mechanics of prescribing and billing. The Committee found that the Respondent failed to demonstrate a single instance of having utilized his training in general medicine, internal medicine or radiology to the benefit of any patient whose chart was examined. The Committee found that the Respondent had admitted to making no effort at continuing education in the recent years of his practice. The Committee noted that while the Respondent's attorney suggested that the Respondent's lack of proficiency in English was the cause of his problem, the Committee found that the Respondent's vocabulary and understanding of English was above the threshold of competence in English. The Committee concluded that the Respondent's ignorance of the language was not an issue, but rather that his ignorance of medicine was well documented. The Committee concluded that the credible

evidence indicated that the Respondent does not possess the necessary skills and ability to practice medicine, and that there was no indication that the Respondent had the necessary insight, motivation or ability to make him a candidate for retraining. The Committee voted to revoke the Respondent's license to practice medicine in New York State.

REQUESTS FOR REVIEW

The Respondent contends that the Hearing Committee's penalty is excessively harsh and has requested that the Review Board substitute a penalty imposing a period of probation with retraining. The Respondent's brief notes that the Respondent has ceased to prescribe medication on Article 33 triplicate prescriptions since the 1993 visit to his office by Department of Health Investigators. The Respondent contends that the findings of the Hearing Committee are harsh and should be overturned. The Respondent contends that the record indicates that Dr. Oh is a good candidate for retraining. The Respondent contends that the Committee had no ground for their finding that the Respondent was evasive concerning his tenure at Deepdale Hospital and the Respondent contends that any portion of penalty that is based on dissatisfaction with the Respondent's answers concerning Deepdale Hospital are improper. The Respondent argues that he is a competent and caring physician who acted in a misguided attempt to assist his patients. The Respondent also contends that the Committee based their findings on competence on the Respondent's difficulty with the English language. The Respondent contends that his isolation from his colleagues is the root of his difficulties and contends further that additional training and probation will cure those difficulties.

The Petitioner contends that the Respondent's misconduct did not result from innocence or inexperience. The Petitioner contends that the amount of drugs involved in this case was monumental and that the Respondent knew that Patients B and E were addicts. The Petitioner contends that the Respondent's license was revoked based upon evidence of the Respondent's seriously substandard practice. The Petitioner contends that the Respondent is not a candidate for retraining and that the continued and excessive prescribing of drugs for no apparent medical reason belies any desire the Respondent may profess for retraining.

REVIEW BOARD DETERMINATION

The Review Board has considered the 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 violating Public Health Law Article 33, failing to maintain adequate records, and negligence on more than one occasion. The Committee's Determination on the charges is consistent with their Findings of Fact and Conclusions that the Respondent entered into a Stipulation with the Department of Health in which he admitted to prescribing controlled substances in a manner inconsistent with the provisions of Article 33. The Determination is also consistent with the Committee's findings that the Respondent failed to maintain proper patient records and failed to maintain records which accurately reflected the evaluation and treatment of all the patients, A through E. The Determination is also consistent with the Committee's Determination that in the treatment of Patients A through E the Respondent failed to meet acceptable medical standards in treating those Patients. Specifically, the Committee's Determination is consistent with their findings that the Respondent, in each of the cases, had prescribed medication without justification and in excessive amounts. In the most blatant cases, the Respondent continued to prescribe narcotics for Patients B and E, even though the Respondent knew that these Patients were addicted to the narcotics.

The Review Board finds that the Committee's Determinations are supported by the Record and we reject the contention by the Respondent that the Committee's Determination on negligence was based upon the Respondent's difficulties with the English language or upon the Committee's statement that the Respondent was evasive in his answers concerning his tenure at Deepdale Hospital.

The Review Board votes 4-0 to sustain the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State. The Committee's Determination is consistent with their findings and conclusions and the penalty of revocation is appropriate in this case.

The evidence before the Hearing Committee demonstrates a pattern of practice in which the Respondent prescribed controlled substances in excessive amounts without proper indication and in two cases for people who were addicted to the substances. This pattern of practice constitutes a danger to the Respondent's patients.

The Review Board finds no evidence in this Record to demonstrate that the Respondent is a candidate for retraining. The Hearing Committee noted in their conclusion that the Respondent has failed to make any effort at Continuing Education in recent years of his practice. As the Committee indicated, the Respondent's practice consists of prescribing drugs and billing. The Respondent admitted that he was aware that Patients B and E were addicts, yet the Respondent continued to provide prescriptions to Patient B and E for the narcotics to which those Patients were addicted. The Record demonstrates that the Respondent abandoned the proper practice of medicine and instead sold prescriptions for controlled substances. The only way to correct such a pattern of misconduct and to assure the public's ongoing protection is to revoke the Respondent's license to practice medicine in New York State.

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 July 19, 1995 Determination finding the Respondent of guilty of professional misconduct.
2. The Review Board **SUSTAINS** the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State.

ROBERT M. BRIBER

SUMNER SHAPIRO

EDWARD SINNOTT, M.D.

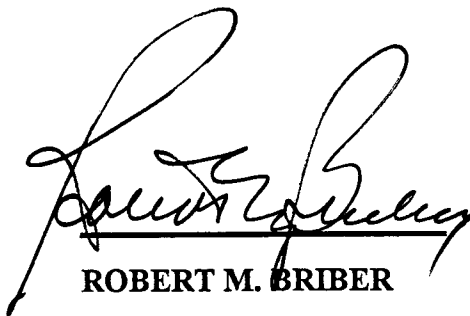
WILLIAM A. STEWART, M.D.

IN THE MATTER OF HEI YOUNG OH, 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. Oh.

DATED: Albany, New York

10/4, 1995



ROBERT M. BRIBER

IN THE MATTER OF HEI YOUNG OH, 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. Oh.

DATED: Syracuse, New York

2 Oct., 1995



WILLIAM A. STEWART, M.D.