



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

May 12, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Prabha Prakash, M.D. Geroge Weinbaum, Esq.
30 Lake Street - Apartment 7J 3 Barker Avenue
White Plains, New York 10603-4002 White Plains, New York 10601

Marcia Kaplan, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

RE: In the Matter of Prabha Prakash, M.D.

Dear Dr. Prakash, Mr. Weinbaum and Ms. Kaplan:

Enclosed please find the Determination and Order (No. ARB-93-18) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

RECEIVED

MAY 21 1993

**OFFICE OF PROFESSIONAL
MEDICAL CONDUCT**

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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Very truly yours,

Tyrone T. Butler, nam

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

bcc: Dr. Vacanti
Mr. Briber
Mr. Millock
Mr. Osten
Ms. Tanner
Ms. Bohenek
Ms. Schottenfeld
Mr. Horan
SAPA File
Case File
ARB Decision Binder
Horan Reading File

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

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IN THE MATTER : ADMINISTRATIVE
OF : REVIEW BOARD
PRABHA PRAKASH, M.D. : DETERMINATION
: AND ORDER
: ARB NO.93-18

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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 May 3, 1993 to review the Professional Medical Conduct Hearing Committee's (hereinafter the "Hearing Committee") February 5, 1993 Determination to censure and reprimand Dr. Prabha Prakash for Professional Misconduct. The Office of Professional Medical Conduct (OPMC) requested the review through a Notice of Review which the Review Board received on February 24, 1993. **James F. Horan, Esq.** served as Administrative Officer to the Review Board. Marcia E. Kaplan, Esq. submitted a brief on behalf of OPMC on March 9, 1993. George Weinbaum, Esq. submitted a brief on behalf of Dr. Prakash on March 17, 1993.

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 Office of Professional Medical Conduct brought this proceeding against Dr. Prakash pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9), which provide an expedited hearing in cases in which professional misconduct charges against a physician 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. 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 determined that the Respondent had committed misconduct based upon the Respondent's February 6, 1992 guilty plea in Westchester County Court to the charge of offering a false instrument for filing in the second degree, a Class A Misdemeanor. The Respondent's misconduct

involved submitting claims to the Medicaid System and its fiscal agent for payment for care which the Respondent had not provided. The County Court sentenced the Respondent to a one year conditional discharge and ordered that the Respondent pay restitution to New York State amounting to Eight Thousand Two Hundred Thirty-Eight (\$8,238.00) Dollars.

As a penalty, the Hearing Committee voted to censure and reprimand Dr. Prakash. The Hearing Committee found the Respondent's conduct to be reprehensible, but also found several mitigating factors in this case. The Respondent was remorseful and stated that she had never completely read the Department of Social Services Manual explaining billing codes. The Respondent also made full restitution to New York State. The Hearing Committee found that the Respondent never billed her patients for services which she did not perform and did not pose a health risk to the public at large. The Hearing Committee also found as a mitigating factor that the Respondent no longer is engaged in private practice and that the County Court believed that the Respondent was truly sorry for her actions. After considering all the mitigating factors, the Hearing Committee felt that a censure and reprimand was an appropriate penalty.

REQUESTS FOR REVIEW

The Office of Professional Medical Conduct does not feel that the Hearing Committee's penalty adequately addresses the Respondent's misconduct and asks that the Review Board suspend the

Respondent's license for one year, stayed, place the Respondent on one year's probation and require the Respondent to perform 100 hours of community service. OPMC contends that the Respondent's crime was a calculated fraud directly related to her practice of medicine and an abuse of the Respondent's license for profit. The Office of Professional Medical Conduct argues that their proposed penalty would serve to require the Respondent to repay the community for her misconduct.

The Respondent contends that the Hearing Committee's censure and reprimand penalty are sufficient punishment in this case in conjunction with the adverse publicity of the Respondent's criminal prosecution, court ordered restitution and record of criminal conviction.

REVIEW BOARD DETERMINATION

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

The Review Board sustains the Hearing Committee's Determination and Order sustaining the charges of professional misconduct.

We vote unanimously to overturn the Hearing Committee's Determination to censure and reprimand the Respondent. That penalty is not consistent with the Hearing Committee's finding that the Respondent was convicted of submitting claims to the Medicaid Program for services which the Respondent did not perform. We believe a censure and reprimand alone is not an

appropriate penalty for the Respondent's breach of the public trust, which Hearing Committee found to be reprehensible.

Since the Hearing Committee made no finding that the Respondent provided poor medical care or constituted a threat to the public, we see no need to suspend or monitor the Respondent's practice or to order that the Respondent undergo retraining. The Respondent does, however, owe a debt to the public for her breach of the public trust. We do not believe that restitution is a sufficient penalty for the Respondent's conduct, since restitution involves merely returning money to which the Respondent was not entitled.

For the reasons stated above, we order that the Respondent perform 100 hours of community service. The nature of the community service shall be subject to the approval of the Director of the Office of Professional Medical Conduct. We believe that the 100 hours of community service will repay the Respondent's debt to the public and will help deter such misconduct by the Respondent and other physicians in the future.

ORDER

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

1. The February 5, 1993 Determination and Order of the Hearing Committee on Professional Medical Conduct finding Dr. Prabha Prakash guilty of professional misconduct is **sustained**.
2. The Hearing Committee's censure and reprimand penalty is **overturned**. The Respondent shall instead complete 100 hours of community service.

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

MARYCLAIRE B. SHERWIN

EDWARD C. SINNOTT, M.D.

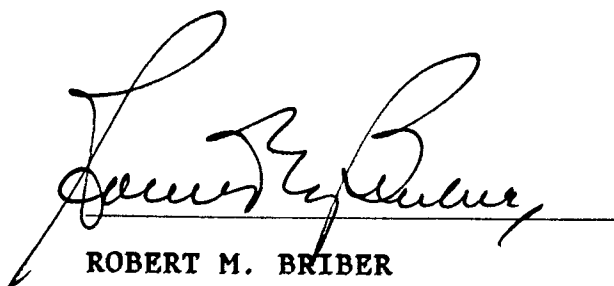
WILLIAM A. STEWART, M.D.

IN THE MATTER OF PRABHA PRAKASH, 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. Prakash.

DATED: Albany, New York

May³, 1993



ROBERT M. BRIBER

IN THE MATTER OF PRABHA PRAKASH, M.D.

WINSTON S. PRICE, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the result in the Determination and Order in the Matter of Dr. Prakash.

DATED: Brooklyn, New York

May 3, 1993

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 PRABHA PRAKASH, 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. Prakash.

DATED: Albany, New York

May 3, 1993

Maryclaire B. Sherwin
MARYCLAIRE B. SHERWIN

IN THE MATTER OF PRABHA PRAKASH, 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. Prakash.

DATED: Albany, New York

May 3, 1993

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 PRABHA PRAKASH, 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. Prakash.

DATED: Albany, New York

May 3, 1993

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

WILLIAM A. STEWART, M.D.