



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

March 21, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

E. Marta Sachey, Esq.
NYS Dept. of Health
Rm. 2429 Corning Tower
Albany, New York 12237

Alan Lambert, Esq.
Lifshutz, Polland & Associates, P.C.
675 Third Avenue, Suite 2400
New York, New York 10017

Fidel R. Ramos, M.D.
306 East Main Street
Westfield, New York 14787-1127

Effective Date March 28, 1996

RE: In the Matter of Fidel R. Ramos, M.D.

Dear Ms. Sachey, Mr. Lambert and Dr. Ramos:

Enclosed please find the Determination and Order (No. 95-304) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. The 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.

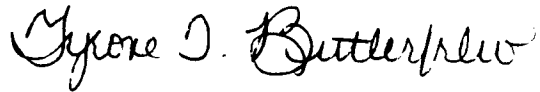
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

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
FIDEL RAMOS, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 95-304**

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 February 16, 1996 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) December 14, 1995 Determination finding Dr. Fidel R. Ramos, (Respondent) guilty of professional misconduct. The Respondent requested the Review through a Notice which the Board received on December 22, 1995. James F. Horan served as Administrative Officer to the Review Board. Alan Lambert, Esq. filed a brief for the Respondent, which the Review Board received on January 26, 1996. E. Marta Sachey, Esq. filed a brief for the Office of Professional Medical Conduct (Petitioner), which the Review Board received on January 29, 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 gross negligence, gross incompetence, negligence on more than one occasion, incompetence on more than one occasion, fraud, moral unfitness and failure to maintain adequate records. The charges arose from the care which the Respondent provided to twelve persons, Patient A through L. The Petitioner began this proceeding by serving a Summary Order, from the Commissioner of Health, upon the Respondent, suspending the Respondent's continued practice of medicine, based on the Commissioner's finding that the Respondent's continued practice presented an imminent danger to the health of the people of New York State.

After hearing testimony, the Hearing Committee recommended that that Summary Order continue in effect. The Commissioner of Health issued an Interim Order on July 7, 1995, determining that the Summary Order shall remain in effect pending the final resolution in this case. The Hearing Committee issued their Determination on the Petitioner's charges on December 14, 1995.

The Committee sustained all specifications of charges. The Committee found that the Respondent was guilty of moral unfitness relating to his treatment for Patient A, fraud involving his treatment for Patients A and C, gross negligence and gross incompetence in treating Patients A through D, F through H and J through L, and negligence on more than one occasion, incompetence on more than one occasion and failing to maintain adequate records for all Patients, A through L.

The Committee found that the Respondent was guilty of fraud and moral unfitness for knowingly altering Patient A's medical record and for attempting to mislead the Office of Professional Medical Conduct regarding his alteration of the record. The Committee also found the Respondent guilty of fraud for making false entries in Patient C's records.

The Committee found that the Respondent was guilty of negligence and incompetence on more than one occasion in the care of each Patient, A through L. The Committee found that the Respondent's substandard care rose to the levels of gross negligence and gross incompetence in the care for Patients A through D, F through H and J through L. The Committee found that each of the twelve patient cases represented problems that a physician would find commonly in a rural practice, such as the Respondent's. The Committee concluded that the Respondent failed to meet even minimal standards with regard to proper management. The Committee concluded that the Respondent failed to obtain and document adequate histories and physical examinations for Patients C through L. The Committee concluded that the Respondent's records clearly demonstrated that he provided no continuity in care to his patients. The Committee concluded that the Respondent employed drug therapies in a scatter shot approach and that he did not perform laboratory cultures which might have made it possible for the Respondent to make a reasoned decision as to the appropriate drug for specific circumstances.

The Committee determined that the Respondent maintained inadequate medical records for all Patients A through L. The Committee found that the Respondent repeatedly failed to document histories and physical examinations and that descriptions of patient complaints were sketchy.

The Committee made their findings based on testimony by the Petitioner's experts Drs. Antkovich and Gutierrez, whom the Committee found to be credible and well qualified experts. The Committee noted that they also gave credence to testimony by the Petitioner's witnesses, especially Patient C. The Hearing Committee stated that they did not find testimony by the Respondent's witnesses, Drs. Foote and Dr. Heibel, to be persuasive. The Committee concluded that the Respondent's testimony was not credible, that his recollection of events was selective and that his testimony regarding undocumented facts strained all reason and frequently was contradicted by other extrinsic evidence.

The Committee stated that they were extremely troubled by the lack of fundamental medical knowledge demonstrated by the Respondent's treatment of Patients A through L. The Committee concluded that the Respondent could not handle common problems encountered by a primary care physician, that the Respondent's diagnostic and therapeutic skills were grossly substandard and that the Respondent failed to provide any meaningful continuity of care.

The Committee determined that the Respondent is unable or unwilling to conform to the applicable standards of the profession. The Committee also expressed concern over the Respondent's lack of veracity and his unethical behavior. The Committee found that the Respondent's deficiencies related to every aspect of medicine and that the deficiencies were so great that rehabilitation through retraining was not possible. The Committee concluded that the only sanction which would adequately protect the public was revocation.

REQUESTS FOR REVIEW

RESPONDENT: The Respondent has asked that the Review Board annul the Committee's Determination revoking the Respondent's license and that the Review Board order a new hearing with a new Administrative Officer and Hearing Committee. In the alternative, the Respondent asks that, if the Review Board will not order a new hearing, that the Review Board remand to the original Hearing Committee, so that the Committee can review new exhibits, consider the Respondent's proposed findings of fact, and render a Determination allowing the Respondent to practice general surgery, while he retrains for primary care medicine.

The Respondent raised five issues in contesting the Hearing Committee's Determination.

POINT I. The Respondent argues that he was denied his statutory rights with respect to an interview prior to convening a Hearing Committee, because the Respondent was not advised that he had the right to have an attorney at the interview.

POINT II. The Respondent argues that the Board for Professional Medical Conduct failed to make a record of a critical part of a hearing.

POINT III. The Respondent argues that the Committee disregarded inconsistencies in the Petitioner's evidence, relied upon unsubstantiated evidence in finding that the Petitioner had sustained the allegations of misconduct by a preponderance of the evidence.

POINT IV. The Respondent argues that the Hearing Committee's Administrative Officer improperly closed the hearing record to certain evidence which the Respondent sought to introduce.

POINT V. Finally, the Respondent argues that, even assuming that the Committee's findings are valid, the penalty of revocation is disproportionate to the Committee's findings.

PETITIONER: The Petitioner has asked that the Review Board sustain the Committee's Determination on the Specifications of Misconduct and that the Board sustain the Committee's Determination revoking the Respondent's license to practice medicine in New York State.

The Petitioner argues that the cases reviewed in this proceeding represented the problems encountered in a rural care primary practice, and that in these cases the Committee concluded that the Respondent repeatedly failed to meet even minimal standards of care. The Petitioner notes that the Committee concluded that the Respondent's explanations of his patient care demonstrated flawed medical judgment and a lack of basic knowledge. The Petitioner notes further that the Committee found that the Respondent made an after-the-fact addition to a patient's hospital record and lied about that in his interview with the Office of Professional Medical Conduct, and that the Respondent made entries in office records for a patient regarding medical advice, which the Respondent had not given.

The Petitioner contends that the magnitude of the Respondent's failures and deficiencies, which concern every aspect of his medical practice, demonstrate that revocation is the only penalty which would protect the public in this case.

PRE-HEARING CONFERENCE TRANSCRIPT: In reply to the Respondent's brief, the Petitioner noted that a transcript had been prepared of a pre-hearing conference, contrary to an assertion at Point II of the Respondent's brief. In a response letter, the Respondent withdrew his assertion put forth in Point II of his brief.

REVIEW BOARD DETERMINATION

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

The Review Board votes 5-0 to sustain the Hearing Committee's Determination finding the Respondent guilty of all specifications of misconduct. The Committee's Determination on the specifications is consistent with the Committee's findings and conclusions and the Committee's findings are supported by the record.

The Review Board rejects the Respondent's request for a new hearing, in front of a new Committee and a new Administrative Officer. The Review Board may remand a hearing, but we interpret out remand authority to mean that we can remand to the original hearing committee only¹. The Review Board finds no reason to remand this case to the original Hearing Committee. The Review Board will not consider the Respondent's Point I, concerning the conduct of the Respondent's interview, because the issue of whether or not the interview was conducted properly is a legal matter for the courts to resolve. The Review Board rejects the Respondent's contention in his Point IV, that the Hearing Committee's Administrative Officer acted improperly by refusing to allow the Respondent to submit documents to the Hearing Committee, in written summations, which were not part of the Hearing record. The Committee and their Administrative Officer control the admission of evidence at a hearing. The Respondent was represented by counsel at the hearing and had the opportunity to submit documents into evidence. The Respondent may not later try to place documents before the Committee during summations which were not in the record Classic Pools, Inc. v. New York State Tax Commission, 90 AD2d 621, 456 NYS2d 230 (Third Dept. 1982). We reject the Respondent's contention that the hearing rules for Physician Disciplinary cases would permit the submission of new evidence following the close of a hearing and we reject the Respondent's attempt to reclassify a full hearing as merely "oral argument".

¹Public Health Law §230-c(4)(b) (McKinney's Supp. 1995).

In his Point III the Respondent argued that the Hearing Committee disregarded inconsistencies in the Petitioner's evidence and relied upon unsubstantiated evidence. The Respondent also argued that the Hearing Committee failed to consider the evidence and proposed findings which the Respondent offered and that, therefore, the Committee could not assert that their findings were by a preponderance of the evidence. The Review Board rejects these arguments by the Respondent. The job for the Review Board in this matter is to determine whether the evidence, which the Hearing Committee cites, support their findings and conclusions and whether those findings and conclusions are consistent with the Committee's Determination finding the Respondent guilty of misconduct. The Hearing Committee, as finder of fact, has the job to weigh the evidence and choose among conflicting testimony or evidence. It is not error for the Hearing Committee to find testimony by one witness to be more credible than conflicting evidence from another witness.

In the Respondent's case, the Hearing Committee found that the Petitioner's experts, Drs. Antkowich and Gutierrez were well qualified by experience and education to evaluate the Respondent's care of the patients, whose cases were at issue in this hearing. The Committee rejected the testimony by the Respondent's experts Drs. Foote and Heibel. The Committee also determined that the Respondent was not credible and also that the Respondent's explanations of his patient care showed flawed medical judgement and lack of basic medical knowledge. The Committee's discussion of the conflicting testimony at pages 89-91 of their Determination demonstrates clearly that the Committee considered the conflicting evidence. The Committee's conclusion, to credit the testimony by Drs. Antkowich and Gutierrez and to reject testimony by Drs. Foote and Heibel and by the Respondent, was within the Committee's authority as finder of fact.

The Committee's findings that the Respondent knowingly altered Patient A's medical record, that the Respondent attempted to mislead the Office of Professional Medical Conduct about the alteration, and that the Respondent made fraudulent statements on Patient C's record support the Committee's Determination that the Respondent was guilty of fraud in practicing medicine. The Committee's finding concerning the Respondent's alteration of Patient A's record and the attempt to mislead the Office of Professional Medical Conduct support the finding that the Respondent was guilty of moral unfitness in practicing medicine.

The Review Board finds that the Hearing Committee's extensive findings of fact and conclusions are consistent with and support the Committee's Determination that the Respondent was guilty of negligence on more than one occasion and incompetence on more than one occasion in his care to all the Patients A through L and that the Respondent was guilty of gross negligence and gross incompetence in treating Patients A through D, F through H and J through L. The Board finds that the Respondent's challenges to these findings were merely an attempt to relitigate the issues.

The Review Board votes 5-0 to sustain the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State. That penalty is consistent with the Committee's findings concerning the Respondent's fraudulent conduct and their extensive findings concerning the Respondent's repeated and in some cases egregious negligence and incompetence. The Respondent's fraudulent acts alone would warrant the revocation of his license. The Respondent's repeated and egregious acts of negligence and incompetence, standing apart from the Respondent's fraudulent conduct, would also warrant the revocation of the Respondent's license. The Review Board finds no mitigating factors in the Respondent's case. We agree with the Hearing Committee that the Respondent is not a candidate for retraining, and, we find that we can not adequately protect the public by limiting the Respondent's license.

The Respondent's Point V in his brief argued that, even if the Hearing Committee's findings of fact were valid, that the revocation of the Respondent's license was disproportionate, arbitrary and capricious. The Respondent argues that precedent would allow the Respondent to continue practicing in one area, with a license to prohibit practice in that specialty in which the Respondent's care proved unacceptable. The Respondent contends that the charges against him relate to primary care and that no allegations relate to his performance as a general surgeon. The Respondent also contends that the intent of Public Health Law §230² encourages rehabilitation and retraining over revocation. The Respondent asks that the Board remand this case to the Hearing Committee, so they can reconsider the penalty in light of facts that, the Respondent contends, indicate that the Respondent can safely practice general surgery.

²Chapter 606, Law of 1991.

The Review Board rejects the Respondent's contention that he is fit to practice general surgery. We disagree with the Respondent's contention that the issues in this case relate to general medicine only and not to general surgery. The Respondent provided surgical care to Patient A. In that case, the Respondent was guilty of both gross negligence and gross incompetence, and committed fraud and demonstrated moral unfitness in his conduct in Patient A's case. Again, contrary to the Respondent's contention, Patient I's case also involved surgery that the Respondent had performed and the follow-up care for the Patient following amputations. The Committee found the Respondent guilty of negligence, incompetence and failing to maintain adequate records in that case.

The Review Board concludes that even if there were no patient cases involving surgery included as part of this proceeding, the evidence from this case still demonstrates that the Respondent's continued practice of medicine, in any specialty, would pose a danger to the people of New York. In determining whether a physician's negligence and incompetence in one area of medicine warrants revocation, or whether limitation of license would be sufficient to protect the public, the Hearing Committee and/or the Review Board must determine whether the Respondent demonstrates a lack of medical knowledge and skill which would implicate the Respondent's general competence to practice medicine, Matter of Colvin, 214 AD2d 854, 625 NYS2d 351 (Third Dept. 1995). The Hearing Committee in this case made clear that the Respondent lacks fundamental medical knowledge. The Committee noted that the Respondent was unable to manage common problems encountered by a primary care physician, but their findings and conclusions indicate that the Respondent's lack of knowledge and skill would result in poor care in any other area of medicine. The Committee found that the Respondent's diagnostic and therapeutic skills were substandard, that the Respondent paid little attention to consultants and he ignored objective data, such as X-rays or laboratory reports. The Review Board questions how a physician who lacks basic medical knowledge, who does not properly monitor patients, who ignores consultants and who ignores objective data can practice as a surgeon. There is a general fundamental body of knowledge that is essential to the practice of medicine, in whatever specialty, and the Respondent lacks that knowledge.

The Respondent also contended that the Hearing Committee improperly ignored a preference in the Public Health Law for rehabilitation or retraining rather than license revocation as a penalty. The Review Board rejects that contention by the Respondent. The Review Board finds that the Respondent is not a candidate for retraining. A retraining program can correct limited deficiencies in a Respondent's medical knowledge, but retraining will not assist a physician who lacks basic knowledge and skill as the Respondent does. As the Committee noted, the Respondent's failures and deficiencies relate to every aspect of medical practice and those deficiencies are so great that rehabilitation through retraining is not possible.

As the Board noted previously, the Respondent's fraudulent actions concerning Patient A and Patient C's medical records would standing alone warrant revocation of Respondent's medical license. Integrity is as basic to the practice of medicine as is skill and knowledge. A physician must deal honestly with other physician's, with medical facilities, with governmental regulators, with third party payors and especially with patients. In this case, the Respondent altered patient records, which could have affected subsequent patient care, due to the altered information. The Respondent also tried to mislead the Office of Professional Medical Conduct. The Respondent's fraudulent actions demonstrated a lack of the integrity that is essential to the practice of medicine.

Ample evidence in this record exists to support the Hearing Committee's Determination to revoke the Respondent's license to practice medicine. The Review Board finds that there is no alternative means to protect the public in this case.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's December 14, 1995 Determination finding the Respondent 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

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

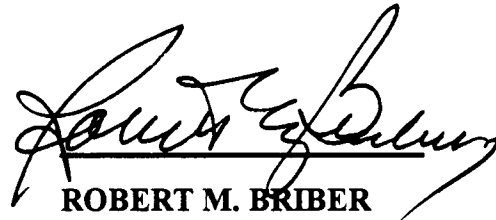
WILLIAM A. STEWART, M.D.

IN THE MATTER OF FIDEL R. RAMOS, 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. Ramos.

DATED: Schenectady, New York

Nov 10, 1996


ROBERT M. BRIBER

IN THE MATTER OF FIDEL R. RAMOS, 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. Ramos.

DATED: Delmar, New York

MARCH 15, 1996



SUMNER SHAPIRO

IN THE MATTER OF FIDEL R. RAMOS, 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. Ramos.

DATED: Brooklyn, New York

MARCH 15, 1996

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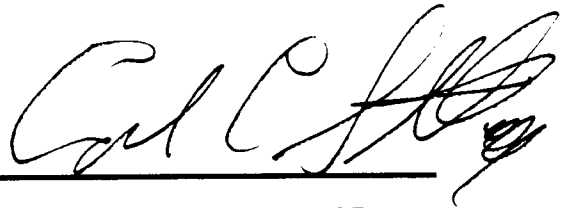
WINSTON S. PRICE, M.D.

IN THE MATTER OF FIDEL R. RAMOS, 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. Ramos.

DATED: Roslyn, New York

March 15, 1996



EDWARD C. SINNOTT, M.D.

IN THE MATTER OF FIDEL R. RAMOS, 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. Ramos.

DATED: Syracuse, New York

20 Mar, 1996

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.