



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

May 7, 1996

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Stein, Esq.
NYS Dept. of Health
5 Penn Plaza-6th Floor
New York, New York 10001

Amy T. Kulb, Esq.
Jacobson & Goldberg
585 Stewart Avenue - Suite 720
Garden City, New York 11530

Padma Ram, M.D.
204 Sherman Street
Watertown, New York 13601

Effective Date: 05/14/96

RE: In the Matter of Padma Ram, M.D.

Dear Mr. Stein, Ms. Kulb and Dr. Ram:

Enclosed please find the Determination and Order (No. 95-309) 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.

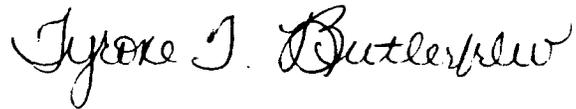
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

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
PADMA RAM, M.D.

ADMINISTRATIVE
REVIEW BOARD
DECISION AND
ORDER NUMBER
ARB NO. 95-309

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., WILLIAM A. STEWART, M.D.**¹ held deliberations on March 15, 1996 to review the Hearing Committee on Professional Medical Conduct's (Hearing Committee) December 27, 1995 Determination finding Dr. Padma Ram (Respondent) guilty of professional misconduct. The Office of Professional Medical Conduct (Petitioner) requested the Review through a Notice which the Board received on January 8, 1996. James F. Horan served as Administrative Officer to the Review Board. Paul Stein, Esq. filed a brief for the Petitioner on February 8, 1996 and a reply brief on February 14, 1996. Amy T. Kulb, Esq. filed a brief for the Respondent on February 5, 1996 and a reply brief on February 14, 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.

¹Dr. Edward Sinnott, a Long Island resident, recused himself from sitting on this case due to the extensive press coverage the Respondent's Nassau County hearing received.

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 brought this case pursuant to Public Health Law Section 230(10)(p) and Education Law Section 6530(9)(c), which provide an expedited hearing in cases in which a professional misconduct charge against a Respondent is based upon a finding in an adjudicatory proceeding that a Respondent violated a state statute or regulation, when the violation would constitute professional misconduct. In this case, the Petitioner charged that a Nassau County Health Department proceeding found the Respondent guilty for 240 violations of the New York Sanitary Code and Public Health Law for failing to perform required quality assurance testing of mammography equipment, failing to comply with required radiation safety guidelines and directing performance of mammography procedures by an unlicensed technician. The expedited hearing determines the nature and severity of the penalty which the Hearing Committee will impose based upon the prior administrative adjudication.

The Hearing Committee in this case found that the Petitioner had met its burden of proof in establishing that the Respondent had been found guilty in a Nassau County Health Department adjudicatory proceeding for violation of the State Sanitary Code relating to the safety, testing and operation of mammography equipment. The Committee found that the Nassau County Health Department assessed a civil penalty against the Respondent amounting to One Hundred Seventy Thousand Dollars (\$170,000.00).

The Committee concluded that the Respondent's conduct constituted a willful or grossly negligent failure to comply with substantial provisions of state regulations. The Committee also concluded that the Respondent permitted or abetted an unlicensed person in performing activities requiring a license. The Committee concluded that the Respondent's conduct would constitute misconduct, as violations of Education Law Sections 6530(16) and 6530(11).

The Committee voted to censure and reprimand the Respondent. The Committee stated that the Respondent neglected her responsibilities concerning the operation of mammography equipment, thereby placing hundreds of women at risk. The Committee concluded that the Respondent was sincerely remorseful, has closed her private practice and returned to emergency medicine. The Committee determined that the Respondent would be unlikely to place herself in such a position in the future to pose an unacceptable risk to the public. The Committee determined that revocation or suspension of the Respondent's license was not warranted. The Committee also found no need for probation or monitoring and found that the Respondent has already been fined sufficiently for the violations.

REQUESTS FOR REVIEW

The Petitioner contends that a censure and reprimand is not an appropriate penalty for the Respondent's egregious misconduct. The Petitioner contends that the Hearing Committee found that the Respondent's acts and omissions had put hundreds of women at risk. The Petitioner points out that the Respondent has to date failed to pay any of the civil penalty, which the Nassau County Health Department imposed and which the Hearing Committee relied upon when concluding that further fines against the Respondent would not be appropriate.

The Petitioner argues that revocation is the appropriate penalty for a physician who places patients at risk. The Petitioner argues that to sanction the Respondent with only a censure and reprimand undermines the regulation of all X-ray equipment and technicians.

The Respondent argues that there is no basis for modifying the Hearing Committee's Determination. The Respondent argues that there are no ongoing public safety concerns and no reasons to interfere with the Hearing Committee's appropriately exercised discretion.

The Respondent requests that the Review Board dismiss the findings against the Respondent in the interests of justice. The Respondent argues that the Respondent's violations involving the testing and guidelines for mammography equipment did not qualify as willful or grossly negligent failure to comply with substantial provisions of state regulations governing the practice of medicine. The Respondent also argues that there was no proof that she permitted an unlicensed person to perform activities that require a license. The Respondent also contends that use of the word license in Education Law §6530(11) refers to a medical license and not a license such as that required by Public Health Law §3502.

REVIEW BOARD DETERMINATION

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

The Review Board votes to sustain the Hearing Committee's Determination finding the Respondent guilty for professional misconduct. The record clearly demonstrates that the Nassau County Health Department found that the Respondent had committed extensive violations of the State Sanitary Code, by failing to perform required testing or evaluation of mammography equipment which the Respondent used on the Respondent's patients. Nassau County also found that the Respondent violated the Public Health Law by employing an unlicensed technician to perform mammography examinations.

The Board denies the Respondent's request to dismiss this case in the interests of justice. We find that the Respondent's violation of the Sanitary Code and her employment of an unlicensed technician were wilful acts. We find that the Respondent violated substantial provisions of law relating to the practice of medicine. The Sanitary Code provisions require testing to assure proper functioning of diagnostic equipment. The failure to assure the continued proper functioning of that

equipment places the patients who receive testing from that equipment at risk if either the equipment fails to detect medical problems of the patients or if the equipment produces radiation which would be dangerous to the patients. The requirement that technicians be licensed to perform testing assures a level of expertise is present to again assure that equipment is functioning properly. The Sanitary Code and Public Health Law provisions involved in this case are clearly related to the use of mammography equipment in the practice of medicine.

We also reject the Respondent's contention that Education Law §6530(11), prohibiting assisting unlicensed practice, relates to medical licenses and not to a license issued under Public Health Law §3502. Education Law §6530(11) does not contain any wording that restricts its provisions to only medical licenses. Further, physicians as part of their normal professional activities, are called upon to supervise persons in other health professions such as nurses, physical therapists, emergency medical technicians, laboratory assistants and X-ray technologists.

The Review Board votes to overrule the Hearing Committee's Determination as to concerning the penalty in this case. We agree with the Hearing Committee that the Respondent's misconduct does not rise to the level to warrant revocation or a general suspension of the Respondent's license. We feel, however, that the Respondent's failure to perform proper testing on her mammography equipment and her failure to assure that her technician was properly licensed demonstrates that the Respondent is not competent to assume the use and management of imaging devices in her practice.

The Review Board votes to limit the Respondent's license to prohibit the Respondent from practicing radiology and from owning or using radiology equipment. This ban does not preclude the Respondent from ordering X-rays or radiology tests and does not ban the Respondent from reading X-rays in general practice. The Respondent's failure to perform testing on her radiology equipment placed hundreds of her patients at risk. The Respondent was responsible to be sure that her diagnostic equipment functioned properly and was responsible to assure that her staff were qualified to perform their duties. The Respondent failed in those responsibilities. The number of violations and period of time involved indicates that this was not merely an isolated incident, but rather was typical of her

practice in performing mammographies. The Board concludes that the danger posed to the Respondent's patients by the Respondent's misconduct warrants a ban on the Respondent's practice as a radiologist.

We conclude further, that the Respondent's misconduct was limited to specific forms of radiology and that the Respondent's misconduct does not implicate her general competence to practice medicine. The Board finds, therefore, that no further limitation is necessary on the Respondent's practice in order to protect the public.

The Petitioner had pointed to the Respondent's failure to pay her Nassau County fine as a reason for a more severe penalty in this case. The Review Board rejects that argument as a basis for setting a penalty in this case. The Review Board is not a collection agency. The Respondent remains in this State, and Nassau County can seek payment on their fine through the courts. The Review Board based our Penalty Determination solely on the danger we feel that the Respondent posed to the public in her practice by using untested mammography equipment and employing an unlicensed technician.

ORDER

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

1. The Administrative Review Board **SUSTAINS** the Hearing Committee on Professional Medical Conduct's December 27, 1995 Determination finding the Respondent guilty of professional misconduct.
2. The Review Board **OVERRULES** the Hearing Committee's penalty in this case.
3. The Review Board **LIMITS** the Respondent's license to prohibit her from practicing radiology and to prohibit her from owning or using radiology equipment.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

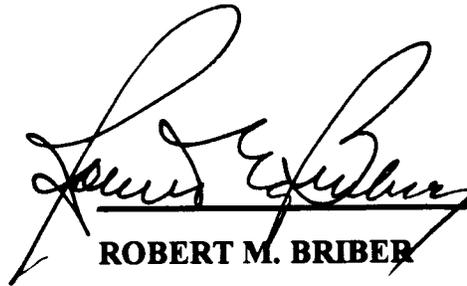
WILLIAM A. STEWART, M.D.

IN THE MATTER OF PADMA RAM, 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. Ram.

DATED: Schenectady, New York

Apr 18, 1996



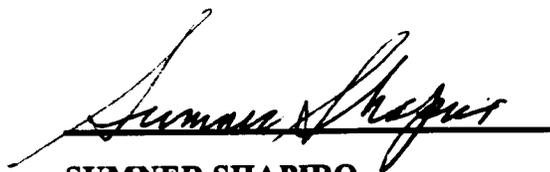
ROBERT M. BRIBER

IN THE MATTER OF PADMA RAM, 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. Ram.

DATED: Delmar, New York

April 18, 1996


SUMNER SHAPIRO

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IN THE MATTER OF PADMA RAM, 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. Ram

DATED: Brooklyn, New York

4/19/96 1996

A handwritten signature in cursive script, appearing to read 'WSP', is written over a solid horizontal line.

WINSTON S. PRICE, M.D.

IN THE MATTER OF PADMA RAM, 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. Ram.

DATED: Syracuse, New York

16 April, 1996

William A. Stewart

WILLIAM A. STEWART, M.D.