



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark H. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

June 25, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Samir Mostafa, M.D.

REDACTED

Raymond W. Belair, Esq.
Belair & Evans
61 Broadway
New York, New York 10006

Kevin C. Roe, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower - Room 2438
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Samir Mostafa, M.D.

Dear Dr. Mostafa, Mr. Belair and Mr. Roe:

Enclosed please find the Determination and Order (No. ARB-93-45) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

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,

REDACTED

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

:

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

-----X

| | | |
|---------------------|---|-----------------------|
| IN THE MATTER | : | <u>ADMINISTRATIVE</u> |
| | : | <u>REVIEW BOARD</u> |
| OF | : | <u>REMAND</u> |
| | : | <u>ORDER</u> |
| SAMIR MOSTAFA, M.D. | : | <u>ARB NO.93-45</u> |

-----X

The Administrative Review Board for Professional Medical Conduct (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 June 1, 1993 to review the Professional Medical Conduct Hearing Committee's (Committee) March 24, 1993 Determination finding Dr. Samir Mostafa guilty of professional misconduct and suspending his license to practice medicine in New York State pending evaluation. Both the Respondent and the Office of Professional Medical Conduct (OPMC) requested the review through Notices which the Review Board received on April 5, and April 8, 1993. James F. Horan served as Administrative Officer to the Review Board. Kevin C. Roe, Esq. submitted a brief for OPMC on April 17, 1993. Raymond W. Belair, Esq. submitted a brief for Dr. Mostafa on April 17, 1993 and a Reply on April 21, 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 charged the Respondent with gross incompetence, gross negligence, incompetence on more than one occasion and negligence on more than one occasion, for the care that he provided, as an anesthesiologist, to four patients, A through D. The Hearing Committee found the Respondent had committed gross negligence in providing care to Patients C and D and negligence on more than one occasion in caring for Patients A, C and D. The Committee noted that throughout the hearing there were repeated references to the severe emotional distress which the respondent experienced at the time of the cases involving Patients A through D and noted further that the Respondent's emotional distress continued to show

during the hearing. The Committee found that the degree of stress exhibited by the Respondent throughout the hearing constitutes a potential hazard both for the patients and the Respondent.

The Hearing Committee voted to suspend the Respondent's license indefinitely and refer him for an evaluation of his fitness and competency at the Physician Prescribed Education Program (PPEP) in Syracuse. The Committee provided that the suspension would be lifted upon certification from PPEP that the Respondent was fit and competent to practice medicine. The Committee determined further that the Respondent could not return to the practice of anesthesiology until he has completed a one year training fellowship in anesthesiology and obtained from the fellowship program's chief, the chief's approval and recommendation that the Respondent is ready emotionally and clinically to resume anesthesia practice.

REQUESTS FOR REVIEW

The Respondent has asked that the Review Board overturn and vacate the findings of the Hearing Committee that the Respondent was guilty of gross negligence in treating Patients C and D, and of negligence on more than one occasion in treating Patients A, C and D. The Respondent raised six points in his brief concerning specific conclusions of the Committee. The Respondent did not contest the order of the Committee that the Respondent undergo the PPEP evaluation.

The OPMC has requested that the Review Board overturn

the Hearing Committee's penalty and revoke the Respondent's license to practice medicine in New York State because the Respondent's repeated and gross negligence in treating the patients involved in this case are evidence that the Respondent is a danger to his patients and because the record does not indicate that the Respondent is a candidate for re-education.

In the alternative, OPMC has asked the Review Board to modify the Hearing Committee's penalty both as to the requirement that the Respondent undergo the PPEP evaluation and as to the requirement involving the Respondent's return to practicing anesthesiology.

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 that the Respondent was guilty of gross negligence in the treatment he provided to Patients C and D, of negligence on more than one occasion in treating Patients A, C and D. The Hearing Committee's Determination was consistent with their findings and conclusions and is supported by the record from the hearing.

The Review votes to overturn that portion of the Hearing Committee's penalty which would allow the Respondent to return to the practice of anesthesiology following a one year fellowship, because we find that portion of the penalty is inconsistent with the Hearing Committee's findings and conclusions concerning the

Respondent's negligence and the stress he has suffered associated with the practice of anesthesiology. We vote to modify that portion of the penalty which ordered that the Respondent undergo the PPEP evaluation.

The Hearing Committee findings and conclusions indicate that the Respondent should no longer practice anesthesiology. The Hearing Committee made that recommendation and the Respondent stated at the hearing that he would not practice anesthesiology again. The evidence from the hearing and the Committee's findings and conclusions established that the Respondent can not handle the emotional stress associated with the practice of anesthesiology. The Respondent's emotional state will not benefit from the one year anesthesiology fellowship which the Hearing Committee ordered that the Respondent undergo in order to return to the practice of anesthesiology. If the Respondent is fit to practice general medicine, the Review Board believes that the Respondent's license should be limited to forbid him to practice anesthesiology.

The Review Board sustains the Hearing Committee's Determination to suspend the Respondent's license and to order the Respondent to undergo the PPEP evaluation in Syracuse. First, we believe the sentence is appropriate under Public Health Law Section 230-a(2). The Hearing Committee may impose a sentence that would include suspension, wholly or partially, during a period of retraining. Although the Hearing Committee has characterized their penalty as an indefinite suspension, the terms of the suspension are actually that the Respondent's license is suspended

pending the evaluation to determine whether the Respondent is fit to practice general medicine. Further, we believe that the penalty is appropriate because it is not clear from the record whether the Respondent is fit to practice general medicine. The PPEP evaluation would indicate whether Respondent is or is not so fit.

The Review Board votes to modify the penalty to include additional terms. The Hearing Committee did not indicate what should take place following the PPEP evaluation, if the evaluation indicates that the Respondent is not fit to practice general medicine or if the evaluation indicates that the Respondent should not return to practice without some period of retraining. The Review Board orders that following the PPEP evaluation, whatever it may be, this case shall be remanded to the Hearing Committee, so that the Hearing Committee may review the evaluation and determine whether the Respondent needs retraining, and if so, what the status of his license shall be during the retraining. So that the Hearing Committee may resolve that issue as expeditiously as possible, the Hearing Committee may confer by telephone conference in reaching a Determination. The Respondent shall remain on suspension pending the Hearing Committee's Determination. Either party may then appeal the Hearing Committee's Supplemental Determination to the Review Board.

ORDER

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

1. The Hearing Committee's March 24, 1993 Determination finding Dr. Samir Mostafa guilty of professional misconduct is sustained.
2. The Hearing Committee's penalty is modified in part and sustained in part, as provided in this Review Board Determination.
3. The Respondent's license is limited to prohibit him from practicing anesthesiology.
4. Following an evaluation of the Respondent's medical skills at the Physician Prescribed Education Program in Syracuse, this case is remanded to the Hearing Committee so that they may review the evaluation and determine if the Respondent is fit to return to practice general medicine.

IN THE MATTER OF SAMIR MOSTAFA, 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. Mostafa.

DATED: Albany, New York

June 15, 1993

REDACTED

MARYCLAIRE B. SHERWIN

IN THE MATTER OF SAMIR MOSTAFA, 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. Mostafa.

DATED: Albany, New York

June 15, 1993

REDACTED

✓ _____
ROBERT M. BRIBER *✓*

IN THE MATTER OF SAMIR MOSTAFA, 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. Mostafa.

DATED: Brooklyn, New York

June 22, 1993

REDACTED

~~_____~~
WINSTON S. PRICE

IN THE MATTER OF SAMIR MOSTAFA, 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. Mostafa.

DATED: Albany, New York

June 21, 1993

REDACTED

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF SAMIR MOSTAFA, 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. Mostafa.

DATED: Albany, New York

10 June , 1993

REDACTED

WILLIAM A. STEWART, M.D.