



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

February 11, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Agnes Song, M.D. Paul M. Cecere
1098 Anderson Avenue 58 Main Street
Fort Lee, New Jersey 07024 Hackensack, New Jersey 07601

Silvia Finkelstein, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

RE: In the Matter of Agnes Song, M.D.

Dear Dr. Song, Mr. Cecere and Ms. Finkelstein:

Enclosed please find the Determination and Order (No. ARB-92-101) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Tyrone T. Butler/nam

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

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
AGNES SONG, M.D. : DETERMINATION
: AND ORDER
: ORDER NO. ARB-92-101

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A quorum of the Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, MARYCLAIRE B. SHERWIN, EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.**¹ held deliberations on January 20, 1993 to review the Professional Medical Conduct Hearing Committee's (Hearing Committee) November 12, 1993 Determination placing Agnes Song, M.D. on probation and ordering that Dr. Song complete the Physician Prescribed Educational Program (PPEP). Both the Respondent and the Department of Health requested the review through Notices of Review which the Board received on November 24, 1992 and November 27, 1992 respectively. The Respondent withdrew her request for review on December 22, 1993. **JAMES F. HORAN, ESQ.** served as Administrative Officer to the Review Board. Sylvia Finkelstein, Esq. submitted a brief to the Board on behalf of the Department of Health on January 11, 1993. Paul M. Cecere, Esq. filed a response to the Department's brief on behalf of Dr. Song on January 19, 1993.

¹ At the time at which the Administrative Review Board met to deliberate this case, the New York State Senate had confirmed only four members of the five member Administrative Review Board that was created pursuant to Chapter 606 of the Laws of 1991.

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 Dr. Song with violating the terms of a prior disciplinary probation. The prior probation required that the Respondent complete a two-year residency program during the course of the three-year probation and that she not practice medicine during the period, except as required to participate in the residency program. In the present case, the Department charged that the Respondent violated the probation by practicing medicine during the probationary period and by failing to enroll in a residency program.

The Hearing Committee found that there was insufficient

probative evidence that the Respondent practiced medicine during the probationary period. As to the charge concerning the residency program, the Committee found that there was no doubt that the Respondent had failed to enter a residency program, but the Committee found that there was no intent by the Respondent to avoid entering a residency program. The Committee concluded that the Respondent attempted to enter a residency program but was prevented due to circumstances beyond her control.

The Committee felt that the Respondent still needs retraining, and placed the Respondent on three years probation and ordered that the Respondent enter the Physician Prescribed Educational Program in Syracuse (see Hearing Committee Determination page 6, para.6).

REQUESTS FOR REVIEW

Both parties filed notices of review in this case. Prior to the date on which the parties were due to submit their briefs, the parties through the Department's attorney, Ms. Finkelstein, contacted our Administrative Officer to advise the Board that the parties felt they had reached an agreement in the case and that they planned to submit a stipulation for the Board's approval in lieu of briefs. By separate letter dated December 22, 1993, the Respondent's counsel informed the Board that the parties were unable to finalize the stipulation and that the Respondent was withdrawing her appeal. The Respondent also consented to an extension in the time period for the parties to file briefs in the Department's appeal. Upon consent of both parties, the Administrative Officer allowed the parties until January 8, 1993 to file their briefs in the Department's appeal. The extension of time did not delay or impede the Review Board from considering this appeal within the time limits mandated under PHL 230-c(4)(a).

The Department's only objection to the Hearing Committee's Determination was that the Committee did not provide any time limits in the terms of probation to insure the Respondent's early enrollment and compliance with the retraining program. The Department requested that the Review Board amend the terms of probation to require that the Respondent complete the Physician Prescribed Education Program's (PPEP) Phase I within three months from the Probationary period's commencement and

enroll in PPEP Phase II within six months from completing Phase I.

REVIEW BOARD DETERMINATION

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

The Review Board votes unanimously to sustain the Hearing Committee's Determination and Penalty. The Determination and Penalty are consistent with the Hearing Committee's findings and conclusions and the Penalty is appropriate under PHL 230-a.

The Review Board does not believe that it is necessary to impose time limits within which Dr. Song must enroll in the Phases of the PPEP retraining. The Hearing Committee's Terms of Probation provide that the Respondent shall have a monitor to evaluate the Respondent's practice during the probationary period. We feel that the monitor together with the retraining requirements established in the probation terms offer sufficient protection for the public health without imposing additional time limits on the retraining. The Hearing Committee concluded that the Respondent's failure to enroll in a residency program during the previous probation arose not from the Respondent's intent to avoid retraining but from circumstances beyond her control. We feel, in addition, that such time restraints are unnecessary because quick compliance with the Hearing Committee's retraining requirements is in the Respondent's own best interest. Only by completing the mandated retraining will the Respondent be able to return to a full and unsupervised practice.

ORDER

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

The November 12, 1993 Determination by the Hearing Committee on Professional Medical Conduct, placing Dr. Agnes Song on probation and ordering that she participate in Phase I and Phase II of the Physician Prescribed Educational Program, is hereby **sustained**.

ROBERT M. BRIBER

MARYCLAIRE B. SHERWIN

EDWARD C. SINNOTT, M.D.

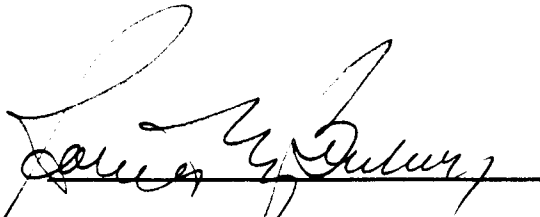
WILLIAM A. STEWART, M.D.

IN THE MATTER OF AGNES SONG, 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 Agnes Song, M.D.

DATED: Albany, New York

2/4, 1993



ROBERT M. BRIBER

IN THE MATTER OF Agnes Song, 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 Agnes Song, M.D.

DATED: Albany, New York

February 9, 1993

Maryclaire B. Sherwin

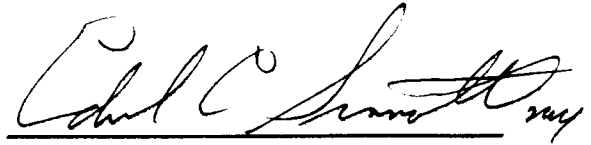
MARYCLAIRE B. SHERWIN

IN THE MATTER OF AGNES SONG, 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 Agnes Song, M.D.

DATED: Albany, New York

February 3, 1993

A handwritten signature in cursive script, reading "Edward C. Sinnott, M.D.", written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF AGNES SONG, 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 Agnes Song, M.D.

DATED: Albany, New York

February 3, 1993

Handwritten signature of William A. Stewart M.D. in cursive script.

WILLIAM A. STEWART, M.D.