



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

December 31, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ricardo Vance, M.D.
1000 Grand Concourse
Bronx, New York 10451

Jeffrey M. Rubin, Esq.
Rubin & Shang
9 East 40th Street
New York, New York 10016

David W. Smith, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

RE: In the Matter of Ricardo Vance, M.D.

Dear Dr. Vance, Mr. Rubin and Mr. Smith:

Enclosed please find the Determination and Order (No. 93-129) 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.

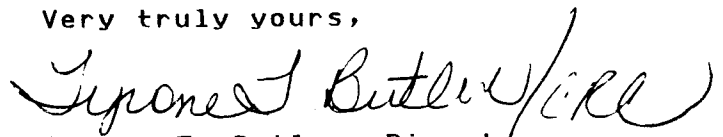
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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 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)].

Very truly yours,

A handwritten signature in cursive script, appearing to read "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

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IN THE MATTER	:	<u>ADMINISTRATIVE</u>
	:	<u>REVIEW BOARD</u>
OF	:	<u>DETERMINATION</u>
	:	<u>AND ORDER</u>
RICARDO VANCE, M.D.	:	ARB NO.93-129

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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 November 5, 1993 to review the Professional Medical Conduct Hearing Committee's (Committee) August 26, 1993 Determination finding Dr. Ricardo Vance guilty of professional misconduct. Both the Office of Professional Medical Conduct (OPMC) and the Respondent requested the review through Notices which the Review Board received on September 2, 1993 and September 8, 1993. James F. Horan served as Administrative Officer to the Review Board. David W. Smith, Esq. submitted a brief for OPMC on October 6, 1993 and a response brief on October 20, 1993. Jill Levine, Esq. submitted a brief for Dr. Vance on October 11, 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 Negligence on more than one occasion, ordering excessive tests and failure to maintain adequate records. The charges arose from the care which the Respondent provided to four patients, A through D.

The Hearing Committee sustained the charge that the Respondent performed excessive tests in treating Patients A, C and D. The Committee sustained the charge of failure to maintain adequate records for Patients A through D and the Committee sustained the charge that the Respondent was negligent on more than one occasion in his treatment of Patients A through D. In the case of Patient A, the Committee found that the Respondent

inappropriately prescribed controlled substances for the Patient and had ordered inappropriately a test for the Patient's lung capacity. As to the care for Patient B, the Committee found that the Respondent had inappropriately prescribed controlled substances and had failed to perform proper follow up care after finding certain results. As to the treatment for Patient C, the Committee found that the Respondent had diagnosed pelvic inflammatory disease without performing appropriate laboratory and diagnostic tests, failed to investigate and treat the Patient, whom the Respondent believed to be suffering from hepatitis, and had inappropriately prescribed controlled substances to the Patient, who was diagnosed as an alcohol and substance abuser. As to Patient D, the Committee found that the Respondent failed to appropriately treat the Patient's alcoholism.

The Committee concluded that the Respondent was guilty of a pattern of clearly sub-standard care. The Committee voted to refer the Respondent for an evaluation of his skills as a physician at the Physician Prescribed Educational Program (PPEP) in Syracuse and ordered that the Respondent undergo any retraining which the PPEP evaluation indicates is necessary. The Committee ordered further that the Respondent's license shall be suspended during the time that the Respondent is undergoing the evaluation and any necessary retraining.

REQUESTS FOR REVIEW

The OPMC has asked the Review Board to sustain the Committee's Determination finding the Respondent guilty of

misconduct, ordering that the Respondent undergo the PPEP evaluation and retraining and placing the Respondent on suspension during the evaluation and retraining. The OPMC has asked that the Review Board modify the penalty, to provide that the Respondent may practice during the suspension to the extent necessary for the evaluation and retraining. The OPMC asks in addition that the Review Board impose a two year period of probation following the evaluation and retraining to assure that the retraining has corrected the deficiencies in the Respondent's practice.

The Respondent asks the Review Board to review the Hearing Committee's Determination on two grounds. First, the Respondent alleges that OPMC failed to prove the charges against the Respondent by a preponderance of the evidence. Second, the Respondent alleges that the Hearing Committee failed to consider mitigating factors in reaching a decision on the penalty in this case.

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 of professional misconduct. The Committee's Determination is consistent with the Committee's findings of fact and conclusions.

The Review Board votes to sustain the portion of the Hearing Committee's penalty which orders the Respondent to undergo the PPEP evaluation and any necessary retraining, and which

suspends the Respondent's license to practice during the period of evaluation and retraining. The Review Board votes to modify the Committee's penalty in two instances. First, the Respondent shall be allowed to practice during the suspension to the extent necessary for the PPEP evaluation and retraining. Second, the Review Board votes to impose a two year period of probation following the Respondent's suspension, evaluation and retraining.

Public Health Law Section 230-a allows a Hearing Committee to suspend a Respondent's license during a retraining period, but allows the Respondent to practice to the extent necessary for retraining. The Review Board modifies the Hearing Committee's Determination to make clear that Dr. Vance license shall be suspended during retraining, except to the limited extent necessary for retraining.

The Review Board modifies the Hearing Committee's penalty further by imposing a two year period of probation following the successful completion of the retraining which will be necessary in Dr. Vance's case. Due to the problems noted in Dr. Vance current practice, the Review Board believes that the Respondent should be subject to probation, under such terms as the Director of the Office of Professional Medical conduct shall impose, to assure that the Respondent's retraining has corrected successfully the deficiencies in the Respondent's pattern of practice.

ORDER

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

1. The Review Board sustains the Hearing Committee's August 26, 1993 Determination finding Dr. Ricardo Vance guilty of professional misconduct.

2. The Review Board sustains the Hearing Committee's Determination to order that the Respondent undergo an evaluation of his medical skills and any retraining that the evaluation indicates is necessary.

3. The Review Board modifies the Hearing Committee's Determination by providing that during the evaluation and retraining, the Respondent's license to practice medicine in New York State shall be suspended, except to the extent necessary for the evaluation and retraining.

4. The Review Board modifies the Hearing Committee's Determination to require that, following the successful completion of the evaluation and retraining, the Respondent will be on probation for two years.

ROBERT M. BRIBER

MARYCLAIRE B. SHERWIN

WINSTON S. PRICE

EDWARD C. SINNOTT

WILLIAM A. STEWART

IN THE MATTER OF RICARDO VANCE, 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. Vance.

DATED: Brooklyn, New York

December 4, 1993


A handwritten signature in cursive script, appearing to read "W. S. Price MD", is written over a horizontal line.

WINSTON S. PRICE

IN THE MATTER OF RICARDO VANCE, 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. Vance.

DATED: Albany, New York
12/1, 1993



ROBERT M. BRIBER

IN THE MATTER OF RICARDO VANCE, 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. Vance.

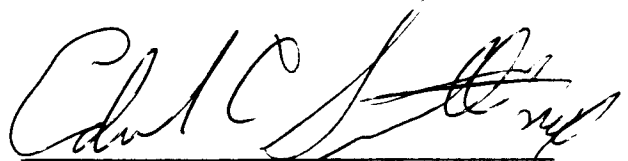
DATED: Albany, New York
December 2, 1993

MaryClaire B. Sherwin
MARYCLAIRE B. SHERWIN

IN THE MATTER OF RICARDO VANCE, 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. Vance.

DATED: Albany, New York
December 1, 1993

A handwritten signature in cursive script, appearing to read 'Ed C. Sinnott', written over a horizontal line.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF RICARDO VANCE, 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. Vance.

DATED: Albany, New York
, 1993

William A. Stewart
WILLIAM A. STEWART, M.D.