



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

May 6, 1997

**PUBLIC**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Masao Mitsui, M.D.  
2 Mott Street  
New York, New York 10013

Paul Stein, Esq.  
NYS Department of Health  
5 Penn Plaza-Sixth Floor  
New York, New York 10001

**RE: In the Matter of Masao Mitsui, a/k/a George Wang,  
a/k/a Cheng C. Wang, M.D.**

Dear Dr. Mitsui and Mr. Stein:

Enclosed please find the Determination and Order (No.96-302) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
Hedley Park Place  
433 River Street-Fourth Floor  
Troy, New York 12180

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,

Handwritten signature of Tyrone T. Butler in black ink.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm

Enclosure

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

COPY

-----X  
IN THE MATTER :  
OF :  
MASAO MITSUI, A/K/A GEORGE WANG, :  
A/K/A CHENG C. WANG, M.D. :  
-----X

ADMINISTRATIVE  
REVIEW BOARD  
DECISION AND  
ORDER NUMBER  
ARB# 96-302

The Office of Professional Medical Conduct (Petitioner) requests, pursuant to New York Public Health Law (Pub. H.L.) §230-c(4)(a) (McKinney's Supp. 1996), that the Administrative Review Board for Professional Medical Conduct (Board) review and modify a Determination by a Hearing Committee on Professional Medical Conduct (Committee) which determined that the Respondent Masao Mitsui, a/k/a George Wang, a/k/a Cheng C. Wang, M.D., committed professional misconduct in violation of New York Education Law (Educ. Law) § 6530(9)(e). Board Members **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** conducted deliberations in this case on March 21, 1997 and the Board now renders this Determination. Administrative Law Judge **LARRY G. STORCH** served as the Board's Administrative Officer. The Board votes 5-0 to **SUSTAIN** the Hearing Committee's penalty in this case. We vote to impose no further sanction upon the Respondent's license to practice medicine in New York State. The Board discusses the reasons for this Determination below after summarizing the Committee's Determination on the charges, the issues the parties raised on review and the Board's review

authority.

**MASAO MITSUI, M.D.**, represented himself on this review.

**PAUL STEIN, ESQ.**, Associate Counsel for the New York State Department of Health, represented the Petitioner.

#### CHARGES AND COMMITTEE DETERMINATION

Pub. H.L. §230 authorizes three member committees from the State Board for Professional Medical Conduct (BPMC) to conduct disciplinary proceedings to determine whether physicians have committed professional misconduct by violating Educ. L. §6530. The Petitioner filed charges with BPMC alleging the Respondent violated Educ. L. §6530(9)(e) by virtue of having been found by the Commissioner of Health to be in violation of Article 33 of the Public Health Law.

The Petitioner brought this case as an expedited proceeding pursuant to Pub. H.L. §230(10)(p). The purpose for such a proceeding is to determine the nature and severity for the penalty to be imposed for the misconduct, Matter of Wolkoff, 1996 N.Y. LEXIS 3165.

Three BPMC Members, **GERALD S. WEINBERGER, M.D. (CHAIR)**, **ARTHUR J. WISE, M.D. AND PRISCILLA R. LESLIE** comprised the Committee which conducted a hearing pursuant to Pub. H.L. §230(10) and which rendered the December 28, 1996 Determination that the Board now reviews. Administrative Law Judge **MICHAEL P. McDERMOTT** served as the Committee's Administrative Officer.

The Hearing Committee found that on October 26, 1994

the Commissioner of Health of the State of New York issued a Statement of Charges alleging that the Respondent had committed numerous violations of Article 33 of the Public Health Law and 10 NYCRR Part 80. The Committee further found that on or about December 5, 1994 the Commissioner issued a Stipulation and Order in settlement of these charges. Through the terms of the Stipulation and Order, the Respondent admitted that over a period of several years he improperly dispensed substantial amounts of Valium and Librium in that he failed to prepare official New York State prescription forms as required. The Respondent further admitted that on numerous occasions he improperly dispensed, Butabarbital tablets, Tylenol #4 tablets, Librium capsules, Valium tablets and Darvon capsules in that he failed to place such controlled substances in suitable containers on which were permanently affixed labels with required information permanently written. In addition, the Respondent admitted that he failed to maintain a biennial inventory of all controlled substances in his possession on May 1, 1991 and May 1, 1993. A civil penalty of \$6,000.00 was assessed against the Respondent, with \$3,600.00 of the penalty suspended contingent upon his compliance with the requirements of the Public Health Law, the rules and regulations promulgated by the Department of Health, and the terms set forth in the Stipulation and Order, for a period of two years from the effective date of said Stipulation and Order.

The Committee concluded that the charge of professional misconduct based upon the Commissioner's Stipulation and Order was sustained. The Committee voted to take no further action

against the Respondent. The Hearing Committee noted that the Respondent fully complied with the provisions of the Stipulation and Order and that the Respondent testified that he recognized his errors and would not make the same mistakes again. They further considered that there was no evidence that the Respondent personally profited as a result of his violations of Article 33 and that he does not currently prescribe or dispense controlled substances.

#### RECORDS AND ISSUES ON REVIEW

The Petitioner filed a Notice requesting a review, on the Committee's Determination, which the Board received on January 14, 1997. The Record on review contained the hearing transcript and exhibits and the parties' briefs. The Board received the Petitioner's brief on February 19, 1997 and a letter submitted by the Respondent on February 20, 1997.

The Petitioner contends that the Stipulation and Order executed by the Respondent and the Department contemplated further action by the Office of Professional Medical Conduct. Further, it would not make sense to define violations found under Article 33 as professional misconduct, and then not impose a penalty for them. It would be reasonable to assume that in all Article 33 cases where there is a finding against a Respondent, a penalty of some kind is imposed.

The Petitioner further contends that the penalty imposed (none) is not consistent with the findings of fact nor commensurate with the gravity of the Respondent's misconduct. He

argues that the violations which the Respondent admitted involved prescription drugs that are among those most susceptible to abuse and involved thousands of doses. In addition, he points out that the Respondent's patients were either Medicaid or Medicare patients, and susceptible to prescribing abuses.

The Petitioner argues that the Hearing Committee's failure to impose a penalty on the Respondent undermines New York State's statutory scheme for preventing physician abuse and mis-prescribing of controlled substances. He contends that the absence of a substantial penalty imposed by the Board implies that the controlled substance statutes and regulations are . . . trivial technicalities and of no importance. He states that the Hearing Committee failed to give sufficient weight to the need to promote general deterrence and support of the controlled substance statutes and regulations. The Petitioner urges that the Review Board impose a temporary or permanent loss of the Respondent's license to practice medicine in the State of New York.

The Respondent contends that it would be wrong to impose a more severe penalty, as requested by the Petitioner. He argues that one cannot generalize that since drugs are a problem in society, he should have his license suspended or revoked for the offenses dealt with in the Stipulation and Order.

### THE BOARD'S REVIEW AUTHORITY

Pub. H.L. §230(10)(i), §230-c(1) and §230-c(4)(b) authorize the Board to review determinations by hearing committees for professional medical conduct and to decide:

- 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 Pub. H.L. §230-a.

Pub. H.L. §230-c(4)(b) permits the Board to remand a case to the Committee for further consideration. Pub. H.L. §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

The Board has the authority to substitute our judgement for that of the Hearing Committee, in deciding upon a penalty Matter of Bogdan 195 AD2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, Matter of Spartalis 205 AD2d 940, 613 NYS2d 759 (Third Dept. 1994), and deciding credibility issues Matter of Minielly 222 AD2d 750, 634 NYS 2d 856, 1995.

### THE BOARD'S DETERMINATION

The Board renders this Determination after reviewing the hearing record, the Committee's Determination and Order and the parties' briefs. The Board sustains the Committee's Determination finding the Respondent guilty of professional misconduct. The record established that by the execution of Stipulation and Order CS-94-64, the Respondent admitted violations of Article 33 of the Public Health Law.



The Board votes 5-0 to sustain the Committee's Determination to impose no further penalty in satisfaction of the charge brought against him. The Review Board rejects the Petitioner's argument that the fact that this case was referred to the Office of Professional Medical Conduct requires that an additional penalty be imposed. The mere fact that a case must be considered by the Board does not mandate an additional sanction, if not warranted by the circumstances. Each case must be considered individually, on its own merits.

The Review Board finds that the determination not to impose a further sanction upon the Respondent is appropriate, given the findings and conclusions of the Hearing Committee. The Hearing Committee found that the Respondent has complied with all provisions of the Stipulation and Order, in that he paid the required civil penalty, and there was no evidence that the Respondent had violated Article 33 during the two years following execution of the settlement. Moreover, the Hearing Committee found that there was no evidence the Respondent intended to circumvent the law in order to unlawfully profit from his conduct.

No findings were made to indicate that the drugs dispensed by the Respondent were not medically indicated for the patients. The violations committed by the Respondent, although not insignificant, essentially dealt with poor record-keeping. Under the totality of the circumstances, we conclude that the Hearing Committee appropriately determined not to impose further sanctions upon the Respondent.

ORDER

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

1. The Review Board **SUSTAINS** the Hearing Committee's December 28, 1996 Determination finding the Respondent guilty of professional misconduct.
  
2. The Review Board **SUSTAINS** the Hearing Committee's Determination to impose no further sanction in satisfaction of the charge brought against the Respondent.

SUMNER SHAPIRO

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

WILLIAM A. STEWART, M.D.

IN THE MATTER OF MASAO MITSUI, A/K/A GEORGE WANG, A/K/A CHENG C.  
WANG, M.D.

WILLIAM A. STEWART, M.D., a member of the  
Administrative Review Board for Professional Medical Conduct,  
concurrs in the Determination and Order in the Matter of Dr.  
Mitsui.

DATED: Syracuse, New York

30 April, 1997



WILLIAM A. STEWART, M.D.

IN THE MATTER OF MASAO MITSUI, A/K/A GEORGE WANG, A/K/A CHENG C.  
WANG, 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. Mitsui.

DATED: Roslyn, New York

April 24, 1997

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

EDWARD C. SINNOTT, M.D.

**IN THE MATTER OF MASAO MITSUI, A/K/A GEORGE WANG,  
A/K/A CHENG C. WANG, 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. Mitsui.

**DATED: Delmar, New York**  
**April 24, 1997**

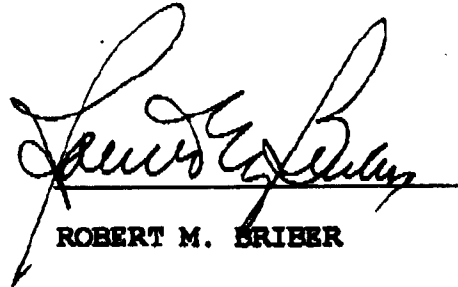
  
**SUMNER SHAPIRO**

IN THE MATTER OF MASAO MITSUI, A/K/A GEORGE WANG, A/K/A CHENG C.  
WANG, M.D.

ROBERT M. BRIEBER, a member of the Administrative Review  
Board for Professional Medical Conduct, concurs in the  
Determination and Order in the Matter of Dr. Mitsui.

DATED: Schenectady, New York

5/5, 1997



ROBERT M. BRIEBER