



# 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*

April 17, 1997

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Kevin P. Donovan, Esq.  
NYS Department of Health  
Corning Tower Room 2438  
Empire State Plaza  
Albany, New York 12237

Momtaz Ahmed, M.D.  
5813 Independence Drive  
Jamesville, New York 13078

Joseph Cote, Esq.  
Suite 501  
Empire Building  
472 South Salina Street  
Syracuse, New York 13202

Momtaz Ahmed, M.D.  
472 South Salina Street  
Syracuse, New York 13202

### **RE: In the Matter of Momtaz Ahmed, M.D.**

Dear Mr. Donovan, Dr. Ahmed and Mr. Cote:

Enclosed please find the Determination and Order (No.96-293) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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, appearing as "Tyrone T. Butler/nm".

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

IN THE MATTER

OF

MOMTAZ AHMED, M.D.

ADMINISTRATIVE  
REVIEW BOARD  
DETERMINATION  
ARB NO. 96-293

Administrative Review from a Determination by a Hearing  
Committee on Professional Medical Conduct

Before: **ROBERT M. BRIBER, SUMNER SHAPIRO, EDWARD C. SINNOTT, M.D., and WILLIAM A. STEWART, M.D.,<sup>1</sup> Board Members.**

After a hearing into charges that the Respondent **DR. MOMTAZ AHMED** (Respondent) committed professional misconduct, a Hearing Committee on Professional Medical Conduct (Committee) sustained some charges, suspended the Respondent's license to practice medicine in New York State (License), stayed the suspension and placed the Respondent on six months probation. In this proceeding pursuant to N. Y. Pub. Health Law §230-c(4)(a) (McKinney's Supp. 1997), the New York State Department of Health (Petitioner) asks the Administrative Review Board for Professional Medical Conduct (Board) to modify and strengthen the Committee's December 12, 1996 Penalty Determination, so that the Respondent will be unable to avoid certain probation terms. After reviewing the record in this case and conducting Deliberations on February 28, 1997, the Board votes 3-1 to modify the probation terms that the Committee imposed. The Board discusses the modifications below after we summarize the Committee's Determination on the charges, the issues for review and the Board's review authority.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination. **JOSEPH S. COTE, ESQ.** represented the Respondent. **KEVIN P. DONOVAN, ESQ.** (Associate Counsel, NYS Department of Health) represented the Petitioner.

**COMMITTEE DETERMINATION ON THE CHARGES**

Under N.Y. Pub. Health Law §230(7)(McKinney's Supp. 1997), three member Committees

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<sup>1</sup> Dr. Winston Price was unable to participate in this case.

from the State Board for Professional Medical Conduct (BPMC) conduct disciplinary proceedings to determine whether physicians have committed professional misconduct. The Petitioner filed charges with BPMC alleging that the Respondent committed misconduct under the following categories:

- committing conduct that evidences moral unfitness, a violation under N.Y. Educ. Law §6530(20)(McKinney's Supp. 1997);
- willfully abusing a patient physically, a violation under N.Y. Educ. Law §6530(31)(McKinney's Supp. 1997);
- practicing with gross incompetence, a violation under N.Y. Educ. Law §6530(6)(McKinney's Supp. 1997);
- practicing with gross negligence, a violation under N.Y. Educ. Law §6530 (4)(McKinney's Supp. 1997); and,
- failing to maintain accurate records, a violation under N.Y. Educ. Law §6530(32)(McKinney's Supp. 1997).

The charges arose from the Respondent 's conduct toward a person whom the record refers to as Patient A, to protect her privacy. The charges alleged that, during an examination, the Respondent made contact with the Patient's breasts and genitalia without medical justification.

Three BPMC Members, **MARYCLAIRE B. SHERWIN (Chair)**, **ANDREW J. MERRITT, M.D.**, and **STANLEY B. LESLIE, M.D.**, comprised the Committee who conducted the hearing in the matter and who rendered the Determination that the Board now reviews. Administrative Law Judge **MICHAEL P. MCDERMOTT** served as the Committee's Administrative Officer. The Committee determined that Patient A saw the Respondent for a physical examination. The Committee concluded that the Respondent:

- failed to obtain and/or record an adequate medical history for the Patient, including a history concerning hypertension and breast problems;
- failed to perform an adequate physical examination and/or evaluation for the Patient, including breast, lungs, heart and vital signs;
- examined the Patient's labia and breasts in an inappropriate manner that failed to meet acceptable medical standards; and,

- failed to record a repeat blood pressure for the Patient's clearly abnormal blood pressure.

The Committee concluded that the Respondent's failures to obtain or record an adequate history and to perform or record an adequate physical exam or evaluation on Patient A constituted multiple acts of negligence that cumulatively amount to egregious conduct and constitute gross negligence. The Committee also found that the medical records for Patient A failed to meet acceptable standards. The Committee found no evidence in the record to support the gross incompetence charge. On the Moral Unfitness and Patient Abuse charges, the Committee found no evidence in the record to indicate that the Respondent examined Patient A's breasts and labia for his own sexual gratification. The Committee concluded that, although the Respondent performed the examinations in an inappropriate and medically unacceptable manner, no evidence indicated that the Respondent acted for his own sexual gratification.

The Committee suspended the Respondent's License for one year, stayed the suspension and placed the Respondent on six months probation. The probation imposed three requirements.

- 1 - The Respondent attend a Breast Clinic and perform supervised breast examinations.
- 2 - The Medical Director at the Syracuse Community Health Center (the facility at which the Respondent worked and at which he examined Patient A) must monitor the Respondent and report monthly to the Office for Professional Medical Conduct (OPMC) about whether the Respondent's record keeping complies with acceptable medical practice standards.
- 3 - A chaperone must be present any time the Respondent examines a female patient.

### **REVIEW HISTORY AND ISSUES**

The Petitioner filed a Notice requesting this review, that the Board received on December 26, 1996. The Notice stayed the Committee's penalty automatically, pending this Determination from the Board [see N.Y. Pub. Health Law §230-c(4)(a)(McKinney's Supp. 1997)]. The Record for review contained the Committee's Determination, the hearing transcripts and exhibits, the Petitioner's brief

and the Respondent's reply brief. The Board received the Petitioner's brief on January 28, 1997 and the Respondent's reply brief on February 10, 1997.

The Petitioner's brief asks the Board to modify the Committee's Penalty. The Petitioner argues that the Committee's Penalty would allow the Respondent to avoid complying with the second and third probationary terms, if the Respondent ceases to practice for the six month probation period. The Petitioner argues further that the Committee's second probation term would apply only if the Respondent continued to practice at the Syracuse Community Health Center. The Petitioner asks the Board to modify the Committee's second and third terms to toll the probation if the Respondent ceases practice and to delete reference to the Syracuse Community Health Center. In the alternative, the Petitioner requests that the Board impose a stricter Penalty for the Respondent's gross negligence, by restricting the Respondent to practicing in a supervised setting, with a monitoring physician to observe the Respondent when he performs histories and physicals.

The Respondent disputes the Committee's Determination that he committed gross negligence and asks the Board to find that Determination inappropriate due to the limited factual evidence concerning negligence. The Respondent argues that the Committee's limited negligence findings provide no support for the Petitioner's request that the Board impose stricter monitoring terms. The Respondent also contends that the Committee acted beyond their authority by imposing the probation term that requires the Director at the Syracuse Community Health Center to monitor and report on the Respondent's patient care.

#### **THE BOARD'S REVIEW AUTHORITY**

In reviewing a Committee's Determination, the Board determines: whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law, and whether the Penalty is appropriate and within the scope of penalties which the law permits [N.Y. Pub Health Law §230(10)(i), §230-c(1) & 230-c(4)(b)(McKinney's Supp. 1997)]. The Board may remand a case to the Committee for further consideration [N.Y. Pub. Health Law §230-c(4)(b)(McKinney's Supp. 1997)]. The Board's Determinations result from a majority concurrence among the Board's Members [N.Y. Pub. Health Law §230-c(4)(c)(McKinney's Supp. 1997)].

The Review Board may substitute our judgement for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 AD 2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 AD 2d 940, 613 NYS 2d 759 (Third Dept. 1994), and in determining credibility Matter of Minielly v. Comm. of Health 222 AD 2d 750, 634 NYS 2d 856 (Third Dept. 1995).

### THE BOARD'S DETERMINATION

The Board has considered the record below and the parties' briefs. The Board votes 4-0 to sustain the Committee's Determination finding that the Respondent practiced with gross negligence and failed to prepare accurate records for Patient A. The Board votes 4-0 to sustain the Committee's Determination finding no evidence to support the charge that the Respondent committed gross incompetence and 3-1 to sustain the Determination finding no evidence to support the charges that the Respondent willfully harassed Patient A and that the Respondent practiced with moral unfitness. The Board votes 4-0 to modify the Committee's Probation Terms and 3-1 to reject the Petitioner's request that we impose a stricter Penalty than that which the Hearing Committee imposed.

The Respondent's careless examination on Patient A failed to note abnormalities in the Patient's breasts and failed to note or retest the Patient's elevated blood pressure. The Committee noted that the Respondent's failure to retest the Patient's blood pressure constituted a significant deviation from minimum acceptable practice standards [see Committee Determination, page 9, paragraph 6]. The Board concludes that the Respondent's careless examination placed the Patient at risk and that the evidence demonstrated that the Respondent practiced with gross negligence in treating the Patient. The Respondent characterized the Committee's gross negligence finding as inappropriate, because the proof showed no detrimental effects to the Patient's health. The Board rejects that argument. Gross negligence requires proof that a physician practiced at a gross deviation from acceptable medical standards, but requires no showing that the gross deviation in care actually resulted in patient harm.

The Board votes 3-1 to sustain the Committee's findings on the moral unfitness and patient abuse charges. The Board's dissenting member would overturn those findings, because he believes

that the evidence showing that the Respondent performed medically unacceptable examinations on the Patient's breasts and labia, coupled with Patient A's reaction to the examination, demonstrate that the Respondent performed the examinations for his own sexual gratification and that the Respondent practiced medicine with moral unfitness and willfully harassed or abused a patient.

The Board votes 4-0 to modify the Committee's Penalty Determination, because we find the first and second probation terms inappropriate. The Board votes 3-1 to reject the Petitioner's request that the Board impose a stricter penalty against the Respondent. The Board's majority agrees with the Committee that the Respondent needs to correct the deficiencies in the Respondent's examination procedures and in his record keeping, and, the majority agrees that the Respondent should undergo a probation period with a monitor to assure that he has corrected his practice deficiencies. The majority find the Committee's first probation term inappropriate, however, because the Respondent demonstrated deficiencies in areas beyond breast examinations, yet the Committee limited the retraining requirement in the probation term to only attending a breast clinic and performing supervised breast examinations. The Respondent also failed to retest the Patient's elevated blood pressure, performed an unacceptable examination on the Patient A's genitalia and prepared inadequate records. The Board's majority finds that the retraining must address all the deficiencies that the Committee identified. As to the second probation term, the Board agrees with the Respondent that the Committee acted inappropriately by imposing monitoring and reporting requirements on the Respondent's supervisor at the Syracuse Community Health Center, a non-party to the proceeding. The Board also agrees with the Petitioner that the probation term should require a monitor for the Respondent's practice at any practice setting, rather than the Syracuse Community Health Center only. The majority sees no need, however, to restrict the Respondent to a supervised setting only during the probation period. The Board's dissenting member, the same member who would find the Respondent guilty for moral unfitness and patient abuse, votes to revoke the Respondent's License.

The Board's majority votes to suspend the Respondent's License for one year, and we stay that suspension, on condition that:

- within four to six weeks from this Determination's effective date, the Respondent must make arrangements to attend a course in physical diagnosis and preparing



medical records at the State University of New York Health Science Center in Syracuse.

Following his participation at the course, the Respondent shall be on probation for six months, under supervision by the Director of the Office of Professional Medical Conduct (OPMC), pursuant to the provisions in N.Y. Pub. Health Law §230(18)(McKinney's Supp. 1997). The probation terms shall include the following two requirements:

- a. ) the Respondent may examine a female patient only with a chaperone present, and,
- b.) the Respondent must practice under supervision by a monitor, whom the Respondent shall choose and whom OPMC shall approve.

If at any time during the probation period, the Respondent ceases to practice or leaves the State, the Respondent's absence or inactivity shall toll the probation period until the Respondent's return to the State or to practice.

**ORDER**

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

1. The Board **SUSTAINS** the Hearing Committee's December 12, 1996 Determination finding the Respondent guilty for professional misconduct on certain charges and dismissing other charges against the Respondent.
2. The Board **SUSTAINS** the Hearing Committee's Penalty suspending the Respondent's License for one year, staying the suspension and placing the Respondent on probation for six months.
3. The Board **MODIFIES** the Committee's probation terms, as we discuss in this Determination.

**ROBERT M. BRIBER**

**SUMNER SHAPIRO**

**EDWARD SINNOTT, M.D.**

**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF MONTAZ AHMED, M.D.**

**WILLIAM A. STEWART, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, affirms that he participated in the Deliberations in the Matter of Dr. Ahmed and that this Determination reflects the decision by the Board's majority.

**DATED: Syracuse, New York**

*7 April*, 1997



**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF MOMTAZ AHMED, 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. Ahmed.

**DATED: Delmar, New York**  
**April 7, 1997**

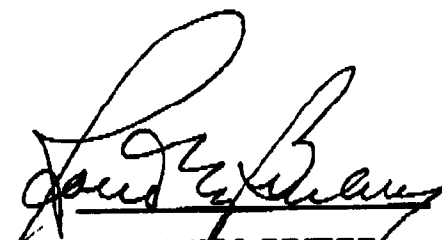
  
**SUMNER SHAPIRO**

**IN THE MATTER OF MOMTAZ AHMED, 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. Ahmed.

**DATED: Schenectady, New York**

April 15, 1997



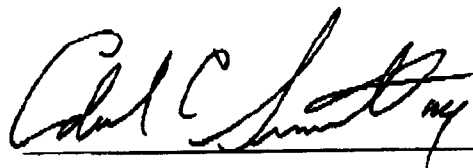
**ROBERT M. BRIBER**

**IN THE MATTER OF MOMTAZ AHMED, 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. Ahmed.

**DATED: Roslyn, New York**

April 16, 1997

A handwritten signature in black ink, appearing to read "Edward C. Sinnott, M.D.", written over a horizontal line.

**EDWARD C. SINNOTT, M.D.**