



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

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

Karen Schimke
Executive Deputy Commissioner

November 13, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Indravadan Dave, M.D.
206 Warwick Avenue
South Pasadena, California 91030

RE: In the Matter of Indravadan Dave, M.D.

EFFECTIVE DATE NOVEMBER 20, 1996

Dear Ms. Bresler and Dr. Dave:

Enclosed please find the Determination and Order (No.96-165) 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.

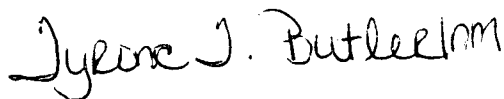
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Office of Professional Medical Conduct
New York State Department of Health
Empire State Plaza
Corning Tower, Room 438
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)].

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**

**IN THE MATTER
OF
INDRAVADAN DAVE, M.D.**

**ADMINISTRATIVE
REVIEW BOARD
DETERMINATION
ARB NO. 96-165**

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

The New York State Department of Health (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 July 16, 1996 Determination by a Hearing Committee on Professional Medical Conduct (Committee), which found the Respondent **DR. INDRAVADAN DAVE** (Respondent) guilty for professional misconduct, but which took no action against his New York medical license. The Petitioner argues that the Respondent's criminal conviction in Georgia for conspiracy to commit arson, justifies a Determination revoking the Respondent's license. After reviewing the record in this case and conducting Deliberations on September 20, 1996, Board Members **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** vote to sustain the Committee's Determination that the Respondent's criminal conviction constituted professional misconduct in violation of N.Y. Education Law (EDUC. L.) Article 130 (McKinney's Supp. 1996). The Board also sustains the Committee's Determination to take no action against the Respondent's New York License, for the reasons we discuss below.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination.

No counsel represented the Respondent and the Respondent made no submissions to the Board.

JEAN BRESLER, ESQ. (Associate Counsel, NYS Department of Health) represented the Petitioner.

COMMITTEE DETERMINATION ON THE CHARGES

PUB.H.L. §230(7) authorizes three member panels from the State Board for Professional Medical Conduct (BPMC) to conduct disciplinary proceedings to determine whether physicians have committed professional misconduct in violation of EDUC. L. Article 130. The Petitioner filed charges with BPMC alleging that the Respondent violated EDUC. L. §6509(5)(a)(ii), because he stands convicted for committing an act which constitutes a crime under Federal Law. The Petitioner brought this case as an expedited proceeding pursuant to PUB.H.L. §230(10)(p). The purpose of such a proceeding is to determine the nature and severity for the penalty to be imposed for the conduct. The charges arose from the Respondent's 1986 guilty plea in the United States District Court for the Northern District of Georgia.

Three BPMC Members, **BENJAMIN WAINFELD, M.D. (Chair)**, **RAFAEL LOPEZ, M.D.** and **MICHAEL A. GONZALEZ, R.P.A.** comprised the Committee who conducted the hearing in the matter and who rendered the Determination which the Board now reviews. Administrative Law Judge **JONATHAN M. BRANDES** served as the Committee's Administrative Officer. The Committee determined that the Petitioner proved by preponderant evidence that the Respondent had entered guilty pleas to conspiracy to commit arson and making false material declarations to a Federal Grand Jury. The Committee found that, as a result of the conviction, the Respondent spent six months in prison, spent two years on probation and paid a monetary penalty.

The Committee voted to impose no penalty against the Respondent's New York License. The Committee found that following the criminal conviction, Georgia took disciplinary action against the Respondent's license. Before he completed probation in Georgia, the Respondent moved to California and served probation on his medical license in that state. The Committee concluded that the Respondent satisfied punitive sanctions that three authorities had imposed against him and that he works currently as an Emergency Physician in a California Hospital, which is aware of the facts in this

case. The Committee found that the Respondent's testimony at the hearing demonstrated remorse and reformation, that the Respondent recognized and admitted his crimes and that the Respondent presented no threat to the public in this or any other state. The Committee found that the serious criminal conduct constituted an isolated incident in an otherwise unblemished career.

REVIEW HISTORY AND ISSUES

The Petitioner filed a Notice requesting this review, which the Board received on July 24, 1996. The Record for review contained the Committee's Determination, the hearing transcripts and exhibits and the Petitioner's brief. The Respondent submitted no brief or reply.

The Petitioner argued that the Committee's failure to impose a penalty against the Respondent's New York License was inconsistent with the Committee's Determination that the Respondent had committed serious criminal offenses. The Petitioner contends that, even though the criminal activity occurred eleven years ago, the criminal activity would justify revoking the Respondent's New York license.

THE BOARD'S REVIEW AUTHORITY

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.

The Review Board may substitute our judgement for that of the Hearing Committee, in deciding upon a penalty Matter of Bogdan 195 AD 2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, Matter of Spartalis 205 AD 2d 940, 613 NYS 2d 759 (Third Dept. 1994), and on issues of credibility Matter of Minielly __AD 2d __, 634 NYS 2d 856, 1995 N.Y. App. Div. LEXIS 12692 (Third Dept. 1995).

THE BOARD'S DETERMINATION

The Board has considered the record below and the parties' briefs. The Board sustains the Committee's Determination finding the Respondent's Federal criminal convictions constitute misconduct in violation of EDUC. L. § 6509(5)(a)(ii). Neither party disputed the Committee's finding as to misconduct.

The Board sustains the Committee's Determination to impose no penalty against the Respondent's New York License. The Board agrees with the Petitioner that the Respondent committed serious crimes. The Board finds, however, that the eleven years that have passed since that conduct demonstrate that the Respondent's criminal conduct was an isolated incident. The Board agrees with the Committee that the Respondent demonstrated remorse at the hearing and that the Respondent represents no threat to the public. We also find no necessity to impose a penalty in New York, because the Respondent has already satisfied sanctions from the Federal Court in Georgia and from the licensing authorities in Georgia and California.

ORDER

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

1. The Board the Hearing Committee's **SUSTAINS** the Hearing Committee's July 16, 1996 Determination finding the Respondent guilty for professional misconduct.

2. The Board also **SUSTAINS** the Hearing Committee's Determination to impose no penalty in this case.

ROBERT M. BRIBER

SUMNER SHAPIRO

WINSTON S. PRICE, M.D.

EDWARD SINNOTT, M.D.

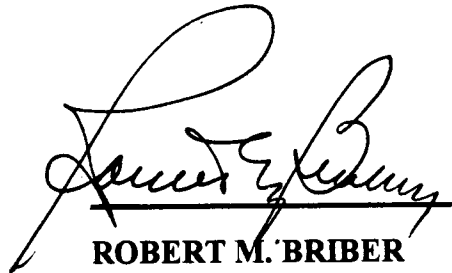
WILLIAM A. STEWART, M.D.

IN THE MATTER OF INDRAVAN DAVE, 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. Dave.

DATED: Schenectady, New York

10/31, 1996



ROBERT M. BRIBER

IN THE MATTER OF INDRAVAN DAVE, 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. Dave.

DATED: Delmar, New York

OCT. 31, 1996

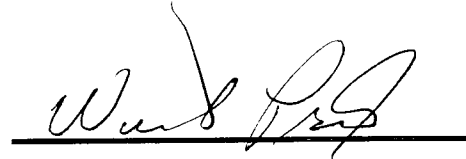

SUMNER SHAPIRO

IN THE MATTER OF INDRAVAN DAVE, 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. Dave.

DATED: Brooklyn, New York

11/2, 1996

A handwritten signature in cursive script, appearing to read "Winston Price", is written above a solid horizontal line.

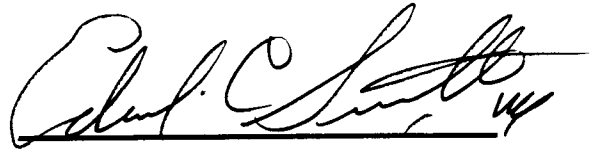
WINSTON S. PRICE, M.D.

IN THE MATTER OF INDRAVAN DAVE, 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. Dave.

DATED: Roslyn, New York

Oct 31, 1996

A handwritten signature in cursive script, reading "Edward C. Sinnott, M.D.", written over a horizontal line. The signature is fluid and includes a small flourish at the end.

EDWARD C. SINNOTT, M.D.

IN THE MATTER OF INDRAVAN DAVE, 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. Dave.

DATED: Syracuse, New York

31 Oct. . 1996

William A. Stewart

WILLIAM A. STEWART, M.D.