



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

July 30, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David Benjamin, M.D.
209-2 43rd Avenue
Bayside, New York 11361

Amy T. Kulb, Esq.
Jacobson and Goldberg
585 Stewart Avenue
Garden City, New York 11530

Ralph Bavaro, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

**RE: In the Matter of David Benjamin, M.D.
a/k/a Elyas Bonrouhi, M.D.**

Dear Dr. Benjamin, Ms. Kulb and Mr. Bavaro:

Enclosed please find the Determination and Order (No. ARB-93-79) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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	:	<u>ADMINISTRATIVE</u>
		<u>REVIEW BOARD</u>
OF	:	<u>DETERMINATION</u>
		<u>AND ORDER</u>
DAVID BENJAMIN, M.D.	:	<u>ARB NO. 93-79</u>
a/k/a ELYAS BONROUHI, M.D.	:	

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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.** met on July 30, 1993 to review the Professional Medical Conduct Hearing Committee's (Committee) June 1, 1993 Determination finding Dr. David Benjamin guilty of professional misconduct and revoking his license to practice medicine in New York State. The Respondent requested the review through a Notice which the Review Board received on June 6, 1993. James F. Horan served as Administrative Officer to the Review Board. Amy T. Kulb, Esq. submitted a brief on the Respondent's behalf on July 7, 1993. Ralph J. Bavaro, Esq. submitted a response brief for OPMC on July 17, 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, incompetence on more than one occasion, practicing the profession fraudulently and failing to maintain adequate records. The charges alleging negligence, incompetence and inadequate record keeping arose from the care which the Respondent provided to five patients, A through E. The fraud charge arises from the Respondent's application for privileges to the Catholic Medical Center of Brooklyn and Queens.

The Hearing Committee sustained the charge that the Respondent was negligent on more than one occasion for his surgical care for Patients A and B and for his for the Respondent's failure to obtain adequate consents from all five

patients. The Committee sustained the charge of incompetence on more than one occasion arising from the Respondent's treatment of Patients A through C and for the Respondent's failure to obtain adequate consents for Patients A through E. The Committee also determined that the Respondent had failed to maintain adequate medical records and that the Respondent had practiced the profession fraudulently due to misrepresentations he made on his 1989 application for privileges at Catholic Medical Center of Brooklyn and Queens.

The Hearing Committee voted to revoke the Respondent's license due to: the Respondent's repeated acts of incompetence in both the choice of surgical procedure and in the performance of the chosen procedure, the Respondent's lack of understanding of patient rights and welfare, his lack of understanding about how to maintain adequate records and the Respondent's failure to improve after significant remediation which followed an earlier disciplinary proceeding.

REQUESTS FOR REVIEW

The Respondent has requested that the Review Board modify the Hearing Committee's Determination to revoke the Respondent's license. The Respondent believes that the record in this case would not justify a penalty any more severe than a partial suspension of the Respondent's license, until the Respondent had completed a course of retraining, followed by probation with a monitor. The Respondent contends that problems

with the Respondent's practice, his surgical skills, the lack of informed consents and the inadequate record keeping could all be addressed through remediation.

The Respondent alleges that the Hearing Committee erred in a number of their conclusions. The Respondent alleges further that the admission into evidence of information about the prior disciplinary determination against the Respondent and letters about prior terminations of hospital privileges had a prejudicial effect. Finally, the Respondent asks the Review Board to consider several mitigating factors which the Respondent's brief raises.

The OPMC urges the Review Board to sustain the Hearing Committee's Determination and Penalty.

REVIEW BOARD DETERMINATION

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

Four members of the Review Board vote to sustain the Hearing Committee's Determination to revoke the Respondent's license to practice medicine in New York State. That determination is consistent with the Findings of Fact and Conclusions of Law and it is appropriate in view of the Hearing Committee's conclusions concerning the Respondent's repeated acts of incompetence, lack of understanding of patients' rights and welfare, lack of understanding about how to maintain adequate medical records and his failure to improve after the significant remediation which followed the earlier disciplinary proceeding.

The Review Board finds that there was no prejudice to this Respondent because the Hearing Committee correctly based their findings on the charges which were before them in this case.

Dr. Sinnott abstained from taking part in this deliberation and determination due to the recent publicity surrounding this Respondent in the New York City Metropolitan area. The other members of the Review Board were not aware of this publicity.

ORDER

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

1. The Administrative Review Board votes to sustain the Hearing Committee's Determination that Dr. David Benjamin, a/k/a Elyas Bonrouhi, M.D., was guilty of professional misconduct.

2. The Review Board votes to sustain the Hearing Committee's Determination to **revoke** Dr. Benjamin's license to practice medicine in the State of New York.

ROBERT M. BRIBER

WINSTON S. PRICE, M.D.

MARYCLAIRE B. SHERWIN

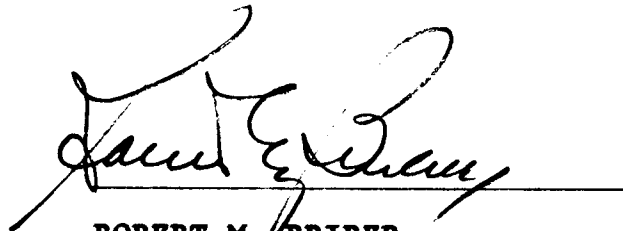
WILLIAM A. STEWART, M.D.

IN THE MATTER OF DAVID BENJAMIN, 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. Benjamin.

DATED: New York, New York

July 30, 1993

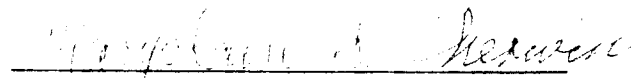


ROBERT M. BRIBER

IN THE MATTER OF DAVID BENJAMIN, 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. Benjamin.

DATED: New York, New York
, 1993




MARYCLAIRE B. SHERWIN

IN THE MATTER OF DAVID BENJAMIN, 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. Benjamin.

DATED: New York, New York

JULY 30th, 1993



WINSTON S. PRICE

IN THE MATTER OF DAVID BENJAMIN, 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. Benjamin.

DATED: New York, New York

30 July, 1993

A handwritten signature in cursive script that reads "William A. Stewart". The signature is written in dark ink and is positioned above a horizontal line.

WILLIAM A. STEWART, M.D.