



# STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
Commissioner

Dennis P. Whalen  
Executive Deputy Commissioner

February 6, 2003

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Emmanuel Brunot, M.D.  
Glenwood Medical Center  
5520 Glenwood Road, Apt. 3B  
Brooklyn, New York 11234

Nancy Strohmeier, Esq.  
NYS Department of Health  
5 Penn Plaza - 6<sup>th</sup> Floor  
New York, New York 10001

Denise Quarles, Esq.  
90 Park Avenue  
New York, New York 10016

**RE: In the Matter of Emmanuel Brunot, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 02-285) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large, prominent initial "T".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah

Enclosure

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

**In the Matter of**

**Emmanuel Brunot, M.D. (Respondent)**

**Administrative Review Board (ARB)**

**A proceeding to review a Determination by a  
Committee (Committee) from the Board for  
Professional Medical Conduct (BPMC)**

**Determination and Order No. 02-285**

**COPY**

**Before ARB Members Grossman, Lynch, Pellman, Price and Briber  
Administrative Law Judge James F. Horan drafted the Determination**

**For the Department of Health (Petitioner):  
For the Respondent:**

**Nancy Strohmeyer, Esq.  
Denise L. Quarles, Esq.**

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct in providing treatment to three patients and in the answers the Respondent provided on certain applications for re-appointment and re-certification. The Committee voted to fine the Respondent and to limit his license to practice medicine in New York State. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney Supp. 2003), both parties ask the ARB to modify that Determination. After considering the record and the parties' review submissions, we vote to sustain the Committee's Determination on the charges and we decline the Petitioner's request that we sustain additional charges. We reduce the fine against the Respondent and we overturn the Committee and remove the restriction on the Respondent's License. We also place the Respondent on probation for five years under the terms that appear in the Appendix to this Determination.

**Committee Determination on the Charges**

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law §§ 6530(2-3) 6530(5), 6530(14), 6530(21), 6530(25) &

6530(32) (McKinney Supp. 2003) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- practicing with negligence on more than one occasion,
- practicing with incompetence on more than one occasion,
- failing to report a medical misconduct proceeding,
- willfully filing a false report,
- delegating professional responsibilities to an unqualified person, and,
- failing to maintain accurate records.

The charges involved the care that the Respondent provided to four persons, Patients A-D. The charges alleged further that the Respondent submitted false no-fault insurance claims concerning the care for Patients A-D and that the Respondent knowingly used unlicensed employees to administer therapy to the Patients. In addition, the charges alleged that the Respondent answered falsely and with intent to misrepresent on several re-appointment and re-certification applications in 1997 (1997 Applications) and 1999 (1999 Applications). A hearing on the charges ensued before the Committee that rendered the Determination now on review.

The Committee sustained the charge that the Respondent delegated professional responsibilities to unlicensed persons and committed fraud by allowing unlicensed employees to provide physical therapy to patients. The Respondent acknowledged that the unlicensed employees provided the therapy, but the Respondent claimed ignorance concerning the legal prohibition against an unlicensed person performing therapy. The Committee dismissed charges that the Respondent committed fraud in submitting no-fault billings. The Committee determined that the Petitioner failed to prove that the Respondent submitted billings with intent to deceive. The Committee also dismissed charges that the Respondent committed fraud by making false answers on the 1997 and 1999 Applications. The Committee again found no intent to deceive in

the Respondent's answers. The Committee found, however, that the Respondent willfully filed false reports concerning 1999 Applications to Aetna USHealthcare and Fidelis.

The Committee dismissed the charges concerning negligence, incompetence and inaccurate record keeping concerning Patient C. As to the care that the Respondent provided to Patients A, B and D, the Committee found that the Respondent:

- failed to obtain histories for Patients A and D,
- failed to notes the types and dosages of analgesics and muscle relaxants that the Respondent prescribed for the Patients,
- failed to address complaints by the Patients concerning headaches and dizziness, and,
- never conducted a single physical examination or assessment on the efficacy of physical therapy regimes on the Patients, over the course of months of physical therapy treatments.

The Committee concluded that the Respondent's care for these Patients constituted practicing with negligence and incompetence on more than one occasion and failing to maintain accurate records.

The Committee found that the Respondent conducted a sloppy office practice, but concluded that the Respondent lacked the intent to deceive. The Committee accepted the Respondent's explanations that the Respondent relied on his office staff to perform insurance billing and that the Respondent relied on his former attorney in making incorrect answers on the 1997 Application. The Committee decided against revoking the Respondent's License. The Committee determined, however, that the Respondent lacked independent critical judgement and that he would fail to modify his behavior sufficiently to allow the Respondent to continue in an independent office setting. The Committee voted to restrict the Respondent to practice in a

facility, which holds a license under N.Y. Pub. Health Law Article 28. The Committee also voted to fine the Respondent \$12,500.00, the amount the Respondent tried unsuccessfully to bill the no-fault insurance carriers.

### Review History and Issues

The Committee rendered their Determination on September 10, 2002. This proceeding commenced on September 19 & 23, 2002, when the ARB received both parties' Notices requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and response brief and the Respondent's brief. The record closed when the ARB received the Petitioner's response brief on October 25, 2003.

The Petitioner asks that the ARB overrule the Committee and affirm additional misconduct charges. The Petitioner contends that the Committee findings support the Determination that the Respondent practiced with negligence in treating Patient C and that the Respondent practiced fraudulently in submitting the no-fault insurance billings and in both the 1997 and 1999 Applications. The Petitioner requests further that the ARB overturn the Committee and revoke the Respondent's License.

The Respondent's brief made no challenge to the Committee's Determination on the charges. The Respondent argued, however, that the Committee imposed an overly harsh penalty through the fine and the limitation on the Respondent's License. The Respondent asks that the ARB to consider mitigating factors in the case, as well as the Respondent's remorse and his fitness for re-training. The Respondent also alleges misconduct by the Petitioner's counsel for trying to control the hearing and alleges bias by the all white and mostly Jewish Committee,

prosecutor and Administrative Officer against the Respondent, a Haitian-American, and his attorney, an African-American.

### Determination

The ARB has considered the record and the parties' briefs. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct by practicing with negligence and incompetence on more than one occasion and failing to maintain accurate records for Patients A, B and D. Further, the ARB affirms the Committee's Determination to sustain charges that the Respondent employed unlicensed persons to perform therapy and willfully filed a false report by making false answers on the 1999 Applications. Neither party challenged the Committee's Determination on those charges. We reject the Petitioner's request that we sustain additional charges. We modify the fine the Committee imposed and we overturn the Committee's Determination to limit the Respondent's License. We place the Respondent on probation for five years under the terms that we specify in the Appendix to this Determination.

The Petitioner asked that we overturn the Committee and sustain fraud charges involving both the no-fault billings and the 1997 and 1999 Applications. To sustain a fraud charge, a committee must determine that a licensee acted with intent to deceive, Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (Third Dept. 1966), aff'd, 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). The Committee in this case, found no intent by the Respondent to deceive because they found the Respondent credible in his explanations that he relied on office staff for billing and on his prior attorney concerning the answers to the Applications. By a 3-2 vote the ARB affirms the Committee's Determination that the Respondent lacked the intent to commit

fraud. The majority defers to the Committee in their judgement on the Respondent's credibility. The ARB also votes 3-2 to affirm the Committee's Determination to dismiss the charges that the Respondent practiced with negligence in treating Patient C. The Committee's Determination provided no basis for finding negligence in the treatment to Patient C.

The ARB finds no support in the record for the Respondent's assertion that the Committee's Determination resulted from bias. To overturn a decision due to bias, the party attacking the decision must show that the outcome in the decision flowed from bias, Matter of Moss v. Chassin, 209 A.D.2d 889, 618 N.Y.S.2d 931 (3<sup>rd</sup> Dept. 1994). In this case, the Respondent failed to show that the Committee's Determination resulted from bias. The Respondent made no challenge to the Committee's Determination on the charges and admits the facts in the case. We note that the Committee based their Determination to dismiss many charges on the Respondent's own testimony. The Committee also decided against revoking the Respondent's License.

The Respondent's brief at page 2 also alleged, that on eighteen instances during the hearing, the Petitioner's counsel attempted to control the hearing or acted in an undignified manner. Although the Respondent alleged that such actions amounted to misconduct, the Respondent's counsel objected to the actions by Petitioner's counsel at the hearing on only two of the eighteen instances [Hearing Transcript pages 968, 882-883]. In one of those instances, the Committee's Administrative Officer admonished counsel for both parties for their conduct [Transcript pages 969-970]. The Respondent's brief also failed to cite any regulation or court decision that would define the actions by the Petitioner's attorney as misconduct. The Respondent argues that the actions by the Petitioner's attorney manifested the bias present in the

hearing. As the ARB has already noted, however, the Respondent failed to demonstrate that the Committee's Determination resulted from bias.

The Respondent argued that the Committee imposed an overly harsh penalty by imposing a Twelve Thousand Five Hundred Dollar (\$12,500.00) fine. We agree. First, the Committee indicated that they imposed the fine in that amount, because that sum represented the amount the Respondent attempted to bill on the no-fault insurance claims. The Committee, however, dismissed the charge relating to the no-fault claims. Second, even if the Committee had sustained the specification of charges relating to the no-fault claims, under N.Y. Pub. Health Law § 230-a (7), a committee may assess a fine not to exceed Ten Thousand Dollars (\$10,000.00) for each specification of charges. We agree, however, with the Committee that the Respondent's conduct in this case warrants a fine. For willfully filing false reports and for allowing unlicensed persons to perform therapy on Patients A, B and D, we assess a fine totaling Five Thousand Dollars (\$5000.00).

The ARB also agrees with the Respondent that the Committee imposed an inappropriate penalty by limiting the Respondent's License as a sanction for the charges that the Committee sustained. The Committee concluded, at page 30 in their Determination, that the Respondent would be unable to modify his behavior, but earlier in that same page the Committee found that the Respondent's record keeping appeared at that point to meet appropriate standards. That conclusion indicated that the Respondent had modified the earlier conduct that resulted in the Determination that the Respondent failed to maintain accurate records. The Committee also indicated their concern that language or cultural differences may have contributed to some the problems that this proceeding addressed [Committee Determination page 29] and the Committee described the Respondent as an adequate community physician [Committee Determination page

30]. The ARB concludes that we can sanction the Respondent and oversee the Respondent's practice without removing the Respondent from the community and restricting him to practice in an Article 28 facility.

The ARB votes 5-0 to place the Respondent for probation for five years under the terms that we specify in the Appendix to this Determination. The probation terms shall include the requirement that the Respondent take and complete, within one year, a course in Office Management and Billing. The Respondent may select the course, but must receive approval for the course from the Office for Professional Medical Conduct (OPMC). The terms will also include a provision for at least quarterly medical record review and billing claim record audit, with OPMC receiving authority to perform random reviews or audits on such records. The ARB concludes that the retraining will aid the Respondent in further modifying his behavior and that the probation will assure that he Respondent has modified that behavior.

## ORDER

**NOW**, with this Determination as our basis, the ARB renders the following **ORDER**:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct by practicing medicine with negligence on more than one occasion, practicing with incompetence on more than one occasion, allowing unlicensed persons to perform therapy, failing to maintain accurate records and willfully filing false reports.
2. The ARB overturns the Committee's Determination to limit the Respondent's License.
3. The ARB affirms the Committee's Determination to fine the Respondent, but we reduce the fine from Twelve Thousand Five Hundred Dollars (\$12,5000.00) to Five Thousand Dollars (\$5000.00).
4. The ARB places Respondent on probation for five years, under the terms that Appear in the Appendix to this Determination.

Robert M. Briber  
Thea Graves Pellman  
Winston S. Price, M.D.  
Stanley L. Grossman, M.D.  
Therese G. Lynch, M.D.

# Appendix

## Terms of Probation

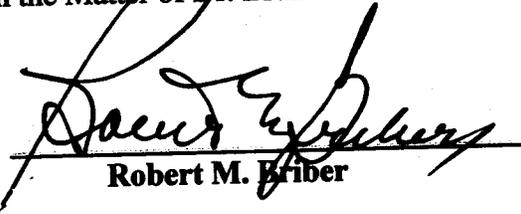
1. The Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. The Respondent shall submit written notification to the New York State Department of Health addressed to the Director, OPMC, to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of the Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
6. The Respondent's professional performance shall be reviewed by the Director of OPMC. This review shall may include at least a quarterly a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices and billing claims record audits. The Director shall also conduct random record reviews, interviews and/or audits.

7. The Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
8. The Respondent shall take and complete, within one year, a course in Office Management and Billing. The Respondent may select the course, but must receive approval for the course from OPMC.
9. The Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. **Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.**

**In the Matter of Emmanuel Brunot, M.D.**

**Robert M. Briber, an ARB Member, affirms that this Determination and Order reflect the decision by the majority of the ARB Members in the Matter of Dr. Brunot.**

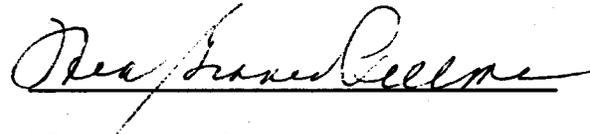
**Dated: January 18, 2003**

  
Robert M. Briber

**In the Matter of Emmanuel Brunot, M.D.**

**Thea Graves Pellman**, an ARB Member affirms that this Determination and Order reflect the decision by the majority of the ARB Members in the Matter of Dr. Brunot.

**Dated:** \_\_\_\_\_, 2003

A handwritten signature in cursive script, reading "Thea Graves Pellman", written over a horizontal line.

**Thea Graves Pellman**

In the Matter of Emmanuel Brunot, M.D.

Winston S. Price, M.D., an ARB Member affirms that this Determination and Order reflect the decision by the majority of the ARB Members in the Matter of Dr. Brunot.

Dated: Jan 21, 2003

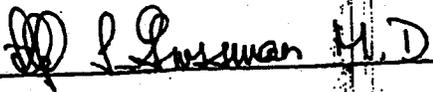
A handwritten signature in black ink, appearing to read "Winston S. Price", written over a horizontal line.

Winston S. Price, M.D.

In the Matter of Emmanuel Brunot, M.D.

Stanley L. Grossman, an ARB Member affirms that this Determination and Order reflect the decision by the majority of the ARB Members in the Matter of Dr. Brunot.

Dated: January 18, 2003

 Stanley L. Grossman, M.D.

Stanley L. Grossman, M.D.

**In the Matter of Emmanuel Brunot, M.D.**

**Therese G. Lynch, M.D.**, an ARB Member affirms that this Determination and Order reflect the decision by the majority of the ARB Members in the Matter of Dr. Brunot.

Dated: January 18, 2003

Therese G. Lynch M.D.

**Therese G. Lynch, M.D.**