



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

PUBLIC

December 3, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
433 River Street – 4th Floor
Troy, New York 12180

Anthony Celentano, R.P.A.
60-34 Flushing Avenue
Maspeth, New York 11378

Edward J. Pavia, Jr., Esq.
Michael F. Mongelli II, P.C.
41-07 162nd Street
Flushing, New York 11358

RE: In the Matter of Anthony Celentano, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-148) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 that reads "Sean D. O'Brien". The signature is written in a cursive style with a large initial "S" and "D".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

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

In the Matter of

Anthony Celentano, 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. 04-148

COPY

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

For the Department of Health (Petitioner): Paul Robert Maher, Esq.

For the Respondent:

Edward J. Favia & Michael F. Mongelli, Esqs.

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2004), the ARB considers the penalty to impose against the Respondent's Authorization to practice as Physician Assistant, following the Respondent's criminal conviction for illegally billing the Medicaid Program. After a hearing below, a BPMC Committee voted to revoke the Respondent's Authorization. The Respondent now requests review on that Determination and argues that the Committee failed to consider or misunderstood mitigating factors in the case and that the Committee imposed an overly harsh penalty, inconsistent with the penalties in prior cases. After considering the hearing record and the parties' review submissions, we affirm the Committee, because we conclude that the Respondent's criminal conduct warrants revocation.

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), 6530(9)(a)(i), 6530(20) & 6530(21)

(McKinney Supp. 2004) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- engaging in conduct that results in a criminal conviction under New York Law,
- engaging in conduct in practice that evidences moral unfitness, and,
- willfully making or filing a false report.

A BPMC Committee conducted a hearing on the charges and rendered the Determination now on review.

The Record before the Committee demonstrated that the Respondent was convicted of Criminal Possession of Marijuana in the Fourth Degree, a Class A Misdemeanor, in County Court for Suffolk County, New York in March 1988. On or about December 7, 1990, the Respondent submitted an Application to the New York State Education Department (SED Application) in which he answered falsely on a question concerning prior criminal convictions. In November 2003, the Respondent entered a guilty plea to Offering a False Instrument for Filing in the Fifth Degree, a Class E Felony. The Respondent received a three-year conditional discharge and the Court directed that the Respondent pay \$60,000.00 in restitution, a \$200.00 surcharge and a \$10.00 victim's assistance fee. The Felony conviction involved billings to the Medicaid Program for services the Respondent never performed.

The fraud, moral unfitness and false report charges related to the SED Application. The Committee dismissed those charges. The Committee found that the Respondent received a Certificate of Relief from Disabilities following the Marijuana conviction. The Committee accepted as credible the Respondent's explanation that he believed that the Certificate relieved the Respondent from responsibility for reporting the Marijuana conviction. The Committee

concluded that the Respondent's false answer on the SED Application resulted from the Respondent's mistake about the Certificate of Relief rather than from any intent to deceive.

The Committee found that the Respondent's Marijuana conviction and the Respondent's Felony conviction made the Respondent liable for disciplinary action under Educ. Law § 6530(9)(a)(i). The Respondent testified that, although he entered a guilty plea on the Marijuana conviction, he was actually not guilty. The Committee refused to allow the Respondent to repudiate his guilty plea in that case. On the Felony conviction, the Respondent argued that he cooperated with the prosecution and that he engaged in the criminal scheme due to financial desperation. As further mitigation, the Respondent argued that he provided excellent medical care and that losing his License would leave him and his family on public assistance.

The Committee voted to revoke the Respondent's Authorization to practice as a Physician Assistant. The Committee found no mitigating circumstances in the Respondent's cooperation with prosecutors, because the Respondent began cooperating only after he learned about an investigation into All City Family Health Care, where the Respondent practiced and engaged in his criminal scheme. The Committee also concluded that the Respondent's criminal conduct outweighed any benefit from health care that he provides. The Committee found no excuse for the Respondent's criminal conduct due to the financial difficulties he faced. The Committee also saw no validity to the Respondent's argument that he would have to seek public assistance if he lost his Authorization to practice.

Review History and Issues

The Committee rendered their Determination on July 1, 2004. This proceeding commenced on July 12, 2004, when the ARB received the Respondent's Notice requesting a

Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's response brief. The record closed when the ARB received the response brief on August 18, 2004.

The Respondent challenges the Committee's Determination and argues that the Committee ignored or misinterpreted mitigating factors, which resulted in an overly harsh penalty, inconsistent with prior sanctions imposed. The Respondent contends that rather than crediting the Respondent's cooperation with authorities, the Committee penalized the Respondent for such cooperation.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent's criminal convictions made the Respondent liable for disciplinary action pursuant to Educ. Law § 6530(9)(a)(i). Neither party challenged the Committee's Determination on those charges. We also affirm the Committee's Determination to revoke the Respondent's Authorization to practice as a Physician Assistant.

We find no merit to the Respondent's argument that the Committee failed to consider or misinterpreted mitigating factors in this case. The Committee discussed in detail the factors that the Respondent raised in his defense and the Committee gave their reasons for rejecting those defenses.

The Respondent argued incorrectly that, rather than crediting the Respondent's cooperation with prosecutors, the Committee punished the Respondent for cooperation. The record shows that the Committee punished the Respondent for using his Authorization to

practice as a Physician Assistant to engage in an illegal scheme to submit false billings. The Committee refused to accept the Respondent's cooperation with the prosecution as a mitigating factor, because the Respondent cooperated only after he became aware about an investigation into the criminal scheme. We agree with the Committee that the Respondent's cooperation failed to constitute a mitigating factor.

The Respondent's brief mentioned a prior determination in which the ARB did credit a respondent's cooperation with prosecutors as a consideration in reducing a sanction, Matter of Despen, ARB # 97-303, 1997 WL 1053227 (NYSDOH-Admin. Rev. Bd.). In the Despen case, Mr. Despen worked at a practice that submitted false billings for Mr. Despen's services as a Physician Assistant. The false billings became the basis for criminal convictions against Mr. Despen and others at the practice. Mr. Despen played no active role in the criminal scheme, received no financial gains from the false billings and left the practice ahead of any investigation, when Mr. Despen became nervous over the illegal activity. Mr. Despen went to prosecutors ahead of knowing about any investigation. In the present case, the Respondent participated in the illegal scheme at All City Family Health Care, he received proceeds from the scheme and he cooperated with prosecutors only in response to the criminal investigation. We find differences between the Respondent's conduct and the conduct by Mr. Despen and see no mitigating factors in the Respondent's cooperation with prosecutors. We disagree with the Respondent's argument that our decision will discourage other persons from cooperating with prosecutors in situations similar to the Respondent's case. Such other persons will remain willing to cooperate for consideration on any criminal sanction, whether or not that cooperation will provide any mitigation in a professional disciplinary proceeding.

The Respondent also argued that the Committee imposed a harsh penalty, inconsistent with penalties in prior cases. We have already noted that we find the facts in this case differ from those in Despen. We note that both BPMC Committees and the ARB have ruled previously that participation in fraudulent or criminal billing schemes provides grounds for revocation, Galin v. DeBuono, 259 A.D.2d 788, 686 N.Y.S.2d 190 (3rd Dept. 1999); Adler v. Bur. of Prof. Med. Cond., 211 A.D.2d 990, 622 N.Y.S.2d 609 (3rd Dept. 1995); Teruel v. DeBuono, 244 A.D.2d 710, 664 N.Y.S.2d 381.

The record indicated that the Respondent experienced financial difficulties at the time he joined in the illegal scheme. We agree with the Committee that financial difficulties provide no grounds for engaging in criminal conduct. We also find unconvincing the Respondent's argument that revocation would force him to seek public assistance. The record indicated that the Respondent provided good health care. We agree with the Committee that the Respondent's criminal conduct outweighed his skills as a practitioner.

The Respondent used his authorization as a Physician Assistant to engage in an illegal scheme to obtain financial gain from false billings. The Respondent has demonstrated thereby his unfitness to practice. We affirm the Committee's Determination on sanction.

ORDER

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

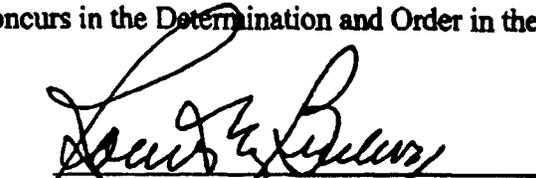
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's Authorization to practice as a Physician Assistant.

Robert M. Briber
Thea Graves Pellman
Datta G. Wagle, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

In the Matter of Anthony Celentano, R.P.A.

Robert M. Briber, an ARB Member, concurs in the Determination and Order in the Matter of Mr. Celentano.

Dated: September 17, 2004



Robert M. Briber

In the Matter of Anthony Celentano, R.P.A.

**Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the
Matter of Mr. Celentano.**

Dated: 9-18, 2004

A handwritten signature in cursive script, appearing to read 'Thea Graves Pellman', written over a horizontal line.

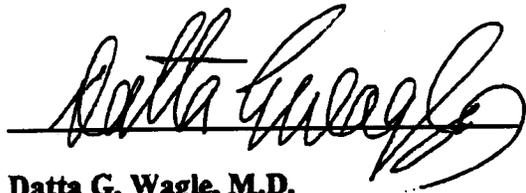
Thea Graves Pellman

In the Matter of Anthony Celentano, R.P.A.

Datta G. Wagle, M.D., an ARB Member concurs in the Determination and Order in the

Matter of Mr. Celentano.

Dated: 9/18/, 2004

A handwritten signature in cursive script, reading "Datta G. Wagle", written over a horizontal line.

Datta G. Wagle, M.D.

In the Matter of Anthony Celentano, R.P.A.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the
Matter of Mr. Celentano.

Dated: December 2, 2004

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Stanley L Grossman, M.D.

In the Matter of Anthony Celentano, R.P.A.

**Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in
the Matter of Mr. Celentano.**

Dated: September 16, 2004

Therese G. Lynch M.D.

Therese G. Lynch, M.D.