



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 26, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel Guenzburger, Esq.
NYS Department of Health
5 Penn Plaza – Suite 601
New York, New York 10001

T. Lawrence Tabak, Esq.
Kern, Augustine, Conroy &
Schoppmann, P.C.
420 Lakeville Road
Lake Success, New York 11042

Ralph Sheldon Bell, M.D.
c/o T. Lawrence Tabak, Esq.
Kern, Augustine, Conroy &
Schoppmann, P.C.
420 Lakeville Road
Lake Success, New York 11042

RE: In the Matter of Ralph Sheldon Bell, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-46) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

IN THE MATTER
OF
RALPH SHELDON BELL, M. D.

DETERMINATION
AND
ORDER
BPMC #01-46

MR. KENNETH KOWALD, Chairperson, MILTON O.C. HAYNES, M.D. and RALPH LUCARIELLO, M.D., duly designated members of the State Board for Professional Medical Conduct appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. JEFFREY ARMON, ESQ., served as Administrative Officer for the Hearing Committee. After consideration of the entire record, the Hearing Committee submits this Determination.

SUMMARY OF PROCEEDINGS

Notice of Hearing/Statement of Charges:	October 13, 2000
Prehearing Conference:	December 5, 2000
Date of Hearing:	January 12, 2001
Department of Health appeared by:	DONALD P. BERENS, JR., ESQ. General Counsel, NYS Department of Health
	BY: DANIEL GUENZBURGER, ESQ. NYS Department of Health 5 Penn Plaza, Suite 601 New York, New York 10001
Representative for Respondent :	T. LAWRENCE TABAK, ESQ. Kern, Augustine, Conroy & Schoppmann, P.C. 420 Lakeville Road Lake Success, New York 11042

Witness for the Department of Health: Maury J. Greenberg, M.D.

Witnesses for the Respondent: None called

Deliberations held: February 1, 2001

NOTE: Numbers in parenthesis refer to transcript pages or exhibits, and they denote evidence that the Hearing Committee found persuasive in determining a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the evidence cited. All Hearing Committee findings were unanimous unless otherwise specified.

Petitioner's Exhibits are designated by Numbers.

Respondent's exhibits are designated by Letters.

= Transcript

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A copy of the Statement of Charges (Ex. 1) is attached to this Determination and Order as Appendix II.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York State on or about July 22, 1960 by the issuance of license number 084265 by the New York State Education Department. (Ex. A)

2. Respondent treated Patient A from about September, 1994 through June, 1997 for several medical conditions, including hypertension, asthma, allergies and chronic obstructive pulmonary disease (COPD). (Ex. 2)

3. Patient A had a number of risk factors for cardiac disease, including elevated cholesterol, hypertension, obesity and some degree of arteriosclerotic disease. (Ex. 2; T. 25-9)

4. Patient A, aged 49 at the time, presented to Respondent on May 29, 1997 with complaints of chest pains for one day and shortness of breath. Respondent performed a physical examination on the patient, noted in the medical record findings of wheezing and no radiation of pain to the neck or arm, performed an electrocardiogram, ordered laboratory tests, including a CBC, urine analysis, SMA and cardiac enzymes and referred the patient to a cardiologist for a consultation. Respondent recorded a diagnosis of hypertension, asthma and COPD. (Ex. 2, p. 22)

5. The electrocardiogram results identified certain abnormalities which Respondent did not consider significant. The results could be considered equivocal and could have been interpreted differently by different physicians. (Ex. 2, pp. 22, 62; T. 90-2)

6. Cardiac enzymes are chemicals found within heart muscle cells which are released when muscle is damaged and can be measured in elevated levels in a patient's serum. Respondent ordered a cardiac enzyme test on May 29, 1997; the blood for such test was drawn on June 2 and the results were made available on June 3, 1997. (Ex. 2, pp. 22, 56; T. 36-7)

7. The patient did not follow Respondent's advice on May 29, 1997 and failed on that day to make an appointment with the cardiologist to whom he had been referred. (Ex. 2; T. 62-3)

8. Respondent recorded a note in the medical record dated May 30, 1997 that he called Patient A at work to follow-up on his condition, but that the patient was not there. It was further recorded that the patient's home telephone was disconnected with no other forwarding number. (Ex. 2, p. 22)

9. Patient A returned to Respondent's office on June 2, 1997 for a follow-up visit. His complaint was documented as "still angina pains". Respondent performed a physical examination and referred the patient to the cardiologist for an appointment "ASAP today". (Ex. 2, p. 23)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concluded that Factual Allegations A. 1., A. 4., B. 1. and B. 2. should **BE SUSTAINED** and that Factual Allegations A. 2. and A. 3 should **NOT BE SUSTAINED**. The Committee further determined that only the Third Specification of professional misconduct should **BE SUSTAINED** and that all other Specifications should **NOT BE SUSTAINED**.

DISCUSSION

Respondent was charged with multiple Specifications of Charges alleging professional misconduct within the meaning of Education Law §6530. This statute sets forth numerous forms of actions which constitute professional misconduct, but does not provide definitions of such categories of misconduct. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law", sets forth suggested definitions for certain types of professional misconduct.

The following definitions were utilized by the Hearing Committee during its deliberations:

Negligence is the failure to exercise the care that would be exercised by a reasonably prudent licensee under the circumstances.

Gross Negligence is the failure to exercise the care that would be exercised by a reasonably prudent licensee under the circumstances, and which failure is manifested by conduct that is egregious or conspicuously bad.

Incompetence is a lack of the skill or knowledge necessary to practice the profession.

Gross Incompetence is an unmitigated lack of the skill or knowledge necessary to perform an act undertaken by the licensee in the practice of medicine.

The Committee relied upon these definitions in considering the Specifications of professional misconduct.

Allegations A. 1. and A. 4. were viewed by the Committee as being linked and were considered together. The Committee concluded that it was inappropriate for Respondent to order a cardiac enzyme test without admitting the patient to a hospital. The reasoning was that if it was felt that the patient's complaints indicated the performance of such a test, Respondent was required to obtain the results as quickly as possible. Dr. Greenberg testified that if the test results were positive, an intervention such as emergency angioplasty would have been performed within hours. In the case at hand, the results of the enzyme test were not available until about five days after Respondent ordered it. The Committee agreed with the statement by Dr. Greenberg that, if Respondent was concerned enough to order the test, it should have been performed in a hospital setting to ensure the quickest turnaround for obtaining the results.

For similar reasons, Allegations B. 1. and B. 2. were sustained. Respondent recorded that the patient still complained of angina pain. This indicated he considered the pain to be serious when he first saw the patient and that it continued through the time of the follow-up visit. The Committee believed that the continuation of the serious complaint, the history of cardiac risk factors and the fact that the patient had not seen the cardiologist as referred by the Respondent contributed to the requirement that the patient be admitted to a hospital for evaluation and treatment. Although the patient was again referred to the cardiologist "as soon as possible", the

record gave no indication that Respondent took any further action to ensure that the patient actually followed the referral.

The Committee did not sustain Factual Allegation A. 2. because it misstated Respondent's diagnosis. It was noted that the patient exhibited symptoms of shortness of breath and wheezing. Respondent also indicated a diagnosis of hypertension and COPD in addition to asthma and performed appropriate laboratory tests and an electrocardiogram in response to the patient's complaints. This Allegation was considered to be unfounded by the evidence in the record.

Allegation A. 3. was not sustained based on the testimony of the Department's expert who described the results of the EKG as being equivocal and which could have been interpreted differently by different physicians. The contention that the results suggested an evolving myocardial infarction could not be definitively established.

The Committee considered the sustained Allegations to only constitute the practice of medicine with negligence on more than one occasion and consequently sustained only the Third Specification of Charges. The members of the Committee did not believe that their conclusions were based on hindsight or in consideration of ensuing events and considered Respondent's actions to be more than an error of judgement. Respondent failed to exercise sufficient care, in view of the patient's history and complaint, to obtain the results of the cardiac enzyme test in the quickest possible manner and subsequently failed to promptly hospitalize the patient when the complaint persisted for several days. These deviations from accepted standards were not considered egregious and Respondent demonstrated that he possessed the necessary skill and knowledge by ordering appropriate diagnostic tests when presented with Patient A's complaint. It was determined that he misjudged how to apply his knowledge in this case. The Committee did not conclude that Respondent abandoned and/or neglected Patient A by failing to order him hospitalized.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York

should be suspended for a two year period, said suspension to be stayed, and Respondent be placed on probation in accordance with the Terms of Probation set forth in Appendix I during the two year period. Included in the Terms of Probation are requirements that he complete certain courses in continuing medical education. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand and the imposition of monetary penalties.

The Committee members felt somewhat disadvantaged by the failure of Respondent to appear and testify at this proceeding. While no negative inferences were drawn from such failure, the Committee did not receive the benefit of information relating to his hospital staff and admitting privileges, the extent of his experience and medical knowledge or his history of treating Patient A. The Committee believed Respondent treated the serious complaint and symptoms of the patient in a somewhat cavalier manner and concluded that it would be appropriate for him to participate in a program of continuing medical education to refresh his skills in addressing cardiac emergencies.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Third Specification of Charges, as set forth in the Statement of Charges (Ex. 1) is **SUSTAINED** and;
2. All other Specifications are **NOT SUSTAINED** and are hereby **DISMISSED**, and;
3. The license of Respondent to practice medicine in New York State be hereby **SUSPENDED** for a period of two years, said suspension to be **STAYED**; and
4. Respondent shall be placed on **PROBATION** during the period of the stayed suspension of his license, and he shall comply with all terms of probation as set forth in Appendix I, attached hereto and made a part of this Determination and Order.
5. This Order shall be effective upon service on the Respondent or his attorney by personal service or by certified or registered mail.

DATED: Troy, New York

February 21, 2001


MR KENNETH KOWALD, Chairperson

**MILTON O.C. HAYNES, M.D.
RALPH LUCARIELLO, M.D.**

TO:

Daniel Guenzburger, Esq.
NYS Department of Health
5 Penn Plaza, Suite 601
New York, New York 10001

T. Lawrence Tabak, Esq.
Kern, Augustine, Conroy & Schoppmann, P.C.
420 Lakeville Road
Lake Success, New York 11042

APPENDIX I

APPENDIX I

Terms of Probation

1. 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. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 4th Floor, 433 River Street, Troy, New York 12180-2299; said notice is 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. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide periodic written verification of 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. 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.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
6. 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.
7. Respondent shall take and complete a course in cardiac emergency care proposed by Respondent and subject to the prior written approval of the Director. Respondent shall complete the course or program within ninety (90) days of the effective date of this Order, unless the Director of OPMC approves an extension in writing.

8. Within thirty (30) days of the effective date of this Order, Respondent shall provide written verification to the Director of any and all Continuing Medical Education (CME) courses that he has successfully completed within the preceding two year period. In the event that Respondent has not successfully completed any CME courses during said period, Respondent shall, in addition to the requirement of Paragraph 7, above, enroll in and complete a review course in family medicine practice within one year of the effective date of this Order. The course shall be proposed by Respondent and be subject to the prior written approval of the Director.

9. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he 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.

APPENDIX II

IN THE MATTER
OF
RALPH SHELDON BELL, M.D.

STATEMENT
OF
CHARGES

RALPH SHELDON BELL, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 22, 1960, by the issuance of license number 084265 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. At all times relevant to the Statement of Charges, the Respondent, a physician trained in pediatrics and board certified in that specialty, practiced family medicine at a facility called the "Multi Specialty Practice" located at 7540 Metropolitan Avenue, Middle Village, New York. On or about May 29, 1997, Patient A, a 49 year old male, presented to Respondent with complaints of chest pain for one day, shortness of breath and "sweating". Patient A was obese, had an elevated cholesterol level, a family history of heart disease and a ten year history of hypertension which had been difficult to control with anti-hypertensive medication. Respondent had treated Patient A since September 1994.

At the May 29, 1997 visit Respondent failed to take appropriate steps to exclude the possibility that Patient A was experiencing a myocardial infarction, including but not limited to:

1. Failing to have Patient A admitted to a hospital for further evaluation and treatment.
 2. Inappropriately diagnosing that Patient A's symptoms were due to asthma.
 3. Incorrectly interpreting Patient A's EKG as normal, when, in fact, the EKG suggested an evolving myocardial infarction.
 4. Inappropriately ordering "cardiac enzymes."
- B. On or about June 2, 1997, Patient A returned to Respondent with a complaint of continued chest pain. Respondent care and conduct deviated from medically accepted standards in that he:
1. Failed to have Patient A admitted to a hospital for further evaluation and treatment.
 2. Inappropriately referred Patient A for an out-patient consultation with a cardiologist.

SPECIFICATION OF CHARGES

FIRST AND SECOND SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4)(McKinney Supp. 2000) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

1. Paragraphs A, A1, A2, A3, and/or A4.
2. Paragraphs B, B1, and/or B2.

THIRD SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3)(McKinney Supp. 2000) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

3. Paragraphs A, A1, A2, A3, A4, B, B1, and/or B2.

FOURTH SPECIFICATION

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6)(McKinney Supp. 2000) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

4. Paragraphs A, A1, A2, A3, A4, B, B1, and/or B2.

FIFTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 2000) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

5. Paragraphs A, A1, A2, A3, A4, B, B1, and/or B2.

SIXTH SPECIFICATION
NEGLECTING A PATIENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(30)(McKinney Supp. 2000) by abandoning and/or neglecting a patient as alleged in the facts of:

6. A, A1, A2, A3, A4, B, B1, and/or B2.

DATED: October 13, 2000
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct