



*Public*  
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*

August 28, 2001

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Denise Lepicier, Esq.  
NYS Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza, Suite 601  
New York, New York 10001

Robert S. Asher, Esq.  
295 Madison Avenue  
New York, New York 10017

Angel Prado, M.D.

**RE: In the Matter of Angel Prado, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-94) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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, 

 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**

**Angel Prado, 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. 01-94**

**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:**

**Denise Lepicier, Esq.  
Robert Asher, Esq.**

After a hearing below, a BPMC Committee determined that the Respondent practiced medicine fraudulently, practiced medicine with gross negligence and negligence on more than one occasion and failed to maintain accurate records. The Committee voted to revoke the Respondent's License to practice medicine in New York State (License). In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 2001), both parties ask the ARB to modify that Determination. The Respondent asks the ARB to overturn the findings that the Respondent committed fraud and to reduce the penalty. The Petitioner asks that the ARB overturn the Committee, sustain additional gross negligence and fraud charges and sustain charges that the Respondent engaged in conduct that evidenced moral unfitness. After considering the hearing record and the parties' submissions, we affirm the Committee's Determination that the Respondent practiced fraudulently and we affirm the Determination to revoke the Respondent's License. We overturn the Committee and hold that the Respondent engaged in conduct that evidenced moral unfitness in four instances. On our own motion, we modify the penalty and fine the Respondent \$40,000.00.

### 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(2-6), 6530(20) & 6530(32) (McKinney Supp. 2001) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- practicing medicine with negligence on more than one occasion,
- practicing medicine with gross negligence,
- practicing medicine with incompetence on more than one occasion,
- practicing medicine with gross incompetence,
- engaging in conduct in practice that evidences moral unfitness, and,
- failing to maintain accurate patient records.

The charges involved the care the Respondent provided to ten persons, Patients A-J. The record identifies the Patients by letters to protect privacy. The fraud charges also involved the answers the Respondent provided on a 1990 application by the Respondent for medical staff appointment at Cabrini Medical Center (Cabrini).

The Committee dismissed charges that the Respondent practiced with incompetence on more than one occasion or gross incompetence. The Committee also dismissed the charges that the Respondent engaged in conduct that evidenced moral unfitness. The Committee held that the Petitioner failed to prove that the Respondent's conduct toward the Patients fell within medical practice and evidenced moral unfitness. The Committee also dismissed the charge that the Respondent made a fraudulent application to Cabrini.

The Committee sustained the charges that the Respondent practiced with negligence on more than one occasion and failed to maintain accurate records for all Patients A-J. The Committee found that the Respondent failed to document the care and treatment he provided to each Patient and that the Respondent never formulated an adequate sequential approach to address the Patient's complaints, care or treatment. The Committee found that the Respondent's care for Patients B; C, G and H rose to the level of gross negligence. The Committee sustained

fraud charges relating to the care to Patients A, C, D and J. The Committee found that the Respondent submitted false bills with intent to mislead insurance companies to conceal that he had actually performed cosmetic procedures for which the insurance companies provided no reimbursement. The Committee voted to revoke the Respondent's License.

### **Review History and Issues**

The Committee rendered their Determination on April 6, 2001. This proceeding commenced on April 26, 2001, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and brief in opposition and the Petitioner's brief and response brief. The record closed when the ARB received the response brief on June 8, 2001.

The Petitioner requests that the ARB overturn the Committee and sustain additional misconduct charges. The Petitioner argues that the Committee erred by failing to find the Respondent:

- practiced fraudulently by failing to include certain information in the Patient's medical charts,
- engaged in conduct that evidenced moral unfitness by failing to maintain accurate records, and,
- practiced with gross negligence by failing to record operative reports.

The Petitioner's brief made no challenge to the Committee's Determination to dismiss the incompetence on more than one occasion and gross incompetence charges or the fraud charge relating to the Cabrini application.

The Respondent challenged the Committee's Determination that the Respondent practiced fraudulently in the billings he submitted for Patients A, C, D and J. The Respondent argued that

proving fraud requires a showing by clear and convincing evidence. The Committee's Determination indicated that the Committee made the determination on fraud by preponderance of the evidence. The Respondent also argued that no basis exists in the case for revocation, without the fraud charges. In response to the Petitioner's brief, the Respondent argued that the sole basis for the Petitioner's request to sustain additional charges comes from testimony by Patient B that the Committee found credible. The Respondent asks that the ARB overturn that credibility finding and reject the Petitioner's request to sustain additional charges. The Respondent made no challenge to the Committee's Determination that the Respondent practiced with negligence on more than one occasion in treating all Patients and with gross negligence in treating Patients B, C, G and H and that the Respondent failed to maintain accurate records for all the Patients.

#### **Determination**

The ARB has considered the record and the parties' briefs. In reviewing a Committee's Determination pursuant to N. Y. Pub. Health Law § 230-c(4), the ARB determines whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law, and, whether the Penalty is appropriate and within the scope of penalties which N.Y. Pub Health Law §230-a permits. That review standard means that the ARB may substitute our judgement for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3<sup>rd</sup> Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> Dept. 1995). We also may choose to substitute our

judgement and impose a more severe sanction than the Committee on our own motion, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). We choose to substitute our judgement in this case in modifying both the Committee's Determination on the charges and the Determination on penalty. We make both modifications on our own motion.

We affirm the Committee's Determination that the Respondent practiced with negligence on more than one occasion in treating Patients A-J and failed to maintain accurate records for Patients A-J. We also affirm the Committee's Determination that the Respondent practiced with gross negligence in treating Patients B, C, G and H. Further, we affirm the Committee's Determination dismissing all charges alleging gross incompetence and incompetence on more than one occasion and dismissing the fraud charges relating to the Cabrini application. Neither party challenged those determinations by the Committee. We affirm the Committee's Determination that the Respondent practiced fraudulently in the billings for Patients A, C, D and J. We modify the Determination and find that the Respondent evidenced moral unfitness in the billings relating to those four Patients. We affirm the Committee's Determination to revoke the Respondent's License. We modify the penalty to include a \$40,000.00 fine for the Respondent's fraudulent misconduct.

The Respondent alleged that the Committee's Determination erred in sustaining certain fraud charges by using the preponderance of the evidence standard. We disagree. Under N. Y. Pub. Health Law § 230(10)(f), a Committee must base their determination on preponderance of the evidence. The courts have also held that preponderance constitutes the burden of proof in a license revocation proceeding as opposed to clear and convincing evidence, Matter of Giffone v. DeBuono, 263 A.D.2d 713, 693 N.Y.S.2d 691 (3<sup>rd</sup> Dept. 1999).

The Respondent also alleged that the evidence failed to satisfy all the elements necessary to prove fraud. Again, we disagree. In order to sustain a charge that a physician practiced medicine fraudulently, a hearing committee must find that (1) the physician made a false representation, whether by words, conduct or by concealing that which the licensee should have disclosed, (2) the physician knew the representation was false, and (3) the physician intended to mislead through the false representation, Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (3rd Dept. 1966), aff'd, 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). A committee may infer a respondent's knowledge and intent properly from facts that such committee finds, but the committee must state specifically the inferences it draws regarding knowledge and intent, Choudhry v. Sobol, 170 A.D.2d 893, 566 N.Y.S.2d 723 (3<sup>rd</sup> Dept. 1991). A committee may reject a respondent's explanation for a misrepresentation and draw the inference that the respondent intended or was aware of the misrepresentation, with other evidence as the basis, Matter of Brestin v. Comm. of Educ., 116 A.D.2d 357, 501 N.Y.S.2d 923 (3<sup>rd</sup> Dept. 1986). In this case, the Committee found that the Respondent acted knowingly, intentionally and with intent to deceive, by concealing the true nature of the surgeries that the Respondent performed on Patients A, C, D and J. The Committee also acted within their authority in rejecting the Respondent's explanation for the billings.

The Petitioner asked that we sustain additional fraud and gross negligence charges and that we sustain moral unfitness charges, all arising from the Respondent's failure to record certain information. We hold that the Committee's Determination contained insufficient findings to support the additional charges the Petitioner asked that we sustain. On our motion, we modify the Committee's Determination and hold that the false billings relating to Patients A, C, D and J evidenced moral unfitness. The Respondent filed false statements with insurance companies for

his own fraudulent gain. This conduct occurred within the Respondent's practice and the conduct violated the medical profession's ethical standards and the trust the public places in the medical profession.

In discussing penalty, the Respondent's brief conceded that no place exists in the medical profession for a dishonest physician [Respondent's Brief page 5]. The Respondent argued his own honesty, but the record indicated otherwise. The record supported the Committee's Determination to revoke the Respondent's License. In addition to the fraudulent practice, the Respondent repeatedly provided substandard care that rose to egregious levels in some case and the Respondent displayed what the Committee termed a reckless disregard. We see no chance to correct the Respondent's conduct through retraining and see no alternative to protect the public. On our own motion, we modify the Committee's Determination to assess a fine against the Respondent, because the Respondent used his medical License fraudulently to obtain unjust enrichment. Under N. Y. Pub. Health Law § 230-a(7), we may impose a fine up to \$10,000.00 for each specification of the charges we affirm. We vote to fine the Respondent \$10,000 for the fraudulent and morally unfit conduct that occurred in the billings for each Patient A, C, D and J, for a fine totaling \$40,000.00.

## 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 practiced medicine fraudulently, with negligence on more than one occasion and with gross negligence and that the Respondent failed to maintain accurate patient records.
2. The ARB modifies the Committee's Determination to sustain charges that the Respondent engaged in conduct that evidenced moral unfitness in four instances.
3. The ARB Affirms the Committee's Determination to revoke the Respondent's License.
4. The ARB modifies the Committee's Determination and we add a \$40,000.00 fine.
5. The Respondent shall pay that fine to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning II Building, Room 1258, Empire State Plaza, Albany, New York, 12237, due within thirty (30) days of the effective date of this Order.
6. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. 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 § 171(27); State Finance Law § 18; CPLR § 5001; and Executive Law § 32].

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

In the Matter of Angel Prado, M.D.

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

Dated: August 4, 2001

  
~~Robert M. Briber~~

In the Matter of Angel Prado, M.D.

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

Dated: Aug 25, 2001

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**Thea Graves Pellman**

In the Matter of Angel Prado, M.D.

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

Dated: August 3, 2001

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Stanley L Grossman, M.D.

In the Matter of Angel Prado M.D.

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in  
the Matter of Dr. Prado

Dated: Aug 6, 2003

  
Therese G. Lynch, M.D.