



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

December 31, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Wilfred T. Friedman, Esq.
36 West 44th Street
New York, New York 10036

Roy Nemerson, Esq.
NYS Department of Health
5 Penn Plaza-Sixth Floor
New York, New York 10001

Doreen Palmer, M.D.
285 South Central Avenue-Apt. H-1
Hartsdale, New York 10530

RE: In the Matter of Doreen Palmer, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-241) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 "Tyrone T. Butler/nm". The signature is written in a cursive style with a large initial 'T' and a trailing 'nm' at the end.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH (Petitioner)

In The Matter Of

Doreen Palmer, M.D. (Respondent)

**Administrative Review
Board (ARB)
Determination and
Order 98 - 241**

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

COPY

**Before Board Members: Briber, Grossman, Lynch, Shapiro¹.
Administrative Law Judge James F. Horan served as the Board's Administrative Officer.**

**For the Respondent: Wilfred T. Freidman, Esq.
For the Petitioner: Roy Nemerson, Esq.**

After a hearing on professional misconduct charges, a BPMC Committee voted to revoke the Respondent's License to practice medicine in New York State (License), upon determining that the Respondent practiced while impaired and violated a condition on her License. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1998), the Respondent asks the ARB to overturn the revocation order and instead suspend the Respondent's License until the Respondent can demonstrate her fitness once again to practice medicine. Upon considering the record, the Respondent's request and a possible alternative penalty that the Petitioner suggested, the ARB overturns the Committee. We suspend the Respondent's License for one year certain and we suspend the Respondent's License thereafter until she can demonstrate her fitness to practice.

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(7-8) & 6530(29) (McKinney Supp. 1998), because the

¹ ARB Member Winston Price, M.D. recused himself from participating in this case, due to his acquaintance with the Respondent. The ARB proceeded to review the case with a four member quorum, see Matter of Wolkoff v. Chassin, 89 N.Y.2d 250(1996).

Respondent :

- practiced medicine while impaired by mental disability,
- suffered from a psychiatric conditions that impairs medical practice, and,
- violated license terms, limitations or conditions.

A BPMC Committee conducted a hearing into those charges, at which the Respondent failed to appear or offer a defense. The Committee rendered the Determination now on review, in which they sustained all the charges.

The record before the Committee demonstrated that the Respondent surrendered her License temporarily in 1995 and 1996, due to incapacity (Temporary Surrender). The Respondent regained her License in October, 1996 for a five year period (Restoration Order), subject to certain conditions. The conditions included continuance in and compliance with therapy. The Committee found that the Respondent has suffered since 1995, with remission periods, from a psychiatric condition that impairs her ability to practice. Diagnoses for the Respondent's condition have included: Marked Delusionary Features, Major Depression with Paranoia, Recurrent Major Depression with Psychosis, and Paranoid Psychotic Disorder. The Committee determined that in February, 1998, the Respondent became paranoid, hostile, confused and forgetful. The Committee concluded that the Respondent's condition has impaired her ability to practice since February, that she practiced while so impaired and that her impairment affected her medical practice significantly on March 6-8 and March 16-18, 1998. The Committee also concluded that the Respondent violated conditions on her License by failing to take prescribed medication, failing to attend scheduled therapy sessions, failing to submit to an independent psychiatric evaluation and failing to meet with representatives from the Office for Professional Medical Conduct.

The Committee voted to revoke the Respondent's License, with a limitation. The Committee voted to revoke primarily because the Respondent failed to appear at the hearing and offer the Committee an opportunity to observe the Respondent, hear her responses and make a determination whether she presented as a candidate for rehabilitation and an alternative penalty. The Committee also placed a limitation on any further License the Respondent may obtain, that the License restoration include at least five years on probation, with extensive monitoring.

Review History and Issues

The Committee rendered their Determination on October 8, 1998. The revocation penalty became effective immediately. This proceeding commenced on October 23, 1998 when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, an Affidavit from the Respondent, a letter from the Petitioner and a reply letter from the Respondent. The review record closed when the ARB received the Respondent's reply on December 2, 1998.

The Respondent's Affidavit states that she failed to appear at the hearing due solely to her illness. The Respondent requests that the ARB impose a lesser sanction than License revocation. The Respondent describes herself as a good candidate for rehabilitation and indicates that she has returned to treatment, with the expectation that treatment will enable her to return to safe and appropriate practice. The Respondent requests that we modify the penalty to one year definite suspension, retroactive to October 5, 1998, with the opportunity for the Respondent to make application after that date to a BPMC Committee for License restoration, upon a showing that the Respondent can again practice safely.

The Petitioner's letter indicates that the Petitioner neither opposes nor recommends the Respondent's request for a modification in the penalty or a remand to the Committee to reconsider a modification. The Petitioner notes that the Committee has rendered an appropriate penalty. As to the specific modification the Respondent requested, the Petitioner indicates that other Respondents have received similar sanctions previously, but only through a negotiated Consent Agreement. The Petitioner states that the previous sanction terms have included an indefinite suspension:

- with a minimum one year suspension, but without a maximum period;
- with provision that the Licensee may petition a BPMC Modification Committee for a modification, that the Committee may grant or deny, depending on the Committee's

- determination on whether the Respondent's incapacity continues; and,
- with the Consent Agreement setting forth the procedures for the Modification Committee.

The Petitioner argues that the Committee set forth a similar procedure in their Determination, except under the Committee's Order the Respondent would be unable to re-apply for licensure for three years rather than one. The Petitioner notes that, because no such sanction appears in the list for permissible penalties in N.Y. Pub. Health Law § 230-a (McKinney's Supp. 1998), the ARB should require the Respondent to waive any objection to that sanction, if the ARB considers such modification.

By letter the ARB received on December 2, 1998, the Respondent waived any objection to the sanction the Petitioner's letter discussed.

Determination

The ARB quorum who participated in this case have considered the record and the parties' submissions. We vote 4-0 to sustain the Committee's Determination that the Respondent committed misconduct by violating conditions on her License and by practicing while impaired by a psychiatric condition. The Respondent made no challenge to the Committee's Determination on the charges. We vote 4-0 to overturn the Committee's Determination revoking the Respondent's License. We discuss our reasoning below.

The Committee's Determination stated clearly that they revoked the Respondent's License because she failed to appear at the hearing, thus denying the Committee a chance to assess the Respondent's capacity for rehabilitation and denying the Committee the opportunity to consider whether a suspension or other penalty would provide an appropriate alternative to revocation. The Respondent has now submitted an affidavit to the ARB admitting that she failed to appear due to her impairment and indicating a willingness to accept a further suspension from practice, until she can demonstrate her fitness once again to practice medicine. The ARB concludes that the suspension presents an appropriate alternative to revocation, that would provide protection for the public, but offer

an opportunity for the Respondent to return to practice if her condition improves. The record demonstrates the Respondent's value as a physician, when she can practice in full health.

The ARB suspends the Respondent's License for one year certain, retroactive to October 8, 1998. Following that one year, the Respondent shall remain on suspension until such time as she can demonstrate to a BPMC Committee (Modification Committee) her fitness to practice medicine. The Petitioner's letter offered to draft an Order incorporating terms to assist the ARB in crafting this sanction. The ARB directs the Petitioner to draft a Proposed Order setting forth the procedures under which any Modification Committee would consider a request by the Respondent for a modification in the suspension. The Petitioner shall present a copy of the Proposed Order to the Respondent. If the Respondent agrees to the terms, the Order will become effective immediately with no further action by the ARB necessary. If the Respondent requests any clarifications or modifications in the Proposed Order's terms, and if the parties can reach no agreement on those terms in dispute, then the parties should submit the Proposed Order and their comments to the ARB for our resolution. For the parties' information, the ARB has scheduled our next deliberations for January 29 and February 26, 1999.

If a Modification Committee does restore the Respondent's License, we recommend that the Committee include in the restoration a substantial probation period, with monitoring. The prior Restoration Order contained monitoring terms that worked very well in identifying the relapse in the Respondent's condition. The ARB concludes that similar monitoring would provide a valuable safeguard to the public in any future restoration.

ORDER

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

1. The ARB **SUSTAINS** the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB **OVERTURNS** the Committee's Determination revoking the Respondent's License.
3. The ARB **SUSPENDS** the Respondent's License for one year certain and **SUSPENDS** the Respondent's License thereafter, until such time as the Respondent can demonstrate her fitness to practice medicine, to a BPMC Modification Committee.
4. The ARB **DIRECTS** the Petitioner to draft a Proposed Order setting forth the procedures for the Modification Committee to follow in considering any restoration application by the Respondent.

Robert M. Briber

Sumner Shapiro

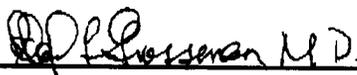
Stanley L. Grossman, M.D.

Therese G. Lynch, M.D.

In The Matter Of Doreen Palmer, M.D.

Stanley L. Grossman, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Palmer.

Dated: December 30, 1998

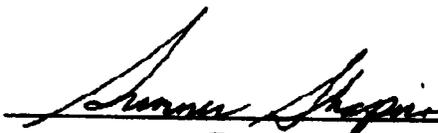


Stanley L. Grossman, M.D.

In The Matter Of Doreen Palmer, M.D.

Sumner Shapiro, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Palmer.

DATED: December 22, 1998

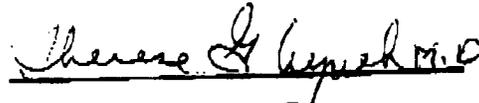


Sumner Shapiro

In The Matter Of Doreen Palmer, M.D.

Therese G. Lynch, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Palmer.

Dated : Dec 23 , 1998

A handwritten signature in cursive script that reads "Therese G. Lynch M.D." is written over a horizontal line.

Therese G. Lynch, M.D.