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

March 24, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Catherine Anne Eck, P.A.,
a/k/a Caterine Anne Madding, P.A.
300 Cabrillo Street #4
San Francisco, California 94118

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place
433 River Street, Ste 303
Troy, New York 12180

RE: In the Matter of Catherine Anne Eck, P.A.
a/k/a Catherine Anne A. Madding, P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-06) 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.

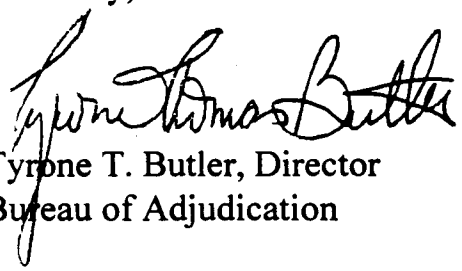
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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 **Catherine Anne Eck, P.A. a/k/a Catherine Anne Madding, P.A. (Respondent)** **A proceeding to review a Determination by a Committee (Committee) from the Board for Professional Medical Conduct (BPMC)**	**Administrative Review Board (ARB)** **Determination and Order No. 03-06** 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): **Paul Robert Maher , Esq.**
For the Respondent: **Pro Se**

After a hearing below, a BPMC Committee determined that the Respondent committed misconduct in another state (California) that made the Respondent liable for disciplinary action against her license as a Physician Assistant in New York (License). The Committee voted to suspend the Respondent's License for five years, with the possibility for a stay on the suspension, and placed the Respondent on probation in New York for five years, effective immediately. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2003), the Petitioner asks the ARB to modify the Committee's Determination. After considering the hearing record and the review submissions, the ARB modifies the Committee's Determination and suspends the Respondent's License until the Respondent satisfies completely all probation terms under the California penalty. If following the suspension, the Respondent returns to practice in New York, the Respondent shall practice on probation for five years, under the terms that appear as 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(9)(d) (McKinney Supp. 2003) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from another state took disciplinary action against the Respondent's license as a Physician Assistant in that state, for,
- conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York.

The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the Respondent's misconduct in California would constitute misconduct if committed in New York, under the following categories:

- practicing medicine fraudulently, a violation under N. Y. Educ. Law §§ 6530(2) (McKinney Supp. 2003); and,
- engaging in conduct that evidenced moral unfitness, a violation under N.Y. Educ. Law § 6530(20)(McKinney Supp. 2003).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney 2003), before a BPMC Committee, which rendered the Determination now on review. In the Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The Committee determined that the Physician Assistant Committee of the Medical Board of California (California Board) entered into a Stipulation with the Respondent in April 2002. In

the Stipulation, the Respondent agreed that a basis existed to discipline her for illegally and fraudulently obtaining drugs for her own use, under cover of her status as a Physician Assistant. The Respondent agreed to accept a stayed revocation of her California License, to serve five years on probation and to pay $1,800.00 in investigative costs.

The BPMC Committee concluded that the Respondent's conduct would have constituted fraud in practice if the engaged in that conduct in New York. The Committee concluded further that the Respondent's conduct and the California Stipulation made the Respondent liable for disciplinary action pursuant to N. Y. Educ. Law §§ 6530(9)(d).

The Committee voted to suspend the Respondent's License for five years, to stay the suspension if the Respondent completes successfully the California Probation and to place the Respondent on probation to commence on the effective date of the Committee's Order. The Probation Terms appear as Appendix II to the Committee's Determination.

Review History and Issues

The Committee rendered their Determination on January 7, 2003. This proceeding commenced on January 15, 2003, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and the Petitioner's brief. The record closed when the ARB received the Petitioner's brief on February 18, 2003.

The Petitioner asks that the ARB modify the Probation terms that the Committee imposed. The Probation Terms now require that the Respondent report for urine screening as soon as practicable after an order for such a screen. The Petitioner asks the ARB to amend that Term to provide that the Respondent must report for a screen within four hours from the order

for such a screen. The Petitioner also requests that the ARB stay the probation until the Respondent returns to New York to practice and that the ARB amend the Probation Terms to provide for on-site supervision at any location at which the Respondent would practice.

The Respondent made no submission to the ARB. In a letter prior to her hearing, the Respondent denied ever practicing her profession fraudulently and denied any misconduct in practice in New York. The Respondent argued that her problem with drugs resulted from unrelieved pain and that she now participates in the very strict diversion program under the California probation.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination on the charges, but we modify the Probation terms that the Committee imposed.

The Respondent's pre-hearing letter argued that she never practiced fraudulently. The Respondent, however, entered the Stipulation with the California Board that provided that a basis existed for disciplining the Respondent for fraudulently obtaining narcotics. The ARB holds that the Stipulation's provisions bind the ARB and the Hearing Committee and we reject any attempt by the Respondent to repudiate the Stipulation that she signed with the California Board. That Stipulation provided the basis to conclude that the Respondent's conduct in California would constitute fraud in practice and provided the basis to hold the Respondent liable for disciplinary action pursuant to N. Y. Educ. Law §§ 6530(9)(d).

The ARB agrees with the Committee that the Respondent's California conduct raises grounds for a strict penalty that will assure the Respondent remains abstinent from drugs and in compliance with treatment programs. We hold the penalty the Committee imposed provides no

assurance, however, that the Respondent will remain in compliance. The Committee provided for a suspension for five years and for probation at the same time. The Committee's penalty would allow the Respondent to regain a full and unrestricted license in New York in five years, even if the Respondent fails to complete the California probation. The Committee's penalty also provides for probation now, with the Respondent outside the State and beyond the ability of the Office for Professional Medical Conduct to supervise the probation.

In reviewing a Committee's Determination, the ARB may substitute our judgement for the Committee's in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd., 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993). The ARB elects to exercise that authority in this case and we modify the Committee's Penalty. We vote to suspend the Respondent's License until such time as the Respondent completes successfully the California probation. We conclude that placing that condition on the suspension will assure that the Respondent will remain in California under the strict probation terms that will monitor the Respondent's continued recovery.

We hold that at such time as the Respondent's suspension ends and the Respondent chooses to return to practice in New York, the Respondent will practice for five years on probation, under the terms in the Committee's Order, with two modifications. We delete Paragraph B in the Committee's Order that referred to serving probation in New York during the California probation. We find that Paragraph unnecessary, as the Respondent would only become eligible for probation in New York after completing successfully the California probation. Paragraph D in the Committee's Order provided provisions for a sobriety monitor and the last sentence in Paragraph D provided that the monitor would determine the frequency for blood/breath or urine screening. We amend the final sentence in Paragraph D to read:

"Respondent shall be screened in the discretion of the monitor, but no more frequently than three times weekly".

We see no reason for more frequent screenings, because at the point that the Respondent may return to practice in New York, the Respondent will already have completed successfully five years under screening due to the California Probation. We reject the Petitioner's request that we include a probation term that requires the Respondent to practice under supervision. A Physician Assistant must already by law practice under supervision by a physician.

ORDER

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

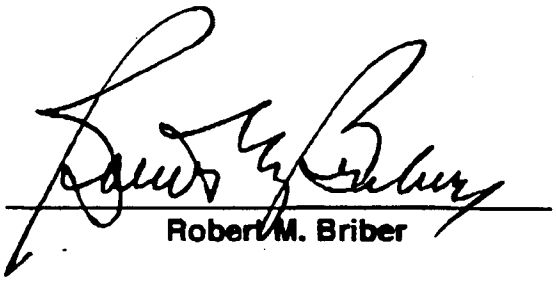
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB modifies the penalty that the Committee imposed in this case.
3. The ARB votes to suspend the Respondent's License until such time as Respondent satisfies completely the terms in the California Probation.
4. If the Respondent returns to practice in New York following her suspension, the Respondent shall practice on probation for five years, under he terms that we specify in our Determination.

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 Catherine Anne Eck, a/k/a Catherine Anne Madding, P.A.

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

Dated: March 13, 2003



Robert M. Briber

In the Matter of Catherine Anne Eck, a/k/a Catherine Anne Madding, P.A.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the Matter of Ms. Manning.

Dated: 3/18, **2003**

Thea Graves Pellman

In the Matter of Catherine Anne Eck, a/k/a Catherine Anne Madding, P.A.

Winston S. Price, M.D., **an ARB Member concurs in the Determination and Order in the Matter of Ms. Manning.**

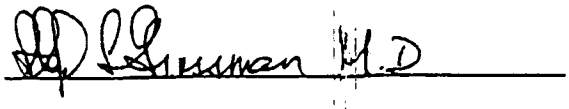
Dated: 03/19, 2003

Winston S. Price, M.D.

In the Matter of Catherine Anne Eck, a/k/a Catherine Anne Madding, P.A.

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

Dated: March 20, 2003



Stanley L Grossman, M.D.

In the Matter of Catherine Anne Eck, a/k/a Catherine Anne Madding, P.A.

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

Dated: March 12, **2003**

Therese G Lynch M.D

Therese G. Lynch, M.D.