



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

October 1, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
& Robert Maher, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Bonnie M. Wier, Esq.
Kern, Augustine, Conroy
& Schoppmann, P.C.
1120 Route 22 East
Bridgewater, New Jersey 08807

Johnny Rick Larsen, D.O.
4 Breckenridge Drive
Shamong, New Jersey 08088

Johnny Rick Larsen, D.O.
Kimball Medical Center
600 River Avenue
Lakewood, New Jersey 08701

RE: In the Matter of Johnny Rick Larsen, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-196) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

Johnny Rick Larsen, D.O. (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. 02-196

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:**

**Paul Robert Mahar, Esq.
Bonnie M. Weir, Esq.**

After a hearing below, a BPMC Committee determined that the State of New Jersey took disciplinary action against the Respondent's medical license in that state, for drug abuse. The Committee found that the Respondent's conduct in New Jersey would constitute professional misconduct under New York Law and the Committee voted to place the Respondent's New York Medical License (License) on probation for three years. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2002), the Petitioner asks the ARB to modify that Determination by finding the Respondent liable for additional misconduct and by increasing the sanction. After reviewing the hearing record and the parties' review submissions, we reject the Respondent request that we sustain an additional misconduct charge. We modify the Committee's Determination to suspend the Respondent's License until the Respondent completes the disciplinary penalty against his New Jersey medical license.

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)(b) & (9)(d) (McKinney Supp. 2002) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from another state (New Jersey) found the Respondent guilty for professional misconduct [§6530(9)(b)] and/or took disciplinary action against the Respondent's medical license in that state [§6530(9)(d)], 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 New Jersey 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. 2002),
- practicing with negligence on more than one occasion, a violation under N. Y. Educ. Law §§ 6530(3) (McKinney Supp. 2002),
- failure to comply with federal, state or local law, rules or regulations that govern medical practice, a violation under N. Y. Educ. Law §§ 6530(16) (McKinney Supp. 2002),
- engaging in conduct in practice that evidences moral unfitness, a violation under N.Y. Educ. Law § 6530(20)(McKinney Supp. 2002),
- practicing beyond the scope permitted by law, a violation under N. Y. Educ. Law §§ 6530(24) (McKinney Supp. 2002), and,

- failure to maintain accurate records, a violation under N.Y. Educ. Law §6530(32)(McKinney Supp. 2002).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney 2002), 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 evidence at the hearing demonstrated that the New Jersey State Board of Medical Examiners (New Jersey Board) entered a Final Order on December 14, 2001 that found that the Respondent 1.) engaged in indiscriminate prescribing of dangerous controlled substances, and, 2.) procured the substances through improper methods in order to maintain his addiction thereto. The New Jersey Board suspended the Respondent's New Jersey license for two years, stayed the suspension, placed the Respondent on probation for two years, ordered the Respondent to participate in the New Jersey Physicians Health Program (PHP) and ordered the Respondent to pay \$6000.00 in costs.

The BPMC Committee determined that the Respondent's conduct in New Jersey would constitute violations, if committed in New York, under the following categories:

- practicing fraudulently,
- willful or grossly negligent failure to comply with substantial provisions of federal, state or local law, rules or regulations that govern medical practice, and,
- failure to maintain accurate records.

The Committee dismissed the charge that the Respondent's conduct also evidenced moral unfitness. The Committee concluded that the Respondent's conduct and the New Jersey Board's actions made the Respondent liable for disciplinary action against his License pursuant to Educ. Law §§6530(9)(b) & (9)(d).

The Committee voted to place the Respondent on probation for three years, under the terms that the Committee specified in their Order. The Committee found that the Respondent has remained drug free for a number of years prior to the hearing and that the Respondent has

taken steps to decrease the likelihood that his drug abuse will recur. The Committee concluded that the probation with monitoring will protect the public from any relapse in the Respondent's condition.

Review History and Issues

The Committee rendered their Determination on June 14, 2002. This proceeding commenced on June 24, 2002, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and the Respondent's response brief. The record closed when the ARB received the response brief on July 22, 2002.

The Petitioner asks that the ARB overturn the Committee and sustain the charge that the Respondent's conduct evidenced moral unfitness. The Petitioner argues that the Respondent purchased drugs under false and deceptive means, contrary to the acceptable standards of moral decency. The Petitioner also asks that the ARB impose a more severe penalty. In reply, the Respondent argues that the Petitioner's request for a more severe sanction contradicts the position that the Petitioner took at the hearing. At hearing the Petitioner requested a period of suspension, stayed, with probation. The Respondent also argues that drug addiction does not automatically evidence moral unfitness.

Determination

The ARB has considered the record and the parties' briefs. We reject the Petitioner's request that we sustain the moral unfitness charge. We modify the Committee's Determination and suspend the Respondent's License until such time as the Respondent completes successfully

the New Jersey probation. Thereafter, we place the Respondent on probation in New York for three years, under the probation terms that the Committee specified in their Order.

On the moral unfitness issue, we agree with the Respondent that drug addiction constitutes an illness rather than immoral conduct. We affirm the Committee's Determination to dismiss the moral unfitness charge.

In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996). In this case, we agree with the Committee that the Respondent's conduct warrants a sanction less severe than revocation, because the Respondent has taken steps to deal with his addiction. We also agree with the Committee that, in fashioning a penalty, we should focus on protecting the public against a relapse in the Respondent's condition rather than seeking to penalize the Respondent. In reviewing a penalty, the ARB may substitute our judgement for that of the Committee, Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993). The ARB 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 elect to substitute our judgement in this case.

The Respondent has demonstrated progress in New Jersey in dealing with his addiction, by participating in PHP. We conclude that we should craft a penalty in New York to ensure that the Respondent remains in PHP and completes the New Jersey Probation. The penalty the Committee imposed contains no requirement that the Respondent complete the New Jersey probation. The ARB votes 5-0 to modify the Committee's penalty to suspend the Respondent's License, until he completes the New Jersey probation successfully. If after completing the New

Jersey probation successfully, the Respondent returns to New York to practice medicine, the Respondent shall serve three years on probation under the terms from the Committee's Order. The probation time from the New York and New Jersey penalties would then total five years. The ARB concludes that five years will provide the appropriate time frame to assure that the Respondent has remained in recovery and presents no danger for a relapse.

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 Committee's Determination to place the Respondent on probation for three years as we provided in our Determination.
3. Preceding the probation, the ARB suspends the Respondent's License until such time as the Respondent completes his probation in New Jersey.

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 Johnny Rick Larsen, D.O.

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

Dated: September 18, 2002

A handwritten signature in cursive script that reads "Therese G. Lynch, M.D." with a horizontal line underneath the signature.

Therese G. Lynch, M.D.

In the Matter of Johnny Rick Larsen, D.O.

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

Dated: 9-27, 2002

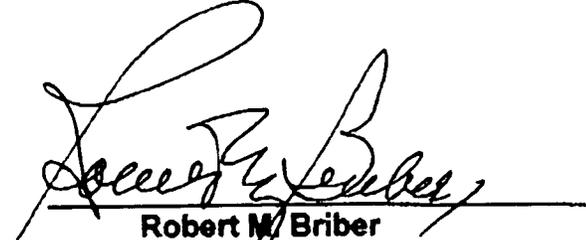
A handwritten signature in cursive script, appearing to read 'Thea G. Pellman', written over a horizontal line.

Thea Graves Pellman

In the Matter of Johnny Rick Larsen, D.O.

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

Dated September 18, 2002



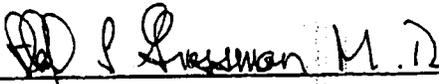
Robert M. Briber

In the Matter of Johnny Rick Larsen, D.O.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Larsen.

Dated: September 18, 2002



Stanley L Grossman, M.D.