



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

November 19, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jeffrey A. Buckner, M.D.
35A East 35th Street
New York, New York 10033

Leni S. Klaimitz, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001

Anthony Z. Scher, Esq.
Wood & Scher
The Harwood Building
Scarsdale, New York 10583

In the Matter of Jeffrey A. Buckner, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-238) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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". The signature is written in a cursive style with a large initial 'T' and 'B'.

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

Jeffrey A. Buckner, M.D. (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. 02-238

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):

Leni A. Klaimitz, Esq.

For the Respondent:

Anthony Z. Scher, Esq.

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by fondling a patient's breast, for no legitimate medical purpose. The Committee voted to suspend the Respondent's License to practice medicine in New York State (License), to stay the suspension and to place the Respondent on probation for five years. In this proceeding pursuant to N.Y. Pub. Health Law §230-c (4)(a)(McKinney 2002), the Petitioner asks the ARB to modify the Determination by increasing the penalty. The Respondent argues against any increase in the penalty and contends that the evidence before the Committee failed to prove the charges that the Committee sustained. After reviewing the hearing record and the review submissions from the parties, we affirm the Committee's Determination on the charges. We overturn the Committee's Determination to suspend the Respondent's License and to stay the suspension. The ARB votes to censure and reprimand the Respondent. We affirm the Committee's Determination to place the Respondent on probation for five years.

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), 6530(20) & 6530(31) (McKinney Supp. 2002) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- engaging in conduct that evidences moral unfitness, and,
- willfully harassing, abusing or intimidating a patient, either physically or verbally.

The charges alleged that the Respondent fondled the breast of a patient (Patient A) for no legitimate medical purpose. The record identifies the Patient by an initial to protect patient privacy. The Respondent denied the charge and the case proceeded to a hearing before the Committee that rendered the Determination now on review. The Committee rendered the Determination on August 6, 2002.

The Committee found that the Respondent fondled Patient A's breast during an examination on December 28, 1998. The Committee noted that only the Respondent and Patient A were present in the examining room during the incident and the Committee found the Patient testified credibly in stating that the Respondent fondled the Patient's breast. The Committee rejected the Respondent's testimony denying that he fondled the Patient's breast and the Committee found the Respondent's testimony evasive. The Committee sustained charges that the Respondent's conduct evidenced moral unfitness and that the Respondent willfully harassed a patient. The Committee dismissed the fraud charge, because they found the Respondent made no intentional misrepresentation or concealed no known facts. The Committee voted to suspend the Respondent's License for six months, to stay the suspension and to place the Respondent on probation for five years. The probation terms require a chaperone present in the room whenever the Respondent examines and/or treats a female patient [Committee Determination, Appendix II, Probation Term 8].

Review History and Issues

This proceeding commenced on August 20, 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 response brief and the Respondent's brief. The record closed when the ARB received the response brief on October 7, 2002.

The Petitioner requests that the ARB revoke the Respondent's License. The Petitioner contends that the Committee Determination on penalty would provide no safeguard for female patients and would deter no such conduct in the future. In the alternative, the Petitioner asks that the ARB impose a substantial period of actual suspension and limit the Respondent's License to a chaperone at all times.

The Respondent argues that the Committee grossly misconstrued the evidence. The Respondent asks that the ARB overturn the Committee's Determination sustaining some charges, or in the alternative, that the ARB leave the Committee's Determination on penalty undisturbed. The Respondent suggests that Patient A fabricated facts, that the Patient failed to inform her husband about the incident immediately after the incident occurred, that testimony by the Patient's husband failed to corroborate the Patient's testimony and that the Patient's husband returned to the Respondent for care after the incident occurred.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent harassed a patient and engaged in conduct that evidenced moral unfitness. We modify the Committee's Determination on penalty.

In challenging the Committee's Determination on the charges, the Respondent actually challenges the Committee's Determination that found Patient A credible in her accusation that the Respondent fondled the Patient's breasts and that rejected the Respondent's denial of the accusation. The ARB affirms the Committee's Determination on credibility. We defer to the Committee as fact finder in their judgement on credibility. As former members on BPMC Committees, the ARB knows the difference between actually seeing witnesses testify in person and only reading testimony in transcripts. The Committee gave detailed reasons for making their credibility judgement. We see no reason to overturn that judgement. We also hold that the evidence the Committee found credible proved that the Respondent harassed a patient and engaged in conduct that evidenced moral unfitness.

We agree with the Committee's Determination that revocation would constitute an overly harsh penalty in this case. The misconduct comprises a single incident in a long career. We agree further with the Committee that the Respondent should serve five years on probation and that the probation terms should include a requirement that the Respondent treat and/or examine female patients only with a chaperone present. We vote 5-0 to overturn the Committee's Determination to impose a stayed suspension in this case. We vote 3-2 to censure and reprimand the Respondent.

ORDER

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

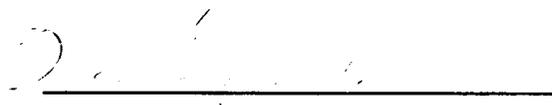
1. The ARB affirms the Committee's Determination that the Respondent harassed Patient A and engaged in conduct that evidenced moral unfitness.
2. The ARB overturns the Committee's Determination to suspend the Respondent's License and to stay the suspension.
3. The ARB votes 3-2 to censure and reprimand the Respondent.
4. The ARB votes 5-0 to affirm the Committee's Determination to place the Respondent on probation for five years under terms that include a requirement for a chaperone.

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 Jeffrey A. Buckner, M.D.

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

Dated: _____, 2002



Thea Graves Pellman

In the Matter of Jeffrey A. Buckner, M.D.

Winston S. Price, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Dr. Buckner.

Dated: 11/15, 2002

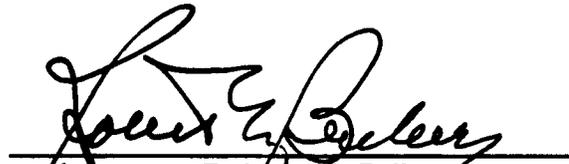


Winston S. Price, M.D.

In the Matter of Jeffrey A. Buckner, M.D.

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

Dated: 10/13/2002


Robert M. Briber

In the Matter of Jeffrey A. Buckner, M.D.

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

Dated: November 12, 2002

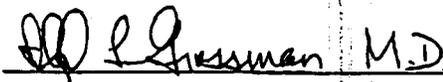
Therese G. Lynch M.D.

Therese G. Lynch, M.D.

In the Matter of Jeffrey A. Buckner, M.D.

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

Dated: November 15, 2002

 M.D.

Stanley L Grossman, M.D.