



STATE OF NEW YORK DEPARTMENT OF HEALTH

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Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

PUBLIC

November 17, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Patrick Pitter, M.D.
487-A Forbell Street
Brooklyn, New York 11208

Jean Bresler, Esq.
NYS Department of Health
5 Penn Plaza – Sixth Floor
New York, New York 10001

Brian Figeroux, Esq.
Figeroux & Associates
26 Court Street – Suite 709
Brooklyn, New York 11242

RE: In the Matter of Patrick Pitter, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-129) 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.

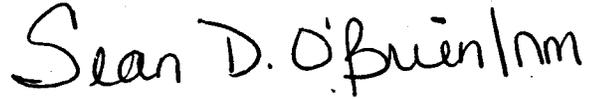
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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 "Sean D. O'Brien/nm". The signature is written in a cursive style with a vertical line through the "n".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO: nm
Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

In the Matter of

Patrick Pitter, 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. 03-129

COPY

**Before ARB Members Grossman, Lynch, Pellman and Briber¹
Administrative Law Judge James F. Horan drafted the Determination**

**For the Department of Health (Petitioner):
For the Respondent:**

**Jean Bresler, Esq.
Brian Figeroux, Esq.**

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by assaulting a patient sexually and by submitting documents that contained deliberate misrepresentations. 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 2003), the Respondent argues that the Petitioner failed to prove the charges and that the Committee imposed an overly harsh penalty. After reviewing the Committee's Determination and the parties' review submissions, the ARB affirms the Committee's Determination that the Respondent committed professional misconduct and the ARB affirms the Committee's Determination revoking the Respondent's License.

¹ ARB Member Datta Wagle, M.D., was unable to participate in this case. The ARB proceeded to consider the case with a four member quorum, see Matter of Wolkoff v. Chassin, 89 NY2d 250 (1996).

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(14), 6530(20) & 6530(31) (McKinney Supp. 2003) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- making a false, inaccurate or misleading application for hospital privileges,
- engaging in conduct that evidences moral unfitness, and/or,
- willfully abusing a patient physically or verbally.

The charges alleged inappropriate sexual conduct by the Respondent toward a patient (Patient A) and toward a nurse-practitioner (Nurse PS) with whom the Respondent worked. The record identifies Patient A and Nurse PS by initials to protect privacy. The charges also alleged that the Respondent made deliberately misleading statements on an application to the State Education Department, on applications to two hospitals and in a submission to the Office for Professional Medical Conduct (OPMC). The Respondent denied the charges and a hearing followed before the Committee that rendered the Determination now on review.

The Committee dismissed all charges relating to Nurse PS, because they found no physician-patient relationship existed between the Respondent and Nurse PS.

The Committee found that the Respondent engaged in forcible sexual intercourse with Patient A, during an unnecessary pelvic examination, and that the Respondent harassed Patient A verbally. The Committee concluded that such conduct constituted willful patient abuse and engaging in conduct that evidences moral unfitness. The Committee also concluded that the Respondent engaged in fraud by making willful misrepresentations to Patient A about her medical history and by creating a false medical record for the Patient.

The Committee also found that the Respondent made false statements on applications and/or submissions to Methodist Hospital, Brookdale Hospital and OPMC. The Committee concluded that the false statements amounted to deliberate misrepresentations. The Committee found that the Respondent's conduct with all the false statements amounted to practicing

fraudulently. The Committee found in addition that the false statements to Brookdale and Methodist Hospitals constituted making a false, inaccurate or misleading application for hospital privileges, a violation under N. Y. Educ. Law § 6530(14).

In reaching their Determination, the Committee found Patient A credible in her testimony and found corroborating evidence for the Patient's testimony in hospital records that indicated a diagnosis of sexual assault. The Committee rejected the Respondent's testimony and, at pages 7-8 in their Determination, the Committee listed the reasons that they found the Respondent's testimony unreliable.

The Committee voted to revoke the Respondent's License due to the conduct toward Patient A and the repeated false statements over an extended time period.

Review History and Issues

The Committee rendered their Determination on May 20, 2003. This proceeding commenced on June 6, 2003, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's response brief. The record closed when the ARB received the response brief on July 15, 2003.

The Respondent's brief argues that the Petitioner failed to prove by preponderance of credible evidence that the Respondent abused Patient A or that the Respondent is morally unfit to practice medicine. The Respondent argued further that the Petitioner failed to prove by clear and convincing evidence that the Respondent practiced fraudulently or submitted false and misleading applications. The Respondent admits that he submitted documents that contained misstatements, but he contends that he submitted those documents without intent to deceive. He argues that his conduct warrants no sanction more severe than a censure and reprimand.

In response, the Petitioner disputes the issues that the Respondent raised on review and the Petitioner asks that the ARB affirm the Committee's Determination in full.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Determination that the Respondent assaulted Patient A and that the Respondent submitted false documents with the intent to deceive. We also affirm the Committee's Determination to revoke the Respondent's License.

In seeking to overturn the Committee's Determination on willful abuse and moral unfitness, the Respondent in effect asks the ARB to overturn the Committee's Determination on credibility. The ARB rejects that request and we defer to the Committee in their judgement as the fact finder. The Committee received the opportunity to view the witnesses first hand. The ARB members sat on BPMC Hearing Committees prior to becoming ARB Members and we realize the difference in assessing credibility between reading a transcript and listening to and observing a live witness. We also reject the Respondent's argument that the Committee failed to weigh the testimony properly. The Committee gave detailed reasons for accepting Patient A's testimony and rejecting the Respondent's testimony. The ARB holds that the testimony the Committee found credible proved by preponderant evidence that the Respondent assaulted Patient A sexually. The sexual assault amounted to willful patient abuse, a misconduct violation under Educ. Law § 6530(31), and engaging in conduct that evidences moral unfitness, a misconduct violation under Educ. Law § 6530(20).

The Respondent also challenged the findings relating to Patient A by arguing that the Petitioner should have produced certain witnesses at hearing. We find no merit in that argument.

As the Petitioner's brief points out, the Respondent failed to raise that issue at hearing and so the Respondent has waived the issue and failed to preserve the issue for review. Also, if the Respondent felt that any witness could have provided important information, the Respondent could have called that witness to testify.

In addition to the charges concerning the assault on Patient A, the Committee sustained charges that the Respondent violated a.) Educ. Law § 6530(2) by creating false records concerning Patient A and by making false statements on certain applications or submissions, and 2.) Educ. Law § 6530(14) by making false submissions to hospitals and OPMC. The Respondent argued that the Petitioner failed to prove either charge by clear and convincing evidence. The ARB rejects the Respondent's argument that clear and convincing evidence constitutes the proof standard on those charges. Under Pub. Health Law § 230(10)(f), preponderance of the evidence constitutes the proof standard on all charges in physician disciplinary cases. The courts have specifically rejected the argument that clear and convincing evidence should constitute the proof standard in physician disciplinary cases involving fraud charges, Matter of Giffone v. DeBuono, 263 A.D.2d 713, 693 N.Y.S.2d 691 (3rd Dept. 1993).

The Respondent also argued that to prove violations under Educ. Law §§ 6530(2) & 6530(14) the Respondent must show misrepresentation of fact, intent to deceive and material misrepresentation. As support for that argument the Respondent cited three civil cases, but no cases involving physician disciplinary proceeding. We reject the Respondent's arguments as to both misconduct specifications.

Misconduct under Educ. Law § 6530(14) involves, in part, violations under Pub. Health Law § 2805-k. That statute requires hospitals to conduct investigations prior to granting or renewing physician privileges and requires the physician subject to investigation to verify as true

and accurate the information that the physician provides pursuant to the investigation. Under Educ. Law § 6530(14), a violation of Pub. Health Law § 2805-k constitutes misconduct. No provision in § 6530(14) states that the violation must be willful, intentional or material and the Respondent's brief cites to no case that held that violations under §§ 2805-k or 6530(14) must be willful, intentional or material. We hold that providing false information on a hospital privileges application would constitute a violation under § 6530(14). The Respondent's admissions that he provided false information to Methodist Hospital and Brookdale Hospital, therefore, establish by preponderant evidence that the Respondent committed misconduct under the definition in Educ. Law § 6530(14).

In order to sustain a charge that a licensee practiced medicine fraudulently under Educ. Law § 6530(2), a hearing committee must find that (1) a licensee made a false representation, whether by words, conduct or by concealing that which the licensee should have disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation, Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (Third Dept. 1966), aff'd, 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). Nothing in the statute or court decisions interpreting that statute require that the Committee find the misrepresentation material. A committee may infer the licensee'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 (Third Dept. 1991). A committee may also reject a licensee's explanation for a misrepresentation (such as resulting from inadvertence or carelessness) and draw the inference that the licensee 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 (Third Dept. 1986).

In this case, the Committee gave detailed reasons for rejecting the Respondent's explanations for his conduct. The record reveals that the Respondent made misrepresentations to Patient A, created a false and inaccurate record for the Patient, and provided false information to Brookdale Hospital, Baptist Hospital and OPMC. We infer from this pattern that the Respondent made willful, knowing misrepresentations with the intent to deceive. We affirm the Committee's Determination that the Respondent committed misconduct under the definition in Educ. Law § 6530(14).

The Respondent violated the trust that the State places in physicians and, more seriously, the Respondent violated the trust that Patient A placed in the Respondent. We agree with the Committee that the Respondent has demonstrated his unfitness to practice medicine in New York State. Either the Respondent's assault against Patient A or his repeated, fraudulent conduct would constitute a sufficient reason, standing alone, to revoke the Respondent's License.

ORDER

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

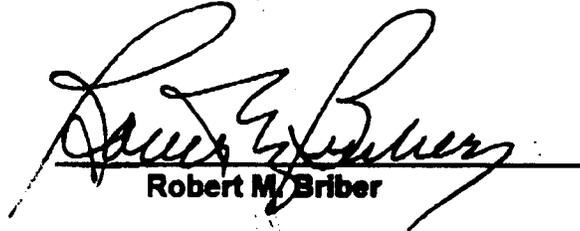
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.

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

In the Matter of Patrick Pitter, M.D.

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

Dated: November 3, 2003



Robert M. Briber

In the Matter of Patrick Pitter, M.D.

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

Dated: Nov. 14, 2003

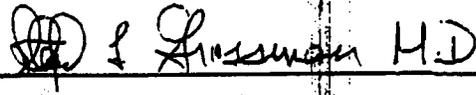
A handwritten signature in cursive script, appearing to read 'Thea Graves Pellman', written over a horizontal line.

Thea Graves Pellman

In the Matter of Patrick Pitter, M.D.

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

Dated: November-3, 2003

 Stanley L. Grossman M.D.

Stanley L Grossman, M.D.

In the Matter of Patrick Pitter, M.D.

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

Dated: November 2, 2003

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

Therese G. Lynch, M.D.