



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

August 28, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Armando Tabotabo, M.D.
P.O. Box 985
Matawan, New Jersey 07747-0985

Armando Tabotabo, M.D.
12 W. Front Street
Keyport, New Jersey 07735-1210

Armando Tabotabo, M.D.
175 Santiago Avenue, Apt. B
Rutherford, New Jersey 07070-1641

RE: In the Matter of Armando Tabotabo, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-133) 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.

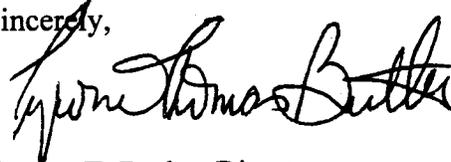
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

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

Armando Tabotabo, 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. 01-133

COPY

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

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

**Paul Robert Maher, Esq.
Pro Se**

After a hearing below, a BPMC Committee determined that the Respondent engaged in conduct in another state that made the Respondent liable for disciplinary action against the Respondent's License to practice medicine in New York (License). The Committee voted to revoke the Respondent's License. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 2001), the Respondent asks the ARB to nullify the Committee's Determination and reinstate his License. After considering the hearing record and the review submissions by the parties, we hold that the binding findings by New Jersey disciplinary authorities established that the Respondent's continuing medical practice represents a danger to the public. We affirm the Committee's Determination revoking the Respondent's 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) &(d) (McKinney Supp. 2001) because:

¹ ARB Member Winston Price, M.D. was unavailable to take part in the review on this case. The ARB reviewed the case with a four member quorum, see Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

- the duly authorized professional disciplinary agency from a sister state (New Jersey) found the Respondent guilty for misconduct [§ 6530(9)(b)] and/or took action against the Respondent's 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 New York action followed three Orders by the New Jersey Board of Medical Examiners (New Jersey Board) concerning the Respondent's medical license and practice in that state [Petitioner's Exhibit 5]. The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the misconduct in New Jersey that resulted in the Orders would constitute misconduct if committed in New York, under the following categories:

- practicing the profession fraudulently or beyond its authorized scope, a violation under N. Y. Educ. Law § 6530(2) (McKinney 2001),
- practicing the profession with negligence on more than one occasion, a violation under N. Y. Educ. Law § 6530(3) (McKinney 2001),
- practicing the profession with gross negligence, a violation under N. Y. Educ. Law § 6530(4) (McKinney 2001),
- practicing the profession with incompetence on more than one occasion, a violation under N. Y. Educ. Law § 6530(5) (McKinney 2001),
- practicing the profession with gross incompetence, a violation under N. Y. Educ. Law § 6530(6) (McKinney 2001),
- failure to comply with an order pursuant to Public Health Law § 230, a violation under N. Y. Educ. Law § 6530(15) (McKinney 2001),
- willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules or regulations that pertain to medical practice, a violation under N. Y. Educ. Law § 6530(16) (McKinney 2001),
- practicing the profession beyond the scope permitted by law, a violation under N. Y. Educ. Law § 6530(24) (McKinney 2001),

- violating probation pursuant to Public Health Law § 230, a violation under N. Y. Educ. Law § 6530(29) (McKinney 2001), and,
- failing to maintain accurate patient records, a violation under N. Y. Educ. Law § 6530(32) (McKinney 2001).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 2001), before a BPMC Committee, which rendered the Determination which the ARB now reviews. In such a 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 record indicated that the New Jersey Board issued an Order limiting the Respondent's License in 1999, upon the Board's finding that the Respondent prescribed addictive controlled substances to undercover investigators indiscriminately and without proper indication. The Board concluded that the Respondent could continue in practice safely with restrictions on his New Jersey license such as a prohibition on prescribing certain substances and a requirement that a monitor accompany the Respondent during all patient care. In February 2001, the New Jersey Board suspended the Respondent's New Jersey license temporarily, upon the Board's finding that the Respondent practiced without the monitor. The Respondent failed to appear at the hearing on that charge. On March 14, 2001, the Respondent surrendered his New Jersey license.

The Committee in the New York hearing found that the Respondent's conduct would constitute misconduct in New York under Educ. Law §§ 6530 (2-6), (15-16), (20), (24), (29) & (32). The Committee found further that the New Jersey Board found the Respondent guilty for and took disciplinary action against the Respondent for the conduct. The Committee determined that the Respondent's conduct in New Jersey made the Respondent liable for disciplinary action against his New York License pursuant to N.Y. Educ. Law §§ 6530(9)(b) & (9)(d). The Committee voted to revoke the Respondent's License. The Committee termed the indiscriminate prescribing and the practice without the monitor egregious misconduct and the Committee found no evidence to show that the Respondent could correct his egregious misconduct.

Review History and Issues

The Committee rendered their Determination on June 1, 2001. This proceeding commenced on June 14, 2001, 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 17, 2001. The Respondent also attempted to serve a reply to the response brief on July 30, 2001.

The Respondent's brief argues that he surrendered his New Jersey license because he could not afford to defend the action. The Respondent admits to practicing without a monitor, but blames that on the company that provided the monitors. The Respondent also contests some findings by the New Jersey Board from the 1999 action concerning the inappropriate prescribing to the undercover investigators. The Respondent requests that the ARB reinstate his New York License.

In response, the Petitioner argues that the ARB should take proactive steps to protect the public in New York from the conduct that the Committee found egregious. The Petitioner asks the ARB to affirm the Committee's Determination.

Determination

The ARB has considered the record and the parties' briefs. We gave no consideration to the Respondent's July 30th sur-reply brief, because N. Y. Pub. Health Law § 230-(c)(4)(a) allows the parties to serve no additional papers beyond the brief and response brief. We affirm the Committee's Determination that the Respondent's conduct in New Jersey made the Respondent

liable for disciplinary action in New York, but we modify that Determination as to two specifications in the charges. We affirm the Committee's Determination to revoke the Respondent's License.

Petitioner's Exhibit 5 establishes that the New Jersey Board found the Respondent guilty for misconduct and disciplined the Respondent for misconduct. That conduct if committed in New York would have amounted to practicing fraudulently, practicing with gross negligence and incompetence and negligence and incompetence on more than one occasion, violating federal state or local laws regulating medical practice, practicing beyond authorized scope and failing to maintain accurate records. The Respondent's conduct made him liable for disciplinary action under both Educ. Law §§ 6530(9)(b) & 6530(9)(d).

The Petitioner also charged that the Respondent's conduct in New Jersey would constitute New York misconduct under Educ. Law §§ 6530(15) & 6530(29). Those sections define misconduct as violating orders or probation under N.Y. Pub. Health Law § 230. As the Petitioner offered no proof that the Respondent violated conditions or probation under an order pursuant to § 230, the ARB dismisses those specifications on our own motion. We affirm the Committee on all other specifications.

The Respondent attempted to re-litigate the findings under the New Jersey Orders concerning the prescribing to the undercover investigators and concerning the monitors. The Respondent also alleged that the New Jersey Board treated him unfairly. We reject those arguments and hold that the Respondent must make any challenge to the New Jersey Orders in that state, as neither the Committee nor the ARB may overturn the New Jersey findings, Matter of Herberman v. Novello, ___ A.D.2d ___, 720 N.Y.S.2d 626 (3rd Dept. 2001).

The Respondent engaged in serious misconduct by prescribing addictive substances without proper indication. The New Jersey Board gave the Respondent the chance to continue in practice with a monitor, but the Respondent went beyond the practice that the New Jersey Board authorized and he practiced without a monitor. At the hearing below, the Respondent attempted to place the blame for his misconduct on others. He also gave the Committee no indication that the Respondent could practice without committing further misconduct. We agree with the Committee that the Respondent presents as a continuing risk to commit further misconduct, if he receives the chance to practice medicine in New York. We hold that the Committee acted appropriately in revoking the Respondent's License.

ORDER

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

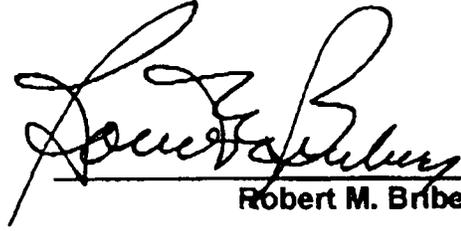
1. The ARB affirms the Committee's Determination that the Respondent's misconduct in New Jersey would constitute misconduct in New York, except we overturn that portion of the Committee's Determination that sustained charges pursuant to N.Y Educ. Law §§ 6530(15) & 6530(29).
2. The ARB affirms the Committee's Determination revoking the Respondent's License.

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

In the Matter of Armando Tabotabo, M.D.

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

Dated: August 16, 2001



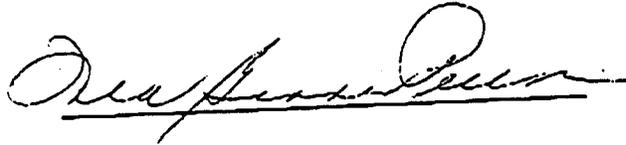
Robert M. Briber

In the Matter of Armando Tabotabo, M.D.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Tabotabo.

Dated: Aug. 25, 2001



Thea Graves Pellman

In the Matter of Armando Tabotabo, M.D.

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

Matter of Dr. Tabotabo.

Dated: August 16, 2001

Stanley L. Grossman M.D.

Stanley L Grossman, M.D.

In the Matter of Armando Tabotabo, M.D.

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

Dated: Aug. 16, 2001

Therese G. Lynch M.D.
Therese G. Lynch, M.D.