



STATE OF NEW YORK DEPARTMENT OF HEALTH

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Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

August 4, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Cindy Fascia, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237

George Michael Innes, M.D.
c/o Catherine Gale, Esq.
Gale & Dancks, LLC
7136 East Genesee Street
Fayetteville, New York 13066-0097

RE: In the Matter of George Michael Innes, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 05-53) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 cursive script that reads "Sean D. O'Brien".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

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

In the Matter of

George Michael Innes, 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. 05-53

COPY

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

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

**Cindy M. Fascia, Esq.
Pro Se**

After a hearing below, pursuant to N. Y. Pub Health Law (PHL) § 230(10) (McKinney Supp. 2005), a three-member BPMC Committee determined that the Respondent engaged in extensive and repeated professional misconduct, that included inappropriate touching of and comments to patients, without medical justification. The Committee voted to revoke the Respondent's License to practice medicine in New York State (License). In this proceeding pursuant to PHL §230-c(4)(a), both parties ask the ARB to modify that Determination. The Petitioner asks the ARB to sustain additional charges and the Respondent asks the ARB to overturn the revocation. After reviewing the hearing record and the review submissions from the parties, the ARB votes 4-0 to affirm the Committee's Determination in full.

Committee Determination on the Charges

A three-member BPMC Committee conducted a twenty-day hearing into charges that the Respondent committed professional misconduct in practicing medicine and violated N. Y. Educ.

¹ ARB Member Stanley Grossman, M.D. recused himself from participating in this case. The ARB reviewed the case with a four-member quorum, see Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

Law (EL) §§ 6530(2-3), 6530(14), 6530(20-21) 6530(23) & 6430(31-32) (McKinney Supp. 2005) under the following specifications:

- practicing medicine fraudulently;
- practicing medicine with negligence on more than one occasion;
- violating PHL § 2805-k by failing to provide true and accurate information in seeking professional privileges from a hospital;
- engaging in conduct that evidences moral unfitness;
- willfully filing a false report;
- revealing personally identifiable patient information without patient consent;
- willfully harassing, abusing or intimidating a patient; and,
- failing to maintain accurate patient records.

The charges related to the care that the Respondent, an emergency room physician, provided to several patients and to staff at several facilities at which the Respondent worked and to the Respondent's interactions with facility staff. The charges also related to the Respondent's application for staff appointment at a facility and the Respondent's communication to a Board Member and administrator at a facility. The charges date from on or about 1988-1990 until August 2004. The Respondent received his License in 1988. As relevant on this review, the charges allege that the conduct at issue took place at several facilities in New York [Via Health/Newark Hospital, Canton-Potsdam Hospital, Albany Memorial Hospital, St. Peter's Hospital Albany and The Hospital in Sidney, New York] and at a party [Patient F]. The charges refer to Patients and staff by initials to protect privacy.

After conducting the hearing, the Committee rendered a Determination that found that the Respondent evidenced moral unfitness in practice in by touching inappropriately and without medical reason and/or making inappropriate comments to Patients A and F, and Employees I, J, O, P and S. The Committee found that the conduct also amounted to willfully harassing or intimidating F, I, J, O, P and S. The Committee also determined that the Respondent evidenced moral unfitness in kissing Nurse N, without her consent on hospital grounds. The Committee found that the Respondent released patient information without consent concerning Patient D and

that the Respondent failed to maintain an accurate record for Patient D. The Committee found that the Respondent practiced medicine with negligence on more than one occasion in treating Patients A and C, by failing to record medical information on patient charts that could affect future patient care. Further, the Committee determined that the Respondent made an intentionally misleading answer in failing to disclose his termination from Via Health on an application to Canton-Potsdam Hospital. The Committee concluded that the answer amounted to practicing fraudulently, engaging in conduct that evidences moral unfitness, filing a false report and violating PHL § 2805-k by failing to provide true and accurate information in seeking professional privileges from a hospital. Finally, the Committee found that the Respondent sent an electronic mail or computer message to a Board Member of and the acting CEO of the Hospital at Sidney asking that they make no report about recent events at the Hospital to the Committee for Physician's Health (CPH) or the Office for Professional Medical Conduct (OPMC). The Committee found that the Respondent made inappropriate remarks to Employee S at the Hospital during an employee physical in 2002. The Committee found that the Respondent's message to the officials at the Hospital amounted to practicing fraudulently and engaging in conduct that evidences moral unfitness.

The Committee voted to revoke the Respondent's License. The Committee rejected the Respondent's suggestion that therapy would assist the Respondent to correct his behavior. The Committee noted that the Respondent entered into a contract with CPH in 2001, in which the Respondent received treatment with Dr. Linda Land. In that contract, the Respondent agreed to treat all patients with dignity and refrain from sexual innuendo, harassment, intimidation or seduction. The Respondent's conduct toward Employee S occurred after the Respondent entered into the CPH Contract. The Committee found that the Respondent lacked awareness concerning his problem and that he showed an inability to exercise discretion. The Committee concluded that no penalty other than revocation would protect the public adequately.

Review History and Issues

The Committee rendered their Determination on March 28, 2005. This proceeding commenced on April 14 & April 15, 2005, when the ARB received the Review Notices from the Respondent and then the Petitioner. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and reply brief and the Respondent's brief and reply brief. The record closed when the ARB received the Petitioner's reply brief on May 25, 2005.

The Respondent asks that the ARB overturn the Committee's Determination to revoke the Respondent's License. The Respondent argues that the Committee, the Petitioner and the Petitioner's expert engaged in misconduct and that the Respondent failed to receive due process or the opportunity to offer a defense. The Respondent argued that the Committee erred in the charges they sustained and the Respondent challenged the Committee's findings on the charges the Committee sustained. The Respondent characterized himself as an extraordinary physician, with much to offer patients and he argued that he can change his approach to patients and comply with monitoring.

The Petitioner asked that the Committee sustain the Committee's factual findings and the determination to revoke the Respondent's License. The Petitioner requests further that the ARB sustain additional misconduct charges with the Committee's findings as the basis. Following the Respondent's reply brief, the Petitioner sent a letter to the Administrative Officer for the ARB asking that the Administrative Officer instruct the ARB to disregard certain material in the reply brief.

ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL §230-a permits. The ARB may substitute our judgment for that of the Committee, 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); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3rd Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health. 222 A.D.2d 750, 634 N.Y.S.2d 856 (3rd Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin. 89 N.Y.2d 828 (1996). 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).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono. 243 A.D.2d 847, 663 N.Y.S.2d 361 (3rd Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent committed professional misconduct. We refuse to consider matters outside the record or beyond our authority, we find no matters in the record to merit a remand for further proceedings and no grounds on which to sustain further charges. We affirm the Committee's Determination to revoke the Respondent's License.

Matters Outside Record and Authority: The Petitioner complained that the Respondent's reply brief referenced matters outside the record and asked that our Administrative Officer issue instructions to or to provide additional material to the ARB. The Administrative Officer issued no instructions and provided no additional material in this case to the ARB and the Administrative Officer issues no instructions or provides no additional materials at any party's requests to the ARB in any other cases either. The ARB knows our authority and knows the statute that we work under, without anyone providing us with instructions. We know that we may review no matters from outside the record and we disregard any attempts to place matters from outside the record before us.

With the review in this matter pending, the Respondent sent electronic messages to the Administrative Officer for the ARB, on notice to the Petitioner's counsel, asking that the ARB

conduct investigations into allegations by the Respondent and asking that the Respondent receive the opportunity to appear before the ARB and argue his case orally. The Administrative Officer responded that the ARB conducts no investigations and that the ARB hears no oral arguments. Nothing in PHL § 230-c authorizes or allows the ARB to conduct investigations and nothing requires the ARB to conduct de novo hearings or hear oral arguments.

Due Process and Remand Authority: The Respondent's brief made many allegations that the Respondent failed to receive due process and the Respondent asked the ARB to vacate the revocation order due to those allegations. The ARB holds no authority to vacate a Committee's Determination on procedural grounds, but the ARB may remand a matter to a Committee for further proceedings under PHL § 230-c. We considered the Respondent's due process complaints as a request for remand to correct any procedural problems. We conclude that no reason exists for a remand in this case.

The Respondent made allegations with no support in the record about leaks, witness tampering and false testimony by the Petitioner's expert. As the Respondent offered no support for the allegations, we find no grounds on which to consider those allegations. The Respondent also complained about statements by the Petitioner's attorney and about the number of charges the Petitioner brought against the Respondent. We note that the statements by the Petitioner's attorney constituted statements by counsel only. We also note that the Committee dismissed a large number of charges here and that the Committee went into great depth in discussing their reasons for sustaining and dismissing charges. We find no reason to credit the Respondent's allegation that the number of charges prejudiced the Respondent's defense.

The Respondent also alleged that the Committee came to a decision on the charges before they heard all sides and that the hearing's length prejudiced the Respondent's defense. We find

no validity in those arguments. The Committee's Administrative Officer, Judge Zimmer, made clear to the Committee their obligation to hear all sides before rendering a verdict [May 4th hearing transcript]. Further, the Committee's Determination demonstrates that the Committee considered all the evidence in great detail and the Committee gave extensive explanations for their determination on each charge sustained or denied. As to the hearing's length, we note that the Committee conducted twenty days of hearing in this case and the Committee had scheduled additional days. The hearing ended after twenty days because the Respondent's counsel stated that the Respondent had no further proof [Committee Determination page 6].

The Respondent also argued that he received no chance to present a summary of the charges in his own words. We see no validity in that argument. The Respondent received an extensive opportunity to present a defense, the Respondent received the opportunity to address the Committee during his testimony and both parties received the opportunity to present summations in writing, with proposed findings of fact, following the hearing.

The Respondent also complained that the Committee heard from multiple witnesses on the August 5, 2004 hearing date, when the Respondent was absent due to an emergency illness. Judge Zimmer refused to adjourn that day, because Nurse O traveled from Alaska to testify on that date. We find no prejudice to the Respondent because the hearing went forward. The Respondent's attorney received the chance to cross-examine all witnesses and Judge Zimmer indicated that the possibility existed that the Respondent could recall witnesses at a later time. The Respondent's brief alleged that the Respondent received no chance himself to confront the witnesses. The Respondent testified, however, that he failed to recall anything about Nurse O and that he had no recollection about an incident with Employee J, who also testified on that date [see Committee Determination page 4].

The ARB notes that we all served on Hearing Committees prior to becoming ARB members and we found in reviewing this record that Judge Zimmer did a very good job in conducting a fair hearing.

Determination on the Charges: In making their Determination that the Respondent committed professional misconduct, the Committee credited some expert testimony by the Petitioner's expert, Richard Braen, M.D. The Committee found Dr. Braen a credible and knowledgeable witness, but the Committee noted some disagreement with Dr. Braen's opinions. The Committee also credited some expert testimony by the Respondent himself, but noted that the Respondent tended to put the "best spin" on events and that the Respondent failed to understand limits and boundaries of acceptable behavior. The Respondent challenged the findings that the Committee based on the testimony by Dr. Braen, but the Respondent failed to cite to any specific errors or point to any contradictions in the testimony.

The ARB finds that the Committee reviewed the expert testimony carefully and they again gave detailed reasons why they credited some testimony and rejected other testimony. We defer to the Committee as the finder of fact in their judgment about credibility between the experts. For the same reason, we defer to the Committee in their judgment about which fact evidence to credit. For the sustained charges involving patients or staff, Patients A, D and F, Nurse N and Employees I, J, O, P and S all testified and in some cases other witnesses corroborated that testimony. In crediting the testimony by these people and sustaining the charges, the Committee often rejected testimony by the Respondent and some of his witnesses. The Committee, as the fact-finder, received the opportunity to view the testimony by all these witnesses and they were in the best position to judge credibility. As to the charges the Committee sustained on the Canton-Potsdam Application and the communication to the Board Member and

CEO at The Hospital at Sidney, the Committee based their conclusions on the Application itself and on the Respondent's communication. In each case, the Committee could reject the Respondent's explanations for his intentions in filing the Application and in sending the communication.

We find no merit to the Respondent's challenges to the evidence, which the Committee credited as the basis for those charges the Committee sustained. For example, in challenging the Findings on Patient F, the Respondent's brief stated incorrectly that the Committee accepted unsupported testimony by Patient F and disregarded the Respondent's testimony. In fact, the charges concerning Patient F fell into three categories: F.1, F.2 and F.3. The Committee rejected all the charges in category F.3. In dismissing those charges, the Committee credited testimony by the Respondent and rejected testimony by Patient F. As to the charges in F.1 and F.2 that the Committee sustained, the Committee's Determination cites to corroborating testimony and evidence, including some testimony by the Respondent. Following the incident with Patient F, the Respondent faced criminal charges. In settling those charges, the Respondent made a statement in court in which he apologized to the Patient and her family and in which the Respondent admitted to engaging in uninvited, offensive and inappropriate conduct [Committee Determination, Finding of Fact 83]. The Committee found that apology corroborated the testimony by Patient F. The Respondent's brief argued that the Committee took the apology out of context and that the Respondent made the apology only on recommendation from his lawyer in the criminal case. The ARB concludes that the Committee acted properly within their role as fact-finder in determining the context for the apology and refusing to accept the Respondent's attempt to repudiate that apology later on.

We hold that the evidence that the Committee found credible provided the basis for the Committee to determine that the Respondent practiced fraudulently, practiced with negligence on more than one occasion, engaged in conduct that evidenced moral unfitness, practiced medicine fraudulently, violated PHL § 2805-k by failing to provide true and accurate information in seeking professional privileges from a hospital, willfully filed a false report, revealed personally identifiable patient information without patient consent, willfully harassed, abused or intimidated patients and failed to maintain accurate patient records.

We reject the Petitioner's request that we sustain additional charges in this case. Again, we conclude that the Committee made an extensive and detailed analysis on the evidence in this case and we affirm the Committee's Determination on which charges to sustain and dismiss.

Penalty: The Respondent argued that his misconduct reflected acceptable behavior in the Emergency Room at the time the conduct occurred. He admits now to engaging in piggish behavior and he asserts that he can modify his behavior and comply with monitoring. The ARB finds the Respondent's arguments unconvincing and we affirm the Committee's Determination to revoke the Respondent's License.

The record demonstrates that the Respondent has received warnings and chances to change his behavior but has failed to heed those warnings or take advantage of those chances. The Respondent's brief indicated at page 25 that OPMC conducted a first interview with the Respondent in 1999. Despite knowing that OPMC was looking into his conduct as of 1999, the Respondent continued his pattern of misconduct. The incidents with Patients A and D and Employee S all took place after 1999. After the incident with employee I, the Respondent entered into a Memorandum of Agreement with his employer in 1991, in which the Respondent agreed to examine his practice to ensure his behavior and procedures could not be misperceived

as having a sexual implication. The conduct involving Patients A and F and Employee S all occurred after the Memorandum of Agreement. In settling the criminal charges concerning the 1998 incident with Patient F, the Respondent agreed to obtain counseling and he made the apology. The brush with the criminal courts failed to deter the Respondent from future misconduct and at the hearing in this case, the Respondent sought to distance himself from his apology. The Respondent entered treatment with Dr. Land under the CPH contract in 2001, but still engaged in the conduct involving Employee S in 2002.

The Respondent has engaged in abusive and morally unfit conduct towards patients almost from the time he received his License and he has continued to engage in that conduct despite prior warnings, promises to change and a brush with a criminal court. In addition, the Respondent has engaged in additional conduct that shows indifference to his patients and to the truth. We agree with the Committee that no penalty other than revocation can protect patients. The ARB concludes that if we allowed the Respondent to retain his License, he would repeat his misconduct in the future. We vote 4-0 to affirm the Committee's Determination 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.

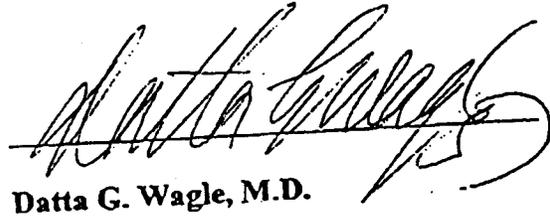
Robert M. Briber
Thea Graves Pellman
Datta G. Wagle, M.D.
Therese G. Lynch, M.D.

In the Matter of George Michael Innes, M.D.

Datta G. Wagle, M.D., an ARB Member concurs in the Determination and Order in the

Matter of Dr. Innes.

Dated: 7/28/, 2005

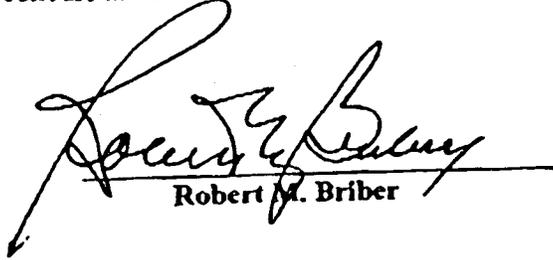


Datta G. Wagle, M.D.

In the Matter of George Michael Innes, M.D.

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

Dated: July 27, 2005

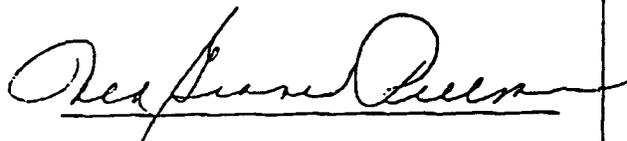


Robert M. Briber

In the Matter of George Michael Innes, M.D.

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

Dated: July 29, 2005



Thea Graves Pellman

In the Matter of George Michael Innes, M.D.

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

the Matter of Dr. Innes

Dated: July 27, 2005.

Therese G. Lynch M.D.

Therese G. Lynch, M.D.