



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

December 4, 1998

Dennis P. Whalen
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Emmanuel Somers, M.D.
210 East 80th Street
New York, NY 10021

Howard Bushin, Esq.
251 West 93rd Street
New York, NY 10025

Emmanuel Somers, M.D.
3418 Broadway
New York, NY 10031

Daniel Guenzburger, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, NY 10001

RE: In the Matter of Emmanuel Somers, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.98-223) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 "Tyrone Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH (Petitioner)



In The Matter Of
Emmanuel Somers, M.D. (Respondent)

**Administrative Review
Board (ARB)
Determination and
Order 98 - 223**

**Proceeding to review a Determination by a Hearing Committee (Committee)
from the Board for Professional Medical Conduct (BPMC)**

**Before Board Members : Briber, Grossman, Lynch, Price & Shapiro.
Administrative Law Judge James F. Horan served as the Board's Administrative Officer.**

For the Respondent: No appearance
For the Petitioner: Daniel Guenzburger, Esq.

After a hearing on charges that the Respondent committed professional misconduct in practicing medicine, a BPMC Committee sustained charges that the Respondent practiced medicine with negligence and incompetence on more than one occasion and failed to maintain adequate patient records. The Committee voted to limit the Respondent's license to practice medicine in New York State (License), to permit him to practice pathology only. In this proceeding, pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1998), the Petitioner asks the ARB to overturn the Committee and revoke the Respondent's License, due to a prior disciplinary action that found the Respondent practiced pathology with negligence on more than one occasion. After reviewing the record and the Petitioner's brief, we vote unanimously to revoke the Respondent's License. We hold that the Respondent's unacceptable patient care in general practice in the cases at issue in this proceeding and his prior disciplinary history for unacceptable practice in pathology demonstrate the Respondent's unfitness to practice medicine in New York State.

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(2-3), 6530(5) & 6530(32) (McKinney Supp. 1998) by:

- practicing medicine fraudulently,
- practicing medicine with negligence on more than one occasion,
- practicing medicine with incompetence on more than one occasion, and,

- failing to maintain accurate patient records.

The negligence, incompetence and record keeping charges arose from the Respondent's care for six Patients, A through G. The record refers to the Patients by letters to protect their privacy. The fraud charges arose in part from a prescription the Respondent wrote for Patient C, and in part from the Respondent's written answers to a New York State Medical Society survey. A hearing ensued before the Committee who rendered the Determination now on review.

The Committee dismissed all charges alleging fraud. The Committee sustained charges that the Respondent failed to maintain accurate records for all Patients A through G. The Committee also sustained charges that the Respondent practiced medicine with incompetence on more than one occasion, in treating infant Patients A and B, by failing to identify and assess developmental milestones. The Committee's found this failure to assess also constituted negligence on more than one occasion. The Committee found that the Respondent practiced with additional negligence on more than one occasion in treating Patients A, B, D, E, F and G by:

- failing to address adequately dehydration in a newborn with diarrhea,
- failing to take adequate histories,
- failing to perform an appropriate examination on a baby with a complaint about abdominal pain,
- failing to confirm anemia and intestinal parasite diagnoses with appropriate laboratory tests,
- using urine dipsticks inappropriately to monitor patients with diabetes,
- failing to monitor appropriately for side effects from the cholesterol lowering medication Mevacor,
- failing to test for serum electrolytes in a patient receiving the diuretic Dyazide, and,
- failing to perform an adequate cardiovascular examination on a patient with edema.

The Committee determined further that the Respondent received his training and experience practicing pathology and that the Respondent left his position as Director for Pathology and Laboratories at Flushing Hospital in 1991. Shortly thereafter, the Respondent began practicing at a family practice clinic in Harlem, at which he rented office space and equipment from the clinic and

billed the patients he treated himself. The Committee found that the Respondent treated up to sixty patients per day routinely at the clinic.

The Committee concluded that the Respondent's misconduct resulted because he completed his training and received his experience in pathology rather than primary care. The Committee found a further contributing factor in the large patient numbers the Respondent treated on a daily basis in the Harlem clinic. The Committee determined that they could protect the public from further misconduct by limiting the Respondent's License to practicing pathology.

Review History and Issues

The Committee rendered their Determination on September 24, 1998. This proceeding commenced on October 7, 1998 when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and the Petitioner's brief. The Respondent made no submissions to the ARB. The record closed when the ARB received the Petitioner's brief on November 9, 1998.

The Petitioner argues that the Committee imposed an inappropriate penalty by limiting the Respondent to pathology, because a 1991 disciplinary proceeding determined that the Respondent practiced pathology with negligence on more than one occasion, following multiple misdiagnoses after pathological examinations. The Petitioner argues that the Respondent would pose as great a danger to the public in practicing pathology, due to his past misconduct, his time away from the specialty since 1992 and his failure to seek remediation for the problems the Respondent experienced that resulted in the earlier disciplinary action. The Petitioner asks the ARB to revoke the Respondent's License, arguing that the Respondent refuses to limit himself to procedures and situations he can handle adequately and safely.

Determination

All ARB Members participated in this case, considered the record and considered the

Petitioner's brief. We conclude that the Respondent demonstrated extremely poor judgement in entering a new specialty, in which he lacked training or experience, and in attempting almost immediately to assume a sixty patient per day caseload. In his practice at the Harlem clinic, the Respondent demonstrated deficiencies in examination, diagnosis, testing, following up on test results and prescribing medication. We hold that this record demonstrates that the Committee acted properly in removing the Respondent from family medicine.

We disagree, however, with the Committee's conclusion that they could protect the public by limiting the Respondent to practicing pathology. The Respondent signed a Consent Decree in 1992, in which he admitted to practicing with negligence on more than one occasion in practicing pathology, by misdiagnosing three biopsy slides as positive for carcinoma [Petitioner Exhibit 14]. Since that Decree, the Respondent has practiced no pathology and has done nothing to remediate the deficiencies that resulted in the misdiagnoses. We conclude that the Committee imposed an inappropriate penalty by limiting the Respondent to pathology.

The ARB holds that the Respondent's prior misconduct in his former specialty and his recent misconduct in family medicine demonstrate the Respondent's general unfitness to practice medicine. The Respondent presents a danger to his patients in either area in which he has practiced and has proven that he presents a poor candidate to rehabilitate himself, because he failed to address the deficiencies he displayed in pathology. The ARB concludes that we can protect the public in this case only by removing the Respondent from medical practice, so we vote 5-0 to revoke the Respondent's License.

ORDER

NOW, based upon this Determination, the Review Board renders the following **ORDER**:

1. The ARB **SUSTAINS** the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB **OVERTURNS** the Committee's Determination to limit the Respondent's License to practicing pathology.
3. The ARB votes 5-0 to **REVOKE** the Respondent's License to practice medicine in New York State.

Robert M. Briber

Sumner Shapiro

Winston S. Price, M.D.

Stanley L. Grossman, M.D.

Therese G. Lynch, M.D.

In The Matter Of Emmanuel Somers, M.D.

Therese G. Lynch, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Somers.

Dated : Nov. 29 , 1998

Therese G Lynch M.D.

Therese G. Lynch, M.D.

In The Matter Of Emmanuel Somers, M.D.

Stanley L. Grossman, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Somers.

Dated : 11/30, 1998

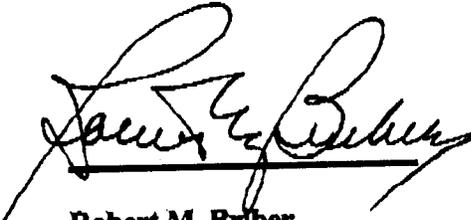
Stanley L. Grossman M.D.

Stanley L. Grossman, M.D.

In The Matter Of Emmanuel Somers, M.D.

Robert M. Briber, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Somers.

Dated : November 30 , 1998

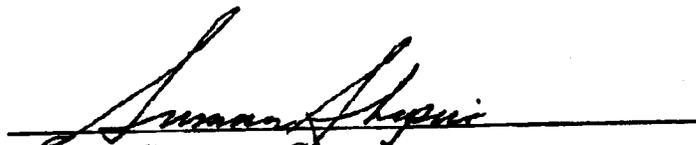


Robert M. Briber

In The Matter Of Emmanuel Somers, M.D.

Sumner Shapiro, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Somers.

DATED: December 1, 1998


Sumner Shapiro