



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

March 24, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Hedley Building-4th Floor
433 River Street
Troy, New York 12180

Robert S. Asher, Esq.
295 Madison Avenue
New York, New York 10017

Joseph Fanfan, Jr., M.D.
3006 E. Merion
Weston, Florida 33332

Joseph Fanfan, Jr., M.D.
300 W. Sunrise Blvd., Suite 8
Fort Lauderdale, Florida 33311

RE: In the Matter of Joseph Fanfan, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-368) 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.

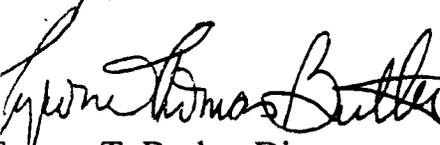
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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,



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

Joseph Fanfan, 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. 02-368

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):

Paul Robert Maher, Esq.

For the Respondent:

Robert S. Asher, Esq.

After conducting a hearing pursuant to N.Y. Pub. Health Law § 230(10)(p)(McKinney's Supp. 2003), a BPMC Committee sustained charges that the Respondent violated N. Y. Educ. Law §6530(9)(a)(ii) (McKinney Supp. 2003) by engaging in conduct that resulted in the Respondent's conviction in United States District Court for tax evasion under Federal Law. The Committee voted to suspend the Respondent's New York Medical License (License) for five years, with the possibility for a stay in the suspension, if the Respondent makes complete restitution under the District Court's sentence for tax evasion. The Petitioner then filed a Notice requesting that the ARB review and modify the Committee's Determination, under N.Y. Pub. Health Law § 230-c (McKinney's Supp. 2003). After reviewing the hearing record and the parties' review submissions, we overrule the Committee and we vote to suspend the Respondent's License until such time as the Respondent makes complete restitution in the amount the District Court ordered.

Committee Determination on the Charges

The Petitioner charged that the Respondent violated N. Y. Educ. Law § 6530(9)(a)(ii) by engaging in conduct that resulted in the Respondent's conviction for a crime under Federal Law. An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 2003), before a BPMC Committee, which rendered the Determination now on review. In the 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 evidence before the Committee demonstrated that the Respondent entered a guilty plea in the United States District Court for the Southern District of Florida, for failure to file tax returns for the years 1994-1997. The Court sentenced the Respondent to six months confinement, five years on probation, a \$100.00 assessment and \$179,168.00 in restitution.

At the hearing on the professional misconduct charges, the Respondent blamed his tax problems on a management consulting company that the Respondent hired to manage business and financial aspects of his private practice and which possessed all the Respondent's private practice financial records. The Committee found that the consultant company failed to cooperate with the Respondent in filing tax returns. The Committee also found that the Respondent waited until 1998 to hire an attorney for assistance with the situation. The Committee concluded that the Respondent's failure to file tax returns constituted no scheme to avoid paying taxes, but also concluded that the Respondent deserved blame for an inadequate response to the situation that the consultant company caused.

The Committee rejected the Petitioner's request that the Committee revoke the Respondent's License. The Committee, however, found the Respondent negligent and irresponsible in responding to the tax problems and the Committee concluded that the Respondent's conduct deserved a substantial penalty. The Committee voted to suspend the Respondent's License for five years and to provide for a stay in the suspension at such time as the Respondent can submit proof that he has made complete restitution under the District Court sentence.

Review History and Issues

The Committee rendered their Determination on December 4, 2002. This proceeding commenced on December 6, 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 the Respondent's response brief. The record closed when the ARB received the response brief on February 7, 2003.

The Petitioner asks that the ARB overrule the Committee, and at a minimum, keep the Respondent's License under suspension until the Respondent satisfies his entire tax obligation. In the alternative, the Petitioner requests that the ARB revoke the Respondent's License due to the long period during which the Respondent failed to file tax returns and the large amount of unpaid taxes.

The Respondent argues that the Committee imposed a very severe penalty for conduct which occurred outside New York and which involved no medical practice. The Respondent notes that he has admitted his guilt and taken responsibility for his conduct. The Respondent contends that the Petitioner requests an increased penalty in part because the Respondent has

failed to complete restitution at this time. The Respondent notes that he remains in compliance with the restitution schedule under the District Court's sentence. The Respondent asks that the ARB place the Respondent on probation until such time as the Respondent satisfies the tax obligation.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the conduct that resulted in the Respondent's tax evasion conviction constituted professional misconduct under N. Y. Educ. Law § 6530(9)(a)(ii). Neither party challenged the Committee's Determination on the charges. We hold, however, that the Committee rendered an inappropriate determination on the penalty to impose. In reviewing a Committee's Determination on penalty, the ARB may substitute our judgement for that of the Committee, Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993) We elect to exercise that authority here and we overturn the Committee's Determination on how to structure the suspension for the Respondent's misconduct.

We agree with the Committee that License revocation would constitute an overly harsh penalty under these facts and we agree that the Respondent's conduct does merit actual time on suspension from practice in New York. The Committee, however, provided for a suspension to end automatically after five years, whether or not the Respondent has completed restitution. The ARB overturns the Committee and holds that the Respondent should remain on suspension until he completes the restitution that will address the Respondent's negligent and irresponsible failure to file tax returns over four years.

ORDER

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

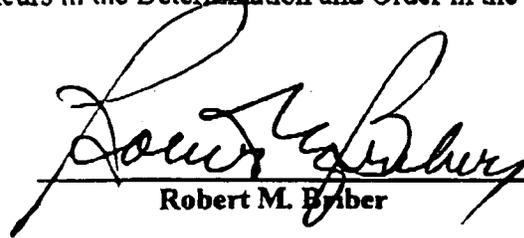
1. The ARB affirms the Committee's Determination that the Respondent's criminal conviction constituted professional misconduct under N. Y. Educ. Law § 6530(9)(a)(ii).
2. The ARB overturns the Committee's Determination to suspend the Respondent's License for five years and to provide conditions for a stay on that suspension.
3. The ARB suspends the Respondent's License until such time as the Respondent makes complete restitution.

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 Joseph Fanfan, M.D.

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

Dated: March 13, 2003



Robert M. Briber

In the Matter of Joseph Fanfan, M.D.

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

Matter of Dr. Fanfan.

Dated: 3/18, 2003



Thea Graves Pellman

In the Matter of Joseph Fanfan, M.D.

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

Dated: 03/19, 2003

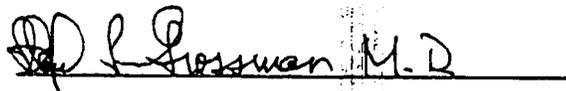
A handwritten signature in black ink, appearing to read "Winston S. Price", written over a horizontal line.

Winston S. Price, M.D.

In the Matter of Joseph Fanfan, M.D.

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

Dated: March 12, 2003

Handwritten signature of Stanley L. Grossman, M.D. in cursive script, written over a horizontal line.

Stanley L Grossman, M.D.

In the Matter of Joseph Fanfan, M.D.

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

Dated: March 12, 2003

Therese G. Lynch M.D.

Therese G. Lynch, M.D.