



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

October 25, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jean Bresler, Esq.
Associate Counsel
NYS Department of Health
145 Huguenot Street – 6th Flr.
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Joseph O. Giaimo, Esq.
Giaimo & Vreeburg, P.C.
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Kew Gardens, New York 11415

James A. Papa, M.D.
1630 Brentwood Road
Brentwood, New York 11717

James A. Papa, M.D.
26 Awixa Avenue
Bay Shore, New York 11706

RE: In the Matter of James A. Papa, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-223) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 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

James A. Papa, 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. 02-223

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):

Jean Bresler, Esq.

For the Respondent:

Joseph O. Giamo, Esq.

After a hearing below, a BPMC Committee found the Respondent committed professional misconduct, in treating three patients and by misrepresenting the Respondent's medical credentials. 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 2002), the Respondent argues that the Committee voted for an excessively harsh penalty and rendered a Determination without support from the evidence at the hearing. After reviewing the hearing record and the parties' review submissions, the ARB affirms the Committee's Determination in full.

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(14), 6530(21) & 6530(32) (McKinney Supp. 2002) by committing professional misconduct under the following categories:

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

- filing a false, inaccurate or misleading application for hospital privileges,
- willfully filing a false report or failing to file a report required by law or by the Department of Health or the Department of Education, and,
- failing to maintain an accurate patient record.

The charges concerned the Respondent treatment to three persons, Patients A-C, for weight loss and the representations that the Respondent made about board certification to a hospital, to the Medical Society of the State of New York (MSSNY) and to patients. The record refers to Patients A-C by initials to protect patient privacy. The Respondent denied the charges and a hearing followed. The Committee rendered their Determination on the charges on July 22, 2002.

In addressing the evidence concerning the treatment for Patients A-C, the Committee determined that the Respondent failed to perform and record appropriate histories and physicals for each Patient and failed to order laboratory studies to establish baselines for the Patients. The Committee found that, without that basic information, any treatment would have been inappropriate. The Committee found that, nevertheless, the Respondent prescribed amphetamines, narcotics and anti-anxiety medication to the Patients over a period of years. The Committee also found that the Respondent:

- continued to prescribe weight loss drugs for Patient A, although the Patient sustained no meaningful weight loss and added anti-anxiety medication for the Patient without medical indication;
- ignored clear signs of drug seeking behavior by Patient A,
- treated Patient B for weight loss without recording the Patient's weight;
- took no steps to determine the nature, cause or severity of the pain about which Patient B complained, and,
- made no inquiry into Patient B's gynecologic history and gave the Patient no instructions to inform the Respondent if the Patient missed menstrual cycles.

The Committee found that, as a result of the Respondent's failure to inquire as to Patient B's gynecologic history and failure to instruct the Patient about missed menstrual periods, the Patient took a combination of amphetamines and narcotics for five months during pregnancy. Taking

those drugs during pregnancy placed both the Patient and her unborn child at risk. The Committee concluded that the Respondent's treatment to Patients A-C constituted practicing with negligence and incompetence on more than one occasion. The Committee concluded further that the Respondent failed to maintain accurate records for the Patients.

In making their factual findings on the medical treatment issues, the Committee relied mostly on testimony by the Petitioner's expert witness, Leonard S. Silver, M.D. The Committee found Dr. Silver a generally competent and credible witness. The Committee found the Respondent's expert witness, Richard S. Blum, M.D., a highly credible and authoritative witness, however, the Committee found that in nearly all major areas at issue, Dr. Blum supported the Petitioner's position rather than the Respondent's. The Committee found the Respondent's testimony evasive, arrogant, prone to sweeping statements and without support in the Patients' medical records. The Committee found the Respondent's testimony a fabrication, on any point without corroboration in the medical record.

The Committee also found that the Respondent held board certification in family practice until 1984, when the certification lapsed. The Committee found that following the lapse in certification, the Respondent:

- submitted a 1987 application to MSSNY that identified the Respondent as board certified in family practice,
- submitted a 1999 application for staff reappointment at Good Samaritan Hospital Center that identified the Respondent as board certified in family practice, and,
- issued prescriptions as late as July 1999 that identified the Respondent as a Diplomate of the American Board of Family Practice.

The Committee concluded that the MSSNY and Good Samaritan Applications constituted fraud in medical practice. Further the Committee concluded that the Good Samaritan Application also constituted filing a false, inaccurate or misleading application for hospital privileges and willfully filing a false report or failing to file a report required by law or by the Department of Health or the Department of Education. The Committee dismissed the charge that the MSSNY Application constituted filing a false report, even though the Application constituted fraud,

because no statute or rule by the Health or Education Departments required the Respondent to file the MSSNY Application.

The Committee voted to revoke the Respondent's License. The Committee concluded that the Respondent prescribed potentially dangerous drugs to the Patients without conducting proper histories and examinations and showed a reckless disregard for his Patients' welfare. The Committee stated that the Respondent showed no remorse over his conduct or insight into his problem and the Committee found the Respondent unsuitable for re-training. The Committee noted that the Respondent showed no serious effort to maintain his skills and medical knowledge and that the Respondent misrepresented his medical credentials. The Committee found that either the reckless disregard for the Patients or the misrepresentations would, taken separately, justify revoking the Respondent's License.

Review History and Issues

This proceeding commenced on August 1, 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 Respondent's brief and the Petitioner's response brief. The record closed when the ARB received the response brief on September 13, 2002.

The Respondent asks the ARB to vacate and annul the Committee's Determination. The Respondent alleges that the Committee's Determination lacks support from substantial evidence in the record, because the Committee overlooked and misapprehended testimony by Dr. Blum, whom the Committee found highly credible and authoritative. The Respondent also argues that the revocation penalty shocks the sense of fairness because the Respondent committed no crimes of grave moral turpitude and caused no grave injury.

In reply, the Petitioner's brief cites testimony by Dr. Blum that supported the Hearing Committee's Determination [Hearing Transcript pages 1121, 1124-1127, 1133-1134 and 1145-

1146]. The Petitioner also notes that the Respondent committed fraud in the MSSNY and Good Samaritan Applications. The Petitioner argues that either the treatment for the Patients or the misrepresentations would warrant License revocation as a penalty in this case.

Determination

The ARB has considered the record and the parties' briefs. The ARB affirms the Committee's Determination that the MSSNY and Good Samaritan Applications constituted fraud in practice and that the Good Samaritan Application constituted filing a false, inaccurate or misleading application for hospital privileges and willfully filing a false report.

Although the Respondent's brief alleged that the record failed to support the Committee's Determination on the charges, the Respondent brief dealt only with the evidence concerning the treatment of the Patients. The Respondent made no challenge to the Committee's findings or conclusions on the Applications. The ARB rejects the Respondent's arguments concerning the findings and conclusions on the care for Patients A-C and on the revocation penalty. We affirm the Committee's Determination on the Patient care findings and conclusions and on the penalty.

The Respondent argued that the Committee overlooked or misapprehended the testimony by Dr. Blum. We disagree that the Committee overlooked Dr. Blum's testimony. The Committee cited to testimony by Dr. Blum in making some Findings of Fact (8, 19, 25, 28). We also disagree with the Respondent that the Committee misapprehended the testimony by Dr. Blum. After reviewing the testimony, the ARB agrees with the Committee that Dr. Blum's testimony in nearly all major areas supported the Petitioner's position rather than the Respondent's. We also find that the testimony by the Petitioner's expert, Dr. Silver, provided credible proof that the

Respondent practiced with negligence on more than one occasion and incompetence on more than one occasion and failed to maintain accurate records for Patients A-C.

In challenging the revocation penalty, the Respondent's brief referred to the discussion on disproportionate administrative agency sanctions, from the New York Court of Appeals decision in Pell v. Board of Education, 34 N.Y.2d 833 (1974). In the quoted portion of that decision that appears at page 24 in the Respondent's brief, the Pell Court indicated that an agency should consider a sanction's impact on an individual against a risk of harm to the general public. The Court also indicated that an agency should consider the prospect of deterrence or recurrence of dereliction and whether the sanction reflects the standards of society.

The Committee's Determination in this case indicated that an ethical foundation of the medical profession requires "First do no harm". The Committee concluded that the Petitioner ignored the basic tenets of modern medicine and prescribed potentially dangerous drugs to the Patients without conducting histories and examinations. The Committee also concluded that the Respondent demonstrated a reckless disregard for his Patients. The Committee also noted that the Respondent showed no insight into his problems and that the Respondent presents as an unsuitable candidate for retraining.

The ARB concludes that the Respondent's continued medical practice would present a risk to the public generally due to the Respondent's disregard for his patients. We find it likely that the Respondent will continue to pose a risk to patients because the Respondent lacks insight into his mistakes and has made no effort to maintain his medical skills. The Respondent has also demonstrated that he lacks integrity by making the fraudulent Applications. The ARB holds that the Committee imposed an appropriate penalty in this case by revoking the Respondent's License.

ORDER

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

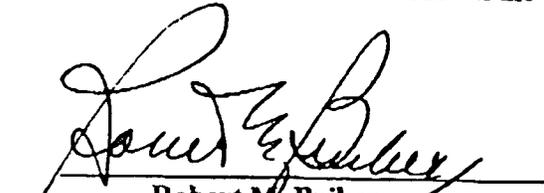
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct in treating three Patients and in misrepresenting the Respondent's medical credentials.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.

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 James A. Papa, M.D.

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

Dated: October 4, 2002

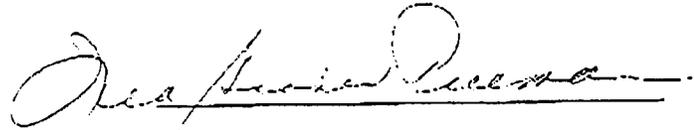


Robert M. Briber

In the Matter of James A. Papa, M.D.

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

Dated: 10/7/02, 2002

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Thea Graves Pellman

In the Matter of James A. Papa, M.D.

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

Dated: Oct 10, 2002

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 James A. Papa, M.D.

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

Dated: October 6, 2002

Stanley L. Grossman M.D.

Stanley L Grossman, M.D.

In the Matter of James A. Papa, M.D.

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

Dated: Oct. 4, 2002



Therese G. Lynch, M.D.