



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*

March 7, 2001

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
Paul Robert Maher, Esq.  
NYS Department of Health  
433 River Street – 4<sup>th</sup> Floor  
Troy, New York 12180

Cadvan O. Griffiths, Jr., M.D.  
127 North Doheny Drive  
Beverly Hills, CA 90211

Cadvan O. Griffiths, Jr., M.D.  
West Wilshire Medical Center  
Suite 120  
Los Angeles, CA 90025-1733

**RE: In the Matter of Cadvan O. Griffiths, Jr., M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 00-313) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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**

**COPY**

**In the Matter of**

**Cadvan O. Griffiths, Jr., 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. 00-313**

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

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

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

After a hearing below, a BPMC Hearing Committee found the Respondent liable for disciplinary action against his License to practice medicine in New York (License), due to his three California criminal convictions for alcohol related driving offenses. 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. 2000), the Respondent asks the ARB to nullify the Committee's Determination. After considering the record and the briefs from both parties, we affirm the Committee's Determination that the Respondent's conduct in California constitutes physician misconduct under New York Law. We overturn the Committee's revocation order as an overly harsh penalty. We vote to suspend the Respondent's License until such time as the Respondent satisfies the probation conditions on the Respondent's California Medical Certificate and regains an unrestricted certificate to practice medicine in California.

**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)&(9)(d) (McKinney Supp. 2001) because:

- the duly authorized professional disciplinary agency from a sister state (California) found the Respondent guilty for professional 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 a disciplinary action against the Respondent by the Medical Board of California (California Board) that concerned the Respondent's conduct in California [Petitioner's Exhibit 5]. The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the misconduct in California that resulted in the disciplinary action would constitute misconduct if committed in New York, under the following categories:

- being a habitual abuser of alcohol, a violation under N. Y. Educ. Law § 6530(8) (McKinney Supp. 2001),
- engaging in conduct that results in a conviction for a crime under state law, a violation under N. Y. Educ. Law § 6530(9)(a)(i) (McKinney Supp. 2001), and,
- failing to comply with federal, state or local laws, rules or regulations, a violation under N. Y. Educ. Law § 6530(16) (McKinney Supp. 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, who 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 Committee determined that the California Board disciplined the Respondent due to three criminal convictions involving the use, consumption or self-administration of alcohol. The California Board revoked the Respondent's physician and surgeon's certificate, stayed the revocation and placed the Respondent on probation for three years. The probation terms included requirements that the Respondent undergo medical and psychiatric evaluations and any treatment if warranted.

The Committee concluded that the California Board's action constituted guilty findings and disciplinary action. The Committee concluded further that the Respondent's conduct in California, if committed in New York, would constitute:

- being a habitual alcohol abuser, and,
- engaging in conduct that results in a criminal conviction under state law.

The Committee determined that the Respondent's conduct and the California Board's action made the Respondent liable for discipline 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 noted that the Respondent testified at the hearing. The Committee found the Respondent's testimony an attempt to obfuscate and to confuse the Committee. The Committee found such testimony demonstrated that the Respondent lacked insight into his problem with alcohol and that he denied such a problem. The Committee also found that the three alcohol related convictions displayed extremely poor judgement.

### **Review History and Issues**

The Committee rendered their Determination on November 14, 2000. This proceeding commenced on November 30, 2000, 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 January 12, 2001.

The Respondent argues that the Committee rendered a Determination without foundation and raises ten issues for review.

1. A decision by California Administrative Law Judge (ALJ) Carolyn Magnuson negated the finding that the Respondent is a habitual alcohol abuser.

2. The Respondent's 1991 driving under the influence conviction involved the loss of a presumably normal blood sample and a nolo contendere plea that the Respondent entered into without anticipating that the plea might constitute grounds for discipline against his medical license.
3. New York acted prematurely in revoking the Respondent's License, because the California disciplinary action remains on appeal in the California courts.
4. Overwhelming evidence at the hearing disproved the accusation that the Respondent abuses alcohol.
5. Public Health Law §§ 230(12)(a) & 230(12)(b) apply only to crimes that endanger the public and none of the Respondent's California convictions constituted felonies.
6. New York's eight-year delay in bringing these charges violated the statute of limitations.
7. The California Medical Board, and by implication BPMC, violated at least fourteen of the Respondent's constitutional rights.
8. The hearing counsels for the Petitioner, Mr. Bogan and Mr. Maher, engaged in "ex parte" communications with the Respondent that constituted an abuse of adjudication power and called into questions the hearing's fairness.
9. Holding a physician to a higher standard of care than other professionals violates due process.
10. The California conduct warrants no disciplinary action against the Respondent's License.

In reply, the Petitioner argues that the Respondent's conviction for any crime constitutes misconduct under Educ. Law § 6530(9)(a) and that the statute contains nothing restricting

misconduct to only felony convictions. The Petitioner argues further that the ARB constitutes an inappropriate forum to re-litigate either the California criminal or California disciplinary proceedings. The Petitioner contends that no statute of limitations applies in this proceeding and that any delay in bringing these charges against the Respondent resulted from the prolonged appeal process that the Respondent instigated in California. The Petitioner's brief denies that either Mr. Bogan or Mr. Maher made the comments that the Respondent alleges and the Petitioner's brief appends affidavits from both counsel that deny the Respondent's allegations. The Petitioner asserts that revocation provides the appropriate sanction in this case and the Petitioner asks that the ARB leave the Committee's Determination and Order undisturbed.

### **Determination**

The ARB has considered the record and the parties' briefs. We sustain the Committee's Determination that the Respondent's California conduct provided the basis for disciplinary action against the Respondent's License here. We overturn the Committee's Determination to revoke the Respondent's License and we vote to suspend the Respondent's until such time as the Respondent satisfies the California probation and regains an unrestricted license or certificate to practice in California. We discuss our reasons for overturning the revocation penalty after we answer the issues that the Respondent raised for review.

**1.)The California Decision:** The Respondent argued that a decision by California ALJ Magnuson negated the finding about habitual alcohol use. We disagree. Judge Magnuson issued a Recommended Decision to the California Board in the Respondent's case in 1997 [Hearing Exhibit 5]. That Decision contained findings of fact (FF) that the Respondent:

- pleaded nolo contendere in 1987 to reckless driving involving alcohol (FF III),
- pleaded nolo contendere in 1990 to reckless driving involving alcohol (FF IV),  
and,
- pleaded nolo contendere in 1992 to driving with a blood alcohol content that exceeded 1.0 (FF VII).

Judge Magnuson's decision found no cause for discipline, because the convictions provided insufficient information to prove impairment and because the passage in time from the last conviction to the Judge's 1997 decision revealed no symptoms to indicate an alcohol problem. The California Board chose against adopting Judge's Magnuson's Decision as the Board's own. The Board's Decision After Non-Adoption [also Exhibit 5] contained findings concerning the Respondent's pleas to alcohol driving offenses (FF III, V & VII). The Board also ruled that more than one misdemeanor conviction involving use, consumption or self-administration of alcohol constituted conclusive evidence that the Respondent engaged in misconduct as defined in California Business and Professional Code § 2239.

The California Board's Decision negated the Recommended Decision by Judge Magnuson and constituted the final administrative ruling by the California Board. The Decision establishes that the California disciplinary authority disciplined the Respondent for and found the Respondent guilty for professional misconduct. The findings from Judge Magnuson's Decision (FF III, IV & VII), which the California Board followed (FF III, V & VII), demonstrate that the Respondent abused alcohol habitually and engaged in conduct that resulted in criminal convictions under state law. That conduct constitutes professional misconduct in New York under Educ. Law § 6530(8) & 6530(9)(a). The proof demonstrates that a sister state found the Respondent guilty for and disciplined the Respondent for conduct that would constitute

misconduct in New York. We affirm the Committee's Determination sustaining the charges that the Respondent's conduct made him liable for discipline against his License pursuant to §§ 6530(9)(b)&(9)(d).

2.) **Nolo Contendere Plea:** The Respondent argued next that his 1992 plea followed the loss of a presumably normal blood sample and that he entered the plea without knowing that the plea would form the grounds for disciplinary action against his medical certificate. We consider this argument an attempt to reopen the 1992 California criminal proceeding to re-litigate that proceeding and we reject that attempt. Neither the ARB nor the Committee provide the proper forum to re-litigate the California conviction Matter of Singla v. New York State Department of Health 229 A.D.2d 798, 646 N.Y.S.2d 421 (3<sup>rd</sup> Dept. 1996).

3.) **Premature Action:** We also disagree with the Respondent's argument that the Committee acted prematurely in disciplining the Respondent in New York, before the California Appellate Courts issue a decision in the Respondent's challenge to the California Board's decision. In Mater of Ricci v. Chassin, 220 A.D.2d 828, 632 N.Y.S.2d 303 (3<sup>rd</sup> Dept. 1995), the New York Supreme Court Appellate Division for the Third Department ruled that a Committee may base misconduct findings on a non-final order from another state. In Ricci, the Court held specifically that a Committee may base a misconduct determination on the findings of fact by a California ALJ. As we have already noted in this case, the findings by Judge Magnuson proved the Respondent's conviction for multiple alcohol related driving offenses. Those findings provided a proper basis for the Committee's Determination.

4.) **Evidence at the California Hearing:** The Respondent's next issue contends that overwhelming evidence at the California Hearing showed that the Respondent does not abuse alcohol. The California Board's Determination indicated that the California Board found the

Respondent's three alcohol related driving convictions more compelling evidence than the evidence that the Respondent introduced in opposition. The Committee's Determination indicated that they found the Respondent's attempts to deny an alcohol problem unconvincing and that they found the Respondent's testimony an attempt to confuse and obfuscate. We hold that the California convictions provided sufficient evidence to prove habitual alcohol abuse and we see no error by the Committee in rejecting evidence to the contrary.

**5.) Felonies and Crimes That Endanger the Public:** The Respondent's brief argues that N.Y. Pub. Health Law §§ 230(12)(a) & 230(12)(b)(McKinney Supp. 2001) address only crimes that endanger the public or felonies. Although those statutes do address conduct that endangers the public or conduct that results in felony convictions, those statutes have no application in this proceeding. The provisions in §§ 230(12)(a) and 230(12)(b) provide the grounds on which the Commissioner of Health may issue an order suspending a physician's license summarily prior to a hearing. The Commissioner issued no summary order in this case. The Petitioner's Notice of Hearing (Exhibit 1) demonstrates that the Petitioner brought the action against the Respondent pursuant to N.Y. Pub. Health Law § 230(10)(p)(McKinney Supp. 2001), rather than pursuant to either §§ 230(12)(a) or 230(12)(b). The provisions in §230(10)(p) apply to hearings such as the present one in which the charges involve violations under Educ. Law § 6530(9). The cases under § 6530(9) involve convictions for crimes or administrative violations. Nothing in § 230(10)(p) or § 6530(9) restricts those statutes to only felony crimes or crimes that endanger the public health. Those statutes apply to the criminal conduct at issue in this proceeding.

**6.) Statute of Limitations:** As his next issue for review, the Respondent argues that the eight years delay between his last criminal conviction and the charges in this case violate the statute of limitations. We reject that argument, because no statute of limitations governs in

initiating a professional misconduct proceeding against a physician, Matter of Corines v. State Board for Professional Medical Conduct, 267 A.D.2d 796, 700 N.Y.S.2d (3<sup>rd</sup> Dept. 1999). Undue delay in rendering an administrative determination can provide the grounds for annulling an administrative determination, but only if the delay handicapped or caused prejudice to a party in mounting a defense to an administrative proceeding, Matter of Cortlandt Nursing Home v. Axelrod 66 N.Y.2d 169, cert. denied 476 U.S. 1115; Matter of Gold v. Chassin 215 A.D.2d 18, lv. denied 87 N.Y.2d 805. In his brief, the Respondent made no argument that the delay in commencing this hearing caused him any prejudice in making his defense.

**7.) Constitutional Arguments:** The Respondent argued that the California proceeding violated fourteen of his constitutional rights. The ARB holds that this issue again attempts to reopen and re-litigate the California proceeding. We assume that the Respondent has raised those arguments with the California courts, which constitute the proper forum to decide those issues.

**8.) Statements by the Petitioner's Counsels:** The Respondent alleged that the hearing counsels for the Petitioner made "ex-parte communications" to the Respondent that constituted an abuse of adjudicatory power and called into questions the hearing's fairness. We see no merit to the Respondent's arguments, even if the hearing counsels made the statements that the Respondent alleges.

In his arguments, the Respondent uses the term "ex parte communication" incorrectly. Under N.Y.A.P.A § 307(2)(McKinney Supp. 2001), no person making findings of fact or conclusions of law, in an administrative adjudication, may communicate with a person or party to that proceeding, directly or indirectly, in connection with an issue of fact or law, except upon notice to and opportunity for all to parties to participate. Under N.Y.Pub. Health Law §§230(10)(e-g) (McKinney Supp. 2001), the Hearing Committee makes findings of fact and

renders a determination on the charges and the Committee's Administrative Officer possesses the authority to rule on legal issues. The Committee and the Administrative Officer then comprise the persons to whom neither party may direct ex parte communications. In the Respondent's brief, he makes no allegation that either counsel for the Petitioner made one party contact with the Committee or the Administrative Officer, so that the Respondent has shown no "ex parte communications".

Inflammatory statements by a prosecutor during a hearing may constitute prosecutorial misconduct, Matter of Siddiqui v. New York State Department of Health, 228 A.D.2d 735, 644 N.Y.S.2d 64 (3<sup>rd</sup> Dept. 1996). The Respondent's brief and the record here show no inflammatory statements by either counsel for the Petitioner during the hearing.

The Respondent alleged that Mr. Bogan made a statement to the Respondent that Mr. Bogan failed to read the Respondent's brief before the hearing. The Respondent argues that if Mr. Bogan had read the brief before the hearing "it is likely his decision would have been otherwise" The Respondent argued that this calls into question the hearing's impartiality. We disagree. In this proceeding, we review the Decision by the Hearing Committee rather than a decision by Mr. Bogan. No information that the Respondent provides calls into question the impartiality of either the Committee or the Administrative Officer. Also, nothing in the record indicates that the Committee failed to consider all the evidence from either party.

The Respondent alleged that Mr. Maher made a statement about constitutional issues before the Health Department. The Respondent argued that the statement showed an abuse of adjudication power. Again, we disagree. In this hearing, the Committee and the Administrative Officer exercised the adjudication power and the Respondent has raised no issue that indicates that the Committee or Administrative Officer abused that power.

As we noted above, even if the Respondent's allegations are true, the allegations would provide no grounds on which to upset the Committee's Determination. We make no determination here as to the allegations' truthfulness. We note that both hearing counsels for the Petitioner have submitted affidavits denying the allegations.

**9.) The Standard for Physicians:** The Respondent also argued that holding a physician to a higher standard than other professionals constitutes an equal protection violation. The New York Courts have held otherwise. In Matter of Ross v. Ambach, 78 A.D.2d 472, 436 N.Y.S.2d 363 (3<sup>rd</sup> Dept. 1981), the Appellate Division for the Third Department held that the statutory distinction in preparing and prosecuting unprofessional conduct charges between physicians and other professionals constituted no constitutional violation. That court has also held the New York Legislature acted rationally and within constitutional restraints in establishing the New York system for disciplining physicians, Matter of Rosenberg v. Board of Regents of the University of the State of New York, 96 A.D.2d 651, 466 N.Y.S.2d 743 (3<sup>rd</sup> Dept. 1983), lv. denied 61 N.Y.2d 608.

**10.) Penalty:** The Respondent argued in conclusion that his California conduct warranted no action against his License. We disagree. The repeated convictions for alcohol related driving offenses proved habitual alcohol abuse and raised an alarm over whether the Respondent may suffer an addiction that impairs his practice. We conclude, however, that the Committee imposed an overly harsh penalty in revoking the Respondent's License. If the Respondent does suffer an addiction, treatment and programs exist to aid in overcoming the addiction and enabling the Respondent to remain in practice and to practice safely.

We hold that the California Board imposed an appropriate sanction in this case in ordering the Respondent to undergo medical and psychiatric examinations and to undergo

medical and psychiatric treatment, if the examinations revealed the need for such treatment. The Respondent has failed to undergo those examinations to date, due to a stay on the California Board's Determination. The record, therefore, remains silent as to whether the Respondent requires treatment and whether the Respondent will comply with that treatment. The ARB votes to suspend the Respondent's License, until such time as the Respondent undergoes the examinations, completes the California probation and regains an unrestricted license or certificate to practice in California.

**ORDER**

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

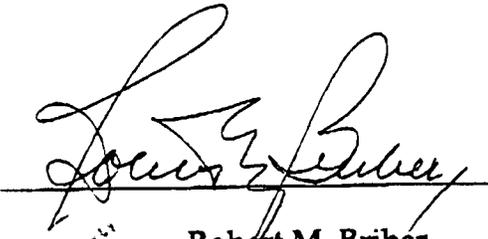
1. The ARB **AFFIRMS** the Committee's Determination that the Respondent's conduct amounted to professional misconduct.
2. The ARB **OVERTURNS** the Committee's Determination revoking the Respondent's License.
3. The ARB **SUSPENDS** the Respondent's License until such time as the Respondent completes successfully the terms under the California probation and regains an unrestricted license or certificate in that state.

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 Cadvan O. Griffiths, M.D.

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

Dated: February 11, 2001

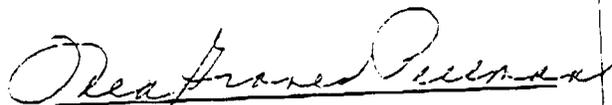


Robert M. Briber

**In the Matter of Cadvan O. Griffiths, M.D.**

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

Dated: Feb 12, 2001



**Thea Graves Pellman**

**In the Matter of Cadvan O. Griffiths, M.D.**

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

Dated: 2/27, 2001

A handwritten signature in cursive script, appearing to read "W. S. Price", is written over a horizontal line.

**Winston S. Price, M.D.**

In the Matter of Cadvan O. Griffiths, M.D.

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

Dated: February 12, 2000

Stanley L. Grossman M.D.

Stanley L. Grossman, M.D.

**In the Matter of Cadvan O. Griffiths, M.D.**

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

Dated: February 12, 2001

Therese G. Lynch M.D.

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