



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

April 18, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel Guenzburger, Esq.
NYS Department of Health
5 Penn Plaza – 6th Floor
New York, New York 10001

John N. Tasolides, Esq.
350 Jericho Turnpike
Jericho, New York 11753-1317

Michael Martin Katz, M.D.
246 Hedge Lane
Hewlett Harbour, New York 11557

Michael Martin Katz, M.D.
968 Grand Street
Brooklyn, New York 11211

RE: In the Matter of Michael Martin Katz, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-334) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

Michael Martin Katz, 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. 00- 334

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):
For the Respondent:**

**Daniel Guenzburger, Esq.
John N. Tasolides, Esq.**

After a hearing below, a BPMC Committee sustained charges that the Respondent committed professional misconduct by committing numerous errors in reports on Magnetic Resonance Imaging (MRI) studies. The Committee voted to restrict permanently 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's Supp. 2000), the Respondent asks ARB to nullify that Determination, while the Petitioner asks the ARB to sustain additional charges and revoke the Respondent's License. After considering the record below and the parties' submissions, we modify the Committee's Determination on the charges and sustain additional charges that the Respondent practiced fraudulently and willfully filed a false report in submitting a report concerning an MRI study on one patient. We affirm the Committee's Determination to restrict the Respondent's License, but we modify the restrictions. We vote 5-0 to add a Ten Thousand Dollar (\$10,000.00) Fine for the false report.

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(2-6), 6530(21), 6530(32) & 6530(35) (McKinney Supp. 2001) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- practicing medicine with negligence on more than one occasion,
- practicing medicine with gross negligence,
- practicing medicine with incompetence on more than one occasion,
- practicing medicine with gross incompetence,
- willfully filing a false report,
- failing to maintain accurate records, and,
- ordering excessive tests, unwarranted by patient condition.

The charges related to the Respondent's interpretation on Magnetic Resonance Images (MRI) for twelve patients, Patients A-L, and his interpretation on ultrasound studies for nine Patients, M-U. The record refers to the Patients by letter to protect their privacy. The fraud and false report charges related to records the Respondent submitted to different parties concerning Patient B and to the Respondent's representations that he was a Fellow of the American College of Radiologists (ACR). The Respondent denied the charges. A hearing ensued before the BPMC Committee which rendered the Determination now on review. The Petitioner withdrew all charges relating to Patients G, K and L during the hearing and withdrew the excessive testing charges prior to the time the Committee rendered a Determination on the charges.

The Committee sustained charges that the Respondent practiced with negligence on more than one occasion and gross negligence and that he failed to maintain accurate records in interpreting the MRIs on Patients A-F and H-J. The Committee found that the Respondent's reports on all those Patients contained inaccurate diagnoses and in some cases contained inaccurate information about the Patients' condition, inaccurate documentation and/or inaccurate descriptions. The Committee dismissed all charges concerning the ultrasounds on Patients M-U.

As to the charges concerning the two records for Patient B, the Committee found that the Respondent issued two reports for the Patient. The Respondent submitted one report to the New York Central Mutual Insurance Company (NYCM) in a claim for no-fault automobile reimbursement and one report to the Office for Professional Medical Conduct (OPMC) in response to a request for records. The reports differed, but neither report bore a label reading "amended" report. One report contained numerous errors and the second report failed to describe abnormal paranasal sinuses. The Committee dismissed charges that the two reports proved fraud or filing false reports. The Committee concluded the two reports showed a poor practice pattern rather than an intention to deceive. As to the allegations concerning the Respondent's status with the American College of Radiologists, the Committee found that the Respondent described himself as an ACR Fellow due to misunderstanding, rather than to intent to deceive.

In making their findings, the Committee relied on expert testimony by the Petitioner's expert, Peter Kalina, M.D. The Committee characterized the Respondent's testimony as "not always credible". The Committee found the Respondent's testimony self-serving and found the Respondent unable to accept responsibility for his actions. The Committee noted that the Respondent's expert Joseph Mormino, M.D., practiced as a neurosurgeon rather than as a radiologist. The Committee also stated that the Respondent maintained professional or business relationships with his three expert witnesses: Robert Bard, M.D., Joseph Mecca, M.D., and Dr. Mormimo.

As a penalty, the Committee voted to suspend the Respondent's License for one year, retroactive to July 7, 2000. The Committee also voted to place a permanent limitation on the Respondent's License that restricted him to practicing radiology only in a hospital, within a Radiology Department certified by the American College of Radiologists, under supervision by the Department's Chair. The Committee concluded that the Respondent conducted business in a careless and sub-standard way and distorted priorities to cut corners, including quality control, to maximize income.

Review History and Issues

The Committee rendered their Determination on November 30, 2000. This proceeding commenced on December 12, 2000, 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 response brief and the Respondent's brief and response brief. The record closed when the ARB received the Petitioner's response brief on January 30, 2001.

The Petitioner's brief raised three issues for review. First, the Petitioner asked that the ARB overturn the Committee's Determination and sustain charges that the Respondent practiced fraudulently and willfully filed false reports by issuing two reports for the MRI study on Patient B. As a second issue, the Petitioner requested that the ARB overturn the Committee and sustain the charges that the Respondent practiced with negligence in reading the ultrasounds for M-U. Finally, the Petitioner argued that the Committee imposed an inappropriate sanction for a physician who used his License for personal aggrandizement. The Petitioner contends that the License restriction will do nothing to correct the Respondent's distorted priorities.

The Respondent also raised three issues for review. First, the Respondent argued that the record fails to support the findings that the Respondent practiced with negligence on more than one occasion and gross negligence and failed to maintain accurate records for Patients A-F and H-J. As a second issue, the Respondent argued that no basis existed for the Committee's finding concerning a prior business relationship between the Respondent and Dr. Bard. Finally, the Respondent contended that the Committee imposed an overly harsh penalty. The Respondent asked that, if the ARB rejected the Respondent's other issues and affirmed any guilty findings against the Respondent, that the ARB limit the Penalty to nothing more severe than a stayed

suspension, with probation and a monitor. The Respondent argued that the License restriction amounted to a de facto revocation and argued that ACR does not certify Radiology Departments.

In reply to the Respondent's brief, the Petitioner agreed that ACR does not certify Radiology Departments. The Petitioner argued that, if the ARB decides against revoking the Respondent's License, the ARB could correct the problem with the penalty the Committee imposed by limiting the Respondent to practice in a Radiology Department in which ACR has accredited major diagnostic modalities.

In reply to the Petitioner's brief, the Respondent argues that the Petitioner's brief contained misleading information.

Determination

The ARB has considered the record and the parties' briefs. We overturn the Committee and sustain the charges that the Respondent practiced fraudulently and willfully filed a false report in preparing two reports from the MRI study on Patient B. We affirm the Committee's Determination to sustain charges that the Respondent practiced with negligence on more than one occasion and gross negligence and failed to maintain accurate records for Patient A-F and H-J. We also affirm the Committee's Determination to dismiss the charges concerning the ultrasounds on Patients M-U. We affirm the Committee's Determination to limit the Respondent's practice to a hospital-based radiology department, but we modify the conditions on the limitation. We modify the penalty further by imposing a Ten Thousand-Dollar (\$10,000.00) fine as a sanction for the fraudulent conduct.

The Fraud and False Filing Charges: In reviewing a Committee's Determination pursuant to N.Y. Pub. Health Law § 230-c(1) (McKinney Supp. 2001), the ARB determines

whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law. The ARB may substitute our judgement 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); and/or 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). We find the Committee's Determination on the fraud and false reports charges inconsistent with their findings and we elect to exercise our authority to substitute our judgement for the Committee's in determining guilt on those charges.

The Committee's Findings of Fact (FF) showed that the Respondent submitted a claim to NYCM in 1998, for no-fault insurance reimbursement for a brain MRI study on Patient B. The NYCM Report described the brain as normal in size, contour and intensity. The Respondent also provided a Report on a brain MRI study on Patient B to OPMC and to the Patient's referring physician. The OPMC Report described the brain as a "variant of normal" and as "compatible with multiple sclerosis". The Respondent knew the Patient suffered multiple sclerosis (FF 7) and the Respondent reviewed and signed both reports (FF 6). The Respondent labeled neither report concerning Patient B as "amended". The Committee found that issuing the two reports constituted a failure to follow minimally acceptable practice standards, but dismissed charges that the two Reports evidenced fraud or willfully filing false reports. The Committee stated that they found no evidence that the Respondent directed the submission of the erroneous NYCM Report or that the Respondent intended to deceive NYCM.

In order to sustain a charge that a licensee practiced medicine fraudulently, a hearing committee or the ARB must find that (1) a licensee made a false representation, whether by words, conduct or by concealing that which the licensee should have disclosed, (2) the licensee

knew the representation was false, and (3) the licensee intended to mislead through the false representation, Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (3rd Dept. 1966), affd, 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). We may infer the licensee's knowledge and intent properly from facts that the Committee finds, but we must state specifically the inferences we draw regarding knowledge and intent, Choudhry v. Sobol, 170 A.D.2d 893, 566 N.Y.S.2d 723 (3rd Dept. 1991). To prove willfully filing a false report, we must establish that a licensee made or filed a false statement willfully, which requires a knowing or deliberate act, Matter of Brestin v. Comm. of Educ., 116 A.D.2d 357, 501 N.Y.S.2d 923 (3rd Dept. 1986). Merely making or filing a false report, without intent or knowledge about the falsity fails to constitute professional misconduct, Matter of Brestin v. Comm. of Educ., (supra). We may reject a licensee's explanation for erroneous reports (such as resulting from inadvertence or carelessness) and draw the inference that the licensee intended or was aware of the misrepresentation, with other evidence as the basis, Matter of Brestin v. Comm. of Educ., (supra).

The Respondent submitted a false report to NYCM, that failed to identify Patient B as suffering from multiple sclerosis, and the Respondent knew that the Patient suffered from multiple sclerosis. Testimony by NYCM employee Kim Nolan demonstrated that nothing required auto liability carriers to reimburse a provider for a MRI study to monitor a pre-existing condition, such as multiple sclerosis (Hearing Transcript page 757). From the evidence, we reject the Respondent's explanation for the false NYCM Report and we infer that the Respondent submitted the NYCM Report to ensure that he received reimbursement from NYCM. We hold that such conduct amounted to fraud in practicing medicine and to willfully filing a false report.

The Other MRI Charges and the Ultrasound Charges: The Respondent alleged error by the Committee for sustaining charges that the Respondent practiced with gross negligence and

negligence on more than one occasion and failing to maintain accurate records for the MRI studies on Patients A-F and H-J. The Petitioner alleged error by the Committee in dismissing charges concerning the ultrasound studies on Patients M-U. We view these allegations as challenges to the Committee's judgement on witness credibility. In effect, each party alleges error due to the Committee's Determination on which evidence the Committee found credible on those charges and each party requests that the ARB substitute our judgement on credibility for the Committee's. The ARB declines that request. The ARB Members served on BPMC Hearing Committees prior to our appointments to the ARB, so we know that reading testimony from a transcript provides a poor substitute for observing witnesses directly. In our role in reviewing a case, the ARB owes the Committee as fact finder deference in their judgements on credibility. We affirm the Committee on their judgements on credibility on the ultrasound and on the remaining MRI charges.

Penalty: As we noted above, the ARB may substitute our judgement for the Committee's judgement in imposing a penalty. Both parties have asked that we exercise that authority in this case. We reject the Petitioner's request that we revoke the Respondent's License. We agree with the Committee that restricting the Respondent to practice in a hospital setting will provide sufficient protection to the public and control over the Respondent's practice to correct the substandard care that the Respondent displayed in the cases at issue in this proceeding. The Respondent argued that restriction to a hospital based practice made an appropriate penalty only in cases involving fraud or patient protection. This case does involve fraud. The numerous errors in the Respondent's Reports raise the possibility that the Respondent's errors will result in Patient harm, if we allow the Respondent to continue his practice without restriction. The Committee found that the Respondent lacked insight into his deficiencies. The failure to admit errors raises

the fear that the Respondent will repeat those errors in the future. The Respondent had argued that the Committee imposed an overly harsh penalty by placing the restriction on the Respondent's entire practice, rather than only on reading MRI studies. We disagree. Although the Committee sustained charges on MRI studies only, the Respondent displayed errors in diagnosis and carelessness that reflected on his overall practice as a physician. The ARB discussed imposing a restriction on the Respondent's License to ban him totally from performing MRI studies. We rejected the MRI ban by a 3-2 vote.

We vote to limit the Respondent's License to practicing radiology only, in a hospital either licensed by the government (such as under Public Health Law Article 28) or operated by the government (such as by the U.S. Veteran's Administration). Our limitation would allow the Respondent to own an interest in a business that performs radiology services, but the Respondent may perform no supervision over the radiology services. The Respondent may have no ownership in or supervision over any business that sub-contracts to perform radiology services at any hospital at which the Respondent practices. We modify the Committee's Determination, to remove any requirement that ACR must certify the radiology department. We also modify the Committee's Determination to remove the requirement that the radiology department's chair must serve as the Respondent's supervisor. The regulations for an Article 28 or Veteran's Administration Hospital will provide sufficient lines of supervision.

In addition to the negligence, gross negligence and record charges that the Committee sustained, the ARB has also sustained charges that the Respondent committed fraud and filed a false report in submitting the NYCM Report. We vote to add a Ten Thousand Dollar (\$10,000.00) Fine as a sanction for the Respondent's fraudulent conduct.

ORDER

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

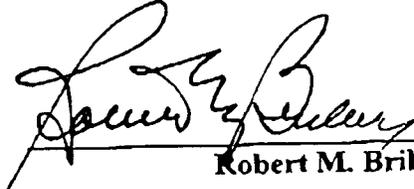
1. The ARB **AFFIRMS** the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB **OVERTURNS** the Committee and **SUSTAINS** the charges that the Respondent practiced fraudulently and willfully filed a false report concerning a MRI study on Patient B.
3. The ARB **SUSTAINS** the Committee's Determination to restrict the Respondent permanently to practice in a hospital based radiology department, but we **MODIFY** the conditions on the restriction.
4. The ARB **FINES** the Respondent Ten Thousand Dollars (\$10,000.00) for practicing fraudulently and filing a false report.

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 Michael Martin Katz, M.D.

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

Dated: 3/13/2001

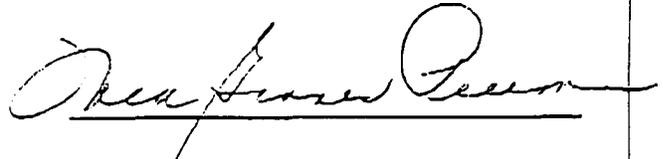


Robert M. Briber

In the Matter of Michael Martin Katz, M.D.

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

Dated: 3/14, 2001

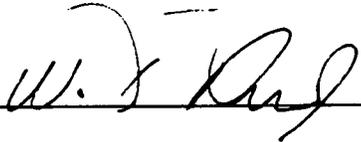
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Thea Graves Pellman

In the Matter of Michael Martin Katz, M.D.

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

Dated: 4/13, 2001



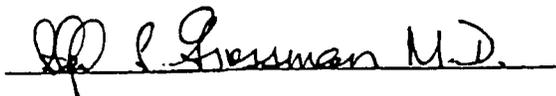
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Winston S. Price, M.D.

In the Matter of Michael Martin Katz, M.D.

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

Dated: March 16, 2001

A handwritten signature in cursive script, reading "S. L. Grossman M.D.", is written over a horizontal line.

Stanley L. Grossman, M.D.

In the Matter of Michael Martin Katz, M.D.

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

Dated: March 13, 2001

Therese G Lynch M.D.

Therese G. Lynch, M.D.