



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 9, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
(SECOND MAILING -NEW RESPONDENT ADDRESS)

Paul Robert Maher, Esq.
NYS Department of Health
433 River Street-Suite 303
Troy, New York 12180

Martin Earl Waugh, D.O.
139 C Street, SE
Washington, D.C. 20003

RE: In the Matter of Martin Earl Waugh, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-347) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

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 11, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Robert Maher, Esq.
NYS Department of Health
433 River Street-Suite 303
Troy, New York 12180

Martin Earl Waugh, D.O.
25001 West Pauline Drive
Plainfield, IL 60544

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Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

COPY

In the Matter of

Martin Earl Waugh, D.O. (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. 02-347

**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 Committee determined that the Respondent committed professional misconduct due to a criminal conviction and administrative disciplinary action against the Respondent in California. The Committee voted to suspend the Respondent's New York Medical License (License) for three years, to provide conditions to stay that suspension and to place the Respondent on probation for three years, at whatever time the suspension ends. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2003), the Petitioner asks the ARB to modify that Determination by increasing the penalty the Committee imposed. After considering the record on review, the ARB overturns the penalty that the Committee imposed. We vote to suspend the Respondent's License until such time as the Respondent complies with the conditions that the State of California established for the Respondent to regain a full license in that state. Following the suspension, the Respondent shall serve three years on probation, under the terms that appear as the Appendix to this Determination.

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. 2003) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from another state (California) found the Respondent guilty for professional misconduct [§6530(9)(b)] and/or took disciplinary action against the Respondent's medical 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 Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the Respondent's misconduct in California would constitute misconduct if committed in New York, under the following categories:

- practicing medicine fraudulently, a violation under N. Y. Educ. Law §§ 6530(2) (McKinney Supp. 2003);
- practicing medicine with negligence on more than one occasion, a violation under N.Y. Educ. Law § 6530(3)(McKinney Supp. 2003);
- practicing medicine with gross negligence, a violation under N.Y. Educ. Law § 6530(4)(McKinney Supp. 2003);
- willful or grossly negligent failure to comply with federal, state or local rules or regulations governing the practice of medicine, a violation under N.Y. Educ. Law § 6530(16)(McKinney Supp. 2003);

- exercising undue influence on a patient, a violation under N.Y. Educ. Law § 6530(17)(McKinney Supp. 2003);
- engaging in conduct that evidences moral unfitness, a violation under N.Y. Educ. Law § 6530(20)(McKinney Supp. 2003),and,
- willfully making or filing a false report, a violation under N.Y. Educ. Law § 6530(21)(McKinney Supp. 2002).

The Petitioner also 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 Committee determined that the Respondent entered a No Contest Plea in Yolo County Superior Court, California on July 31, 2000, to unlawfully prescribing a controlled substance. The California Court sentenced the Respondent to serve three years on probation and to pay a \$1,585.00 Fine. The Probation bars the Respondent from practicing medicine in California until the Respondent's reinstatement by the Osteopathic Medical Board of the State of California (California Board). The Committee determined further that the California Board entered a Decision and Order approving a Stipulation with the Respondent on December 20, 2001. In that Stipulation, the Respondent admitted to:

- possessing Dexedrine, which no qualified practitioner prescribed for the Respondent and which the Respondent contended was meant for another patient;

- prescribing controlled substances for patients, picking up the drugs himself and dispensing the drugs to patients, including patients other than those on the prescription;
- failing to keep a current inventory for dangerous drugs the Respondent kept in his office;
- dispensing or administering controlled substances without making records showing all the information required by law;
- prescribing a controlled substance to a patient who had not seen the Respondent on that date and who never received the medication;
- obtaining or attempting to obtain controlled substances by fraud, deceit, misrepresentation, subterfuge or concealment of a material fact;
- making a false statement in a prescription;
- failing to provide the California Board with records for several patients, as requested;
- writing a Schedule II prescription after the criminal court's order prohibiting such prescriptions,
- being convicted for a crime relating to medical practice and regulation of dangerous drugs; and,
- obtaining monetary loans from a patient.

The Stipulation resulted in a stayed revocation with conditions, a one-year license suspension, five years probation and a \$20,000.00 fine. The Stipulation requires that the Respondent undergo medical and psychiatric evaluations and pass the Comprehensive Variable Examination within one year from the Stipulation's effective date. If the Respondent failed to comply with those

conditions, the then California Board would vacate the stay on the revocation and revoke the Respondent's California License [Petitioner's Hearing Exhibit 7, page 6]. The Committee found that the Respondent chose to make no attempt to meet the conditions for reinstating his California license [Committee Determination, page 6].

The Committee concluded that the Respondent's California criminal conviction constituted professional misconduct under N. Y. Educ. Law § 6530(9)(a)(ii). The Committee concluded further that the Respondent's admissions in the California Stipulation demonstrated that the Respondent's misconduct in California would have constituted negligence on more than one occasion and filing a false report. The Committee then concluded that the conduct made the Respondent liable for disciplinary action against his License pursuant to N. Y. Educ. Law §§ 6530(9)(b) & 9(d).

The Committee voted to suspend the Respondent's License for three years. The Committee provided further for staying a portion of that suspension if the Respondent met the conditions in the Committee's Order. The conditions require the Respondent to submit to an in-depth medical/psychiatric examination to determine the Respondent's mental status and any propensity for using controlled substances. The stay on the suspension would take place only if the evaluation clears the Respondent to practice. Whether the suspension ends after three years or by the stay, the Committee provided for three years probation following the suspension. The probation terms require that the Respondent practice only in a setting subject to supervision and monitoring.

Review History and Issues

The Committee rendered their Determination on November 13, 2002. This proceeding commenced on November 19, 2002, 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 submission to the ARB. The record closed when the ARB received the Petitioner's brief on December 19, 2002.

The Petitioner argues that the Committee provided both an unmanageable and inappropriate penalty. The Petitioner notes that the Committee ordered an evaluation, in part psychiatric, even though no charges against the Respondent involved mental impairment. The Petitioner also contends that the Committee's Order would allow the Respondent to return to practice automatically, after the three-year suspension, without undergoing any evaluation. The Petitioner points out that the Respondent failed to meet the conditions that the California Board placed upon the Respondent regaining a license in that state. The Petitioner asks the ARB to revoke the Respondent's License.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent committed professional misconduct. Neither party challenged the Committee's Determination on the charges. We overturn the Committee's Determination on penalty. We suspend the Respondent's License until such time as the Respondent meets the conditions in the California Stipulation and regains a full license in that state. At such time as the

Respondent regains the California license, the Respondent shall serve three years on License probation in New York, under the terms that appear in the Appendix to this Determination.

The Committee voted to suspend the Respondent for three years, with the possibility of a stay, if the Evaluation clears the Respondent to return to practice. The Committee, however, delegated oversight of the Evaluation process to the BPMC Executive Secretary. The ARB holds that the Committee acted beyond its authority in delegating the Evaluation process. Under Pub. Health Law § 230(7), a Hearing Committee may order a respondent at a hearing to undergo an Evaluation. The statute provides that:

"A committee on professional conduct, on notice to the licensee and after affording the licensee, the office of professional medical conduct, and their attorneys an opportunity to be heard, shall have the authority to direct a licensee to submit to a medical or psychiatric examination when the committee has reason to believe the licensee may be impaired by alcohol, drugs, physical disability or mental disability. The committee, with the advice of the licensee and the office of professional medical conduct, shall designate the physician who will conduct the examination. The results of the examination shall be provided by the examining physician to the committee, the licensee, and the office of professional medical conduct. The licensee may also obtain a physician to conduct an examination the results of which shall be provided to the committee and the office of professional medical conduct."

The Committee, in this case, failed to designate a physician to conduct the Evaluation, with the advice of the Respondent and Petitioner. The Committee also failed to provide the Respondent an opportunity to submit an evaluation from a different physician.

In addition to finding the Committee acted without authority in the way they ordered the Evaluation, we also hold that the Committee acted inappropriately in ordering an Evaluation in New York. The California Stipulation into which the Respondent entered contained a similar provision for a California evaluation [Petitioner's Hearing Exhibit 7, page 6]. The Committee found that the Respondent chose to make no attempt to comply with those conditions [Committee Determination, page 6]. The ARB concludes that the Respondent's refusal to comply with the California Stipulation makes the Respondent a poor candidate for the Evaluation here in

New York. We also note that, under the Committee's Order, the Respondent can regain his License in New York automatically in three years without undergoing the Evaluation. The ARB sees nothing in a three-year suspension, which will guarantee any improvement in the Respondent's practice pattern.

The ARB votes to suspend the Respondent until such time as the Respondent complies with the conditions in the California Stipulation and regains a full license in California. If the Respondent chooses to return to practice in New York after regaining the California license, then the Respondent shall serve three years on probation under the terms that appear in the Appendix to this Determination. The ARB concludes that suspension and probation under these terms will assure that the Respondent's fitness to practice safely in New York.

ORDER

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

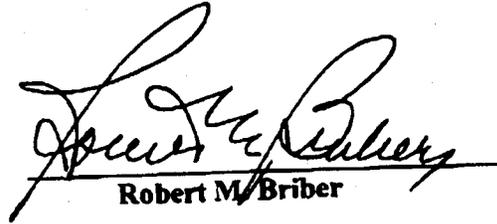
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the penalty the Committee imposed.
3. The ARB suspends the Respondent's License until such time as the Respondent regains his full license in California and the ARB places the Respondent on probation for three years, to begin at such time as the Respondent regains the California 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 Martin Earl Waugh, D.O.

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

Dated: 2/24/2003



Robert M. Briber

In the Matter of Martin Earl Waugh, D.O.

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

Matter of Dr. Waugh.

Dated: Feb 20, 2003



Thea Graves Pellman

In the Matter of Martin Earl Waugh, D.O.

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

Dr. Waugh.

Dated: Mar 01, 2003

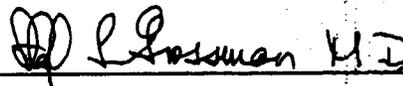
A handwritten signature in black ink, appearing to read "W. S. Price", written over a horizontal line.

Winston S. Price, M.D.

In the Matter of Martin Earl Waugh, D.O.

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

Dated: February 20, 2003

A handwritten signature in black ink, appearing to read "S. L. Grossman M.D.", written over a horizontal line.

Stanley L Grossman, M.D.

In the Matter of Martin Earl Waugh, D.O.

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

Dated: March 7, 2003

Therese G. Lynch M.D.

Therese G. Lynch, M.D.

Appendix

Terms of Probation

1. The Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. The Respondent shall submit written notification to the New York State Department of Health addressed to the Director, OPMC, to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of the Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. The Respondent's professional performance shall be reviewed by the Director of OPMC. This review shall may include at least a quarterly a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices. The Director shall also conduct random record reviews and interviews.
6. The Respondent shall maintain legible and complete medical records, which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. The Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. **Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of**

probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.