



New York State Board for Professional Medical Conduct
433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Kendrick A. Sears, M.D.
Chair

Keith W. Servis, Director
Office of Professional Medical Conduct

Michael A. Gonzalez, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

Public

March 13, 2007

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Paul S. Baxt, M.D.
150 Bassett Street
Apt. 1214
Denver, CO 80202

Re: License No. 101611

Dear Dr. Baxt:

Enclosed is a copy of Order #BPMC 07-55 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect March 20, 2007.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order to the Board for Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Wilfred T. Friedman, Esq.
36 West 44th Street, Suite 816
New York, NY 10036

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
PAUL S. BAXT, M.D.

CONSENT
ORDER

BPMC No. #07-55

Upon the proposed agreement of **PAUL S. BAXT, M.D.**, (Respondent) for Consent Order, which application is made a part hereof, it is agreed and

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 3-13-07



KENDRICK A. SEARS, M.D.
Chair
State Board for Professional
Medical Conduct

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

IN THE MATTER
OF
PAUL S. BAXT, M.D.

CONSENT
AGREEMENT
AND ORDER

PAUL S. BAXT, M.D., (Respondent) being duly sworn deposes and says:

That on or about July 8, 1968, I was licensed to practice as a physician in the State of New York, having been issued License No. 101611 by the New York State Education Department.

My current address is 1850 Bassett St. Apt. 1214, Denver, CO 80202.

I am currently subject to a Non-Disciplinary Temporary Surrender Order (hereinafter "Temporary Surrender"), accepted on April 6, 2000, annexed hereto, made a part hereof, and marked as Exhibit 1 (hereinafter "Original Order 1"). I am also currently subject to Administrative Review Board Determination and Order No. 02-198, (hereinafter "Original Order 2"), annexed hereto, made a part, hereof, and marked as Exhibit 2, that was issued on October 1, 2002.

I apply, hereby, for a Consent Order, to replace and supersede the above described Temporary Surrender Order and Administrative Review Board Determination and Order No. 02-198, and agree to the following:

I shall never activate my registration to practice medicine in New York state or seek to reapply for a license to practice medicine in New York state.

I am not, by this Order, prohibited from practicing medicine in any other jurisdiction, where that practice is not predicated on my New York state license to practice medicine.

The Modification Order to be issued does not constitute a new disciplinary action against me, but replaces and supersedes the Temporary Surrender and Administrative Review Board Determination and Order No. 02-198.

I further agree that the Consent Order for which I, hereby, apply shall impose the following conditions:

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent. Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while the licensee possesses his license.

I, hereby, stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that in the event that I am charged with professional misconduct in the future, this Agreement and Order shall be admitted into evidence in that proceeding.

I, hereby, make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, or upon facsimile transmission to me or my attorney, whichever is first. The Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website.

I stipulate that the proposed sanction and Consent Order as authorized by New York Public Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

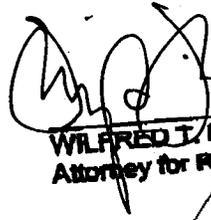
AFFIRMED:

DATE: 2/23/07

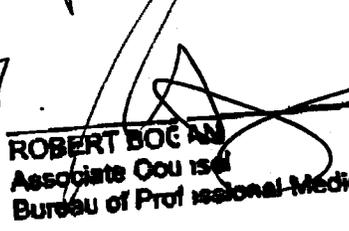

PAUL S. BACI, M.D.
Respondent

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 2/23/07


WILFRED T. FRIEDMAN
Attorney for Respondent

DATE: 28 February 2007


ROBERT BOGAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 3/9/07

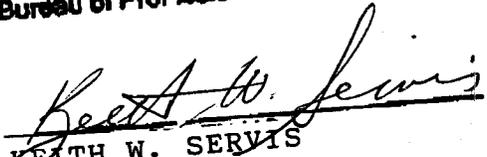

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

Exhibit 1

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
PAUL S. BAXT, M.D.

TEMPORARY
SURRENDER
OF
LICENSE

PAUL S. BAXT, M.D., states:

1. On or about July 8, 1968, I was licensed to practice medicine in the State of New York. I hold license number 101611. I am currently not licensed as a physician in any jurisdiction other than New York State, with the exception of: (list the jurisdictions and license numbers or write "NONE") FL 19409
CO 27059

2. My current address is 1105 Mountain Pines, Boulder, Colorado 80302. I will advise the Director of the Office of Professional Medical Conduct (OPMC) within 30 days of any change in my address.

3. I am at present incapacitated for the active practice of medicine due to substance abuse.

4. My incapacity has not resulted in harm to any patient.

5. I hereby surrender my license document and my registration certificate to the State Board for Professional Medical Conduct (the Board), pursuant to New York Public Health Law Section 230(13).

6. Prior to submitting this Temporary Surrender document, I maintained privileges or an affiliation at (list the places or write "NONE") NONE

7. I maintain no privileges or affiliations with any other hospital.

8. I understand that unless and until my license is restored to me, my licensure status is "inactive" and I am not authorized to practice medicine. I further understand that any practice of medicine while my license is "inactive" shall constitute a violation of N.Y. Educ. Law Section 6530(12), regardless of the location of such practice.

9. Unless and until my license is restored to me, I shall notify all persons who request my medical services that I have temporarily withdrawn from the practice of medicine. I understand that the Department of Health shall notify hospitals and other health care facilities where I have privileges, the Federation of State Medical Boards, the Federal National Practitioner Databank, and other parties inquiring as to my licensure status, that I have temporarily surrendered my medical license and registration pursuant to Pub. Health Law Sec. 230(13), that my license is currently "inactive," and that my temporary surrender of license and change in licensure status is not disciplinary in nature.

10. This temporary surrender shall not be an admission of permanent disability or of professional misconduct, and shall not be used as evidence of a violation of N.Y. Educ. Law Sections 6530(7) and/or (8) unless I practice medicine while my license is "inactive," regardless of the location of any such practice.

11. I understand that my license shall be restored to me only upon a showing to the satisfaction of a Committee of Professional Conduct of the State Board for Professional Medical Conduct that I am no longer incapacitated for the active practice of medicine.

12. I understand that upon my request, a meeting of a committee of the Board shall be convened for the purpose of my making the showing referred to in paragraph 11. The Board will make reasonable attempts to convene a committee not later than 90 days after the Director of OPMC receives my request, which *must* include all that is required to be provided by me pursuant to paragraph 13 below. Failure by me to provide such material will delay the convening of a committee.

13. At the time that I request that a meeting of a committee of the Board be scheduled, pursuant to paragraph 12, I will provide the Director of OPMC, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299, with the following:

- a. The signed acknowledgement from the sobriety monitor referred to in paragraph 15b.
- b. The signed acknowledgement from the supervising physician referred to in paragraph 15c.

- c. The signed acknowledgement from the health care professional referred to in paragraph 15d.
- d. Certified true and complete copies of records of all evaluations and treatment, relating to my impairment, whether that evaluation and treatment occurred prior to or during the time this surrender is in effect. These records should include the results of all urine/blood/breathalyzer tests conducted to detect the presence of drugs/alcohol.
- e. Fully executed waivers of patient confidentiality concerning any previous and prospective evaluation and treatment records.
- f. An independent current in-depth chemical dependency evaluation by a health care professional in a licensed facility and, upon the direction of the Director of OPMC, an independent, complete psychiatric evaluation by a board certified psychiatrist.
- g. My attendance at, participation in, and cooperation with an interview conducted by personnel of OPMC, upon the request of the Director thereof.

Provision of the aforesaid documents does not constitute a showing that I am no longer incapacitated for the active practice of medicine.

14. At the proceeding referred to in paragraph 12, I will provide the committee, at a minimum, with the following:

- a. Certified true and complete records of treatment in a residential rehabilitation or day-treatment program or intensive treatment in an out-patient service.
- b. Evidence of compliance with the terms of a continuing after-care out-patient treatment plan that addresses the major problems associated with my illness.

Submission of the aforesaid evidence does not constitute a showing that I am no longer incapacitated for the active practice of medicine.

15. If the Chairperson of the committee issues an order (Order) restoring my license, the Order shall include a period during which my practice of medicine shall be subject to conditions imposed pursuant to New York Public Health Law §230(13)(a). My practice shall be subject to such

conditions for a period of no less than two years. The minimum conditions will be the following:

- a. I will remain drug and alcohol free.
- b. My sobriety will be monitored by a health care professional, proposed by me and approved in writing by the Director of OPMC, in accordance with the conditions of restoration set forth in or annexed to the Order. Said monitor shall acknowledge his/her willingness to comply with the monitoring by executing the acknowledgement provided by OPMC, and referred to in paragraph 13(a).
 - i. Said monitor shall be familiar with my history of substance abuse, with this temporary surrender, and with the conditions of practice set forth in or annexed to the Order. Said monitor shall not be my treating physician.
 - ii. Said monitor shall see me at least twice during a quarter.
 - iii. Said monitor shall direct me to submit to unannounced tests of my blood, breath, and/or urine for the presence of drugs or alcohol and shall report to OPMC within 24 hours if at any time such a test is ~~refused by me or is positive.~~
 - iv. Said monitor shall report to OPMC any noncompliance with the imposed conditions.
 - v. Said monitor shall not be a personal friend.
 - vi. Said monitor shall submit to OPMC quarterly reports either certifying my compliance, or detailing my failure to comply, with each of the conditions imposed. The reports shall include the results of all body fluid and/or breath tests for drugs and/or alcohol performed during that quarter.
- c. I will be supervised in my medical practice by a licensed physician, proposed by me and approved in writing by the Director of OPMC, in accordance with the conditions contained in or annexed to the Order. Said supervising

physician shall be familiar with my history of substance abuse and with the Order and its conditions. Said supervisor shall supervise my compliance with the conditions of practice imposed by the Order. Said supervising physician shall be in a position regularly to observe and assess my medical practice. Said supervising physician shall acknowledge his/her willingness to comply with the supervision by executing the acknowledgement provided by OPMC, and referred to in paragraph 13(b).

- i. Said supervising physician shall have the authority to direct me to submit to unannounced tests of my blood, breath, and/or urine for the presence of drugs or alcohol and shall report to OPMC within 24 hours if at any time such a test is refused by me or is positive.
 - ii. Said supervising physician shall submit to OPMC quarterly reports regarding the quality of my medical practice, any unexplained absences from work and certifying my compliance or detailing my failure to comply with each condition imposed.
 - iii. Said supervising physician shall report any suspected impairment, inappropriate behavior, questionable medical practices or possible misconduct to OPMC.
- d. I will continue in treatment with a health care professional proposed by me and approved in writing by the Director of OPMC, for as long as the health care professional determines it is necessary.
- i. My treating health care professional shall submit to OPMC quarterly reports certifying that I am complying with the treatment.
 - ii. Said treating health care professional shall report to OPMC immediately if I am noncompliant with my treatment plan, or if I demonstrate any significant pattern of absences.
 - iii. Said treating health care professional shall acknowledge his/her willingness to comply with the above-mentioned reporting by executing

the acknowledgement provided by OPMC and referred to in paragraph 13(c).

e. At the direction of the Director of OPMC, I will submit to evaluations by a board certified psychiatrist or other licensed mental health practitioner designated by the Director. Said practitioner shall report to the Director regarding my condition and my fitness or incapacity to practice medicine.

16. I agree that the terms set out in paragraph 15 are the minimum conditions to be imposed on my practice upon restoration of my license, and that other terms may be added by the Committee at the time of license restoration, and that the costs of complying with all such terms will be my responsibility. I understand that any failure by me to comply with the conditions imposed upon my practice at the time of license restoration, may result in disciplinary action being brought against me charging professional misconduct as defined by the New York State Education Law, including but not limited to N.Y. Educ. Law Section 6530(29). That section defines professional misconduct to include "violating any... condition... imposed on the licensee pursuant to section two hundred thirty of the public health law."

17. I hereby agree to submit signed statements to the Director of OPMC, on an annual basis, certifying that I have not practiced medicine, in any location, at any time subsequent to this surrender of my license, utilizing forms to be supplied to me by OPMC.

18. In the event that a committee of the Board issues an Order restoring my license or denying my application for restoration of license, the Department of Health shall notify all parties notified of my temporary surrender of license, withdrawal from practice, and change in licensure status to "inactive" (see paragraph 9 above) of the Order granting restoration of my license or denying my petition for restoration.



PAUL S. BAXT, M.D.

Accepted: April 6, 2000 David Sule

for: NEW YORK STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

Dated:

CERTIFICATION OF ABSTENTION FROM MEDICAL PRACTICE

I, PAUL S. BAXT, M.D., in compliance with the terms of my temporary surrender of my New York State license to practice medicine, pursuant to N.Y. Public Health Law Section 230(13), have at all times during the calendar year 2000 (specify year), abstained from the practice of medicine in all locations, both within and outside New York State.



PAUL S. BAXT, M.D.

3 | 27 | 00

DATE

AUTHORIZATION

I, PAUL S. BAXT, M.D., authorize all programs in which I have enrolled as an alcohol or drug abuse patient to disclose to the New York State Department of Health, Office of Professional Medical Conduct the following information:

ANY AND ALL RECORDS PERTAINING TO MY EVALUATION AND
TREATMENT WITH REGARD TO ALCOHOL AND/OR DRUG
ABUSE.

The purpose of the disclosure authorized herein is to provide information which enables and facilitates the New York State Board for Professional Medical Conduct in its performance of duties and responsibilities pursuant to Section 230 of the New York Public Health Law.

I understand that, to the extent my records are protected under federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, such records cannot be disclosed without my written consent unless otherwise provided for in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it and that in any event this consent expires automatically upon final disposition of the relevant investigation and/or proceeding by the New York State Board for Professional Medical Conduct.



PAUL S. BAXT, M.D.

SOBRIETY MONITOR
ACKNOWLEDGMENT

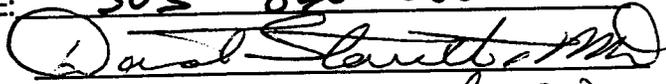
I have agreed to act as PAUL S. BAXT, M.D.'S sobriety monitor.

I am familiar with the Licensee's history of chemical dependence. I am familiar with the minimum terms outlined in the Restoration Order/Temporary Surrender/Voluntary Agreement.

I am not a personal friend or relative of the Licensee.

I am prepared to direct the Licensee to submit to unannounced, supervised tests of blood, breathalyser and/or urine to detect the presence of drugs or alcohol. I will report the results of all such tests to the Office of Professional Medical Conduct on a quarterly basis. I will report any failure or refusal to submit to testing by the Licensee and any positive results within twenty-four (24) hours.

I will report to the Board for Professional Medical Conduct on a quarterly basis regarding the Licensee's compliance or any pattern of non-compliance with the terms and conditions of the Restoration Order/Voluntary Agreement. Should problems arise, or should I become aware that the Licensee has violated any term of the Restoration Order/Voluntary Agreement, I will contact the Office of Professional Medical Conduct within twenty-four (24) hours.

NAME: David Starrett MD
ADDRESS: 740 Emerson ST
Denver, CO
TELEPHONE: 303 820 0805
SIGNED: 
DATED: 28 March 00

PRACTICE SUPERVISOR
ACKNOWLEDGEMENT

I have agreed to act as PAUL S. BAXT, M.D.'S (Licensee's) practice supervisor.

I am familiar with the Licensee's history of chemical dependence.

I am familiar with the minimum terms outlined in the Restoration Order/Temporary Surrender/Voluntary Agreement..

I am not a personal friend or relative of the Licensee.

I will regularly observe and assess the Licensee's medical practice.

I am prepared to direct the Licensee to submit to unannounced, supervised tests of blood, breathalyser and/or urine to detect the presence of drugs or alcohol and will report the results of all such tests to the Office of Professional Medical Conduct on a quarterly basis. I will report any failure or refusal to submit to testing by the Licensee and any positive results within twenty-four (24) hours.

I will submit quarterly reports to the Board regarding the quality of the Licensee's medical practice, work attendance, and overall compliance with the terms and conditions of the Restoration Order/Voluntary Agreement. Should problems arise, or should I become aware that the Licensee has violated any term of the Restoration Order/Voluntary Agreement, I will contact the Office of Professional Medical Conduct within twenty-four (24) hours.

NAME: David Strachan M.D.

ADDRESS: 740 Emerson St
Denver, CO

TELEPHONE: 303 830 0805

SIGNED: David Strachan M.D.

DATED: 28 March 00

THERAPY MONITOR

ACKNOWLEDGMENT

I have agreed to act as PAUL S. BAXT, M.D.'S (the Licensee's) therapy monitor.

I am familiar with the Licensee's history of chemical dependence.

I am familiar with the minimum terms outlined in the Restoration Order/Temporary Surrender/Voluntary Agreement.

I am not a personal friend or relative of the Licensee.

Should I order the Licensee to submit to any test for the presence of drugs or alcohol and should he/she refuse or if the test is positive, I will report the incident to the Office of Professional Medical Conduct within twenty-four (24) hours.

I will submit quarterly reports to the Board for Professional Medical Conduct regarding the Licensee's compliance or any pattern of non-compliance with the terms and conditions of the Restoration Order/Voluntary Agreement. Should problems arise, or should I become aware that the Licensee has violated any term of the Restoration Order/Voluntary Agreement, I will contact the Office of Professional Medical Conduct within twenty-four (24) hours.

~~I will ensure the Office of Professional Medical Conduct is notified should the Licensee drop out of treatment or should he/she fall into a significant pattern of absences.~~

NAME: David Starnett MD

ADDRESS: 240 Eucalyptus ST
Denver, CO

TELEPHONE: 303 830 0805

SIGNED: David Starnett, MD.

DATED: 28 March 00



"Exhibit 2"
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 1, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

PUBLIC

Robert Bogan, Esq.
& Robert Maher, Esq.
NYS Department of Health
Hedley Park Place - 4th Floor
Troy, New York 12180

James F. Biondo, Esq.
Rosenblum & Tannenbaum LLC
50 Main Street
White Plains, New York 10606

Paul S. Baxt, M.D.
1105 Mountain Pines Road
Boulder, Colorado 80302-9223

RE: In the Matter of Paul S. Baxt, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-198) 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.

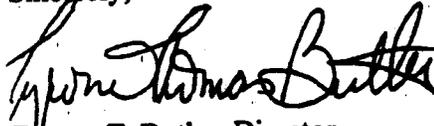
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Paul S. Baxt, M.D. (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 02-198

**A proceeding to review a Determination by a
Committee (Committee) from the Board for
Professional Medical Conduct (BPMC)**

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:**

**Paul Robert Maher, Esq.
James F. Biondo, Esq.**

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2002), the ARB determines the penalty to impose against the Respondent's License to practice medicine in New York, following a Federal criminal conviction and a disciplinary action against him in another state. After a hearing below, a BPMC Committee suspended the Respondent's License, stayed the suspension and placed the Respondent on probation for three years. On review from that Determination, the Petitioner asks that the ARB overrule the Committee and revoke the Respondent's License. After considering the hearing record and review submissions from the parties, we affirm the Committee's Determination to suspend the Respondent's License for one year, to stay the suspension and to place the Respondent on probation. We modify the Determination by increasing the probation to five years and by amending or deleting certain probation terms.

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. 2002) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from another state (Colorado) 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 Colorado would constitute misconduct if committed in New York, under the following categories:

- practicing medicine while impaired by physical or mental disability, a violation under N. Y. Educ. Law §§ 6530(7) (McKinney Supp. 2002);
- suffering from a psychiatric condition that impairs the ability to practice, a violation under N.Y. Educ. Law § 6530(8)(McKinney Supp. 2002); and,
- engaging in conduct that evidences moral unfitness, a violation under N.Y. Educ. Law § 6530(30)(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 2002), 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 District of New Jersey to two counts of making a false loan application, a felony. The Court sentenced the Respondent to serve fifteen months imprisonment and one year supervised release and to pay \$90,000.00 in restitution. The evidence demonstrated further that the Respondent surrendered his license to practice in Colorado through a Stipulation and Final agency Order with the State Board of Medical Examiners (Colorado Board). The Order provided that the Respondent would never apply for a new license, nor apply to reactivate or reinstate his Colorado license, based upon prima facie evidence that he suffered from a mental condition that prevented him from practicing medicine.

The Committee determined that the Respondent's Federal criminal conviction constituted professional misconduct under N. Y. Educ. Law § 6530(9)(a)(ii). The Committee concluded further that the Respondent's conduct in Colorado would constitute misconduct in New York as suffering a psychiatric condition (bipolar disorder) that impairs the ability to practice. The Committee concluded that the Respondent's condition made him subject to disciplinary action under N. Y. Educ. Law § 6530(9)(d). On the Federal conviction, the Committee voted to suspend the Respondent's License for one year, but stayed the suspension. As to the psychiatric condition, the Committee found that the Respondent's bipolar disorder has stabilized with medication and therapy. The Committee found, however, that the Respondent must continue to take his medications and receive therapy to avoid destabilization of his condition. The Committee voted to place the Respondent on probation for three years to ensure that the stabilization continues into the future. The probation terms appear in the Committee's Order. As relevant on this review,

the terms include a provision that would grant the Office of Professional Medical Conduct (OPMC) the discretion to relieve the Respondent from any uncompleted probation term [Committee Determination, page 10, paragraph L]. The probation terms also provided OPMC the discretion to impose a monitor on the Respondent's professional performance [Committee Determination, page 9, Paragraph F].

Review History and Issues

The Committee rendered their Determination on June 14, 2002. This proceeding commenced on June 24, 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 July 22, 2002.

The Petitioner requests that the ARB revoke the Respondent's License because the Respondent knowingly and willingly defrauded a bank. The Petitioner contends that the sanction the Committee imposed will make little impact on the Respondent and will fail to protect the public. In reply, the Respondent contends that his criminal conduct took place thirteen years ago and that the Respondent has received punishment for that crime in many ways.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent's conduct made him liable for disciplinary action under N. Y. Educ. Law §§ 6530(9)(a)(ii) & 6530(9)(d). Neither party challenged the Committee's Determination on the charges. We affirm the Committee's Determination to suspend the

Respondent's License, to stay the suspension and to place the Respondent on probation. We vote 5-0 to modify the probation terms and to increase the probation period.

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); 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); and in determining credibility, Matter of Minielly v. Comm. of Health. 222 A.D.2d 750, 634 N.Y.S.2d 856 (3rd Dept. 1995).

The ARB may choose to substitute our judgement and impose a more severe sanction than the Committee on our own motion, Matter of Kabnick v. Chassin. 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono. 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

We reject the Petitioner's request that we revoke the Respondent's License. The Respondent's criminal conduct occurred thirteen years ago and involved conduct outside medical practice. The Respondent received a substantial penalty for that conduct from the Federal Court that included incarceration, supervised release and restitution. We disagree with the Petitioner that society's protection demands that we add a further actual sanction for that conduct. The imprisonment and restitution will provide sufficient deterrence and protection.

On our motion, we modify the probation terms that the Committee imposed. We agree with the Committee that a term on probation will ensure that the Respondent continues in the treatment and on the medication that stabilizes his condition. The ARB concludes, however, that five years constitutes the appropriate period to ensure that the Respondent's condition remains stable. We vote to overturn the Committee and increase the probation to five years. We also

delete the current Paragraph L from the probation terms. That Paragraph would have granted OPMC the discretion to relieve the Respondent from uncompleted probation terms. The ARB holds that the Respondent should serve the full probation. We also disagree with the Committee's Determination to grant OPMC the discretion to place a monitor on the Respondent's practice [Committee Determination, page 9, paragraph F]. We conclude that the Respondent should serve the first two years on probation with a practice monitor. The monitor will ensure that the Respondent can deal with the pressures from practice without any destabilization in his condition. We vote to delete the opening sentence from Probation Paragraph F that would have permitted OPMC discretion in ordering a practice monitor. We leave intact the remainder of that Paragraph, concerning the Respondent's obligation to cooperate with the Probation Order. We modify the Probation Terms further to add a new Paragraph L, to read as follows:

L). For the first two years under this probation, the Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.

- 1. The Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.*
- 2. The Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.*
- 3. The Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.*
- 4. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be*

submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.

The ARB affirms all other provisions in the Committee's Order.

ORDER

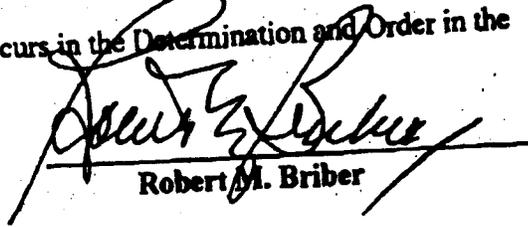
NOW, with this Determination as our basis, the ARB renders the following **ORDER**:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to suspend the Respondent's License for one year and to stay the suspension in full.
3. The ARB affirms the Committee's Determination to place the Respondent on probation when he returns to practice in New York State.
4. We modify the probation, to increase the term from three to five years and we modify Paragraphs F and L in the probation as we discussed in our Determination.

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 Paul S. Baxt, M.D.

Robert M. Briber, an ARB Member concurs in the Determination and Order in the
Matter of Dr. Baxt.
Dated: 8/17/02

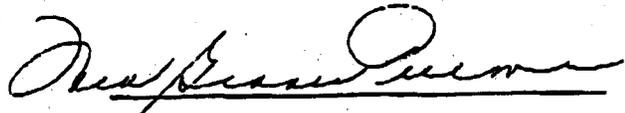


Robert M. Briber

In the Matter of Paul S. Baxt, M.D.

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

Dated: 8/16, 2002

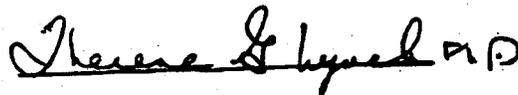


Thea Graves Pellman

In the Matter of Paul S. Baxt, M.D.

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

Dated: August 15, 2002

A handwritten signature in cursive script that reads "Therese G. Lynch, M.D." with a small mark at the end.

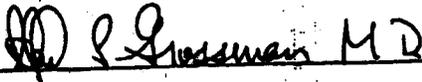
Therese G. Lynch, M.D.

In the Matter of Paul S. Baxt, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Baxt.

Dated: August 16, 2002

 Stanley L. Grossman M.D.

Stanley L. Grossman, M.D.