



**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 9, 2001

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Stephen Coleman, M.D.  
23 Woodland Drive  
Sands Point, New York 11050

Michael S. Kelton, Esq.  
Lippman, Krasnow & Kelton  
711 Third Avenue  
New York, New York 10017

Leslie Eisenberg, Esq.  
NYS Department of Health  
5 Penn Plaza – Sixth Floor  
New York, New York 10001

**RE: In the Matter of Stephen Coleman, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 00-343) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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**

**Stephen Coleman, 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. 00-343**

**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:**

**Leslie Eisenberg, Esq.  
Michael S. Kelton, Esq.**

After a hearing below, a BPMC Committee determined that the Respondent-Psychiatrist engaged in professional misconduct by engaging in a sexual relationship with a patient, prescribing medication for the patient and submitting certain billings to the patient's insurer. The Committee voted to suspend the Respondent's License to practice medicine in New York State (License) and to place the Respondent on probation, under terms that include therapy and continuing education. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 2001), both parties ask the ARB to modify the Committee's Determination. The Respondent asks the ARB to overturn findings by the Committee that the Respondent's conduct amounted to incompetence and fraud. The Petitioner asks the ARB to sustain additional fraud and false report charges and to revoke the Respondent's License. After reviewing the record and the parties' submissions, we sustain additional charges that the Respondent committed fraud and filed false reports. We sustain the Determination to suspend the Respondent's License and to place the Respondent on probation. We modify the penalty to add a Ten Thousand Dollar (\$10,000.00) fine and to change the wording at one sentence in the 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 (2-6), 6530(20-21), 6530(32) & 6530(44)(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,
- engaging in conduct that evidences moral unfitness in practice,
- willfully making or filing a false report,
- failing to maintain accurate records, and,
- engaging in physical contact of a sexual nature with a psychiatric patient.

The charges concerned the Respondent's sexual relationship with a patient (Patient A), prescriptions the Respondent wrote for Patient A and billing to an insurance company for the treatment the Respondent provided to Patient A. The Respondent filed an answer (Respondent Exhibit A1) that admitted to engaging in a sexual relationship with Patient A and to prescribing for the Patient, but denied all other allegations. A hearing ensued before the BPMC Committee that rendered the Determination now on review.

The Committee found that Patient A made regularly scheduled visits to the Respondent's Office between 1989 and 1991. The Committee found that the Respondent engaged in sexual intercourse with Patient A on two separate occasions in the Respondent's office. The Committee also found that the Respondent failed to:

- perform an adequate physical examination on the Patient,
- examine or evaluate the Patient, even though he continued to prescribe various controlled and addictive medications,

- document a comprehensive treatment plan, evaluations, updates or assessments in the Patient's medical record, and,
- provide a rationale for prescribing particular medications [Committee Findings of Fact (FF) 14-17].

As to the prescriptions for medication, the Committee found that the Respondent issued forty-one prescriptions for medications from the time the Patient ceased office visits in November 1991, until February 1997. The Committee also found that the Respondent billed the Patient's insurance company for medical rather than psychotherapy services, because the insurer reimbursed at a higher rate for medical services than for psychotherapy services.

The Committee sustained the charge that the Respondent's sexual conduct with Patient A evidenced moral unfitness. The Committee dismissed the specification charging sexual contact with a psychiatric patient, upon finding that charge duplicated the moral unfitness charge. The Committee dismissed the charges that the Respondent committed fraud by billing the Patient's insurer for medical services. The Committee found the Respondent guilty for fraud for submitting a bill to the insurer for treatment on January 3, 1991, at which time the Respondent engaged in sexual intercourse with Patient A. The Committee sustained the specifications that charged negligence on more than one occasion and incompetence on more than one occasion. The Committee concluded that the Respondent committed negligence in practice by engaging in sexual conduct with Patient A, failing to evaluate the Patient adequately, failing to address transference issues and prescribing without rationale, evaluation or recordation. The Committee concluded that the Respondent practiced incompetently by failing to recognize he was out of control in treating Patient A. The Committee dismissed charges that the Respondent practiced with gross negligence or gross incompetence and that the Respondent willfully filed false reports in submitting the billings to the Patient's insurer. The Committee voted to suspend the Respondent's License for five years, to stay the suspension for the final fifty-four months and to place the Respondent on probation during the period of the stayed suspension. The Probation terms require the Respondent to receive psychiatric treatment and to enroll and complete

successfully courses in psychiatric ethics and in record keeping (Hearing Committee Determination Appendix III).

### **Review History and Issues**

The Committee rendered their Determination on December 15, 2000. This proceeding commenced on December 26, 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 the Respondent's response brief. The record closed when the ARB received the response brief on January 24, 2001.

The Petitioner asks the ARB to overturn the Committee and to sustain the charges that the Respondent committed fraud and willfully filed false reports, by billing the Patient's insurer for medical rather than psychiatric services. The Petitioner argues that the Committee erred in basing their dismissal on the Respondent's belief that he was entitled to higher reimbursement for the care he provided to Patient A. The Petitioner also requests that the ARB overturn the Committee and revoke the Respondent's License. The Petitioner argues that the record contains insufficient evidence to show that the Respondent deserves leniency or that the Respondent possesses the insight or motivation to benefit from retraining. The Petitioner also characterizes the penalty as an insufficient sanction against the Respondent for violating the Patient's trust.

The Respondent opposes the Petitioner's request for revocation and notes that the Committee found several mitigating factors that supported a penalty less severe than revocation. As to the Petitioner's argument concerning the insurance claims, the Respondent argues that he treated the Patient for back pain and billed appropriately for such care. The Respondent asks that the ARB overturn the finding that the Respondent's conduct toward Patient A constituted

incompetence on more than one occasion. The Respondent argues that he knew he was committing boundary violations, but states he was too weak to extricate himself from his own poor judgement. The Respondent also alleges error by the Committee for finding the Respondent committed fraud by billing for the January 3, 1991 office visit, during which the Respondent engaged in sexual intercourse with Patient A. The Respondent argues that the Petitioner's Statement of Charges never alleged fraud due to the billing for the January 3, 1991 visit.

### Determination

The ARB has considered the record and the parties' briefs. We sustain the charge that the Respondent practiced with incompetence on more than one occasion in treating Patient A. We overturn the Committee's Determination that billing for the January 3, 1991 visit constituted fraud. We also overturn the Committee and sustain the charges that the Respondent committed fraud and willfully filed false reports in billing for performing medical, rather than psychotherapy services, for Patient A. The ARB affirms the Committee's remaining Determination on the charges and we affirm the Committee's Determination to suspend the Respondent's License for six months and to place the Respondent on probation for four and one-half years, under the terms that appear in Appendix III to the Committee's Determination. We modify the Determination to add a Ten Thousand Dollar (\$10,000) fine for the false billings that the Respondent submitted to the Patient's insurer and to change the wording in one sentence in the Probation Terms.

**Determination on the Charges:** The Committee found the Respondent practiced with incompetence on more than one occasion by engaging in a sexual relationship with a patient, by failing to obtain outside assistance in dealing with counter-transference events and in failing to

recognize his inability to refuse Patient A. The Respondent argued that the Committee Determination, at page 24, found that the Respondent "knew" such violations were wrong. The Respondent contends that his misconduct concerning Patient A amounted to negligence rather than incompetence, because he possessed proper skill and knowledge, but failed to use his knowledge due to weakness.

The ARB agrees with the Committee that the Respondent's conduct amounted to both negligence and incompetence. The Committee's conclusions at page 24 never stated that the Respondent "knew" his misconduct was wrong. The conclusions instead stated that the Respondent was sorry as soon as sex occurred. The conclusions also stated that the Respondent acknowledged his lack of recognition about the misconduct. The conclusions at page 19 noted that the Respondent never explained his failure to obtain a second opinion from a colleague. The ARB holds that the lack of recognition and the failure to obtain a second opinion demonstrated a lack of skill or knowledge in practice. Such conduct amounted to incompetence and we affirm the Committee's Determination that the Respondent's conduct amounted to practicing with incompetence on more than one occasion.

The Committee found the Respondent committed fraud in practice for billing the Patient's insurer for a visit on January 3, 1991, during which the Respondent and the Patient engaged in sexual intercourse. The Petitioner's Statement of Charges, however, alleged that the fraud in the case occurred due to the Respondent billing the Patient's insurer for treating chronic back pain rather than psychotherapy treatment. The Statement of Charges contained no allegations that the Respondent committed fraud by billing for an office visit during which the Respondent and the Patient engaged in sexual intercourse. A Committee violates due process by imposing a penalty for conduct, in a case in which the Respondent received no opportunity to offer a defense on that

issue, Matter of Dhabuwala v. State Bd. for Prof. Med. Conduct, 229 A.D.2d 752, 645 N.Y.S.2d 600 (3<sup>rd</sup> Dept. 1996). We overturn the Committee finding that the Respondent engaged in fraud by billing for the January 3, 1991 visit.

The Committee dismissed the charges that the Respondent engaged in fraud and willfully filed false reports by billing the Patient's insurer for treating chronic back pain, rather than for psychotherapy. The Committee made findings that the Respondent:

- failed to perform an adequate examination on the Patient (FF 14);
- failed to examine or evaluate the Patient, even though he continued to prescribe various controlled substances and addictive medications to her (FF 15);
- failed to document a comprehensive treatment plan, evaluations, updates, or reassessments for the Patient in the Patient's records (FF 16);
- failed to document or provide a rationale for prescribing particular medications (FF 17); and,
- billed the Patient's insurer for medical rather than psychotherapy services, because medical services received a higher reimbursement rate than psychiatric services (FF 29).

The Committee indicated that they dismissed the fraud and false report charges because the Respondent believed himself entitled to a higher reimbursement rate.

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 (3<sup>rd</sup> 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 (3<sup>rd</sup> 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.

In order to sustain a charge that a licensee practiced medicine fraudulently, a hearing committee 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 (3<sup>rd</sup> Dept. 1966), aff'd, 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). A committee may infer the licensee's knowledge and intent properly from facts that such committee finds, but the committee must state specifically the inferences it draws regarding knowledge and intent, Choudhry v. Sobol, 170 A.D.2d 893, 566 N.Y.S.2d 723 (3<sup>rd</sup> Dept. 1991). To prove willfully filing a false report, a committee 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 (3<sup>rd</sup> 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). A committee 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 ARB concludes that the Committee's FF 14-17 and 29 establish that the Respondent provided no medical care to Patient A. From FF 14-17, we conclude that the Respondent failed

to record or perform evaluations necessary for medical treatment. From the Committee's FF 29, we infer that 1.) the Respondent knew he would receive less reimbursement for psychotherapy services rather than medical care and 2.) billed for medical services to receive higher reimbursement, even though he failed to provide medical services. The Respondent's feeling that he deserved higher reimbursement provides no excuse for the misleading billing. The Respondent's conduct constituted a knowing, deliberate act and a knowing, deliberate attempt to mislead. We hold that the Respondent engaged in fraud in practicing medicine and willfully filed false reports.

**Penalty:** As a penalty for the Charges the Committee sustained, the Committee voted to suspend the Respondent's License for five years, to stay the suspension for all but six months and to place the Respondent on probation. The Probation Terms included requirements that the Respondent enter therapy and complete retraining successfully in ethics and in medical record keeping. We have modified the Committee's basis for finding that the Respondent practiced fraudulently and we have sustained charges that the Respondent willfully filed false reports. As a penalty for the fraud and false reports, we add a Ten Thousand Dollar (\$10,000.00) fine. We hold that the suspension, the probation and the fine constitute a heavy and appropriate penalty for the Respondent's misconduct.

At page 24 in their Determination, the Committee list several mitigating factors they found present in this case. We agree with the Committee that these mitigating factors demonstrate that revocation would constitute an overly harsh penalty in this case.

We modify the Probation Terms that the Committee imposed through Appendix III in their Determination. At Paragraph 6, the Terms states that the Director of the Office for Professional Medical Conduct may review the Respondent's professional performance. The next

sentence in that paragraph states that the review "may" include review of office records, patient records and hospital charts. We vote to amend that sentence to change the word "may" to the word "shall".

### **ORDER**

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

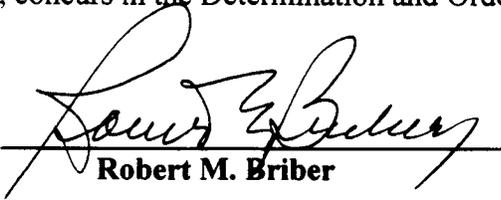
1. The ARB **AFFIRMS** the Committee's Determination that the Respondent committed professional misconduct.
2. We **MODIFY** the grounds for the finding that the Respondent Committed fraud.
3. We **OVERTURN** the Committee and **SUSTAIN** the charge that the Respondent willfully filed false reports.
4. We **SUSTAIN** the Committee's Determination to suspend the Respondent's License for five years, to stay the final fifty-four months and to place the Respondent on probation for fifty-four months, under the terms that appear in Appendix III to the Committee's Determination.
5. We **MODIFY** the Determination to add a Ten Thousand Dollar (\$10,000.00) fine and to change the wording in one sentence in the Probation Terms.

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 Stephen Coleman, M.D.**

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

**Dated February 28, 2001**



**Robert M. Briber**

In the Matter of Stephen Coleman, M.D.

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

Dated: Feb. 28, 2001

A handwritten signature in cursive script, reading "Thea Graves Pellman", written over a horizontal line.

**Thea Graves Pellman**

**In the Matter of Stephen Coleman, M.D.**

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

Dated: 2/27/, 2001

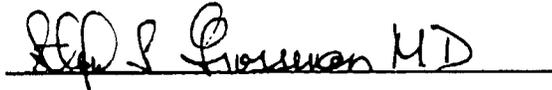
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**Winston S. Price, M.D.**

**In the Matter of Stephen Coleman, M.D.**

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

Dated: 2/28, 2001

A handwritten signature in black ink, appearing to read "Stanley L. Grossman MD", is written over a horizontal line.

**Stanley L Grossman, M.D.**

In the Matter of Stephen Coleman, M.D.

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

Dated: February 28, 2001

*Therese G Lynch M.D.*

Therese G. Lynch, M.D.