

PUBLIC



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

June 30, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ernest J. Steinhilber, M.D.
103 Enclave Lane
St. Simons Island, Georgia 31522

Robert Bogan, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
233 River Street – Suite 303
Troy, New York 12180-2299

RE: In the Matter of Ernest J. Steinhilber, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-76) 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.

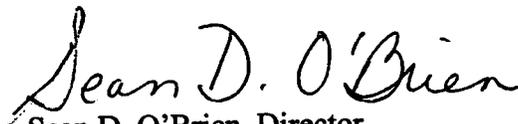
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

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

In the Matter of

Ernest J. Steinhilber, 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. 06-76

COPY

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

For the Department of Health (Petitioner):

Robert Bogan, Esq.

For the Respondent:

Pro Se

In this proceeding pursuant to N.Y. Public Health Law (PHL) § 230-c (4)(a)(McKinney 2005), the ARB considers the penalty to impose against the Respondent's license to practice medicine in New York State (License) following a disciplinary action against the Respondent by another state's medical board. After a hearing below, a BPMC Committee voted to revoke the Respondent's License, upon determining that the Respondent engaged in repeated fraud and deceit on licensing applications. The Respondent now asks the ARB to review the Committee's Determination and to consider additional evidence that the Respondent never raised with the Committee. The ARB declines to consider any additional information and we decline to remand this matter to the Committee. We affirm the Committee's Determination to revoke the Respondent's License.

Committee Determination on the Charges

The Committee conducted a hearing in this matter under the expedited hearing procedures (Direct Referral Hearing) in PHL § 230(10)(p). In that Hearing, the Petitioner charged that the Respondent violated N. Y. Education Law (EL) §§ 6530(9)(b) & (9)(d) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from another state, Maine, 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 Maine would constitute misconduct if committed in New York, under the following specifications:

- practicing the profession fraudulently, a violation under EL § 6530(2),
- engaging in conduct that evidences moral unfitness, a violation under EL § 6530(20), and,
- willfully making or filing a false report, a violation under EL § 6530(21).

In a Direct Referral Hearing, 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 Consent Agreement with the Maine Board of Licensure in Medicine (Maine Board). In the Consent Agreement, the Respondent agreed to accept a reprimand and a \$1,500.00 fine to settle charges that the Respondent engaged in fraud and deceit by failing to list disciplinary actions by other states on a license renewal application. The evidence also indicated that the Alaska Medical Board denied the Respondent's application for licensure in 1998 due to the Respondent's failure to answer licensure application questions truthfully. The Respondent also agreed to surrender his Pennsylvania medical license in 2003 to settle charges that the Respondent lied on a license renewal application concerning licenses and disciplinary actions in other states. In 2004, the Respondent entered into a consent agreement with BPMC by accepting an indefinite suspension of his License, for at least six months, and a \$2000.00 fine to settle charges relating to the Pennsylvania surrender. The New York suspension ended under an amendment to the BPMC consent agreement in February 2006.

The Committee determined that the facts underlying the Maine disciplinary action would constitute misconduct in New York as practicing fraudulently, willfully filing a false report and engaging in conduct that evidences moral unfitness. The Committee concluded that the conduct underlying the Maine action made the Respondent liable for disciplinary action against his License pursuant to EL §§ 6530(9)(b) & (9)(d). The Committee voted to revoke the Respondent's License. The Committee rejected hearing testimony by the Respondent that he gave false answers due to innocent oversight. The Committee concluded that the false answers in the Maine application resulted from the Respondent's deliberate attempt to hide the information. The Committee found that the Respondent's repeated false answers to State Boards demonstrated that the Respondent could not be trusted to practice with the degree of honesty and high moral standards required of physicians.

Review History and Issues

The Committee rendered their Determination on April 11, 2006. This proceeding commenced on April 28, 2006, when the ARB received the Respondent's Letter requesting a Review. In his Letter, the Respondent stated that he forgot to mention at the Direct Referral Hearing that he suffered from Attention Deficit Disorder (ADD). The Respondent argued that the ADD contributed to the Respondent's omissions in the license renewal applications. The Respondent also argued that there would be no point in deliberately placing false information on any licensure application, because all disciplinary actions are reported to the National Practitioner Data Bank and licensing boards would learn about actions against him whether or not the Respondent disclosed the actions on his renewal application.

ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL §230-a permits. The ARB may substitute our judgment 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

judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, 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).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3rd Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

Determination

The ARB has considered the record and the Respondent's letter. We see no reason to overturn the Committee's Determination.

The Respondent attempted to raise an issue with the ARB (his ADD diagnosis) that the Respondent failed to raise at the Direct Referral Hearing. The Respondent's Letter requesting review also attached material from outside the hearing record, concerning that diagnosis. The ARB refuses to consider that information, because the provisions on administrative reviews, that

appear at PHL § 230-c(4)(a), prohibit the ARB from considering any evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3rd Dept. 1997). Under our authority from PHL § 230-c(4)(b), the ARB could remand this matter to the Hearing Committee to consider additional evidence, but we see no reason to remand this case. The Respondent indicated that he received the ADD diagnosis in 1993, so the Respondent clearly knew about the diagnosis when he appeared at the Direct Referral Hearing in March 2006. The Respondent provided no explanation about why he failed to raise the issue with the Committee and nothing in the record or the Respondent's Letter indicated that the Petitioner's counsel, the Hearing Committee or the Committee's Administrative Officer did anything to limit the Respondent in making his presentation to the Committee.

We turn next to considering the penalty the Committee imposed. We agree with the Committee that revocation constitutes the appropriate sanction in this case. The Respondent provided false information previously on applications to Alaska and Pennsylvania. At the time the Respondent made the Maine Application, the Respondent was on suspension in New York. Despite his extensive disciplinary history, the Respondent still failed to provide a complete and truthful application to Maine. We agree with the Committee that the Respondent's pattern of misconduct demonstrates intent to deceive rather than innocent oversight. The Respondent's repeated misconduct proves that he lacks the integrity necessary to practice medicine

ORDER

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

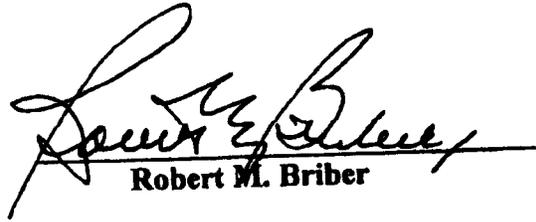
1. The ARB refuses to remand this matter to the Committee to hear further evidence from the Respondent.
2. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
3. The ARB affirms the Committee's Determination to revoke the Respondent's License.

Robert M. Briber
Thea Graves Pellman
Datta G. Wagle, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

In the Matter of Ernest J. Steinhilber, M.D.

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

Dated: June 17, 2006



Robert M. Briber

In the Matter of Ernest J. Steinhilber, M.D.

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

Dated: Jun 28, 2006



Thea Graves Pellman

In the Matter of Ernest J. Steinhilber, M.D.

Datta G. Wagle, M.D., an ARB Member concurs in the Determination and Order in the

Matter of Dr. Steinhilber.

Dated: 6/20/, 2006

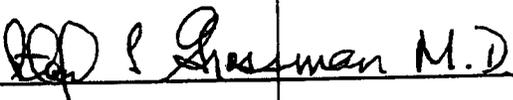
A handwritten signature in black ink, appearing to read "Datta G. Wagle", written over a horizontal line.

Datta G. Wagle, M.D.

In the Matter of Ernest J. Steinhilber, M.D.

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

Dated: June 16, 2006

Handwritten signature of Stanley L. Grossman, M.D.

Stanley L. Grossman, M.D.

In the Matter of Ernest J. Steinhilber, M.D.

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

Dated: June 15, 2006.

Therese G. Lynch M.D.

Therese G. Lynch, M.D.