



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

PUBLIC

April 22, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
433 River Street
Troy, New York 12180

F. Stanton Ackerman, Esq.
Ackerman, Wachs & Finton
90 State Street - Suite 911
Albany, New York 12207

Waqar Ali Farooqi
Standart Woods Apartments
A-1
Auburn, New York 13021

RE: In the Matter of Waqar Ali Farooqi, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-343) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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**

In the Matter of

Waqar Ali Farooqi, 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. 02-343

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.
David J. Levy, Esq.**

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct due to inappropriate sexual contact with a patient and due to the Respondent's conviction for a crime. The Committee voted to revoke the Respondent's New York Medical License. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2003), the Respondent argues that the Committee ignored the hearing evidence and denied the Respondent a fair hearing and the Respondent asks the ARB to nullify the Committee's Determination. After reviewing the hearing record, the Committee's Determination and the parties' review submissions, the ARB affirms the Committee's 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(2), 6530(16-17), 6530(20), 6530(31-32) & 6530(47) (McKinney Supp. 2003) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently;

- willful or grossly negligent failure to comply with provisions of federal, state or local laws, rules or regulations governing medical practice;
- exercising undue influence on a patient;
- engaging in conduct that evidences moral unfitness to practice medicine;
- willfully harassing , abusing or intimidating a patient, either physically or verbally;
- failing to maintain accurate patient records; and,
- failing to use scientifically accepted barrier precautions.

The specifications related to charges that the Respondent engaged in inappropriate and/or unprotected sexual contact with a patient, Patient I, on three occasions:

- on or about October 1998 [Statement of Charges Allegation A.1],
- on or about November 1998 [Statement of Charges Allegation A.2], and,
- on or about February 1999 [Statement of Charges Allegation A.3].

The record refers to the Patient by an initial to protect the Patient's privacy. The Petitioner also charged that the Respondent engaged in conduct that made the Respondent liable for disciplinary action against his License, pursuant to N.Y. Educ. Law § 6530(9)(i), due to the Respondent's conviction for a crime under New York Law. A hearing on the charges followed before the Committee, which rendered the Determination now on review.

The evidence before the Committee showed that the Respondent held a limited License to practice that the Respondent received on October 29, 1996. The record showed further that the Respondent practiced medicine at the Bare Hill Correctional Facility in Malone, NY in 1998-1999.

The Committee found that the Respondent engaged in appropriate and/or unprotected sexual conduct with Patient I on February 15, 1999. The Committee sustained Allegation A.3 and concluded that the inappropriate sexual conduct constituted willfully abusing a patient and evidenced moral unfitness in medical practice. The Committee found insufficient evidence that any such contact occurred on the other two dates at issue [Allegations A.1 and A.2]. The Committee found further that the Respondent entered a guilty plea in Malone Town Court, In March 2001, to tampering with public records in the second degree, a Class A Misdemeanor. The

criminal conviction resulted in three years criminal probation and restrictions on the Respondent's License. The Committee also concluded that the criminal conviction constituted professional misconduct under N.Y. Educ. Law § 6530(9)(a)(i). The Committee dismissed all other misconduct specifications.

In making their findings on the inappropriate contact on February 15, 1999, the Committee indicated that they relied in part on testimony by Patient I that the Respondent forced the Patient to perform oral sex on the Respondent during a treatment visit at the Bare Hill Infirmary. The Patient also testified that the Respondent ejaculated on the Patient's face and that the Patient recovered some of the Patient's semen on a paper towel. The Committee found further that expert testimony proved that the paper towel contained the Respondent's semen. The Patient's medical record also showed that the Respondent treated the Patient on February 15, 1999. The Committee found implausible the Respondent's explanation for how the Patient acquired a paper towel containing the Respondent's semen. The Respondent testified that he suffered from a condition that sometimes caused a semen discharge during urination, that such a discharge occurred on February 15, 1999, that the Respondent wiped off the discharge with a paper towel he discarded in the staff bathroom and that the Respondent provided all that information to the Patient on that date, when the Patient complained about the same condition.

The Committee voted to revoke the Respondent's License. The Committee found that the Respondent's inappropriate contact with the Patient violated the public's trust in the medical profession and forfeited the Respondent's right to that trust.

Review History and Issues

The Committee rendered their Determination on November 13, 2002. This proceeding commenced on November 15, 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 Respondent's brief and the Petitioner's response brief. The record closed when the ARB received the response brief on January 10, 2003.

The Respondent raised two issues for review: 1.) the Committee ignored the weight of the evidence, and, 2.) the Committee denied the Respondent a fair hearing. On the evidence issue, the Respondent argued that the Committee dismissed Allegation A.1 and A.2 and in doing so rejected the Patient's credibility. The Respondent contends that by dismissing those two charges, the Committee made the inherent finding that the Patient fabricated his testimony. The Respondent argued that the evidence concerning the semen must have provided the Committee the proof on which they relied in sustaining Allegation A.3. The Respondent contends that his testimony provided credible evidence to contradict the Patient's version. The Respondent also contends that the Committee's Determination belies rationality and consistency. On the fairness issue, the Respondent contended that Committee Member Michael Golding, M.D. fell asleep on several occasions during the hearing. The Respondent argued that, by falling asleep, Dr. Golding lost out on observing witness demeanor and character and missed the opportunity to weigh evidence fairly and accurately. The Respondent requests that the ARB overturn the Committee and reinstate the Respondent's License.

The Petitioner contends that the Committee never found that the Respondent lacked credibility, but rather the Committee found insufficient proof to prove Allegations A.1 and A.2 by preponderant evidence. The Petitioner argues that the Committee did find explicitly that the Respondent gave an implausible explanation for how the Patient obtained a paper towel containing the Respondent's semen. On the fair hearing issue, the Petitioner contends that the Petitioner's hearing counsel, Mr. Bogan, never observed Dr. Golding asleep. The Petitioner argues that to assess Dr. Golding's attention to the proceeding, the ARB should review the questions that Dr. Golding asked witnesses at the hearing. The Petitioner contends that the hearing questioning by Dr. Golding revealed insights and observations that contradict the

Respondent's claims about Dr. Golding's attention to the hearing. The Petitioner asks that the ARB leave the Committee's Determination undisturbed.

Determination

The ARB has considered the record and the parties' briefs. We vote 5-0 to affirm the Committee's Determination that the Respondent's misdemeanor conviction constituted professional misconduct under N.Y. Educ. Law § 6530(9)(i). Neither party challenged the Committee's Determination on that misconduct specification. We vote 5-0 to reject the Respondent's claim the Committee denied the Respondent a fair hearing. We vote 3-2 to affirm the Committee's Determination that the Respondent engaged in inappropriate sexual contact with Patient I on one occasion. By the same 3-2 vote, we affirm the Committee's Determination to revoke the Respondent's License.

Due Process Issue: In reviewing a Committee's Determination under N.Y. Pub. Health Law §§ 230(10)(i) and 230-c, the ARB determines 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 N.Y. Pub Health Law §230-a permits. In this case, the Respondent seeks review outside the Committee's findings and asks in effect that the ARB make findings that a Committee member paid insufficient attention to the hearing and failed to afford the Respondent a fair hearing. After reviewing the hearing transcripts, the ARB agrees with the Petitioner that the questions Dr. Golding asked during the hearing reflected Dr. Golding's attention to and insights concerning the proceedings. The questioning established Dr. Golding's engagement in and attention to the proceeding. We reject the claim that the Respondent failed to receive due process from the Committee.

Hearing Evidence: By a 3-2 vote, the ARB affirms the Committee's Determination to sustain Allegation A.3. The majority, Dr. Grossman, Dr. Lynch and Ms. Pellman, reject the Respondent's contentions that the Committee acted irrationally in sustaining Allegation A.3 or acted inconsistently with their credibility findings. The majority notes that the Committee made no specific or inherent finding about the Patient's credibility. The Committee sustained Allegation A.3 due to corroborating evidence that came from the medical record, the paper towel containing the Respondent's semen and the expert testimony that linked the semen on the paper towel to the Respondent. The majority also defers to the Committee in their findings that the Respondent gave an implausible explanation for how the Patient came to possess a paper towel containing the Respondent's semen. The majority holds that the Petitioner proved Allegation A.3 by preponderant evidence.

Dr. Price and Mr. Briber would overturn the Committee and dismiss Allegation A. 3. The dissenting members agree with the Respondent that the Committee acted inconsistently when the Committee first rejected the Respondent's testimony concerning Allegations A.1 and A.2, but then accepted the Respondent's testimony concerning Allegation A.3. The members in dissent conclude that they owe no deference to the Committee's judgement on credibility, because the Committee made no specific or inherent finding on witness credibility between the Respondent and the Patient.

Penalty: Under N.Y. Pub. Health Law § 230-a, a Committee or the ARB may impose a penalty for professional misconduct against any present or former licensee, from that list of penalties that appear in the statute. The majority votes to revoke the Respondent's License pursuant to N.Y. Pub. Health Law § 230-a(4). The majority agrees with the Committee that the

Respondent's conduct warrants the most severe sanction, because the Respondent's conduct violated the public's trust in the medical profession.

ORDER

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

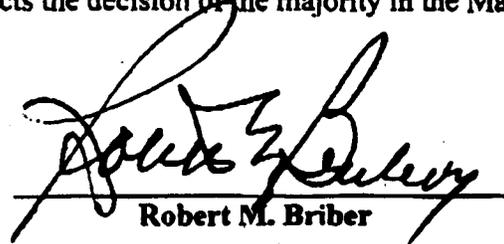
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.

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 Waqar Ali Farooqi, M.D.

Robert M. Briber, an ARB Member, affirms that he took part in this the consideration of the case and that the Determination and Order reflects the decision of the majority in the Matter of Dr. Farooqi.

Dated: March 24 2003



Robert M. Briber

In the Matter of Waqar Ali Farooqi, M.D.

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

Matter of Dr. Farooqi.

Dated: 3/28, 2003



Thea Graves Pellman

In the Matter of Waqar Ali Farooqi, M.D.

Winston S. Price, M.D., an ARB Member affirms that he took part in the consideration of this case and that the Determination and Order reflects the majority's decision in the Matter of Dr. Farooqi.

Dated: 4/18, 2003



A handwritten signature in cursive script, appearing to read "W.S. Price", is written over a horizontal line.

Winston S. Price, M.D.

In the Matter of Waqar Ali Farooqi, M.D.

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

Dated: March 24, 2003

A handwritten signature in cursive script that reads "Therese G. Lynch, M.D." with a horizontal line underneath the signature.

Therese G. Lynch, M.D.