



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.  
Commissioner

*Public*

Dennis P. Whalen  
Executive Deputy Commissioner

April 17, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Timothy J. Mahar, Esq.  
NYS Department of Health  
Corning Tower Room 2509  
Empire State Plaza  
Albany, New York 12237

Michael J. Gianturco, M.D.  
REDACTED

**RE: In the Matter of Michael J. Gianturco, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 00-07) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

REDACTED

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm

Enclosure

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

COPY

In the Matter of

Michael A. Gianturco, 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. 00-7

Before ARB Members Grossman, Lynch, Shapiro, Price and Briber  
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner):  
For the Respondent:

Timothy J. Mahar, Esq.  
Pro Se

After a hearing below, a BPMC Committee determined that the Respondent committed misconduct by providing sub-standard patient care, subjecting patients to excessive treatments or tests and billing fraudulently for services. The Committee voted to revoke the Respondent's License to practice medicine in New York State and to fine the Respondent. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 1999), the Respondent asks the ARB to nullify that Determination and to impose a less harsh penalty. After reviewing the record and the briefs from each party, we sustain the Committee's Determination in full.

**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), (20-21), (32) & (35) (McKinney Supp. 1999-2000), 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 practicing medicine,
- willfully filing a false report,
- failing to maintain accurate patient records, and,
- ordering excessive tests or treatments unwarranted by the patient's condition.

The charges related to the care that the Respondent, a vascular surgeon, rendered to thirteen people, Patients A through M. The record refers to the Patients by initials to protect their privacy. A hearing followed before the Committee that rendered the Determination now on review.

The Committee determined that the Respondent committed professional misconduct that fell into distinct categories. The Committee found that the Respondent committed fraud, evidenced moral unfitness and filed false reports concerning thrombectomies on Patients A, B, C, G, H and I. The Committee determined that the Respondent mischaracterized the thrombectomies as thromboendarectomies, in reports and in billings to insurers. Although both procedures involve removing arterial clots, thromboendarectomies require more surgical time and receive a higher reimbursement rate from insurers. The Committee concluded that the Respondent made the mischaracterizations intentionally to obtain additional income. In addition, the Committee found that the Respondent ordered excessive and unwarranted carotid duplex ultrasound scans for Patients J, K, L and M. Also, the Committee found that the Respondent practiced with gross negligence and gross incompetence in providing care to Patients A, B, C and E. The Committee found that the Respondent failed to adequately evaluate Patient A following femoral bypass surgery, delayed indicated surgery to remove blood clots and thereby increased risk for Patients B and C and failed to evaluate and treat Patient E for wound dehiscence and evisceration following a laparotomy.

The Committee voted to revoke the Respondent's License and to fine the Respondent Ten Thousand Dollars (\$10,000.00). The Committee concluded that the Respondent's treatment for Patient A would have provided sufficient grounds for revocation standing alone. The Committee stated that the Respondent's conduct toward the Patient represented either a lack of understanding about the severity of the Patient's condition or a disregard for the Patient's welfare. The Committee also noted that the Respondent delayed treatment without surgical indications for

Patients B and C and disregarded signs for impending disaster with Patient E. The Committee found that the Respondent refused to acknowledge mistakes in his treatment for the Patients and attempted to deflect blame to others. The Committee also found that the Respondent's fraudulent conduct would have also warranted revocation. The Committee voted to fine the Respondent as well, as a sanction for the profits from the Respondent's fraudulent claims to insurance companies.

### Review History and Issues

The Committee rendered their Determination on January 6, 2000. This proceeding commenced on January 21, 2000, when the ARB received the Respondent'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 February 24, 2000.

In his brief, the Respondent argues that he used the terms thrombectomy and thromboendarectomy interchangeably and that he never intended to bill insurance companies fraudulently. The Respondent also alleges error by the Committee in all their findings concerning patient care and alleges that the Committee imposed an overly harsh penalty. The Respondent requests that the ARB return his License, with whatever restrictions the ARB deems appropriate. In response, the Petitioner argues that the evidence supported the Committee's Determination and the Petitioner asks that the ARB affirm the findings and the penalty.

### Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Findings and Conclusions that the Respondent practiced fraudulently, ordered excessive

treatments and practiced with gross negligence and gross incompetence in treating Patients A, B, C and E. The Respondent argued that he lacked intent to file fraudulent billings and he alleged error by the Committee in effect, because the Committee rejected the Respondent's explanations for the care the Respondent provided. We see no error by the Committee. The Committee as fact finder saw all the witnesses and observed all the evidence. We owe the Committee deference in their findings on credibility. The Committee rejected the Respondent's explanations and they found contrary evidence credible. That contrary credible evidence supported the Committee's findings in full.

We also affirm the Committee's Determination revoking the Respondent's License and fining the Respondent. The record demonstrated that the Respondent placed his Patients at risk and that the Respondent subjected his Patients to unnecessary tests and procedures for the Respondent's enrichment. The Respondent betrayed the trust those Patients placed in him and proved that he presents a risk for any future patient. The Respondent has also refused to admit to any errors in these cases, which indicates his likelihood to repeat his mistakes if we allowed the Respondent to return to practice. We hold that revocation represents the appropriate penalty for either the Respondent's fraudulent conduct or his grossly sub-standard care standing alone. We also affirm the Determination to fine the Respondent as a penalty for the Respondent's profit from his fraudulent conduct.

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 revoking the Respondent's License and fining the Respondent Ten Thousand Dollars (\$10,000.00).

**Robert M. Briber**  
**Sumner Shapiro**  
**Winston S. Price, M.D.**  
**Stanley L. Grossman, M.D.**  
**Therese G. Lynch, M.D.**

**In the Matter of Michael J. Gianturco, M.D.**

Robert M. Briber, an ARB Member, concurs in the Determination and Order in the Matter of Dr. Gianturco.  
Dated: April 11, 2000

REDACTED

~~Robert M. Briber~~

In the Matter of Michael J. Gianturco, M.D.

Sumner Shapiro, an ARB Member concurs in the  
Determination and Order in the Matter of Dr. Gianturco.

Dated: April 6, 2000

REDACTED

~~Sumner Shapiro~~

In the Matter of Michael J. Gianturco, M.D.

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

Dated: 4/12, 2000

REDACTED  
~~Winston S. Price, M.D.~~

Winston S. Price, M.D.

In the Matter of Michael J. Gianturco, M.D.

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

Dated: April 9, 2000

REDACTED

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Stanley L. Grossman, M.D.

In the Matter of Michael J. Gianturco, M.D.

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

Dated: April 8, 2000

REDACTED

Therese G. Lynch, M.D.