

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

November 27, 2006

Dennis P. Whalen
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

J. Bradford Fisher, M.D.
a/k/a John Bradford Fisher, M.D.
Redacted Address

Joel E. Ablove, Esq.
NYS Department of Health
ESP – Corning Tower – Room 2512
Albany, New York 12237

J. Bradford Fisher, M.D.
a/k/a John Bradford Fisher, M.D.
Redacted Address

J. Bradford Fisher, M.D.
a/k/a John Bradford Fisher, M.D.
Body by Fisher
17491 Bastanchury Road
Yorba Linda, California 92886

Carolyn Shearer, Esq.
Bond, Schoeneck & King
111 Washington Avenue
Albany, New York 12210

RE: In the Matter of J. Bradford Fisher, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-151) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 Signature

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

J. Bradford Fisher, M.D.

aka John Bradford Fisher (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. 06-151

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):
For the Respondent:**

**Joel E. Abelove, Esq.
Carolyn Shearer, Esq.**

The Respondent holds a license to practice medicine in New York (License), in addition a license that he holds to practice in California. In this proceeding pursuant to N.Y. Pub. Health Law (PHL) § 230-c (4)(a)(McKinney 2006), the ARB considers whether to take action against the Respondent's License following disciplinary action against the Respondent's California license for Gross Negligence and Repeated Negligent Acts and Incompetence. After a hearing below, a BPMC Committee found that the Respondent's conduct in California made the Respondent liable for action against his License and the Committee voted to censure and reprimand the Respondent and to place him on probation for two years. The Respondent then requested administrative review to challenge the Committee's findings both as to the charges and the penalty. After reviewing the hearing record and the parties' review submissions, the ARB votes unanimously to affirm the Committee's finding on the charges in part, and on our own motion, we vote to sustain an additional charge. On our own motion, we also vote to overturn the Committee's Determination on penalty and 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). The Petitioner commenced the proceeding by filing charges with BPMC alleging 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, California, 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 California would constitute misconduct if committed in New York, under the following specifications:

- practicing the profession fraudulently, a violation under EL § 6530(2);
- practicing medicine with negligence on more than one occasion, a violation under EL § 6530(3);
- practicing medicine with gross negligence, a violation under EL § 6530(4);
- practicing medicine with incompetence on more than one occasion, a violation under EL § 6530(5);
- practicing medicine with gross incompetence, a violation under EL § 6530(6);
- engaging in conduct that evidences moral unfitness in the practice of medicine, a violation under EL § 6530(30); and,
- failing to maintain accurate patient records, a violation under EL § 6530(32).

In the Proceeding, after the Committee determines whether the sister state actually disciplined the licensee or found the licensee guilty of professional misconduct, 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). Following the Direct Referral Proceeding, the Committee rendered the Determination now on review.

The evidence at the hearing demonstrated that the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs (California Board) publicly reprimanded the Respondent for repeated acts of negligence and incompetence. In addition to the reprimand, the California Board also required the Respondent to take a clinical education and assessment program, a medical record keeping course and an ethics course. The California Board also ordered the Respondent to pay \$7000.00 in investigation and prosecution costs.

The California sanction resulted from a Stipulated Settlement and Disciplinary Order to settle several disciplinary accusations against the Respondent [Hearing Exhibit 5]. The Respondent conceded that an administrative hearing could establish a *prima facie* case as to accusations under the heading: First Cause for Discipline (Gross Negligence, Repeated Negligent Acts and Incompetence). The accusations in the First Cause found fault with the Respondent for his treatment of a single patient in:

- billing for services for the patient,
- medical record keeping for the patient,
- performing multiple surgeries on the patient without medical indication,
- describing normal conditions as abnormal or pathological,
- giving the patient excessive diagnostic and therapeutic injections after surgery,
- failing to refer the patient for psychiatric care the patient required to treat uncontrolled anxiety, extreme distress and an inability to control crying,
- failing to document medical procedures the Respondent employed, and,
- billing excessively for his services.

At the Direct Referral Proceeding, the Respondent testified that he had complied with and learned from the courses that the California Board required the Respondent to take. The Respondent also testified that if he was faced with a similar patient today, he would not make the same mistake of handling such a difficult case on his own.

The Committee found that the Respondent's California conduct would constitute misconduct in New York as: practicing fraudulently or beyond the profession's authorized scope, practicing with negligence and incompetence on more than one occasion, engaging in conduct in practice that evidences moral unfitness and failing to maintain a record for each patient which reflects evaluation and treatment accurately. The Committee also concluded that the Respondent's California conduct made him liable for disciplinary action against his license under EL §§ 6530(9)(b) & (9)(d). The Committee found insufficient information in the record to make findings that the Respondent practiced with gross negligence or incompetence. The Committee concluded that the California Board imposed mild penalties and did not consider the Respondent's conduct a serious problem. The Committee found that the California Board took the necessary steps to deal with any problem and the Committee rejected imposing a severe penalty such as revocation or suspension. The Committee voted to censure and reprimand the Respondent and to place him on probation for two years under the terms that appear in the Committee's Order. The Committee provided that the probation would begin to run at such time as the Respondent returns to New York to practice. The probation terms also required that another physician monitor the Respondent's practice during the probation.

Review History and Issues

The Committee rendered their Determination on July 10, 2006. This proceeding commenced on July 13, 2006, 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 reply brief. The record closed when the ARB received the reply brief on September 22, 2006.

The Respondent challenges the Committee's Determination that the Respondent's conduct in California amounted to fraud, moral unfitness and failure to maintain accurate records. The Respondent argues that he conceded that the California Board could establish a *prima facie* case as to only the California Board's First Cause and that the heading to that section referred to only negligence and incompetence. The Respondent argues that the California Stipulation provides no grounds on which to find the Respondent guilty on any other charges. The Respondent also argues that no need exists for probation with a practice monitor. The Respondent contends that, under the California Stipulation, the Respondent completed evaluations that showed no deficiencies. The Respondent contends further that the Committee misunderstood some evidence at the hearing and that the California Board, which considered much more evidence than the Committee, saw no need for probation. The Respondent also argues that no authority exists under PHL § 230-a to impose a probation that commences at some unknown date. The Respondent asks that the ARB remove the probation requirement and limit the sanction in this case to a censure and reprimand.

In reply, the Petitioner argued that the California Stipulation provided the grounds for the Committee to sustain the fraud, moral unfitness and records charges. The Petitioner contended that Paragraphs O, P and Q in the First Cause made accusations concerning making false entries in billing records and that the Respondent stipulated that the California Board could establish a *prima facie* case as to all accusations in the First Cause. Further, the Petitioner argued that nothing bars a Committee from imposing probation with a monitor in New York, merely because California imposed no probation against the Respondent's practice in that state. Finally, the Petitioner contends that nothing in the statute bars a Committee from tolling probation against a licensee's practice during a time when the licensee is outside the State and away from practice

here. The Petitioner asks that the ARB deny the Respondent's motion to modify the Committee's Determination.

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 parties' briefs. We affirm the Committee's Determination on the charges in part and, on our own motion, we overturn the Committee and find that the Respondent's conduct in California also amounted to gross negligence in New York. We overturn the Committee's Determination on penalty, and on our own motion, we revoke the Respondent's License.

In Point III in his review brief, the Respondent challenged the Committee's Determination that the California Stipulation provided no basis for the Committee's finding that the Respondent's conduct in California included fraud, moral unfitness and failure to maintain accurate records. The ARB agrees with the Petitioner that the California Stipulation does provide the basis for the Committee's findings on those charges. The Respondent agreed that the California Board could establish a *prima facie* case with respect to the charges and allegations in the First Cause. The charges and accusations included the following under Section 13:

" M. Following the third surgery, respondent repeatedly returned ██████████ to the operating room to undergo dressing changes, anesthetic inductions and regional blocks without documenting the medical indication."

"O. Respondent represented that he had performed flaps and billed for flaps when, in fact, he performed routine incisions undermining soft tissue and skin.

"P. Respondent unbundled his billing, charging for procedures he performed or were covered by the global surgical period."

The Respondent's Stipulation concerning these accusations demonstrates that the Respondent made misrepresentations in billing that amounted to fraud, that evidenced moral unfitness and that amounted to failure to maintain accurate records. The failure to document medical indications under Accusation N also constituted a record keeping violation.

The ARB affirms the Committee's Determination that the Respondent's conduct in California would have constituted practice with negligence on more than one occasion and incompetence on more than one occasion, if the Respondent committed such conduct in New York. The Respondent made no challenge to the Committee's findings on those charges.

The Committee determined that the California Stipulation contained insufficient information to make findings of gross negligence. We disagree with the Committee. The Stipulation included accusations that the Respondent performed multiple procedures on a single patient without indication, that the Respondent gave that same patient repeated and excessive diagnostic and therapeutic injections and that the Respondent gave those repeated and excessive injections without regard to a definitive diagnosis and plan. The ARB finds this conduct represents an egregious deviation from the accepted standard of care. On our own motion, the ARB overturns the Committee and affirms the charge that the Respondent's California conduct would have constituted practicing with gross negligence if such conduct had occurred in New York.

Points I and II in the Respondent's brief addressed challenges to the Committee's Determination to impose probation against the Respondent's License. Upon ~~considering~~ considering the penalty in this case, the ARB has determined that a censure and reprimand with probation and

monitoring constitutes a wholly inadequate sanction. On our own motion, the ARB votes to revoke the Respondent's License. The Respondent subjected a patient to multiple and excessive procedures and then made misrepresentations in billing for those proceedings. The Respondent placed the patient at repeated risk, while attempting to obtain reimbursement fraudulently. The Respondent displayed a disregard for his patient's well being and a disregard for the profession's moral standards. The ARB rejects the conclusion that the California Board has imposed a sufficient penalty to address the misconduct in this case. The ARB concludes that clinical education and ethics courses will provide no benefit in teaching the Respondent integrity or instilling in the Respondent regard for patients that the Respondent seems to lack. We find the Respondent unfit to practice in New York State and we vote unanimously to revoke the Respondent's License.

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 overturns the Committee's Determination to censure and reprimand the Respondent and to place his license on probation.
3. The ARB revokes 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 J. Bradford Fisher, aka John Bradford Fisher, M.D.

Robert M. Briber, an ARB Member, concurs in the Determination and Order in the

Matter of Dr. Fisher.

Dated: 11/27, 2006

Redacted Signature


Robert M. Briber

In the Matter of J. Bradford Fisher, aka John Bradford Fisher, M.D.

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

Dated: Nov. 19, 2006

Redacted Signature

Thea Graves Pellman

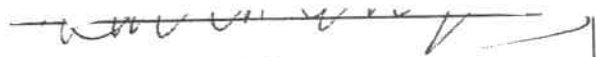
In the Matter of J. Bradford Fisher, aka John Bradford Fisher, M.D.

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

Matter of Dr. Fisher.

Dated: 11/19/, 2006

Redacted Signature



Datta G. Wagle, M.D.

In the Matter of J. Bradford Fisher, aka John Bradford Fisher, M.D.

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

Dated: 11/18/06, 2006

Redacted Signature

Stanley L Grossman, M.D.

In the Matter of J. Bradford Fisher, aka John Bradford Fisher, M.D.

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

Dated: November, 2006

Redacted Signature

Therese G. Lynch, M.D.