



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

August 12, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Chaim D. Citronenbaum, M.D.
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Brooklyn, New York 11218

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Chaim D. Citronenbaum, M.D.


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NYS Department of Health
433 River Street – 1st Floor
Troy, New York 12180-2299

C O R R E C T E D

RE: In the Matter of Chaim D. Citronenbaum, M.D.

Dear Parties:

Enclosed please find a **corrected** Determination and Order (No. 02-133) 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.

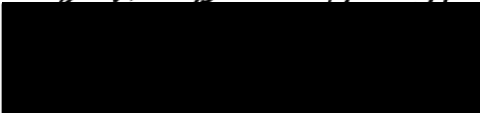
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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



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

Chaim D. Citronenbaum, 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. 02-133

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):

Paul Robert Maher, Esq.

For the Respondent:

Richard A. Finkel, Esq.

After a hearing below, a BPMC Committee found that the Respondent's misconduct in a sister state constituted professional misconduct under New York Law. The Committee voted to suspend the Respondent's License to practice in New York State (License) and to place the Respondent on probation following the suspension. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney Supp. 2002), the Petitioner asks the ARB to modify that Determination, by overturning the Committee and revoking the Respondent's License. After considering the hearing record and the review submissions from each party, we conclude that the record demonstrated a disturbing pattern of dishonesty and deception relating to the Respondent's medical practice. The ARB overturns the Committee and votes to revoke the Respondent's License.

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(9)(b) & (9)(d) (McKinney Supp. 2002) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from another state (New Jersey) 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 New Jersey would constitute misconduct if committed in New York, under the following categories:

- practicing medicine fraudulently a violation under N. Y. Educ. Law §§ 6530(2) (McKinney Supp. 2002),
- engaging in conduct in practice that evidences moral unfitness, a violation under N.Y. Educ. Law § 6530(20)(McKinney Supp. 2002), and,
- willfully making or filing a false report, a violation under N.Y. Educ. Law §6530(21)(McKinney Supp. 2002).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney 2002), before a BPMC Committee, which rendered the Determination now on review. In the Direct Referral Proceeding, 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 at the hearing demonstrated that the Respondent surrendered his license to practice in New Jersey voluntarily by a Consent Order (NJ Consent Order), in July 2000, with prejudice to any attempt to reinstate the New Jersey license and with the effect of permanent revocation. The NJ Consent Order also required the Respondent to pay a \$50,000.00 civil penalty. In the NJ Consent Order, the Respondent made an admission that, on November 9, 1992, he submitted thirty-nine insurance claims to insurance carriers that the Respondent knew contained false or misleading information.

The Committee concluded that the Respondent's conduct in New Jersey would constitute misconduct in New York and the Committee found the Respondent liable for disciplinary action against his License pursuant to N. Y. Educ. Law §§ 6530(9)(b) & (9)(d). Upon making their Determination on penalty, the Committee learned that the Respondent entered into a 1997 Consent Order with BPMC (NY Consent Order), in which the Respondent agreed that he had violated N. Y. Educ. Law § 6530(27) by engaging in advertising that was not in the public interest. Under that Consent Order, the Respondent agreed to a stayed two-year suspension, two years on probation and a \$10,000.00 fine.

The Committee concluded that the activity that resulted in the NJ and NY Consent Orders illuminated a disturbing pattern of dishonesty and deception relating to the Respondent's medical practice. The Committee voted to suspend the Respondent's License for three years, stay all but three months of the suspension and place the Respondent on probation for three years, under terms that appear in the Committee's Order.

Review History and Issues

The Committee rendered their Determination on May 8, 2002. This proceeding commenced on May 22, 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 Petitioner's brief and the Respondent's brief and response brief. The record closed when the ARB received the response brief on June 28, 2002.

The Petitioner asks that the ARB overturn the Committee and revoke the Respondent's License. The Petitioner argues that revocation provides the appropriate sanction for the Respondent's repeated, demonstrated dishonesty. In reply, the Respondent argues that the Committee imposed a reasonable and appropriate penalty. The Respondent argued that:

- the misconduct occurred ten years ago,
- he has accepted full responsibility for the conduct,

- he has altered the aspects of the practice that resulted in the disciplinary matters,
- the disciplinary matters involved no competence or patient care issues, and,
- the Respondent enjoys a reputation as an excellent physician.

The Respondent also disputes the Petitioner's arguments that prior ARB Determinations support the Petitioner's request for revocation.

The Respondent's brief contends that:

- the Petitioner failed to preserve for appeal any objection to the Committee's sanction,
- the ARB may overturn a Committee only upon adequate foundation in the record,
- the record in this proceeding provided no grounds for overturning,
- the Committee's membership violated the requirements under N.Y. Pub. Health Law § 230(6), and,
- the administrative procedures in this case violated due process.

The Respondent's brief asked that the ARB sustain the Committee's Determination.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent's conduct in New Jersey would constitute misconduct under New York Law. The false billings evidenced moral unfitness and constituted fraud in practice and willfully filing false reports. Such conduct made the Respondent liable for action against his License pursuant to N. Y. Educ. Law §§ 6530(9)(b) & (9)(d). We overturn the Committee and revoke the Respondent's License. We will discuss our reasons for the revocation after we discuss the Respondent's procedural challenges and our review authority.

The ARB Review Authority: 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 (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 judgement and impose a more severe sanction than the Committee on our own motion, 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 ARB also may remand a case to the Committee for reconsideration or further proceedings pursuant to N.Y. Pub. Health Law §230-c(4)(b).

The Respondent's discussion about the ARB Review Authority, that appears at Point II in the Respondent's brief, notes that the ARB must make a Determination commensurate with the record and with an adequate foundation in the record, Matter of Kaphan v. DeBuono, 268 A.D.2d 909, 702 N.Y.S.2d 438 (3rd Dept. 2000); Matter of Amato v. Department of Health, 229 A.D.2d 752, 645 N.Y.S.2d 600 (3rd Dept. 1996). As we discuss later, the ARB concludes that the record in this case supports a Determination revoking the Respondent's License.

Point I in the Respondent's brief argues that the Petitioner waived objection to the Committee's penalty, because at hearing the Petitioner's counsel indicated that the appropriate sanction for the Respondent's 1992 conduct in New Jersey should be at least a suspension with probation, if there was no revocation. The Respondent argues that the Petitioner, therefore, did not request revocation at the Committee Hearing. The Respondent contends that the Petitioner

failed to preserve the issue for review under a doctrine that applies to administrative proceedings under two Court of Appeals cases, Gonzalez v. State Liquor Authority, 30 N.Y.2d 108, 331 N.Y.S.2d 6 (1972); Matter of Leogrande v. State Liquor Authority, 19 N.Y.2d 418, 280 N.Y.S.2d 381 (1967).

The ARB holds that we may consider imposing a harsher penalty in this case than the Committee imposed. As we noted above, the Court of Appeals has ruled that the ARB may impose a more severe penalty on our own motion, even in a case in which the Petitioner may have made no objection to the sanction a Committee imposed, Matter of Kabnick v. Chassin (supra). The Court of Appeals cases the Respondent mentioned, Gonzalez and Leogrande, dealt with objections to the introduction of evidence, rather than with penalty determinations.

The Committee's Composition: Point IV in the Respondent's brief challenges the Committee's composition under N.Y. Pub. Health Law § 230(6). That statute requires that a Committee conducting BPMC Hearings contain two physicians and a "lay person". The Supreme Court Appellate Division for the Third Department has ruled that the term "lay person" excludes physician assistants or other persons subject to discipline under N.Y. Pub. Health Law § 230, Matter of Orens v. Novello, 284 A.D.2d 26, 726 N.Y.S.2d 499 (3rd Dept. 2001). The Respondent asked at hearing for the Committee's Administrative Officer to extend the ruling in Orens to exclude a registered nurse from the Committee, even though a registered nurse is not subject to discipline under N.Y. Pub. Health Law § 230. The Administrative Officer denied that request and denied the request to recuse Committee Member Macintyre, a registered nurse, from the Committee in this hearing. Although the Respondent renewed the objection to Committee Member Macintyre in this review, the Respondent has made no request to overturn the Committee's Determination on that ground.

The ARB considered a remand in this case, on our own motion. We find no ground for remand. The Orens case dealt with physician assistants. No court ruling bars registered nurses from serving as Committee members in BPMC proceedings.

Procedural Objections: At Point V in his brief, the Respondent raised seven objections to procedures before the Committee and the ARB and to interpretations about statutes. The Respondent made no request for action by the ARB in answer to those objections and instead requested that the ARB sustain the Committee's Determination. These objections involved specific rulings by the Committee's Administrative Officer and statutory provisions under which the ARB operates. We conclude that these objections constitute legal issues that the Respondent should raise with the courts.

Penalty: The Respondent argued that no reason existed to overrule the Committee. We disagree. The record revealed that the Respondent surrendered his New Jersey License and paid a civil penalty in that state because he submitted false insurance billings. The Respondent also entered into the NY Consent Order for engaging in deceptive advertising. We agree with the Committee that the activity that resulted in the NJ and NY Consent Orders illuminated a disturbing pattern of dishonesty and deception relating to the Respondent's medical practice. We disagree with the Committee that a short suspension and two years on probation provide an appropriate penalty for such disturbing conduct. We overturn the Committee's Determination.

The Respondent's brief asked the ARB to consider several mitigating factors. The Respondent noted that the case involved no patient harm. The ARB has held, however, that submitting fraudulent billings standing alone, without patient harm, provides sufficient grounds for license revocation, Matter of Kabnick v. Chassin, (supra); Matter of Wolfson v. DeBuono, 256 A.D.2d 939, 681 N.Y.S.2d 878 (3rd Dept. 1998). The Respondent also argued that the

Respondent showed remorse for his misconduct. The ARB concludes that the hearing record shows otherwise. The Respondent's hearing testimony admitted to no mistakes and attempted to blame others for his misconduct. His testimony gave no indication that he has learned from his past misconduct and the testimony left the ARB with the impression that the Respondent remains at risk to repeat the misconduct if he remains in practice. The Respondent also presented many letters in his support. None of those letters, however, mentioned the Respondent's misconduct, so the ARB can make no judgement whether those who wrote on the Respondent's behalf would change their opinions about him if they knew about the misconduct the Respondent committed. The Respondent also noted that the misconduct in New Jersey occurred ten years ago. The ARB has imposed revocation as a penalty in the past, even though more than ten years had passed from the time a licensee committed misconduct, Matter of Kashan v. DeBuono, 262 A.D.2d 817, 692 N.Y.S.2d 206 (3rd Dept. 1999). As we stated above, we consider the Respondent to remain at risk to repeat his conduct, despite that time that has passed.

We conclude that revocation constitutes the appropriate penalty for the Respondent's conduct.

ORDER

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

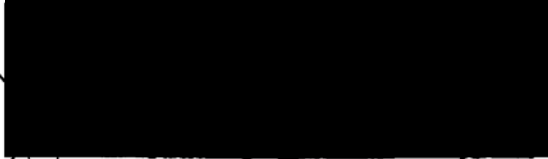
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the Committee's Determination to suspend the Respondent's License and to place the Respondent's License on probation following the suspension.
3. The ARB revokes the Respondent's 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 Chaim D. Citronenbaum, M.D.

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

Dated: July 31, 2002



Robert M. Briber



In the Matter of Chaim D. Citronenbaum, M.D.

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

Dated: 7/29, 2002



~~Thea Graves Pellman~~

In the Matter of Chaim D. Citronenbaum, M.D.

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

Dated: July 26, 2002



Winston S. Price, M.D.

In the Matter of Chaim D. Citronenbaum, M.D.

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

Dated: July 27, 2002

A solid black rectangular redaction box covering the signature of Stanley L. Grossman.

Stanley L Grossman, M.D.

In the Matter of Chaim D. Citronenbaum, M.D.

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

Dated: July 26, 2002

A large black rectangular redaction box covers the signature of Therese G. Lynch, M.D.

Therese G. Lynch, M.D.