



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen  
*Executive Deputy Commissioner*

March 2, 1999

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ronald M. Levy, M.D.  
1331 North Forest  
Suite 120  
Williamsville, NY 14221

Michael Hiser, Esq.  
NYS Department of Health  
ESP Corning Tower – Room 2509  
Albany, NY 12237

Jeffrey A. Lazroe, Esq.  
135 Delaware Avenue  
Suite 101  
Buffalo, NY 14202

**RE: In the Matter of Ronald M. Levy, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 98-279) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 that reads "Tyrone Butler" with a stylized flourish at the end.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:mla

Enclosure

**In The Matter Of**

**Ronald M. Levy, M.D. (Respondent)**

**Administrative Review  
Board (ARB)  
Determination and  
Order 98-279**

Proceeding to review a Determination by a Hearing Committee (Committee)  
from the Board for Professional Medical Conduct (BPMC)

**Before ARB Members : Briber, Grossman, Lynch & Price<sup>1</sup>.**

**Administrative Law Judge James F. Horan served as the Board's Administrative Officer.**

**For the Respondent: Jeffrey Lazroe, Esq.  
For the Petitioner: Michael A. Hiser, Esq.**

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 1998), the Respondent asks the ARB to nullify or modify a Determination by a BPMC Committee, revoking the Respondent's New York Medical License. The Respondent alleges that 1.) rulings by the Committee's Administrative Officer denied the Respondent a fair hearing, 2.) evidence in the hearing record failed to support the Committee's Determination that the Respondent committed repeated and serious misconduct, and 3.) the Committee imposed an overly harsh penalty. After reviewing the hearing record and review submissions by both parties, the ARB finds no merit to the arguments and we vote unanimously to sustain 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(2-6), 6530(16-17), 6530(20-21), 6530(28-29) & 6530(32)(McKinney Supp. 1998) 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;
- failing willfully or by gross negligence to comply with State laws or regulations regulating medical practice;
- exercising undue influence over a patient to exploit the patient for financial gain;
- engaging in conduct that evidences moral unfitness in practicing medicine;
- willfully making or filing a false report;
- failing to provide records upon demand from the Department of Health;
- violating a condition imposed on the Respondent's License pursuant to N. Y. Pub. Health Law § 230 (McKinney Supp. 1998); and,
- failing to maintain accurate records.

The charges concerned:

- the medical care that the Respondent, a psychiatrist, rendered to five Patients A through E<sup>2</sup>,
- prescriptions the Respondent caused to issue,
- the Respondent's answers on applications for relicensure,
- the Respondent's failure to turn over patient records, and,
- the Respondent's failure to pay the fine from a prior BPMC disciplinary action (Levy I).

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<sup>1</sup> ARB Member Sumner Shapiro was unable to participate in this case. The ARB proceeded to review the case with a four member quorum, see Matter of Wolkoff v. Chassin, 89 N.Y.2d 250(1996).

<sup>2</sup> The record refers to the Patients by initials to protect their privacy.

A BPMC Committee heard evidence on those charges from both parties and rendered the Determination now on review.

The Committee dismissed all charges that the Respondent practiced with incompetence, dismissed a charge that the Respondent attempted to coerce Patient D and dismissed most charges that the Respondent failed to maintain accurate records. The Committee did sustain the charge that the Respondent prepared a deliberately misleading record for Patient A and the Committee concluded that such conduct amounted to failing to maintain accurate records and to practicing fraudulently, negligently and with moral unfitness.

The Committee sustained charges that the Respondent practiced with negligence on more than one occasion in treating Patients A, B, D & E, for prescribing addictive medications for the Patients, despite the Patients' addiction histories and/or for continuing to prescribe the medications after the Patients showed signs for substance abuse. The Committee also determined that the Respondent practiced with gross negligence for violating therapeutic boundaries with Patients A and B. In addition, as to Patient A, the Committee found that the Respondent exploited the Patient for the Respondent's financial gain, which constituted an additional instance of gross negligence. In addition for Patient B, the Committee found that the Respondent caused prescriptions to issue for Patient B and Patient C (Patient B's mother), when in fact the Respondent intended the medication for himself. The Committee concluded that such conduct constituted practicing fraudulently, filing a false report, practicing with moral unfitness and willfully violating statutes or regulations. In addition, the Committee found that the Respondent coerced Patient B into signing certain documents and concluded that such conduct constituted fraud and moral unfitness. The Committee found further that the Respondent submitted an application to renew his New York State Medical License, in which he made false representations concerning restrictions on his practice at and his resignation from Bry-Lin Hospital. The Committee concluded that this conduct constituted fraud, moral unfitness, filing a false report and failing to comply

with state laws or regulations. The Committee also sustained charges that the Respondent refused to provide medical records following the Health Department's demand and that the Respondent failed to satisfy a condition on his License. The Committee concluded that the Respondent failed to satisfy a condition, because the Respondent paid only One Thousand Dollars (\$1000.00) from a Thirty Thousand Dollar (\$30,000.00) fine the ARB imposed as a penalty from the Levy I proceeding.

As a sanction for the Respondent's misconduct, the Committee voted to revoke the Respondent's License. The Committee noted that the Respondent engaged in misconduct in three distinct patterns:

- patient exploitation,
- misrepresentation and fraud, and,
- poor medical care.

The Committee saw poor judgement patterns emerging in the conduct that formed the basis for the Levy I proceeding. In that case, the ARB found that the Respondent exhibited poor judgement and we expressed our concern that the Respondent's poor judgement could cross the line into unacceptable practice in the future, Matter of Ronald Levy, ARB 93-161; 1993 WL 944051 (N.Y.D.O.H. Adm. Rev. Bd ). The Committee saw such pattern continuing and deteriorating. The Committee rejected alternative penalties, finding retraining inappropriate and finding the Respondent's attitude incorrigible and intractable. The Committee also recommended against the Respondent being able to re-apply for a New York License.

### **Review History and Issues**

The Committee rendered their Determination on November 20, 1998. This proceeding commenced on December 7, 1998 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 January 20, 1999.

The Respondent requests that the ARB modify the Committee's Determination. The Respondent's brief raises three issues for review:

1. The Committee's Administrative Officer denied the Respondent due process by refusing to allow the Respondent to subpoena medical records for Patients A and B, that would show the care these Patients received from subsequent physicians and that would aid the Respondent in cross-examining these witnesses effectively. The Respondent contended that the testimony from these two Patients formed the basis for sustaining the misconduct charges.
2. No factual basis existed for the Committee's Determination.
3. The Committee imposed a penalty disproportionate to the evidence.

The Respondent's brief also stated the intention to incorporate other requests for relief, but failed to provide any details about those other requests. As to the penalty, the Respondent contended that the Committee should have considered suspension, probation or supervision, rather than revocation.

The Petitioner contends that the Respondent has failed to articulate any reason for the ARB to modify the Committee's Determination and contends that the Respondent has instead sought to re-argue a motion without any legal merit. In reply to the Respondent's review issues, the Petitioner argued as follows:

1. The Respondent received all relevant medical records or he received a full and fair opportunity to subpoena relevant material. The request to subpoena other records came after the Respondent cross-examined Patients A and B and amounted to a fishing expedition.
2. The Respondent offered nothing specific to support his assertion that the record contained insufficient evidence to support the Committee's Determination.

3. The evidence supported the Committee's Determination to revoke the Respondent's License, even without the testimony by Patients A and B.

The Petitioner notes that the Respondent's brief failed to challenge the findings other than those relating to Patients A and B.

### **Determination**

All ARB Members who participated in this case have considered the record and have considered the parties' briefs. We affirm the Committee's Determination in full. The Respondent limited his review brief to challenging procedural rulings at the hearing, the evidence supporting the charges and the penalty the Committee imposed. We discuss those issues below.

**Procedural Challenge:** The Respondent asked that the ARB annul the Committee's Determination, due to the refusal by the Committee's Administrative Officer to issue subpoenas for records concerning subsequent medical treatment for Patients A and B. The ARB holds that we lack the authority to annul a case on the legal grounds that the Respondent raises and we refer the Respondent to raise those issues with the courts.

Under our authority from N. Y. Pub. Health Law § 230-c (4)(b)(McKinney Supp. 1999), the ARB may remand a case for reconsideration or further proceedings. We considered the Respondent's annulment request as a request for remand to consider additional evidence concerning Patients A and B. We reject that request, because the Respondent received a full opportunity to present evidence at the hearing. The Respondent cited McBarnette v. Sobol, 83 N.Y.2d 333 (1994) as support for his argument that due process entitled him to subpoena the subsequent treatment records. In McBarnette, the New York Court of Appeals ruled that a prosecutor in a BPMC proceeding must supply the Respondent with any prior written complaints by a witness, prior to the time the Respondent cross-examines the witness.



In this case, however, the Respondent has made no request for prior complaints by either Patients A or B, but rather he seeks medical records. We note that the Appellate Division has refused to extend the McBarnette ruling beyond the requirement to disclose prior written complaints by a witness, Matter of Lombardo v. DeBuono, 233 A.D.2d 789, 650 N.Y.S.2d 423 (Third Dept. 1996). Further, as the Petitioner's brief points out at page 9, the Respondent made no request for the records until three months after he concluded cross-examination on the Patients and the Patients provided the Respondent with information about their subsequent treatment during their testimony. We see nothing in the Respondent's arguments that would lead us to remand for further proceedings.

**Evidence on the Charges:** The Respondent argued that no factual basis existed for the Committee's findings on the charges. He took the position that the testimony by Patients A and B formed the chief evidence against him and that the Committee erred in finding the Patients credible. The Respondent also argued that the Petitioner's expert Dr. Melvin Pisetzner conceded that a large minority of physicians, in practice throughout the country, render treatment in a way similar to how the Respondent practices [Respondent's Brief, sixth – seventh pages]. After reviewing the record, we hold that the evidence the Committee found credible supports the charges that the Committee sustained.

At the outset, we reject the Respondent's argument that the testimony by Patients A and B provided the sole source for the Committee's findings. Other evidence in the record, such as the Respondent's own records, prove that the Respondent provided medical care that failed to comply with acceptable standards, by prescribing potentially addictive substances to patients despite their substances abuse histories and/or after the patients began to show substance abuse signs. The Respondent himself conceded his relationship outside treatment with Patients A and B. That testimony corroborated testimony by Patients A and B and supported the findings that the Respondent violated therapeutic

boundaries with the Patients. Such evidence established that the Respondent practiced with negligence and gross negligence. The Respondent's re-application for licensure in New York demonstrated that the Respondent made false representations on the application concerning restrictions on his practice and his resignation from Bry-Lin Hospital. That evidence established that the Respondent practiced with fraud and moral unfitness and that the Respondent willfully filed a false report. Evidence other than testimony by Patients A and B also proved that the Respondent failed to satisfy a condition on his License and that the Respondent refused to provide the Department of Health with records following a demand for those records. Such actions constituted professional misconduct.

The testimony by Patients A and B constituted important evidence in establishing that 1.) the Respondent exploited Patient A for financial gain, 2.) the Respondent caused prescriptions to issue for Patients B and C, when the Respondent intended the medication in those prescriptions for his own use, and 3.) the Respondent coerced Patient B into signing certain documents. Exploiting Patient A constituted professional misconduct. The Respondent's conduct toward Patient B amounted to practicing with fraud and moral unfitness, filing a false report and violating statutes and/or regulations. The Respondent argued that no basis existed for any findings from testimony by Patients A and B, because the Patients' substance abuse histories and past bad acts made the Patients untrustworthy witnesses. The Respondent and his wife also offered contradictory testimony.

The ARB sustains the findings that the Committee based on the testimony by Patients A and B. The Respondent's challenges to the Patients' credibility and the contradictory testimony in the record merely raised credibility issues for the Committee to resolve as the fact-finder. The ARB owes the Committee great deference in their role as the fact-finder and we see no reason to overturn their findings in this case. The Committee observed the witnesses and the Committee went into great detail in their

Determination in explaining why they found the Patients more credible as witnesses than the Respondent or the Respondent's wife. The Respondent received a full opportunity during cross-examination to bring out information about Patients A and B and the Committee's findings indicated that the Committee gave such information full consideration in making their findings. The Committee noted that no matter how fragile, dependent or vulnerable the Patients, the Committee found the Patients more credible than the Respondent or Mrs. Levy.

The Respondent's brief also alleged that the Petitioner's expert witness, Dr. Pisetzner, conceded that a large minority of physicians practicing in the country practice in ways similar to how the Respondent practices. The ARB could find no such testimony in the record. At pages 350-351 in the hearing transcript, the Respondent's counsel and Dr. Pisetzner discussed his testimony concerning the contraindications to prescribing potentially addictive benzodiazepines for persons with alcohol dependency problems. At those pages, Dr. Pisetzner refused to agree that "a slew of doctors" in the American Medical Association disagreed with Dr. Pisetzner's opinion, stated that he had no idea what percentage of doctors disagreed with him and stated there was no significant disagreement, among doctors, about the contraindications for using benzodiazepines for alcohol dependent people. The testimony by Dr. Pisetzner established that the Respondent failed to practice medicine according to accepted medical standards. The Respondent introduced no independent medical testimony to refute Dr. Pisetzner's testimony and the Committee found that the Respondent lacked credibility as a witness.

**Penalty:** Finally, the Respondent challenged the Committee's Determination as to the penalty to impose. He argued that the Committee based their penalty on the prejudiced testimony by Patients A and B. The Respondent also argued that the Committee failed to consider a less severe sanction such as probation, suspension or supervision.

As we noted in the previous section, evidence in the record, other than the testimony by Patients A and B, established that the Respondent practiced with negligence on more than one occasion, gross negligence, fraud and moral unfitness, that the Respondent refused to comply with a Health Department demand for records, that the Respondent filed a false report and that the Respondent failed to comply with a condition on his License. The record also revealed a prior disciplinary finding against the Respondent in Levy I, for practicing fraudulently, failing to maintain accurate records and willfully filing a false report<sup>3</sup>. Even without the testimony by Patients A and B, the record provides sufficient evidence to prove serious and extensive misconduct by the Respondent. That evidence and the evidence about the prior disciplinary proceeding provide sufficient grounds to support revoking the Respondent's License. Testimony by Patients A and B established that the Respondent exploited Patient A, coerced Patient B, committed additional fraudulent and morally unfit conduct and violated statutes and/or regulations. That testimony provides further evidence proving the Respondent's unfitness to practice medicine in New York.

Contrary to the Respondent's allegation, the Committee did in fact consider other possible penalties against the Respondent prior to voting for revocation. The Committee found retraining, monitoring and supervision inappropriate, because the Committee dismissed the incompetence charges against the Respondent. The ARB sees no purpose that suspension would serve. Suspension can provide a wake-up call to a careless physician or can provide a punitive sanction. The Respondent has already failed to receive a wake-up call from the disciplinary penalty against him from the Levy I action. The ARB raised a concern in the Levy I action over the Respondent's poor judgement that, if not corrected, could cross the line into unacceptable conduct in the future. The Respondent's conduct has since

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<sup>3</sup> The ARB may consider a Respondent's prior disciplinary history when considering a penalty to impose for professional misconduct, Matter of Brown v. NYS Dept. of Health, 235 A.D.2d 957, 652 N.Y.S.2d 860 (Third Dept. 1997)

crossed that line. The Respondent has crossed the therapeutic boundaries in treating Patients A and B and he has provided poor medical care to Patients A, B, D and E. The Respondent's has also demonstrated that he lacks integrity, through his repeated and diverse fraudulent conduct, through his exploitative conduct toward Patient A and his coercive conduct toward Patient B. The Respondent represents a danger to his patients and he shows no remorse for his actions or recognition about the need to change his practice pattern. The evidence in this record makes clear that, if we return the Respondent to practice, the Respondent will commit additional misconduct.

We vote unanimously to sustain the Committee's Determination revoking the Respondent's License. We also agree with the Committee that the Respondent should never be able to return to medical practice in New York. We strongly urge the Board of Regents to refuse any future request by the Respondent for License restoration.

**ORDER**

**NOW**, based upon this Determination, the Review Board renders the following **ORDER**:

1. The ARB **SUSTAINS** the Committee's Determination that the Respondent engaged in professional misconduct.
2. The ARB **SUSTAINS** the Committee's Determination revoking the Respondent's License to practice medicine in New York State.

**Robert M. Briber**

**Winston S. Price, M.D.**

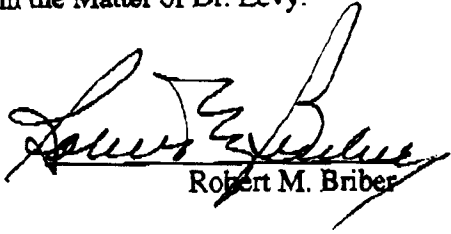
**Stanley L. Grossman, M.D.**

**Therese G. Lynch, M.D.**

**In The Matter Of Ronald M. Levy, M.D.**

**Robert M. Briber, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Levy.**

**Dated : 2/12/99**



Robert M. Briber

**In The Matter Of Ronald M. Levy, M.D.**

**Winston S. Price, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Levy.

Dated: 2/22, 1999

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**Winston S. Price, M.D.**



**In The Matter Of Ronald M. Levy, M.D.**

**Stanley L. Grossman, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Levy.

Dated : February 19 1999



**Stanley L. Grossman, M.D.**

**In The Matter Of Ronald M. Levy, M.D.**

**Therese G. Lynch, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Levy.

Dated : \_\_\_\_\_ , 1999

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**Therese G. Lynch, M.D.**

**In The Matter Of Ronald M. Levy, M.D.**

**Stanley L. Grossman, M.D.**, a member of the Administrative Review Board for Professional

**In The Matter Of Ronald M. Levy, M.D.**

**Therese G. Lynch, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Levy.

Dated : Feb 10 , 1999

A handwritten signature in cursive script that reads "Therese G. Lynch". The signature is written in black ink and is positioned above the printed name.

**Therese G. Lynch, M.D.**