



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

Dennis P. Whalen
Executive Deputy Commissioner

April 5, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Francis J. Offerman, Esq.
Offerman, Cassano, Greco & Slisz, LLP
1776 Statler Towers
Buffalo, New York 14202

Kevin Roe, Esq.
NYS Department of Health
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

Paul J. Steckmeyer, M.D.
17 Long Avenue
Hamburg, New York 14075

RE: In the Matter of Paul J. Steckmeyer, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 99-301) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 fluid and cursive, with the first name being the most prominent.

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

Paul J. Steckmeyer, MD. (Respondent)

Administrative Review Board (ARB)

**A proceeding to review a Determination by a
Committee (Committee) from the Board for
Professional Medical Conduct (BPMC)**

Determination and Order No. 99-301

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

For the Department of Health (Petitioner):

Kevin C. Roe, Esq.

For the Respondent:

Francis J. Offerman, Esq.

After a hearing below, a BPMC Committee determined that the Respondent practiced medicine fraudulently, practiced with gross and repeated negligence, provided unwarranted treatment and evidenced moral unfitness in performing laser surgery on eight patients. The Committee voted to revoke the Respondent's medical license and to fine the Respondent One Hundred Fifty-six Thousand Dollars (\$156,000.00). In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 1999), the Petitioner limits the issue for review to a request that the ARB modify the fine. The Petitioner alleges, and the Respondent agrees, that the Committee erred in calculating the fine, by basing the fine on the multiple misconduct classifications for each sustained act of misconduct rather than on the acts of misconduct themselves. We agree with the parties, we reduce the fine and we modify the reasoning for imposing the fine. In fifteen instances in treating the patients at issue here, the Respondent's conduct amounted to practicing fraudulently. We assess a Ten Thousand Dollar (\$10,000.00) fine against the Respondent for each such fraudulent act, for a total fine amounting to One Hundred Fifty Thousand Dollars (\$150,000.00).

Committee Determination on the Charges

Under N. Y. Pub. Health Law § 230 (McKinney Supp. 1999-2000), BPMC Committees conduct hearings into professional misconduct charges against physicians. The definitions for the misconduct appear in forty-seven sub-sections under N. Y. Educ. Law § 6530 (McKinney Supp.1999-2000). The Statement of Charges that commences those hearings divide the accusations into two sections. In the first section, the Charges make accusations about specific acts a Respondent may have committed (Factual Allegations). In the second section, the Charges allege what specific section under § 6530 that the Respondent's conduct may have violated (Misconduct Specifications). A single act may amount to misconduct under several sub-sections in § 6530. For example, a physician who knowingly submits a false application to a hospital may have committed both fraud in practice, a violation under § 6530(2), and willfully filing a false report, a violation under § 6530(21). A single factual allegation may, therefore, provide the basis for several misconduct specifications [see Hearing Exhibit 1].

The Petitioner commenced this proceeding by filing charges concerning laser surgery that the Respondent performed on nine patients, A through I. The Petitioner withdrew the charges pertaining to Patient F during the hearing. The charges alleged that the Respondent's conduct violated N. Y. Educ. Law §§ 6530(2-6), 6530(20) & 6530(35) (McKinney Supp. 1999) 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 in practice that evidences moral unfitness, and,
- ordering excessive or unwarranted tests or treatments unwarranted by the patient's condition.

The charges referred to the Patients by initials to protect their privacy. A BPMC Committee conducted a hearing on those charges and rendered the Determination now under review.

The Committee sustained twenty Factual Allegations against the Respondent (A2-4, B2-3, C3-4, D1-3, E4-5, G1-3, H1-3 and I1-2). The Committee determined that the Respondent performed surgery without justification on all the Patients, that the Respondent performed surgery without medical indication on all the Patients except Patient I and that the Respondent failed to order or perform tests to evaluate the Patients D, G, H and I (fundus photos and/or fluorescein angiography). The Committee sustained forty-five misconduct specifications as follows: fraud (fifteen specifications), negligence on more than one occasion (one specification), gross negligence (seven specifications), performing excessive treatments unwarranted by the patient's condition (seven specifications) and engaging in conduct that evidenced moral unfitness (fifteen specifications).

The Committee found that the Respondent provided treatments lacking medical justifications after patients no longer required treatment or that the Respondent prolonged or extended treatments without documenting medical justifications. The Committee found further that the Respondent induced the Patients to submit to the unwarranted, invasive and potentially harmful surgeries and that the Respondent did so with intent to mislead the Patients about the need and the frequency for the for the treatments. The Committee voted to revoke the Respondent's License and to fine the Respondent One Hundred Fifty-six Thousand Dollars

(\$156,000.00). The Committee's Order indicated that the Committee calculated the fine by assessing Three Thousand Dollars for each sustained misconduct specification.

Review History and Issues

The Committee rendered their Determination on December 7, 1999. This proceeding commenced on December 17, 1999 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 response brief. The record closed when the ARB received the response brief on January 20, 2000:

The parties agree that the Committee erred in their Order, when they stated that the Committee sustained fifty-two misconduct specifications. The parties argue that the Committee actually sustained only forty-five misconduct specifications. The parties also agree that the Committee erred in basing their fine on the total sustained misconduct specifications, without regard to the underlying conduct. Both parties cite to case law that strikes down cumulative fines for multiple sustained misconduct specifications, that arise from the same act of misconduct, *Kleiner v. Sobol*, 161 A.D.2d 987, 557 N.Y.S.2d 558 (Third Dept. 1990), lv. denied, 76 N.Y.2d 709 (1990); *Klein v. Sobol*, 167 A.D.2d 625, 562 N.Y.S.2d 856 (Third Dept. 1990); *Osher V. University of the State of New York*, 162 A.D.2d 849, 557 N.Y.S.2d 750 (Third Dept. 1990); *L.I.K. Business Ventures v. Axelrod*, 151 A.D.2d 369, 542 N.Y.S.2d 613 (Third Dept. 1999); *Memorial Hospital v. Axelrod*, 118 A.D.2d 938, 499 N.Y.S.2d 505 (Third Dept. 1986).

The parties disagree, however, as to how they recommend that the ARB correct the duplication in the penalty. The Petitioner recommends that the ARB modify the penalty by fining the Respondent Ten Thousand Dollars (\$10,000.00) for each misconduct act that amounted to

fraudulent practice. The Petitioner's recommended fine would then total One Hundred Fifty Thousand Dollars (\$150,000.00) for the fifteen sustained acts that constituted fraud. The Petitioner argues that such modification would leave essentially intact the total fine the committee imposed. The Respondent argues that the ARB should fine the Respondent Three Thousand Dollars (\$3000.00) for each misconduct specification that the Committee sustained, for a fine to total Sixty Thousand Dollars (\$60,000.00) for the twenty sustained misconduct specifications. The Petitioner argues that this modification leaves intact the Committee's intent to fine Three Thousand Dollars (\$3000.00) for violation.

Determination

The ARB has considered the record and the parties' briefs. Mr. Briber informed the ARB prior to deliberations in this case that Mr. Briber knows socially the Petitioner's expert witness, Stewart Ray, M.D. Mr. Briber indicated that the acquaintance would in no way hinder Mr. Briber's ability to render a fair decision in this case. Mr. Briber continued to participate in this case. The remaining ARB Members noted that the issue for review in the case involved recalculating the fine the Committee imposed rather than assessing credible testimony by the expert witnesses.

We agree with the parties that the Committee calculated the fine against the Respondent improperly. Although N. Y. Pub. Health Law § 230-a (7) (McKinney Supp. 1999-2000) authorizes a fine up to Ten Thousand Dollars (\$10,000.00) upon each sustained specification of charges, a Committee abuses its discretion by imposing separate fines for multiple misconduct specifications that arise from the same underlying factual findings, Matter of Colvin v. Chassin, 214 A.D.2d 854, 625 N.Y.S.2d 351(Third Dept. 1995). We agree with the Committee that the Respondent's conduct in this case warrants a fine in addition to the Committee's Determination

to revoke the Respondent's License. We decline the parties' suggestion, however, to recalculate that fine by leaving intact the Committee's intent to impose either a total fine or a fine by misconduct act. The ARB may, on our own motion, substitute our judgement for the Committee's, in deciding upon an appropriate penalty, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). We elect to do so here.

The Committee noted that the Patients at issue here were mostly elderly people in precarious health. The Respondent exposed those patients to multiple unnecessary procedures and extended those Patients' treatments. The Committee found that the Respondent's failure to meet acceptable medical standards rose to egregious levels in treating seven of the Patients. The Committee also found that the Respondent engaged in his misconduct with intent to mislead. Either the risk to the Patients or the Respondent's fraudulent intent provided a sufficient reason in itself to justify the Committee's Determination to revoke the Respondent's License.

In prior cases involving both bad medicine and fraud, the ARB has imposed penalties that included a fine in addition to an order revoking a physician's license, Matter of Bezar v. DeBuono, 240 A.D.2d 978, 659 N.Y.S.2d 547(Third Dept. 1997). Under N. Y. Pub. Health Law § 230-a (7)(McKinney Supp. 1999), we may impose a fine up to Ten Thousand Dollars (\$10,000) per offense. We conclude that the Respondent's conduct in this case warrants the maximum fine for each of the fifteen sustained factual allegations that the Committee determined to constitute fraud. The ARB votes 5-0 to fine the Respondent One Hundred Fifty Thousand Dollars (\$150,000.00).

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 License to practice medicine in New York State.
3. The ARB **MODIFIES** the fine the Committee imposed and the reasons for imposing the fine.
4. The ARB **FINES** the Respondent One Hundred Fifty Thousand Dollars (\$150,000.00).
5. The Petitioner shall pay that sum to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 1245, Empire State Plaza, Albany, New York 12237 within thirty (30) days of the effective date of this Order.
6. Any civil penalty not paid by the prescribed date shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees, referral to the New York

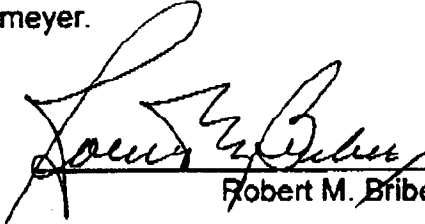
State Department of Taxation and Finance for collection, and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32).

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

In the Matter of Paul J. Steckmeyer, M.D.

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

Dated: February 29, 2000

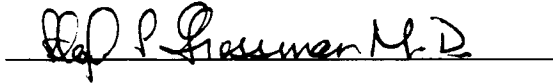


Robert M. Briber

In the Matter of Paul J. Steckmeyer, M.D.

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

Dated: March 1, 2000



Stanley L Grossman, M.D.

In the Matter of Paul J. Steckmeyer, M.D.

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

Dated: 2/29, 2000

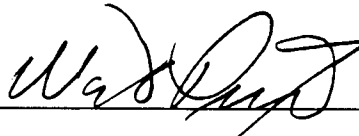
Therese G. Lynch M.D.

Therese G. Lynch, M.D.

In the Matter of Paul J. Steckmeyer, M.D.

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

Dated: 3/21/, 2000



Winston S. Price, M.D.

In the Matter of Paul J. Steckmeyer, M.D.

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

Dated: March 27, 2000



Sumner Shapiro