



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower      The Governor Nelson A. Rockefeller Empire State Plaza      Albany, New York 12237

Antonia C. Novello, M.D., M.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

August 23, 2000

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Stephen A. Grochmal, M.D.  
P.O. Box 1307  
Paramus, New Jersey 07653

Stephen A. Grochmal, M.D.  
625 From Road  
Paramus, New Jersey 07652

Joseph M. Gorrell, Esq.  
Brach, Eichler, Rosenberg,  
Silver, Bernstein, Hammer  
and Gladstone, P.C.  
101 Eisenhower Parkway  
Roseland, New Jersey 07066-1067

Paul Robert Maher, Esq.  
NYS Department of Health  
433 River Street – 4<sup>th</sup> Floor  
Troy, New York 12180

**RE: In the Matter of Stephen A. Grochmal, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 00-145) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 written in a cursive style with a large initial "T".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm

Enclosure

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

**In the Matter of**

**Stephen A. Grochmal, M.D. (Respondent)**

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

**COPY**

**Administrative Review Board (ARB)**

**Determination and Order No. 00-145**

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

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

**Robert Paul Maher, Esq.  
Joseph M. Gorrell, Esq.**

After a hearing below, a BPMC Committee determined that the Respondent's professional misconduct in another state would constitute misconduct under New York Law. The Committee voted to revoke the Respondent's License to practice medicine in New York State (License). In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 2000), the Respondent argues that the Committee erred by failing to consider mitigating factors before voting on a penalty. The Respondent asks the ARB to modify the Committee's Determination by reducing the penalty. After considering the hearing record and the briefs by the parties, we vote to affirm the Committee's Determination. We hold that the Respondent's fraudulent conduct in New Jersey demonstrated his unfitness to practice medicine and that the evidence at the hearing demonstrated that the Respondent remains at risk to repeat that conduct if he retains his 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. 2000) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from a sister state (New Jersey) found the Respondent guilty for improper professional practice [§6530(9)(b)], and/or took action against the Respondent's 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 action resulted from two Consent Agreements that the Respondent entered into with the New Jersey State Board of Medical Examiners (New Jersey Board). 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:

- willful or grossly negligent failure to comply with substantial provisions of federal state or local laws, rules or regulations that pertain to medical practice, a violation under N. Y. Educ. Law § 6530(16) (McKinney Supp. 2000),
- engaging in conduct that evidences moral unfitness in medical practice, a violation under N. Y. Educ. Law § 6530(20) (McKinney Supp. 2000), and,
- willfully making or filing a false report, a violation under N.Y. Educ. Law § 6530(21)(McKinney Supp. 2000).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 2000), before a BPMC Committee, who rendered the Determination which the ARB now reviews. In such a 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 record demonstrated that the Respondent entered into two Consent Agreements with the New Jersey Board. In a 1995 Consent Order, the Respondent admitted to engaging in professional misconduct and using or employing dishonesty, fraud, deception, misrepresentation, false promise or false pretense, a violation under N.J.S.A. 45:1-21(b)&(e). Specifically, the Respondent admitted to submitting to Christ Hospital, Jersey City, NJ, what purported to be a certificate to the Respondent from the American Board of Obstetrics and Gynecology, that the Respondent knew to be false. In the Consent Order, the Respondent acknowledged without admitting that a complaint against him before the New Jersey Board alleged that the Respondent:

- delivered a fetus he knew or should have known was dead, thereby subjecting a patient to unnecessary surgery,
- failed to make himself available to a hospital's Quality Assurance Committee for peer review, and,
- failed to release records to four patients in a timely manner.

The New Jersey Board suspended the Respondent's New Jersey License for thirty-one months active and stayed seventeen months further suspension and substituted probation. The New Jersey Board also ordered that the Respondent:

- pay \$11,636.53 in costs;
- pay a \$5000.00 civil penalty;
- submit to a psychiatric evaluation during the active suspension;
- submit to treatment as indicated, and if indicated, prove his fitness and capacity to practice medicine prior to reentry;
- complete a course in medical ethics; and,

- prior to reentry, enroll in the Colorado Personalized Education for Physicians (CPEP) Program and undergo the assessment process and learning plan activities.

In October 1997, the Respondent entered the second Consent Order with the New Jersey Board. That Order stated that the Respondent appeared before the New Jersey Board in April 1997 and following that appearance and receipt of a psychiatric evaluation and a report from CPEP, the New Jersey Board issued a conditional order continuing the suspension. In October 1997, after reviewing additional submissions from the Respondent, the New Jersey Board found the Respondent's mental state compatible with functioning as a physician. The second Consent Order permitted the Respondent to return to practice and required the Respondent to continue in psychotherapy for an additional year, with reports to the New Jersey Board on the Respondent's ongoing care.

The Committee found that the conduct underlying the New Jersey Consent Orders would constitute misconduct under New York law and the Committee found the Respondent's License subject to discipline under §§ 6530(9)(b)&(9)(d). The Committee noted that, although the Respondent admitted in the First Consent Order to making a false representation, the Respondent denied that charge under oath at the hearing below. The Committee noted further that the Respondent's testimony at the hearing also related to:

- failing to appear before the Quality Assurance Committee at Robert Wood Johnson Hospital,
- failing to release patient records in a timely manner following a request,
- writing prescriptions for his wife,
- transferring a patient contrary to the patient's wishes, and,

- failing to make disclosures on his New York State registration renewal application.

The Committee found the Respondent lacked credibility as a witness, gave bizarre explanations and gave excuses rather than admitting wrongdoing. The Committee described the Respondent as systematically dishonest, with a deep character flaw that makes him morally unfit to practice medicine. The Committee voted to revoke the Respondent's License.

### **Review History and Issues**

The Committee rendered their Determination on May 5, 2000. This proceeding commenced on May 24, 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 July 7, 2000.

The Respondent argues that the Committee failed to consider mitigating factors weighing heavily against revocation and that the Committee imposed a penalty so harsh as to shock one's sense of fairness. The Respondent notes that in Matter of Bottros v. DeBuono, 256 A.D.2d 1034, 683 N.Y.S.2d 333 (3<sup>rd</sup> Dept. 1998), the New York Supreme Court Appellate Division for the Third Department overturned an ARB revocation order because the ARB failed to consider substantial mitigating factors that militated against revocation. In Bottros, a case involving fraud in submitting a license renewal application, the Court noted that nothing in the conduct underlying the case reflected Dr. Bottros' competence as a physician nor suggested that he abused his license for personal aggrandizement. The Respondent points out that the Committee failed to consider that the Respondent has:

- complied fully with the New Jersey Consent Orders, including spending fifteen additional months on suspension,
- retained and updated his medical knowledge during his New Jersey suspension, and,
- took steps to rectify his shortcomings, such as organizing his office to ensure that he fulfills his duties pertaining to medical records.

The Respondent argues that the Committee also erred by imposing a penalty in reaction to the Respondent's testimony at the hearing rather than to the Respondent's underlying conduct in New Jersey. The Respondent argues that he presents no risk for harm to patients and that his successful completion of CPEP will aid in ensuring continued ethical business practices. The Respondent asks that the ARB substitute our judgement for the Committee's and reduce the penalty.

The Petitioner's response brief argues that the Respondent seeks to explain away his difficulties and minimize his wrongdoing. The Petitioner argues that the Committee may look at factors other than mitigating evidence in determining a penalty, such as the Respondent's credibility. The Petitioner contends that the Committee acted appropriately in revoking the Respondent's License.

#### **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 in New York and that such conduct makes the Respondent liable for action against his New York



License, pursuant to N.Y. Educ. Law § 6530(9)(b) & (9)(d)(McKinney Supp. 2000). We also vote to affirm the Committee's Determination to revoke the Respondent's License.

In the First New Jersey Consent decree, the Respondent admitted to submitting a certificate to a hospital that represented falsely his certification as a diplomate of the American Board of Obstetrics and Gynecology. This constituted a calculated falsehood on the Respondent's part and demonstrated the Respondent's moral unfitness to practice medicine. At hearing, under oath, the Respondent attempted to repudiate his admission. The Committee found such attempt unconvincing, noting that the Respondent's own witness, Dr. Canavan, testified that the Respondent admitted to Dr. Canavan that the Respondent submitted the false documentation [Hearing Transcript page 107]. The attempt to repudiate the Consent Order constituted an additional falsehood by the Respondent. At hearing, the Committee also learned that the Respondent had withheld information on a New York license renewal application concerning his disciplinary history in New Jersey. This constituted a further falsehood on the Respondent's part.

The Respondent's continuing attempts at deception gave the Committee sufficient grounds on which to conclude that the Respondent suffers a deep character flaw. The refusal to accept responsibility for his prior conduct also demonstrates that the Respondent has failed to take responsibility for or show remorse for his conduct. Despite a sanction from New Jersey that included an active suspension from practice and monetary penalties, the Respondent continues to engage in deception. The failure to show remorse or admit responsibility indicates that the Respondent remains at risk to repeat his misconduct. The failure to learn from his misconduct and the New Jersey penalty indicates that New York must impose a more severe sanction to deter such misconduct from the Respondent and others in the future.

The Respondent argued that the Committee failed to consider mitigating factors in this case. We find the mitigating factors that the Respondent raised in his brief unconvincing. The Respondent noted that he has satisfied fully the penalties under the New Jersey Consent Orders

and has completed CPEP Program to aid in ensuring continued ethical practice. As we noted above, other evidence at the hearing demonstrates continuing attempts to deceive by the Respondent that belie these arguments from the Respondent's brief. The Respondent had also argued that he had corrected other problems in his practice such as his obligations concerning medical records. The Hearing Committee found that in the Respondent's testimony, he attempted to excuse his wrongdoing or shift the blame to others. We hold again that the failure to admit wrongdoing demonstrates that the Respondent remains at risk to repeat such conduct.

In arguing for a reduction in penalty, the Respondent discussed the Bottros case, in which the Appellate Division overturned an ARB revocation order. In that case, the Appellate Division decision noted that six physicians testified to Dr. Bottros' dedication and the Court concluded that revocation would deprive the public from the services of a skilled practitioner. At the hearing in this case, the Respondent discussed

- his failure to appear before a hospital Quality Assurance Committee,
- a malpractice suit he settled involving transferring a patient against her wishes, and,
- writing prescriptions for his wife.

The Respondent's own testimony presented a physician with poor judgement, rather than a skilled practitioner.

The ARB holds that the Committee acted appropriately in voting to revoke the Respondent's License. Integrity constitutes as essential an element in practicing medicine as knowledge and skill. A physician must deal honestly with patients, other physicians and health care professionals, hospitals and other medical facilities, third party payers and government licensing and regulatory bodies. The Respondent's conduct demonstrated that he lacks integrity and the evidence at the hearing demonstrates that he has failed to correct his unethical behavior.

**ORDER**

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

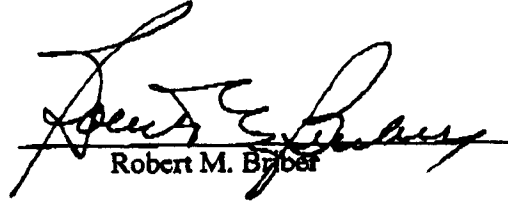
1. The ARB **AFFIRMS** the Committee's Determination that the Respondent's conduct in New Jersey constituted professional misconduct under New York Law.
2. The ARB **AFFIRMS** the Committee's Determination revoking the Respondent's License to practice medicine in New York.

**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 Stephen A. Grochmal, M.D.**

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

Dated: August 16, 2000

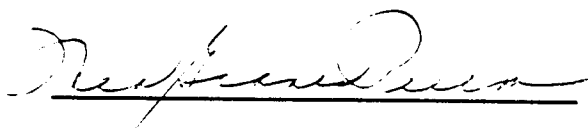


Robert M. Briber

**In the Matter of Stephen A. Grochmal, M.D.**

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

Dated: June 11, 2000

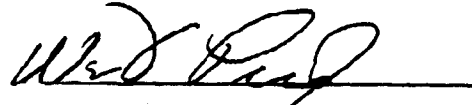
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**Thea Graves Pellman**

**In the Matter of Stephen A. Grochmal, M.D.**

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

Dated: 8/19, 2000

A handwritten signature in cursive script, appearing to read "W. S. Price", is written over a horizontal line.

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

**In the Matter of Stephen A. Grochmal, M.D.**

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

Dated: August 14, 2000

Stanley L. Grossman M.D.

Stanley L. Grossman, M.D.

**In the Matter of Stephen A. Grochmal, M.D.**

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

Dated: August 8, 2000

Therese G. Lynch M.D.

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