



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

PUBLIC

October 10, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Diane Abeloff, Esq.
NYS Department of Health
5 Penn Plaza – 6th Floor
New York, New York 10001

Louis E. Diamond, Esq.
77 Targee Street
Staten Island, New York 10304

George Coppa, M.D.
112 Jerome Road
Staten Island, New York 10305

George Coppa, M.D.
3010 Amboy Road
Staten Island, New York 10306

RE: In the Matter of George Coppa, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-199) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

George Coppa, M.D. (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. 02-199

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):
For the Respondent:**

**Dianne Abeloff, Esq.
Louis E. Diamond, Esq.**

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct, by engaging in a sexual relationship with a psychiatric patient and by making intentionally misleading statements in three applications (Applications) to renew the registration of his license to practice medicine in New York State (License). The Committee voted to revoke the Respondent's License. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2002), the Respondent alleges error by the Committee and their Administrative Officer and the Respondent asks the ARB to nullify the Committee's Determination. After reviewing the hearing record and the parties' review submissions, we affirm the Committee's Determination 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(20-21) & 6530(44)(McKinney Supp. 2002) by committing professional misconduct under the following specifications:

- engaging in conduct that evidences moral unfitness,
- willfully making or filing a false report or failing to file a report required by law or by the Department of Health or Department of Education, and,
- engaging in physical contact of a sexual nature with two patients (A & B) in the practice of psychiatry.

The Respondent filed answers denying all the charges [Respondent's Hearing Exhibits A & A1] and the matter proceeded to hearing. The BPMC Committee which conducted the hearing rendered a Determination on the charges on June 14, 2002.

The Committee dismissed all charges concerning Patient B. As to the charges concerning Patient A, the Committee found that the Respondent engaged in physical contact of a sexual nature with Patient A [Committee Finding of Fact (FF) 7, page 5]. The Committee concluded that the sexual contact constituted professional misconduct as a violation under Educ. Law § 6530(44) and the Committee found that the conduct also evidenced moral unfitness, a misconduct violation under Educ. Law § 6530(20). In making the findings on Patient A, the Committee indicated that they gave great weight to a tape recording (Recording) between the Respondent and Patient A, in which the Respondent admitted the sexual relationship with Patient A. The Committee also noted that the Respondent's counsel at the hearing conceded that the Respondent engaged in the sexual relationship with Patient A. The Committee also stated they drew a negative inference from the Respondent's failure to testify at the hearing.

The Committee also made the following factual findings concerning the Respondent's Applications to renew his License registration:

- the Brooklyn Developmental Disabilities Service Office suspended the Respondent without pay for misconduct/incompetence in March 1999 (FF 8);

- in the Respondent's December 1999 registration Application, the Respondent denied that any facility restricted the Respondent's employment due to misconduct or incompetence (FF 9);
- on December 18, 1999, the Brooklyn Developmental Services Office terminated the Respondent's employment for actions disruptive to consumers' care and treatment and disregard for treatment programs that placed consumers in danger (FF 10);
- in the Respondent's September 2002 registration Application, the Respondent denied that any facility terminated the Respondent's employment due to misconduct, unprofessional conduct, incompetence or negligence (FF 11);
- the South Beach Psychiatric Center terminated the Respondent's employment on September 3, 2000 for misconduct/incompetence (FF 12); and,
- in the Respondent's 2002 registration Application, the Respondent denied that any facility terminated the Respondent's employment for professional misconduct, unprofessional conduct, incompetence or negligence (FF 13).

The Committee drew the inference that the Respondent intended to deceive by making false answers on the Applications and by failing to testify before the Committee concerning the allegations about the false answers. The Committee concluded that the Respondent willfully filed false reports and that such conduct evidenced moral unfitness in medical practice.

The Committee voted to revoke the Respondent's License. The Committee voted further to fine the Respondent Five Thousand (\$5000.00) for the misconduct toward Patient A and Five Thousand (\$5000.00) Dollars for filing the false Applications.

Review History and Issues

This proceeding commenced on August 8, 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 Respondent's brief and the Petitioner's response brief. The record closed when the ARB received the response brief on September 16, 2002.

The Respondent argues that the Committee erred by drawing an adverse inference from the Respondent's failure to testify at the hearing, after the Respondent asserted his Fifth Amendment privilege at the hearing. The Respondent also alleges error by the Committee's Administrative Officer in admitting the Recording. The Respondent argued that the Petitioner failed to authenticate the Recording, that the Recording contained a privileged communication and that the Recording could have violated the New York Penal Law ban on wire tapping. The Respondent argues that the Committee should have refused to credit the Recording and should have dismissed the charges concerning Patient A. The Respondent also argues that a suspension or reprimand would have constituted the appropriate penalty for the Respondent's false answers on the Applications.

In reply to the Respondent, the Petitioner argues that the ARB lacks the authority to review evidentiary rulings by the Committee's Administrative Officer. The Petitioner also argues that the abuse against Patient A and the false Applications provided sufficient grounds on which to revoke the Respondent's License and fine the Respondent Ten Thousand (\$10,000.00) Dollars.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent willfully filed false reports and evidenced moral unfitness in filing the false Applications for License registration. The Respondent's brief made no challenge to the finding on those charges [Respondent's Brief, Conclusion, final page]. We also affirm the Committee's Determination that the Respondent engaged in sexual contact with Patient A, the Committee's Determination to revoke the Respondent's License and the Committee's Determination to fine the Respondent.

The Respondent argued that the Committee erred in drawing a negative inference from the Respondent's failure to testify. We disagree. A Committee in a BPMC proceeding may draw an adverse inference from a respondent's failure to testify in the face of the misconduct allegations, even if the respondent asserts Fifth Amendment Privilege, Matter of Steiner v. DeBuono, 239 A.D.2d 708, 657 N.Y.S.2d 485 (3rd Dept. 1997). In this case, although the Respondent's review brief argued that the Respondent declined to testify due to criminal consequences involving Patient A, the Respondent's counsel at hearing indicated that the Respondent failed to appear at the hearing due to embarrassment and to an unwillingness to deny the truth [Hearing Transcript page 84].

The Respondent also alleged error by the Committee in considering the Recording. The Respondent argued that the Committee's Administrative Officer received the tape without authentication. The record indicates otherwise. The Committee's Administrative Officer received the tape only after reviewing evidence that identified the voices on the Recording and after giving the Respondent an opportunity to examine the Recording for alterations [ALJ Exhibit 1]. The Respondent also alleged that the Recording constituted a privileged communication. Under

our normal practice, the ARB might defer on those legal issues and direct the Respondent to raise the issues with the courts. We note that a United States Magistrate has already received the Recording in evidence in a malpractice suit that Patient A brought against a different physician, -----¹ v. DiDuono, 132 F. Supp. 2d 82 (EDNY 2000). The attorney for Patient A submitted the Recording to the Magistrate. The Respondent's brief fails to mention that Magistrate's ruling on the Recording. We see no error by the Committee's Administrative Officer in receiving the tape.

In addition to the evidence from the recording, the Respondent's hearing counsel conceded that the Respondent engaged in sexual contact with Patient A [Hearing Transcript, page 84]. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct by engaging in contact of a sexual nature with a psychiatric patient and that such contact evidenced moral unfitness in medical practice.

Even if we found error in the Committee considering the Recording, sufficient grounds exist in this case to revoke the Respondent's License due to the repeated false Applications that the Respondent submitted with his License registrations. Filing repeated and intentionally false licensure documents, standing alone, provides a basis for revoking a physician's License, Matter of Glassman v. Dept. of Health, 208 A.d.2d 1060, 617 N.Y.S.2d 413 (3rd Dept. 1994). The conduct toward Patient A proves further the Respondent's unfitness to practice medicine in New York State. We hold also that the conduct toward Patient and the repeated false Applications provided grounds for the Committee to impose fines against the Respondent. We affirm the Committee's Determination to fine the Respondent Ten Thousand (\$10,000.00) Dollars.

¹ Patient A's last name appears at the beginning in this case's title.

ORDER

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

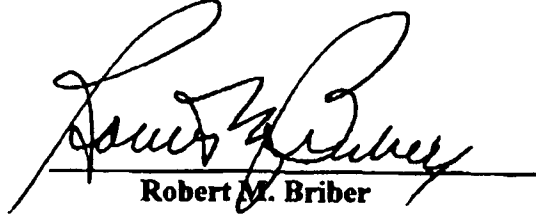
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License and fine the Respondent Ten Thousand (\$10,000.00) Dollars.

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 George Coppa, M.D.

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

Dated: October 4, 2002

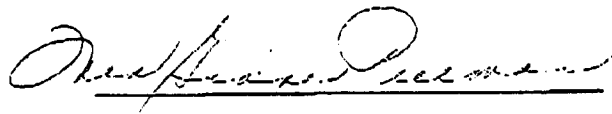


Robert M. Briber

In the Matter of George Coppa, M.D.

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

Dated: 10/7, 2002



Thea Graves Pellman

In the Matter of George Coppa, M.D.

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

Dated: Oct 10, 2002

A handwritten signature in black ink, appearing to read "Winston S. Price", written over a horizontal line.

Winston S. Price, M.D.

In the Matter of George Coppa, M.D.

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

Dated: October 6, 2002

Stanley L. Grossman, M.D.

Stanley L Grossman, M.D.

In the Matter of George Coppa, M.D.

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

Dated: Oct 4, 2002



Therese G. Lynch, M.D.