



# 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*

October 12, 1999

# PUBLIC

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Charles Thomas Steinke, M.D.  
FPC – Allenwood  
Route 15  
P.O. Box 1000  
Montgomery, Pennsylvania 17752

Mark Fantauzzi, Esq.  
NYS Department of Health  
Corning Tower – Room 2509  
Empire State Plaza  
Albany, New York 12237

Norman S. Goldsmith, Esq.  
185 Madison Avenue  
New York, New York 10016

**RE: In the Matter of Charles Thomas Steinke, M.D.**

Dear Parties:

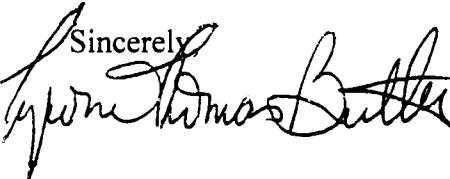
Enclosed please find the Determination and Order (No. 99-123) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:mla  
Enclosure

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

**COPY**

**In the Matter of**

**Charles Thomas Steinke, 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. 99-123**

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

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

**Mark T. Fantauzzi, Esq.**

**For the Respondent:**

**Norman S. Goldsmith, Esq.**

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct, due to his criminal conviction for using his medical license to commit fraud. 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. 1999), the Respondent asks the ARB to nullify the Committee's Determination due to the Committee's refusal to delay the hearing below until the Respondent's release from incarceration and due to alleged errors in the hearing itself. After reviewing the record and the submissions by the parties, the ARB affirms the Committee's Determination to revoke the Respondent's License. We hold that the Committee acted appropriately in refusing the adjournment and in conducting the hearing. The Respondent should direct the constitutional issues that he raises to the courts.

### 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), 6530(9)(a)(ii), 6530(9)(c), 6530(16) & 6530(20)(McKinney Supp. 1999) due to the Respondent's conviction for a crime under federal law. An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 1998), 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 Petitioner also charged that the Respondent violated N. Y. Educ. Law § 6530(42)(McKinney Supp. 1999), by a failing to pay a loan that helped finance his medical education. The Committee considered that charge pursuant to N. Y. Pub. Health Law § 230(10)(e)(McKinney Supp. 1999), at the same hearing as the other charges. The Petitioner commenced the proceedings through a Summary Order, pursuant to N. Y. Pub. Health Law § 230(12)(b)(McKinney Supp. 1999).

The Committee found that the Respondent entered a guilty plea to conspiring to defraud the United States, by allowing his employer to use the Respondent's provider number to submit false billings to various insurance companies, while knowing the employer used the provider number to obtain funds improperly and fraudulently. The conviction constitutes a felony under federal law. The Committee also found that the Respondent failed to repay his Health Education Assistance Loan. The Committee determined that the evidence proved the Respondent's conviction and also proved that the Respondent willfully failed to comply with statutes governing medical practice, practiced medicine fraudulently, engaged in conduct in practice that evidenced moral unfitness and willfully made and filed false reports. The Committee also found that the Respondent's failure to repay his educational loans constituted professional misconduct.

⋮

The Committee concluded that the Respondent used his License to commit fraud. The Committee noted the Respondent failed to submit any evidence through written submissions or through counsel which might mitigate a sanction. An attorney appeared for the Respondent, prior to the hearing, to request an adjournment, but the attorney took no further part in the proceedings after the Committee refused to grant the adjournment. The Committee concluded that the evidence demonstrated the Respondent's moral unfitness to practice medicine and that any of the sustained misconduct specifications would provide sufficient justification to revoke the Respondent's License.

### **Review History and Issues**

The Committee rendered their Determination on June 7, 1999. This proceeding commenced on June 18, 1999, 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 response brief and the Petitioner's brief and response brief. The record closed when the ARB received the Respondent's response brief on August 10, 1999.

The Respondent restricts his brief to requesting a new hearing. The Respondent raised the following points for review:

- I. He was entitled to the first time adjournment, until such time as the Respondent's release from incarceration under his federal conviction, because the Petitioner made no claim of prejudice.
- II. The Respondent's absence contributed to the penalty.
- III. Flaws in the hearing, such as the prosecutor's conduct, denied due process.

As to the prosecutor's conduct, the Respondent alleges that the prosecutor, rather than the Committee's Administrative Officer, instructed the Committee on the law and the Respondent alleges that the prosecutor made a prejudicial slur against the Respondent.

In response, the Petitioner argues that an incarcerated Respondent's absence from an administrative hearing constitutes no due process denial, as long as the Respondent received notice of the charges and an opportunity to be heard, Matter of Sokol v. New York State Department of Health, 223 A.D.2d 809 (Third Dept. 1996). The Petitioner also contends that N. Y. Pub. Health Law § 230(10)(f)(McKinney Supp. 1999) barred the Hearing Committee from providing the open date adjournment that the Respondent requested. As to the Respondent's claims that conduct by the Petitioner's counsel caused prejudice to the Respondent, the Petitioner states that the conduct at issue amounted to counsel's answers to specific questions by Committee members.

In reply to the Petitioner's statement that that N. Y. Pub. Health Law § 230(10)(f) (McKinney Supp. 1999) barred the Hearing Committee from providing the open date adjournment, the Respondent argues that if a statute by its terms denies a party due process, that statute is unconstitutional.

#### **Determination**

The ARB has considered the record and the parties' briefs. As to the Respondent arguments about the statute's constitutionality, we hold that we lack the authority to rule on a statute's constitutionality and we direct the Respondent to raise that issue with the courts. The Respondent also asked that we vacate the Committee's findings and order a new hearing. Under our authority from N. Y. Pub. Health Law § 230-c(4)(b)(McKinney Supp. 1999), the ARB may

remand a case to the Committee for reconsideration or further proceedings. We interpret that section to limit us to remanding to the original Committee, rather than ordering a new hearing before a new Committee. We reviewed the Respondent's request as a request for a remand for further proceedings before the original Committee. The Respondent should direct a request for a new hearing to the courts.

We reject the Respondent's argument that the adjournment refusal constituted a due process denial. Due process provides the Respondent a right to notice, to appear in person or by counsel and to submit evidence. The Singla case held specifically that a Committee may deny a request by an incarcerated respondent to delay a hearing indefinitely, until that respondent's release from incarceration. We find the Respondent's attempt to distinguish the present case from Singla unconvincing. Even with the adjournment refusal, the Respondent had the opportunity to appear by counsel and/or to submit evidence in mitigation. Counsel for the Respondent withdrew from further participation in the hearing after the adjournment refusal and the Respondent failed to provide any written submissions addressing mitigating factors.

We also reject the Respondent's contention that his absence from the hearing contributed to the penalty the Committee imposed. We find the Committee's Determination consistent with their findings that the Respondent committed fraud using his License. We also find the penalty appropriate as a sanction for the Respondent's misconduct. The Respondent could have submitted mitigating information in writing, but the Respondent failed to do so.

The Respondent also argued that he suffered prejudice from comments by the prosecutor. We see no improper conduct by the prosecutor in this hearing. At BPMC hearings, the Committee often directs questions to the parties and to witnesses. In this hearing, the prosecutor answered such questions from the panel. His answers amounted merely to argument by counsel, rather than legal instructions to the Committee. The Respondent also claimed that the prosecutor

branded the Respondent as possessing a fraudulent, evil, black heart. The ARB found no such accusation in the record. The prosecutor did state, at pages 49-50 in the transcript:

*" The third specification doesn't necessarily require a fraudulent intent. You can violate the rules and regulations governing the practice of medicine without having a fraudulent, evil, black heart. " [our emphasis].*

We see no attempt by the prosecutor, through that statement, to describe the Respondent as evil or black-hearted.

For the reasons we discussed above, we deny the Respondent's request for a remand. As the Respondent has raised no issues challenging the basis for the Committee's conclusions on the charges, we sustain the Committee's Determination that the Respondent committed professional misconduct. In reviewing a penalty, the ARB determines whether a Committee rendered a Determination consistent with their findings and conclusions and appropriate under the law. The Respondent has made no specific challenge to the Committee's penalty for either inconsistency with the findings and conclusions or inappropriateness under the law. The ARB affirms the Committee's Determination revoking the Respondent's License.



**ORDER**

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

1. The ARB **AFFIRMS** the Committee's Determination that the conduct resulting in the Respondent's criminal conviction constituted professional misconduct.
2. The ARB **AFFIRMS** the Committee's Determination to revoke the Respondent's License.

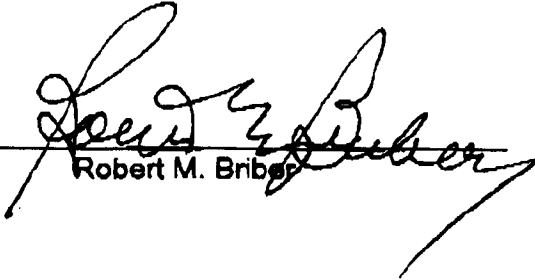
**Robert M. Briber**  
**Sumner Shapiro**  
**Winston S. Price, M.D.**  
**Stanley L. Grossman, M.D.**  
**Therese G. Lynch, M.D.**

•  
•  
•

**In the Matter of Charles Thomas Steinke, M.D.**

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


Dated: Sept 30, 1999

  
Robert M. Briber

**In the Matter of Charles Thomas Steinke, M.D.**

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

Dated: 10/2, 1999



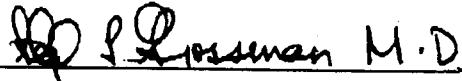
---

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

**In the Matter of Charles Thomas Steinke, M.D.**

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

Dated: October 4, 1999

 M.D.

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

**In the Matter of Charles Thomas Steinke, M.D.**

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

**Dated:** Oct. 2, 1999

*Therese G. Lynch, M.D.*

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