



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 May 25, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street – 4th Floor
Troy, New York 12180

William L. Wood, Jr., Esq.
Wood & Sher
14 Harwood Court
Scarsdale, New York 10583

Faidherbe Ceus, M.D.
Brooklyn Metropolitan Detention Center
80 29th Street
Brooklyn, New York 11232

Faidherbe Ceus, M.D.
60 College Avenue
Nanuet, New York 10954

RE: In the Matter of Faidherbe Ceus, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-13) 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.

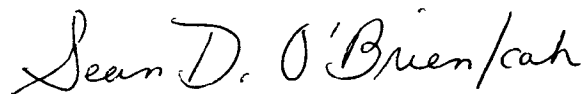
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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 cursive script that reads "Sean D. O'Brien/cah". The signature is written in black ink and is positioned above the typed name.

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah
Enclosure

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

In the Matter of

Faidherbe Ceus, 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. 04-13

COPY

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

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

**Robert Bogan, Esq.
William L. Wood, Esq.**

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2004), the ARB considers the sanction to impose against the Respondent's New York medical license (License) following the Respondent's Federal criminal conviction for perjury. After a hearing below, a BPMC Committee found that the Respondent's conduct amounted to professional misconduct and the Committee voted to fine the Respondent and to order him to perform community service. The Petitioner now seeks review from that Determination and asks the ARB to modify the penalty by adding an actual License suspension. The ARB holds that the Respondent has already received a severe penalty under his criminal sentence, so we overturn the Committee and, on our own motion, modify the penalty to a censure and reprimand.

Committee Determination on the Charges

The Petitioner charged that the Respondent violated N. Y. Educ. Law § 6530(9)(a)(ii) by engaging in conduct that resulted in 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. 2004), before a BPMC Committee, which rendered the Determination now on review. In the 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 demonstrates that the Respondent entered a guilty plea in the United States District Court for the Southern District of New York, in March 2003, to committing perjury, a felony. The Court sentenced the Respondent to nine months in prison, two years supervised release following the imprisonment, a \$2000.00 fine and a \$100.00 penalty assessment.

The Committee at the Direct Referral Hearing determined that the conduct that resulted in the Respondent's criminal conviction constituted professional misconduct and made the Respondent liable for action against his License pursuant to Educ. Law § 6530(9)(a)(ii). The Committee found mitigating factors in the case and limited the penalty, under Pub. Health Law §230-a, to ordering the Respondent to pay a \$3000.00 fine and to perform 300 hours community service. The Committee stated that they found perjury a serious crime, but the Committee noted that the perjury occurred during a deposition and that the Respondent made a single false statement that he held board certification. The Committee found that the Respondent acted only to appear more important or prestigious, rather than from a motive to profit from the false statement. The Committee also found the Respondent's false statement unrelated to medical practice and noted that witnesses and documentary evidence attested to the Respondent's skills, dedication and character.

Review History and Issues

The Committee rendered their Determination on January 28, 2004. This proceeding commenced on February 10, 2004, 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 March 16, 2004.

The Petitioner argued that the Respondent's crime impacted the medical profession adversely and deserved treatment as serious misconduct. The Petitioner requested that the ARB modify the penalty by imposing an actual suspension against the Respondent's License and by censuring and reprimanding the Respondent.

In reply, the Respondent acknowledged his misconduct, but argued that he already received a heavy penalty in the criminal proceeding.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent committed professional misconduct. Neither side challenged the Committee's determination on the misconduct charge. We overturn the Committee's Determination to impose a fine and community service and we reject the Petitioner's request that we impose an actual suspension. We censure and reprimand the Respondent.

The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993) and we may choose to substitute our judgment on our own motion, Matter of Kabnick v.

Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (3rd Dept. 1996).

We choose to substitute our judgment in this case. On our own motion, we overturn the Committee and remove both the fine and the community service that the Committee ordered. We also reject the Petitioner's request that we impose an actual suspension. We hold that the Respondent already received an actual suspension from his medical practice due to the time away from practice in prison under the criminal conviction. The Respondent also received a fine under the criminal conviction. We conclude that the imprisonment, fine and home confinement constituted a severe sanction for the Respondent's conduct that will serve to deter any future misconduct. We see no need to add any sanction against the Respondent's License, other than a censure and reprimand.

This case involved no patient care and the record portrayed the Respondent as a dedicated and skilled practitioner. We conclude that the Respondent's conduct amounted to an aberration, for which the Respondent has already paid a heavy price.

ORDER

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

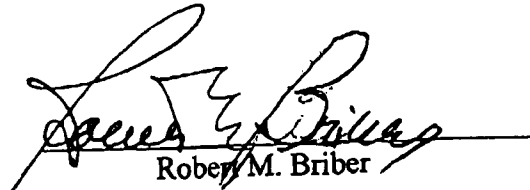
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the Committee's Determination to fine the Respondent and to order the Respondent to perform community service
3. The ARB censures and reprimands the Respondent.

Robert M. Briber
Thea Graves Pellman
Datta G. Wagle, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

In the Matter of Faidherbe Ceus, M.D.

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

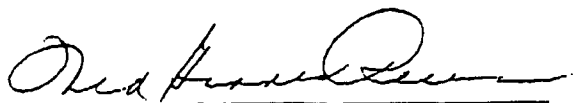
Dated: 5/21/2004


Robert M. Briber

In the Matter of Faidherbe Ceus, M.D.

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

Dated: May 4, 2004



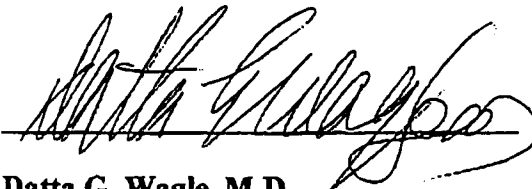
Thea Graves Pellman

In the Matter of Faidherbe Ceus, M.D.

Datta G. Wagle, M.D., an ARB Member concurs in the Determination and Order in the

Matter of Dr. Ceus.

Dated: 5/20/, 2004

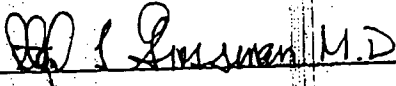

Datta G. Wagle, M.D.

In the Matter of Faidherbe Ceus, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Ceus.

Dated: 05/21, 2004

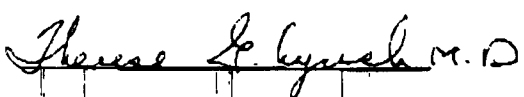
 M.D.

Stanley L. Grossman, M.D.

In the Matter of Faidherbe Ceus, M.D.

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

Dated: May 20, 2004.


Therese G. Lynch, M.D.