



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

July 14, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sein Myint, M.D.
20-34 37th Street
Astoria, New York 11105

Steven H. Jesser, Attorney at Law
1 Northfield Plaza, Suite 300
Northfield, Illinois 60093

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

RE: In the Matter of Sein Myint, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-103) 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.

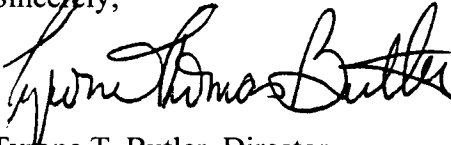
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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**

COPY

In the Matter of

Sein Myint, 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. 00-103

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

**For the Department of Health (Petitioner): Daniel Guenzburger, Esq.
For the Respondent: Steven H. Jesser, Esq.**

After a hearing below, a BPMC Committee determined that the Respondent practiced medicine fraudulently, by fabricating two reference letters that he submitted to obtain employment as a physician. The Committee voted to suspend the Respondent's New York Medical License (License) for two years, but stayed the suspension in full and placed the Respondent on probation. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 2000), the Petitioner asks the ARB to overturn that Determination and to substitute a more severe sanction against the Respondent such as license revocation or, at least, time on actual suspension. Upon reviewing the record, including the parties' submissions, we overturn the Committee and vote to suspend the Respondent's License for six months and to place him on probation for three years following the suspension. We hold that the Respondent's fraudulent conduct warrants actual time on suspension from practice.

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(13) & 6530(20-21)(McKinney Supp. 2000) by:

- practicing medicine fraudulently,
- failing to report professional misconduct,
- engaging in conduct that evidences moral unfitness, and,
- willfully filing a false report.

The Petitioner withdrew the failing to report charge. The charges concerned reference letters that the Respondent submitted in seeking employment at two hospitals. A hearing on the charges proceeded pursuant to N. Y. Pub. Health Law § 230(10)(McKinney Supp. 2000), before the Committee who rendered the Determination now on review.

The Committee found that the Respondent submitted a letter to Staten Island University Hospital that purported to be from Dr. William O'Connell. The Committee found further that the Respondent submitted a second letter to Victory Memorial Hospital that purported to be from Dr. Thomas Santucci. The Committee determined that neither Dr. Santucci nor Dr. O'Connell authored or authorized the letters and that the Respondent forged and mailed the letters on letterhead he picked up at Jamaica Hospital. At the hearing, the Respondent indicated that he forged the letters because he expected unfavorable references if Dr. Santucci or Dr. O'Connell had written the letters. The Committee concluded that the Respondent forged the letters knowingly, falsely and with intent to deceive. The Committee sustained the fraud and filing false reports charges, but dismissed the moral unfitness charge. The Committee concluded that the conduct failed to evidence moral unfitness because no patient harm occurred and because there were no extenuating circumstances.

The Committee voted to suspend the Respondent's License for two years, but to stay the suspension in full. As mitigating factors on any penalty, the Committee considered that the Respondent:

- acknowledged his wrongdoing and demonstrated true remorse,

- perceived discrimination and felt he received inaccurate evaluations that failed to reflect his performance,
- based his decision to forge the letters on anger, immaturity and desperation to support his family, and,
- committed no patient harm and received no pecuniary gain.

The Committee found the Respondent an intelligent, hard working young man, beginning his career, with a demonstrated concern for his patients. The Committee did express concern over the Respondent's anger and urged the Respondent to seek counseling.

Review History and Issues

The Committee rendered their Determination on April 6, 2000. This proceeding commenced on April 14, 2000, 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 May 16, 2000.

The Petitioner asks that the ARB modify the penalty that the Committee imposed. The Petitioner asserts that:

- the facts warrant a more severe sanction,
- the Committee erred in finding no pecuniary gain, because the Respondent obtained employment at a hospital to which he submitted a fraudulent letter,
- the Respondent failed to produce evidence other than his self serving testimony to prove unfair evaluations,
- the Committee erred in their findings as to one date on which the Respondent submitted a fraudulent letter, and,
- the Respondent's immaturity makes him likely to repeat his past mistakes.

The Petitioner requests that the ARB revoke the Respondent's License or impose an actual suspension. In his response to the Petitioner, the Respondent argues that:

- the stayed suspension constitutes a less than lenient sanction that will follow the Respondent throughout his life,
- the Respondent received no illicit profit from his misconduct,
- the Committee based their findings in the Respondent's remorse on the Respondent's demeanor rather than any self-serving testimony,
- the Petitioner engaged in conjecture in concluding that the Committee based their penalty on an error in the dates on which the Respondent submitted one of the letters, and,
- the Petitioner's comments on the Respondent's inability to learn from his mistakes contradicts the Committee's findings concerning the Respondent's remorse.

The Respondent admitted his violations and urged the ARB to sustain the Committee's Determination.

Determination

The ARB has considered the record and the parties' briefs. We sustain the Committee's Determination that the Respondent practiced fraudulently and willfully filed a false report. Neither party made any challenge to the Determination on the charges. We overturn the Committee's Determination to impose only a stayed suspension as a penalty. We vote to suspend the Respondent's License for six months and to place the Respondent on probation for three years following the suspension, under the terms we set out in the Appendix to this Determination.

The ARB concluded that the Respondent should spend actual time under License suspension due to the fraudulent activity the Respondent committed. The Respondent admitted to forging two physicians' signatures on letters to obtain employment. The Respondent claimed to have forged the letters from desperation, because he needed to leave Jamaica Hospital and because the Respondent worried about being able to support his family. The Committee found the Respondent's statements about desperation constituted a mitigating factor. We hold that the facts contradict the Respondent's contention about desperation. By the time the Respondent forged the second letter, he had already left Jamaica for a position at Victory Hospital. The Committee also found mitigation in the Respondent's explanation that he forged the letter because he feared he would receive bad recommendations from Drs. O'Connell and Santucci. We see no mitigation in the Respondent forging letters because he felt he had a reason, as opposed to the Respondent forging the letters on a lark. The Committee also found the Respondent remorseful. We perceive that the Respondent expressed remorse over being caught as opposed to remorse over committing fraud.

We do agree with the Committee that other mitigating factors appear in this case, that lead us to conclude that revocation would constitute an overly harsh penalty in this case. The Respondent is a young, hard working physician, with a demonstrated concern for his patients. The Respondent caused no harm to any patient and he received no illicit gain from his misconduct. We believe that the suspension and probation will punish the Respondent adequately for his misconduct and will deter others from such conduct.

The ARB decided against revocation as a penalty only after a long discussion. Although we voted unanimously against revocation, the Respondent should realize that he came very close to losing his License due to his misconduct.

We vote to place the Respondent on probation for three years, under the terms that we set out in the Appendix. We reject the Petitioner's request that the probation terms require that the

Respondent obtain anger counseling. In their Determination, the Committee found that the Respondent's misconduct resulted in part from the Respondent's anger and immaturity and the Committee recommended that the Respondent receive anger counseling, but they imposed no requirement that the Respondent receive such counseling. The Petitioner argued that the failure to require counseling put the public at risk. The ARB sees no danger to the public from the Respondent. If the Respondent did commit the forgeries due to anger, that anger has caused harm to the Respondent only. The Respondent will continue to suffer the consequences from that anger in the suspension from practice, the probation and the stigma the Respondent will carry throughout his career, due to the misconduct findings against him.

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 on penalty.

3. The ARB **SUSPENDS** the Respondent's License for six months.

4. The ARB **PLACES THE RESPONDENT ON PROBATION** for three years following the suspension, under the terms we set out in the Appendix to this Determination.

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

In the Matter of Sein Myint, M.D.

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

Dated: July 13, 2000

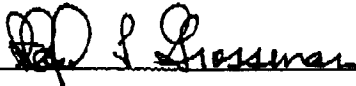


Sumner Shapiro

In the Matter of Sein Myint, M.D.

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

Dated: July 30, 2000

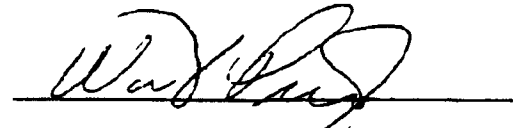


Stanley L Grossman, M.D.

In the Matter of Sein Myint, M.D.

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

Dated: JUNE 26, 2000

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

Winston S. Price, M.D.

In the Matter of Sein Myint, M.D.

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

Dated: June 26, 2000

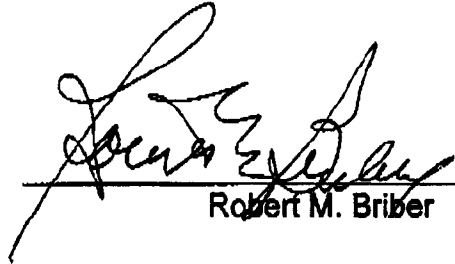
Therese G. Lynch M.D.

Therese G. Lynch, M.D.

In the Matter of Sein Myint, M.D.

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

Dated June 26, 2000



Robert M. Briber

APPENDIX

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Corning Tower Building, 4th Floor, Empire State Plaza, Albany, New York 12237; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of

probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.

6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

7. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.