



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

March 11, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Richard J. Zahnleuter, Esq.
NYS Department of Health
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

Ralph A. Erbaio, Esq.
Lifshutz, Polland & Hoffman, P.C.
675 Third Avenue
New York, New York 10017

Tsedaye Bezabeh, M.D.
1703 East West Highway
#321
Silver Springs, Maryland 20910

RE: In the Matter of Tsedaye Bezabeh, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-360) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

Tsedaye Bezabeh, 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. 02-360

**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:**

**Richard Zahnleuter, Esq.
Ralph A. Erbaio, Esq.**

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct due to her conviction for insurance fraud. The Committee voted to suspend the Respondent's New York Medical License, to fine the Respondent and to place the Respondent on probation for three years. In this proceeding pursuant to N.Y. Pub. Health Law §230-c (4)(a)(McKinney 2003), the Petitioner asks the ARB to overrule that Determination and to revoke the Respondent's License. After considering the hearing record and the parties' review submissions, the ARB affirms the Committee's Determination to suspend the Respondent's License, to fine the Respondent and to place the Respondent on probation. We modify the Committee's Determination by increasing the probation period and by amending the probation terms. We also place a permanent restriction on the Respondent's License.

Committee Determination on the Charges

The Petitioner charged that the Respondent violated N. Y. Educ. Law § 6530(9)(a)(i) by engaging in conduct that resulted in the Respondent's conviction for a crime under New York Law. The proceeding commenced by a Summary Order from the Commissioner of Health, pursuant to N.Y. Pub. Health Law § 230(12)(b). The Order suspended the Respondent's License summarily, upon the Commissioner's Determination that the Respondent was convicted for acts constituting a felony. An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 2003), 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 ARB review addresses the Committee's Determination on the charges and penalty only, as the ARB lacks the authority to review Summary Orders [see Pub. Health Law § 230-c (1)].

The Committee found that the Respondent entered a guilty plea, in Queens County Supreme Court, to Insurance Fraud in the Fourth Degree, a felony. The Court sentenced the Respondent to a Conditional Discharge and ordered the Respondent to pay a mandatory surcharge. The Committee found that the conviction resulted from filing a false medical report with an Insurance Company. The Committee voted to suspend the Respondent's License for six months, retroactive to effective date for the Commissioner's Summary Order, to fine the Respondent \$5000.00 and to place the Respondent on probation under the terms the Committee in the Committee's Order. The terms include a limitation on the Respondent's License that restricts her practice to a hospital or nursing home setting during the probation.

Review History and Issues

The Committee rendered their Determination on December 2, 2002. This proceeding commenced on December 6, 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 Petitioner's brief and response brief and the Respondent's brief. The record closed when the ARB received the response brief on January 17, 2003.

The Petitioner contends that the felony conviction, the attempt to obtain money fraudulently and the Respondent's failure to accept responsibility warrant license revocation and a \$10,000.00 Fine. The Respondent answers that her crime represented aberrant behavior and that revocation would constitute an overly harsh penalty for a single mistake in judgement.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent's criminal conviction made the Respondent liable for disciplinary action pursuant to N. Y. Educ. Law § 6530(9)(a)(i). Neither party challenged the Committee's Determination on the charges. We reject the Petitioner's request that we revoke the Respondent's License, but on our own motion we modify the Committee's Determination by increasing the time the Respondent will serve on probation and by adding an additional probation term. We also limit the Respondent's License permanently to restrict the Respondent to practice in a medical facility operating under a government license or government ownership.

Before the Committee and the ARB, the Petitioner argued that the Respondent's felony conviction, standing alone, warranted revocation. The ARB agrees with the Committee, that if

the New York Legislature had intended revocation as an automatic penalty for a physician with a felony conviction, the Legislature would have mandated revocation under the penalty provisions in N.Y. Pub. Health Law § 230-a. In reviewing penalty decisions by BPMC Committees and by the ARB, courts have indicated that a committee or the ARB must judge each case on its own particular circumstances, Matter of Bottros v. DeBuono, 265 A.D.2d 1034, 683 N.Y.S.2d 333 (3rd Dept. 1998). In the Respondent's case, the ARB agrees with Committee that the Respondent's single criminal act merits a severe sanction, but that the criminal act falls short from conduct that would warrant License revocation. We also agree with the Committee that the Respondent's conduct warrants six months actual suspension, from the effective date that the Committee specified, a \$5000.00 fine, probation and a practice limitation. We modify the Committee's Determination, because we disagree with the Committee on the probation terms and on duration for the probation and the limitation.

The ARB may substitute our judgement 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 substitute our judgement on our own motion, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). We elect to substitute our judgement in this case.

The Committee placed the Respondent on probation for three years and limited the Respondent's License to practice in a hospital or nursing home under Paragraph A in the probation terms. The ARB concludes that three years constitutes an insufficient period on probation. We vote 5-0 to increase the probation to five years. We also add an additional probation term to include record review and billing audits as probation terms. We also conclude that the restriction to practice in a facility should become a permanent restriction on the Respondent's License. We vote to 4-1 to limit the Respondent's License, pursuant to N.Y. Pub.

Health Law § 230-a(6), to restrict the Respondent to practice in a health facility that holds a license under N.Y. Pub. Health Law Article 28 or that the government operates, such as a Veteran's Administration facility.

With these changes, we delete the current Paragraph A from the probation terms in the Committee's Order. We substitute a new Paragraph A to read:

"A. The Respondent's professional performance shall be reviewed by the Director of the Office for Professional Medical Conduct (OPMC). This review shall include at least a quarterly review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and her staff at practice locations or OPMC offices as well as billing claims record audits. The Director shall also conduct random record reviews, interviews and/or audits.

The ARB affirms all other provisions in the Probation terms that the Committee imposed.

ORDER

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

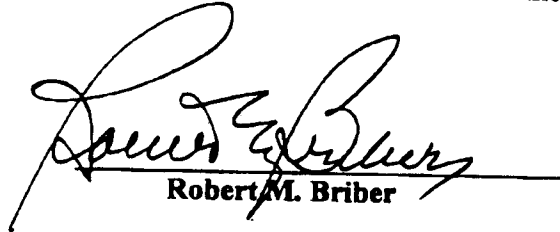
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to suspend the Respondent's License, to fine the Respondent and to place the Respondent on probation.
3. The ARB modifies the Committee's Determination by increasing the probation from three to five years and by amending Paragraph A in the Probation Terms in the Committee's Order.
4. The ARB modifies the Committee's Determination by placing a permanent limitation on the Respondent's License, as we provide in our Determination.

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 Tsedaye Bezabeh, M.D.

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

Dated 2/27/03



Robert M. Briber

In the Matter of Tsedaye Bezabeh, M.D.

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

Dated: April 7, 2003

A handwritten signature in cursive script, appearing to read "Thea Graves Pellman", written over a horizontal line.

Thea Graves Pellman

In the Matter of Tsedaye Bezabeh, M.D.

Winston S. Price, M.D., an ARB Member affirms that he participated in the deliberations in this case and that this Determination reflects the decision by the ARB majority in the Matter of Dr. Bezabeh.

Dated: Mar 01, 2003


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 Tsedave Bezabeh, M.D.

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

Dated: March 2, 2003

 M.D.

Stanley L. Grossman, M.D.

In the Matter of Tsedaye Bezabeh, M.D.

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

Dated: February 26, 2003

Therese G. Lynch M.D.

Therese G. Lynch, M.D.