



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

November 10, 1998

Dennis P. Whalen
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ronald G. Donelson, M.D.
550 Harrison Street
Syracuse, NY 13202

James D. Lantier, Esq.
Smith, Sovik, Kendrick & Sugnet
250 South Clinton Street
Suite 600
Syracuse, NY 13202-1252

Timothy J. Mahar, Esq.
NYS Department of Health
ESP Corning Tower
25th Floor
Albany, NY 12237-0032

RE: In the Matter of Ronald G. Donelson, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.98-122) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 that reads "Tyrone Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH (Petitioner)

COPY

In The Matter Of

Ronald G. Donelson, M.D. (Respondent)

**Administrative Review
Board (ARB)
Determination and
Order 98 - 122**

**Proceeding to review a Determination by a Hearing Committee (Committee)
from the Board for Professional Medical Conduct (BPMC)**

**Before Board Members : Briber, Grossman, Price & Shapiro¹.
Administrative Law Judge James F. Horan served as the Board's Administrative Officer.**

**For the Respondent: James G. Lantier, Esq.
For the Petitioner: Timothy J. Mahar, Esq.**

In this proceeding, we decide 1.) whether the Respondent submitted intentionally or caused another to submit applications, for physician privileges or provider status, that contained false information and, if so, 2.) what action to take against the Respondent's License to practice medicine in New York State (License). After a hearing into charges concerning two applications by the Respondent, a BPMC Committee determined that the Respondent committed fraud in submitting one application and filed false reports intentionally in submitting both applications. As a sanction, the Committee voted to censure and reprimand the Respondent and fined him Ten Thousand Dollars (\$10,000.00). Both the Petitioner and the Respondent then requested administrative reviews pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1998). The Respondent asks that we overturn the Committee's Determinations sustaining the charges and imposing a penalty. The Petitioner asks that we sustain additional misconduct specifications against the Respondent, overturn the penalty the Committee imposed and revoke the Respondent's License. After considering the hearing record and the parties' submissions, we vote 4-0 to sustain additional specifications that the Respondent practiced fraudulently in submitting both applications and we vote to overturn the Committee and revoke the Respondent's License.

Committee Determination on the Charges

The Petitioner commenced this proceeding (Donelson II) by filing a Statement of Charges

¹ ARB Member Therese Lynch, M.D. recused herself from participating in this case because she served in the Investigative Committee in this case, prior to her confirmation to serve on the ARB. The ARB proceeded to review the case with a four member quorum, see Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

[Petitioner Exhibit 1] with BPMC, alleging that the Respondent violated N. Y. Educ. Law §§ 6530(2), 6530(14) & 6530(20-21)(McKinney Supp. 1998), under the following categories:

- practicing medicine fraudulently;
- failing to provide information about a pending medical misconduct proceeding in an application for hospital privileges;
- engaging in conduct that evidences moral unfitness in medical practice; and,
- willfully making, filing or inducing another to make or file a false report.

The Petitioner charged that the Respondent failed to provide truthful answers concerning a prior disciplinary action against the Respondent (Donelson I) on an application to serve as a provider for HMO-CNY (HMO Application) and for hospital privileges at University Hospital in Syracuse (Hospital Application). After a hearing on the charges before a BPMC Committee, the Committee rendered the Determination now on review.

The Committee found that the Office of Professional Conduct (OPMC) began an investigation in the Donelson I proceeding in 1992, following allegations that the Respondent touched a patient's genitals with his ungloved fingers in a sexual manner, without medical purpose. By February, 1993, the Respondent had learned about the investigation and had participated in three interviews with OPMC Staff. The Committee found further that formal misconduct charges and a hearing on the Donelson I charges followed and that the hearing lasted three days, ending on May 25, 1995. In their Determination in the Donelson I proceeding, a BPMC Committee sustained charges that the Respondent touched a patient's genitals in an inappropriate manner and found the Respondent's conduct constituted abusing a patient wilfully. The Committee voted to suspend the Respondent's License, stayed the suspension and placed the Respondent on probation. On review, the ARB sustained the Committee's Determination on the willful abuse charge, sustained an additional charge that the Respondent's conduct constituted moral unfitness and modified the Committee's Determination on the penalty to add an additional condition to the probation (ARB # 95-183).

The Respondent submitted the HMO Application for recertification as a medical services provider for HMO-CNY, in February 1993, after three meetings with OPMC and with knowledge about the Donelson I investigation. Question G on the application asked:

"Have there been any proceedings or investigations of you by the New York State Office of Professional Medical Misconduct [sic], any other state's misconduct board or any governmental or private agency?"

The HMO Application contained the answer "no" to that question and the Respondent signed the following certification:

"I, the undersigned certify that the information provided in this request form is true and correct to the best of my knowledge and belief."

The Committee found that the Respondent signed the HMO Application without reading the responses and with knowledge that he provided false information or provided information with a disregard for the truth. At page 9 in their Determination, the Committee stated that the Respondent knew or should have known that the HMO Application would query about the OPMC investigation. The Committee concluded that the Respondent's failure to read the HMO Application, but to certify its truthfulness, amounted to fraud and willfully filing a false report, although the Committee sustained only the misconduct specification charging filing a false report. The Determination made no specific statement dismissing the fraud or moral unfitness specifications and gave no explanations as to why the Committee dismissed either specification.

The Respondent completed the Hospital Application seeking renewal of privileges in June, 1995, one month after the final hearing day in the Donelson I proceeding. On the Application, he answered "No" to three questions that asked whether the Respondent had ever been subject to:

"... pending professional malpractice claims, actions or medical conduct proceedings in this or any other state?"(Question 5);

"... pending charges or convictions for sexual harassment, sexual abuse, child abuse, elder abuse, or other human rights violations?"(Question 8); and,

"... pending charges pertinent to violations of patient's rights?"(Question 9).

The Respondent signed the Hospital Application that included the following certifications:

"I understand and agree that I as an applicant for Medical Staff membership, have the burden of producing adequate information for proper evaluation of my professional competence, character, ethics and other qualifications and for resolving any doubts about such qualifications. I fully understand that any significant misstatements in or omissions from this application constitute cause for denial of reappointment or cause for summary dismissal from the Medical Staff. All information submitted by me in this application and its enclosures is true to the best of my knowledge and belief."

"The undersigned hereby affirms under penalties of perjury as follows: that he/she is the applicant named herein; that he/she has read the foregoing application and knows the contents thereof; that the same is complete, true and accurate to his/her own knowledge and

belief."

The Committee found that the Respondent gave a false answer to Question 5, because he was facing charges in the Donelson I hearing, involving his conduct toward the female patient. The Committee found the Respondent lacked credibility in explaining that he gave the answer, because the Donelson charges involved non-medical conduct. One Committee member voted to sustain a charge that the Respondent also answered Question 8 falsely, in denying that he had faced sexual abuse charges. The Committee sustained specifications charging that the Respondent's answer to Question 5 constituted practicing fraudulently, willfully filing a false report and failing to provide information about a pending malpractice proceeding in an application to renew hospital privileges. The Committee dismissed all charges that the Respondent's answers on the Hospital Application evidenced moral unfitness in medical practice.

The Committee voted to censure and reprimand the Respondent for his conduct and ordered that he pay a Ten Thousand Dollar (\$10,000.00) fine. The Committee rendered their Determination on June 30, 1998 and issued an amended Determination, making certain technical corrections to the original Determination, on August 6, 1998.

Review History and Issues

This proceeding commenced on July 6, 1998 when the ARB received the Petitioner's Notice requesting a Review. The Respondent then filed a Review Notice on July 15, 1998. Although our Administrative Officer set the date for filing briefs originally as August 17, 1998, the Director of the Bureau of Adjudication, Judge Butler, extended that date until September 14, 1998, due to the need to serve the Amended Determination on August 6, 1998. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and reply brief and the Respondent's brief and reply brief. The record closed when the Respondent submitted his reply brief on September 17, 1998.

The Petitioner requests that the ARB sustain an additional specification that the Respondent practiced with fraud in submitting the HMO Application and additional specifications that the

Respondent evidenced moral unfitness in medical practice by submitting both the HMO and the Hospital Applications. The Respondent raised five main issues for review:

1. The Committee rendered a Determination inconsistent with their findings and conclusions by dismissing the specification alleging that the Respondent committed fraud in submitting the HMO Application.
2. Affirming positive knowledge about an issue on which you lack knowledge constitutes fraud.
3. The Respondent evidenced moral unfitness in submitting both applications, because a physician's ethical obligations include providing truthful information to credentialing authorities.
4. The ARB should consider the Donelson I disciplinary findings when considering the appropriate penalty for this case.
5. The Respondent's pattern of submitting false applications and his misconduct history warrant revoking the Respondent's License.

The Respondent asks that the Review Board overturn the Committee's Determination sustaining one fraud charge and two filing false records charges, sustain the Committee's Determination dismissing the other charges and overturn any penalty against the Respondent. The Respondent raised four main issues for review.

- A. The Respondent committed no misconduct in submitting the HMO Application. The Committee accepted the Respondent's explanation that his employee completed the Application and that the Respondent signed the Application without reading it. The Respondent proved he lacked intent to deceive or recklessness when he submitted a 1995 application to the same HMO, containing information about the Donelson I proceeding.
- B. The Respondent committed no misconduct in submitting the Hospital Application, because he informed his Chief of Service about the Donelson I proceeding, so the Hospital had notice about the proceeding.
- C. The Respondent made no financial gain in connection with either application.

D. The Committee had reasonable grounds in dismissing all the other charges against the Respondent.

In his reply to the Petitioner's brief, the Respondent argues that the Petitioner's references to the findings from the Donelson I proceeding constitute an attempt to sway the Committee to sustain the moral unfitness charges involving the Applications.

Determination

The four Member quorum who participated in this case have considered the record and the parties' briefs. We vote to sustain the Committee's Determination that the Respondent filed false reports in filing both the HMO and the Hospital Applications and that the Respondent committed fraud in answering Question 5 on the Hospital Application. We also sustain the Committee's Determination dismissing the charges that the applications evidenced moral unfitness in medical practice. We overturn the Committee's Determination dismissing the charge that the Respondent practiced with fraud in submitting the HMO Application and in answering Question 8 on the Hospital Application. We also overturn the Committee's Determination on the penalty to impose against the Respondent's License. In exercising our review authority under N.Y. Pub. Health Law § 230-c (McKinney Supp. 1998), the ARB may substitute our judgement for the Committee's judgement in imposing a penalty, Matter of Bogdan v. Med. Cond. Bd., 195 A.D.2d 940, 606 N.Y.S.2d 381 (Third Dept. 1993), or in sustaining or dismissing charges, Matter of Spartalis v. State Bd. for Prof. Med. Cond., 205 A.D.2d 940, 613 N.Y.S.2d 759 (Third Dept. 1994). We exercise that authority now. We sustain additional charges involving both Applications and we vote 4-0 to revoke the Respondent's License.

In order to sustain a charge that a licensee practiced medicine fraudulently, a hearing committee must find that (a) a licensee made a false representation, whether by words, conduct or by concealing that which the licensee should have disclosed, (b) the licensee knew the representation was false, and (c) the licensee intended to mislead through the false representation, Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (Third Dept. 1966), aff'd, 19

N.Y.2d 679, 278 N.Y.S.2d 870 (1967). We note that the elements to prove fraud require no showing that the Respondent committed the fraudulent conduct to achieve financial gain. A committee may infer the licensee's knowledge and intent properly from facts that such committee finds, but the committee must state specifically the inferences it draws regarding knowledge and intent, Choudhry v. Sobol, 170 A.D.2d 893, 566 N.Y.S.2d 723 (Third Dept. 1991). To prove willfully filing a false report or inducing another to do so, a committee must establish that a licensee made or filed a false statement willfully, which requires a knowing or deliberate act, Matter of Brestin v. Comm. of Educ., 116 A.D.2d 357, 501 N.Y.S.2d 923 (Third Dept. 1986). Merely making or filing a false report, without intent or knowledge about the falsity fails to constitute professional misconduct, Matter of Brestin v. Comm. of Educ., (supra). A committee may reject a licensee's explanation for erroneous reports (such as resulting from inadvertence or carelessness) and draw the inference that the licensee intended or was aware of the misrepresentation, with other evidence as the basis, Matter of Brestin v. Comm. of Educ., (supra).

The Committee concluded that the Respondent knew or should have known that the HMO would query about the OPMC investigation [Committee Determination page 9]. The Respondent knew at the time that he submitted the Application that OPMC was investigating him [Committee Factual Finding 8, page 4]. Rather than complete the Application himself, the Respondent assigned a staff person to complete the Application and never informed the staff person about the OPMC investigation [Tr. page 363]. The Respondent then signed the Application without reading it, certifying to the Application's truthfulness [Committee Factual Finding 9, page 4]. The ARB infers from these facts and conclusions that the Respondent withheld the information from the staff person with the intent to cause that person to prepare a false report that failed to report the OPMC investigation. We infer further that the Respondent withheld the information about the investigation with the intent to conceal that information and mislead the HMO about the investigation. We also infer that the Respondent then failed to read the Application deliberately before signing, so he could deny knowledge about its contents if someone discovered the false information. We hold that those actions constitute practicing medicine fraudulently and filing or causing another to file a false report. We sustain the Committee's Determination dismissing the charge that the Respondent's conduct

evidenced moral unfitness in practicing medicine.

In the Hospital Application at Questions 5 and 8, the Respondent answered "no" to questions asking whether he was facing any pending misconduct proceedings or sexual abuse charges. The Respondent made those answers within one month from the final hearing date in the Donelson I proceeding, in which he faced charges that he abused a patient in a sexual manner. We hold that the Respondent's conduct in answering no to both questions amounted to practicing medicine fraudulently, filing a false report and violating N.Y. Pub. Health Law § 2805-k (McKinney Supp. 1998), by failing to provide information about a pending professional medical conduct proceeding in an application to a hospital. The Committee found the Respondent's testimony unbelievable when he claimed that he misunderstood the question or the nature of the Donelson I proceeding. We infer that the Respondent made intentional false answers with intent to withhold that information from the Hospital, with the intent to deceive the hospital. The Respondent argued that he had no intent to deceive, because he provided a copy of the charges to his Chief of Service. The hearing record indicated, however, that the Respondent provided only one page from the two page Statement of Charges and that he omitted the page containing the allegation that the Respondent touched a patient in a sexual manner [Tr. pages 299-300]. The ARB finds such conduct evidences a further intent at deception. The Respondent offered no proof that he ever filed an amended Application and his Chief admitted in testifying at the hearing that the information the Chief received failed to constitute notice to the Hospital about the charges [Tr. page 294, lines 19-23]. We sustain the Committee's Determination dismissing the charge that the Hospital Application evidenced moral unfitness in medical practice.

The ARB concludes that the Respondent's repeated fraudulent conduct proves that he lacks integrity. The Respondent withheld information from both the HMO and the Hospital to prevent those entities from learning about the action against him for abusing a patient sexually. In the past we have held that such conduct provides sufficient grounds for revocation, Matter of Jadoo v. De Buono, 235 A.D.2d 644, 651 N.Y.S.2d 738 (Third Dept. 1997). In imposing a penalty less severe than revocation, the Committee provided no explanation as to why they imposed such a penalty and or why they felt that penalty would correct the repeated misconduct pattern that the Respondent has followed.

The Committee also failed to list any mitigating factors that might support a less stringent sanction against the Respondent. The ARB finds aggravating rather than mitigating circumstances in this case, due to the Respondent's previous misconduct. Contrary to the arguments by the Respondent, we hold that we may consider such prior misconduct in determining the penalty to impose in this case, Matter of Brown v. New York State Dept. of Health, 235 A.D.2d 957, 652 N.Y.S.2d 860 (Third Dept. 1997).

No retraining program can teach the Respondent integrity. We conclude that, allowing the Respondent to return to medical practice after committing repeated fraud and after prior misconduct, would only encourage the Respondent or others in believing that they can escape serious consequences for committing serious misconduct. In imposing misconduct sanctions, the ARB and the BPMC Committees must protect the public, punish the misconduct at issue and deter future misconduct by the Respondent and others. We see no alternative in this case to revoking the Respondent's License.

ORDER

NOW, based upon this Determination, the Review Board renders the following **ORDER**:

1. The ARB **SUSTAINS** the Committee's Determination that the Respondent committed fraud and failed to provide information to a hospital concerning a pending professional misconduct proceeding in his answer to Question 5 on the Hospital Application and that the Respondent filed a false report in submitting the HMO Application and in answer to Question 5 on the Hospital Application.
2. The ARB **SUSTAINS** the Committee's Determination dismissing the charges that the Respondent's conduct evidenced moral unfitness in practicing medicine.
3. The ARB **OVERTURNS** the Committee and we **HOLD** that the Respondent committed fraud in submitting the HMO Application and that the Respondent committed fraud and failed to provide information to a hospital concerning a pending professional misconduct proceeding in his answer to Question 8 on the Hospital Application.
4. The ARB **OVERTURNS** the Committee's Determination to censure and reprimand the Respondent and to impose a fine.
5. The ARB votes 4-0 to **REVOKE** the Respondent's License to practice medicine in New York State.

Robert M. Briber

Sumner Shapiro

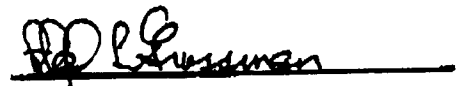
Winston S. Price, M.D.

Stanley L. Grossman, M.D.

In The Matter Of Ronald G. Donelson, M.D.

Stanley L. Grossman, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Donelson.

Dated: Nov. 3, 1998



Stanley L. Grossman, M.D.

In The Matter Of Ronald G. Donelson, M.D.

Sumner Shapiro, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Donelson.

DATED: November 9, 1998

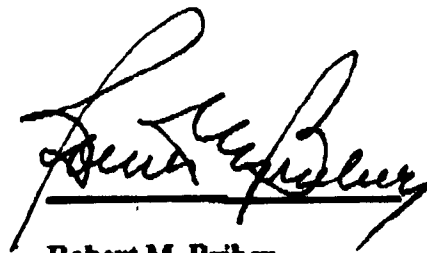


Sumner Shapiro

In The Matter Of Ronald G. Donelson, M.D.

**Robert M. Briber, a member of the Administrative Review Board for Professional Medical
Conduct, concurs in the Determination and Order in the Matter of Dr. Donelson.**

Dated : 11/1/98

A handwritten signature in black ink, appearing to read "Robert M. Briber", written over a horizontal line.

Robert M. Briber