



# STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

July 20, 1999  
Dennis P. Whalen  
*Executive Deputy Commissioner*

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Timothy J. Mahar, Esq.  
NYS Department of Health  
Division of Legal Affairs  
ESP Corning Tower – Room 2509  
Albany, New York 12237

Gregory S. Doria, M.D.  
2118 83<sup>rd</sup> Street, Apt. 3  
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325 West 45<sup>th</sup> Street – Suite 201  
New York, New York 10036-3803

### **RE: In the Matter of Gregory S. Doria, M.D.**

Dear Parties:

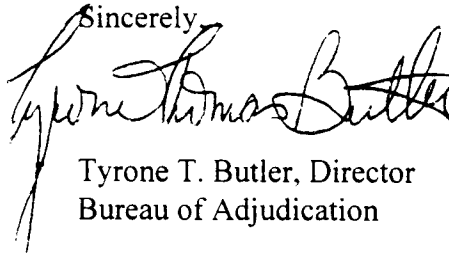
Enclosed please find the Determination and Order (No. 99-20) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt **or** seven (7) days after mailing by certified mail as per the provisions 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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**

**In the Matter of**

**Gregory Doria, 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. 99-20**

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

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

**Timothy J. Mahar, Esq.  
Carl E. Person, Esq.**

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1999), the Petitioner asks the ARB to modify a Determination in which a BPMC Disciplinary Committee dismissed charges that the Respondent practiced medicine fraudulently, violated statutes or regulations, evidenced moral unfitness and failed to follow a directive to undergo a psychiatric evaluation. After considering the record and briefs from both parties, the ARB sustains the Committee's Determination, except we overturn the Committee and sustain the charge that the Respondent committed professional misconduct by failing to follow a directive to undergo a psychiatric evaluation. We vote unanimously to suspend the Respondent's License to practice medicine in New York until he undergoes the evaluation. We remand for further proceedings concerning the evaluation.

### 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(15-16) & 6530(20)(McKinney Supp. 1999) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- failing to comply with a BPMC directive,
- failing willfully or with gross negligence to comply with state laws governing medical practice, and
- engaging in conduct that evidences moral unfitness in medical practice.

The charge involving the BPMC directive alleged that the Respondent failed to comply with an Order by a Special BPMC Investigative Committee (Evaluation Committee) that the Respondent submit to a psychiatric evaluation. The fraud and failure to comply with state law charges involved the Respondent's conduct in South Hackensack, New Jersey on March 22, 1995. Those charges alleged that at that time and place, the Respondent possessed controlled substances illegally and/or made untruthful statements to police about his association with Bergen Pines Hospital and about the semi-conscious woman in the Respondent's presence. The moral unfitness charges related both to the psychiatric exam and to the conduct in New Jersey. A BPMC Disciplinary Committee conducted a hearing into those charges and rendered the Determination now on review. The Disciplinary Committee dismissed all the charges.

As to the charges alleging state law violations, the Petitioner had charged that the Respondent violated New Jersey Law on March 22, 1995 by:

- failing to register with New Jersey as someone who dispensed controlled substances.

- failing to possess the controlled substances in their original containers, and,
- knowingly keeping dangerous controlled substances in a vehicle.

The Disciplinary Committee found insufficient credible evidence to determine whether the Respondent in fact possessed or stored controlled substances as the charges alleged. Although two South Hackensack Police Officers testified at the hearing that they arrested the Respondent and found controlled substances in large quantities in the Respondent's car, the Committee found contradictions in the Officers' testimony and found neither witness credible.

As to the fraud charges, the Petitioner alleged that the Respondent made knowingly false statements to South Hackensack Police on March 22, 1995 that:

- the Respondent was a physician at Bergen Pines Hospital (Bergen), and,
- the semi-conscious woman in the Respondent's company had undergone treatment at Bergen earlier that day and had received an unspecified drug earlier that day.

The Disciplinary Committee found insufficient credible evidence to reach a determination on the Respondent's intent to deceive. The police officers testified that the Respondent told them that he worked at Bergen. The Disciplinary Committee noted that the Respondent had worked as a resident at Bergen in 1993 to 1994 and the Disciplinary Committee considered the possibility that the Respondent told that to the officers, but the officers misunderstood the Respondent to mean he worked at Bergen on March 22, 1995. As to the statements concerning the woman in the Respondent's company, the Disciplinary Committee considered the possibility that the Respondent had merely repeated information to the police that the woman had told the Respondent.

As to the psychiatric evaluation, the Disciplinary Committee found that the Evaluation Committee ordered the Respondent to undergo an examination and evaluation pursuant to N. Y.

Pub. Health Law § 230(7) (McKinney Supp. 1999). The Committee determined that the Respondent appeared for a psychiatric examination by Dr. Phillip Crane on February 10, 1998, but that the Respondent refused, on advice from counsel, to discuss any events that occurred on March 22, 1995 in South Hackensack. Although Dr. Crane testified at the hearing that the Respondent should not be practicing medicine, the Disciplinary Committee noted that Dr. Crane failed to report that finding to OPMC or to issue a report. The Disciplinary Committee found Dr. Crane's actions contradicted his testimony. The Committee also noted that the Respondent had offered to return for further evaluation when his attorney advised the Respondent that he could discuss the events that occurred on March 22, 1995.

The Respondent failed to testify at the hearing. The Disciplinary Committee drew no adverse inference from the Respondent's failure to testify at the hearing.

#### **Review History and Issues**

The Committee rendered their Determination on January 27, 1999. This proceeding commenced on February 10, 1999, 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 31, 1999. The Petitioner requested that the ARB refuse to accept the Respondent's response brief, because the Respondent should have filed the brief by March 22, 1999.

The Petitioner asks that the ARB overturn the Committee's Determination on the charges alleging fraud, failure to comply with a BPMC Order and failing to comply with a statute. As to the BPMC Order, the Petitioner argues that the Respondent failed to comply with the Order by

refusing to discuss the events that occurred on March 22, 1995. The Petitioner alleges that the refusal prevented Dr. Crane from making a judgement about whether the Respondent suffers from a delusional disorder. The Petitioner asserts that by dismissing the charge, the Disciplinary Committee has allowed the Respondent to delay his evaluation indefinitely, while he retains the legal right to practice medicine. Next the Petitioner argued that the proof at the hearing demonstrated that the Respondent practiced with fraud by deceiving the South Hackensack police officers and that the Respondent willfully violated New Jersey statutes concerning controlled substances.

The Petitioner's brief provides specific recommendations as to the penalties that the ARB should impose, if we overturn the Committee and sustain any charge. If the ARB sustains the charge that the Respondent violated controlled substance statutes, the Petitioner asks that we place a permanent limitation on the Respondent's License to bar him from possessing controlled substances, except when another physician has ordered the drugs for the Respondent's own use to treat a medical condition. If the ARB sustains the charge that the Respondent practiced fraudulently, the Petitioner asks that the ARB suspend the Respondent's License for a specific period. If the ARB sustains the charge that the Respondent violated a BPMC Order, the Petitioner asks that the ARB suspend the Respondent's License until the Respondent complies with the Order.

The Respondent argues that the Petitioner's brief merely repeats the arguments that the Disciplinary Committee rejected. The Disciplinary Committee discredited both police officers who testified at the hearing. The Respondent also notes that to force the Respondent to speak to Dr. Crane about the March 22, 1995 incident would deny the Respondent his Fifth Amendment rights, because the Respondent continues to face criminal charges in New Jersey. The

Respondent repeats his request for a stay in the proceedings until a resolution in the New Jersey criminal proceeding.

### **Determination**

All ARB Members have participated in this case and have considered the record and the parties' briefs. We vote 4-1 to accept and consider the Respondent's late brief. We vote unanimously to affirm the Disciplinary Committee's determination to dismiss the moral unfitness charges. The Petitioner raised no challenge to that Determination by the Disciplinary Committee. We also affirm the Disciplinary Committee's Determination to dismiss the charges alleging fraud and willfully violating a statute. We overturn the Disciplinary Committee and sustain the charge that the Respondent violated a directive from BPMC, by failing to cooperate fully with the psychiatric evaluation. As a penalty, we suspend the Respondent's License to practice in New York State until such time as the Respondent completes the evaluation. We remand the case to the Evaluation Committee to designate a different psychiatrist to perform that psychiatric evaluation.

**Fraud and Statutory Violation Charges:** In requesting that the ARB sustain these charges, the Petitioner argues that evidence from the record supports those charges. That evidence came from testimony by the South Hackensack police officers. The Disciplinary Committee found those officers to lack credibility, due to contradictions in the officers' testimony. The Petitioner has, therefore, asked us to overturn the Disciplinary Committee's credibility finding. We reject that request. The Disciplinary Committee, as the fact finder, saw the officers testify and observed their demeanor. Seeing the testimony placed the Disciplinary Committee in a much better position to make a judgement on that testimony than the ARB could make in reading the hearing transcripts. Any reviewing body owes the fact finder great deference in making credibility determinations. The Disciplinary Committee stated in detail their reasons



for their credibility findings. We hold that the Committee acted well within their authority in making those findings. We affirm the Committee's Determinations to dismiss the charges that the Respondent practiced medicine fraudulently and that the Respondent violated a state statute relating to medical practice.

**Failing To Comply With A BPMC Directive:** A BPMC Evaluation Committee ordered that the Respondent complete a neurological and psychiatric evaluation, pursuant to N. Y. Pub. Health Law § 230(7)(McKinney Supp. 1999). The Disciplinary Committee found that the Respondent completed the neurological evaluation and that the Respondent appeared for the psychiatric evaluation. The Committee found, however, and the Respondent concedes that the Respondent refused to answer any questions during the evaluation concerning the events on March 22, 1995. The ARB holds that such refusal constitutes a refusal to comply with a BPMC directive. 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 elect to do so in this case. We sustain the charge that the Respondent violated N. Y. Educ. Law § 6530(15)(McKinney Supp.).

The Disciplinary Committee dismissed the failure to comply charge because the Respondent refused to discuss the March 22, 1995 events on advise from counsel. The ARB has refused previously to accept advise from counsel as an excuse for a physician's refusal to comply with his obligations under the Education Law, Matter of Park, ARB 94-24, 1994 WL 1028349 (NYDOH Admin Rev Bd). In Park, BPMC had directed Dr. Park to turn over certain patient records during a BPMC investigation. Dr. Park refused the directive on advise from counsel. In a subsequent disciplinary proceeding, a BPMC disciplinary committee found that the refusal constituted misconduct, but imposed no penalty, because Dr. Park refused on advise from counsel. On review, the ARB sustained the misconduct finding, but overturned the Committee on

the penalty. We fined Dr. Park Ten Thousand Dollars (\$10,000.00) for refusing to comply with the directive. The Appellate Division for the Third Department later affirmed our Order imposing the fine, Matter of Park v. N.Y.S. Dept. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (Third Dept. 1995).

The Education Law obligates physicians to comply with BMC directives. If we accepted advice from counsel as an excuse for noncompliance, we would permit attorneys to exempt their physician clients from those obligations, merely by counseling against compliance. The Education Law obligated the Respondent to cooperate fully in the psychiatric evaluation and to discuss the events that occurred in South Hackensack on March 22, 1995. The Respondent's refusal to comply constitutes misconduct and warrants a penalty. We turn now to considering that penalty.

**Penalty:** We vote unanimously to suspend the Respondent from medical practice in New York State, until such time as the Respondent completes the psychiatric evaluation that the Evaluation Committee directed the Respondent to undergo. We consider the Respondent's misconduct more serious than the refusal to comply with the directive in the Park case. In Park, the directive involved only turning over records. In the present case, the Evaluation Committee's directive concerned evaluations to determine whether the Respondent suffers a mental or neurological problem that impairs his ability to practice and that would place his patients or himself in danger. We hold that the suspension pending the evaluation will provide adequate protection for the public. If the Respondent wishes to continue his refusal to cooperate fully in the evaluation, until the possible criminal case resolves in New Jersey, that refusal will no longer pose any danger to the public.

The ARB bases our suspension order solely on our own judgment about an appropriate penalty in this situation. We gave no deference to the opinion by the Petitioner's expert Dr. Crane, who recommended the Respondent's suspension until he completed the evaluation. The

Disciplinary Committee found Dr. Crane's recommendation at the disciplinary hearing to lack credibility, because Dr. Crane failed to report that recommendation to BPMC following his interview with the Respondent on February 10, 1998. The Disciplinary Committee found an inconsistency between the failure to report and the recommendation at the hearing. We agree with the Committee's assessment and we direct that a physician other than Dr. Crane perform the psychiatric evaluation. We remand for further proceedings to designate a different physician to perform the evaluation, pursuant to N. Y. Pub. Health Law § 230(7)(McKinney Supp. 1999).

Pursuant to our authority under N. Y. Pub. Health Law § 230-c (4)(b)(McKinney Supp. 1999), the ARB may remand a case to the committee on professional conduct for reconsideration or further proceedings. In the present case, two committees conducted proceedings below, the Evaluation Committee and the Disciplinary Committee. We remand to the Evaluation Committee to designate a new physician to perform the evaluation. Under N. Y. Pub. Health Law § 230(7) (McKinney Supp. 1999), any results from an evaluation return to the Committee that ordered the evaluation. We hold that the Evaluation Committee should retain jurisdiction over the evaluation, appoint the new evaluating physician and review any results from the evaluation.

### **ORDER**

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

1. The ARB **AFFIRMS** the Disciplinary Committee's Determination dismissing charges that the Respondent practiced fraudulently, engaged in conduct evidencing moral unfitness and violated statutes or regulations pertaining to medical practice.

2. The ARB **OVERTURNS** the Committee's Determination dismissing charges that the Respondent failed to follow a directive to submit to a psychiatric evaluation.
  
3. The ARB **SUSTAINS** the charge that the Respondent committed professional misconduct by failing to follow a directive from the Board for Professional Medical Conduct that the Respondent undergo a psychiatric evaluation.
  
4. The ARB **SUSPENDS** the Respondent's License to practice medicine in New York State, until such time as the Respondent complies with the directive to undergo the psychiatric evaluation.
  
5. The ARB **REMANDS** for further proceedings under N. Y. Pub. Health Law § 230(7)(McKinney Supp. 1999), to designate a new physician to perform the psychiatric evaluation.

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

In the Matter of Gregory Doria, M.D.

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

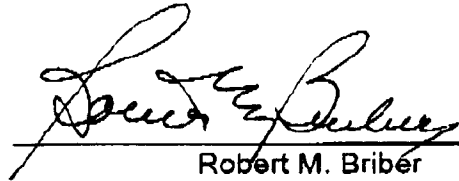
Dated: June 23, 1999

  
Sumner Shapiro

**In the Matter of Gregory Doria, M.D.**

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

Dated: June 24 1999




Robert M. Briber

**In the Matter of Gregory Doria, M.D.**

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

Dated: July 16, 1999



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

In the Matter of Gregory Doria, M.D.

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

Dated: July 9, 1999

Stanley L. Grossman MD MPH

Stanley L. Grossman, M.D.



**In the Matter of Gregory Doria, M.D.**

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

Dated: June 23, 1999

Therese G. Lynch M.D.

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