



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Antonia C. Novello, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

August 23, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Lee Davis, Esq.
NYS Department of Health
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

Thomas Gerrowe, M.D.
226-4 Meadow Farm North
North Chili, New York 14514

RE: In the Matter of Thomas Gerrowe, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-129) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 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

Thomas Gerrowe, 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. 00-129

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

**For the Department of Health (Petitioner): Lee A. Davis, Esq.
For the Respondent: Pro Se**

After a hearing below, a BPMC Committee voted to censure and reprimand the Respondent for professional misconduct involving three patients. The conduct involving the patients occurred while the Respondent, who holds no New York Medical License, practiced medicine under a license exemption for physicians in a residency program. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 2000), the Petitioner asks the ARB to modify the Committee's Determination, by placing a restriction on any New York License the Respondent may receive in the future. The Respondent challenges jurisdiction over him by BPMC or the ARB. After reviewing the record and the submissions from the parties, we hold that the Committee and the ARB hold jurisdiction over the Respondent. We vote to censure and reprimand the Respondent and to restrict any future medical license the Respondent may receive in New York. Prior to receiving such a license, the Respondent must undergo a psychiatric evaluation and then establish to a BPMC Committee his fitness to practice medicine.

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(2-6) (McKinney Supp. 2000), by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- practicing medicine with negligence on more than one occasion,
- practicing medicine with gross negligence,
- practicing medicine with incompetence on more than one occasion, and,
- practicing medicine with gross incompetence.

The charges related to care that the Respondent provided to three persons, Patients A through C. The record identified the Patients by initials to protect patient privacy. A hearing on the charges ensued before the BPMC Committee who rendered the Determination now on review. The Respondent failed to appear at the hearing.

The Committee determined that the Respondent received sufficient notice concerning the hearing through service by mail and by means of alternative service and that the Respondent had evaded service. [Committee Findings of Fact (FF) 2-5]. The Committee also found that the Respondent practiced medicine in New York from July 1, 1997-June30, 1998, in the Residency Program at St. Mary's Hospital in Rochester, pursuant to N.Y. Educ. Law § 6526 (McKinney Supp. 2000) [FF 1]. The Committee's Administrative Officer granted a default judgement and ruled that the Respondent's failure to appear at the hearing constituted an admission on the charges. The Petitioner proceeded to present evidence at the hearing, through documents and through testimony by a witness, Eric Richard, M.D.

As to the care for Patient A, the Committee found that the Respondent wrote a prescription for a contraindicated drug, Imitrex. The Committee found further that, when the Chief Medical Resident at St. Mary's, Martin Pfitzner, M.D., discussed the prescription with the Respondent, the Respondent denied writing the prescription. After reviewing the physician order sheets with the Dr. Pfitzner, the Respondent acknowledged that he wrote the order for Imitrex. When Dr. Richard, the Resident Program Director, spoke with the Respondent about the Imitrex

prescription, the Respondent again denied writing the order. Dr. Richard recognized the signature on the order sheet as the Respondent's. As to the care for Patient B, the Committee found that the Respondent spoke to the Patient's daughter and son-in-law and failed to identify himself as an intern, leaving the daughter with the impression that the Respondent was Patient B's attending physician. During the course of the conversation, the Respondent referred to himself on at least two occasions as a "representative of God." As to the care for Patient C, the Committee found that the Respondent performed a history and a physical on the Patient. The Committee found that the Respondent failed to record adequate information and failed to question the Patient adequately concerning her complaints. The Committee found further that the examination fell below the minimum standard for care, because the Respondent removed Patient C's breast from her bra without warning and attempted to physically handle the breast when using a stethoscope to listen to the Patient's heart. The Patient refused to allow the Respondent to proceed in that fashion. The Committee also found that the Respondent was unreceptive to constructive criticism at St. Mary's concerning his clinical technique.

The Committee sustained all misconduct specifications against the Respondent. The Committee found, however, that the Respondent's non-license status limited the penalties available under N.Y. Pub. Health Law § 230-a (McKinney Supp. 2000). The Committee voted to censure and reprimand the Respondent.

Review History and Issues

The Committee rendered their Determination on May 1, 2000. This proceeding commenced on May 16, 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 Respondent's brief and the Petitioner's brief. The record closed when the ARB received the Petitioner's brief on June 19, 2000.

The Petitioner argues that the penalty the Committee imposed fails to protect the public. The Petitioner argues that the evidence from the hearing demonstrated that the Respondent lacks honesty, accountability and emotional stability. The Petitioner asks that the ARB place a limitation any future registration or licensure for the Respondent, until such time as the Respondent demonstrates to BPMC that he possesses the emotional stability to practice medicine. The Petitioner requests that such a demonstration should include an evaluation by an expert in mental health.

The Respondent questioned whether BPMC holds jurisdiction over him as the Respondent holds no license in New York. The Respondent also alleged that the charges against him resulted from a vendetta against him by Dr. Richard. The Respondent claims that the vendetta arose because the Respondent "blew the whistle" on "the deleterious way" Dr. Richard ran the residency program at Unity Health System (St. Mary's Hospital and Park Ridge Health System).

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Committee held jurisdiction over the Respondent and we affirm the Determination that the Respondent committed professional misconduct. We affirm the Determination to censure and reprimand the Respondent, but we add an additional penalty. We place a permanent restriction on any license the Respondent might receive, to require that the Respondent prove his fitness to practice prior to receiving the license.

Jurisdiction: The Respondents brief questioned whether BPMC or the ARB held jurisdiction over him. The Committee's FF 2-5 established that the Petitioner provided the Respondent sufficient notice concerning the hearing. A basis for jurisdiction also applied under N.Y. Educ. Law § 6526 (McKinney Supp. 2000) and N.Y. Pub. Health Law §§ 230(7) & 230-a

(McKinney Supp. 2000). Under Educ. Law § 6526, physicians in a residency program may practice medicine without a license. Under Pub. Health Law § 230(7), BPMC may conduct hearings involving both physicians practicing under a limited permit and medical residents. The Respondent committed the conduct at issue in this case while in the Residency Program at St. Mary's Hospital in Rochester. Under Pub. Health Law § 230-a, BPMC and the ARB may impose penalties after hearings against licensees or former licensees found guilty for professional misconduct. We hold that a person practicing under the exemption in § 6526 constitutes a licensee or former licensee subject to discipline for misconduct under § 230-a. To hold otherwise would leave exempt persons free to commit misconduct during the exemption period with no consequences for their acts.

Guilt on the Charges: The Committee determined that the Respondent received sufficient notice concerning the disciplinary hearing against him pursuant to Pub. Health Law § 230 (10). Under §§ 230(10)(c)(2) & (3), a licensee who receives notice about a hearing must file an answer to the charges and all charges not answered are deemed admitted. The Respondent failed to appear for the hearing in this case and failed to file an answer. The Respondent's default constituted an admission on each charge. In his brief, the Respondent attempted to explain the allegations against him as a vendetta against him by Dr. Richard. The Respondent's brief failed, however, to explain why the Respondent refused to appear at the hearing and answer the charges. The Respondent had the chance to make his allegations about the vendetta before the Committee but he ignored the opportunity. The Respondent will bear the consequences from his failure to appear. We affirm the Determination that the Respondent committed misconduct.

Penalty: We have noted that the Respondent's misconduct made him subject to discipline under § 230-a. The Committee held that the Respondent's status as a non-licensee limited the penalties available. We disagree. Under § 230-a(6), a Committee or the ARB may place a limitation or a restriction on registration or issuance of a future license. The Committee's

Determination gave no indication whether the Committee considered that option against the Respondent. Also, under § 230(7), a BPMC Committee may direct a licensee, including a medical resident, to submit to a medical or psychiatric examination when the Committee has reason to believe the licensee suffers impairment. The Respondent's conduct in the cases at issue here raises questions about his mental state, specifically the Respondent's statements to Patient B's family and his conduct toward Patient C. The Respondent's untruthfulness and his refusal to accept constructive criticism may also reflect on his mental state. The Committee's Determination made no mention whether they considered directing an examination for the Respondent.

The ARB may substitute our judgement for the Committee in determining a penalty, Matter of Spartalis v. State Bd. for Prof. Med. Cond., 205 A.D.2d 940, 613 N.Y.S.2d 759 (3rd Dept. 1994). We elect to exercise that authority in this case. We place a permanent restriction on any registration or license that the Respondent might receive, that prohibits the Respondent to begin practice under a license, until he submits to a psychiatric evaluation. The Respondent shall then appear before a BPMC Committee under the procedures set out in § 230(7). The Respondent may commence practice under the license, only if that BPMC Committee determines that the Respondent suffers from no impairment.

ORDER

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

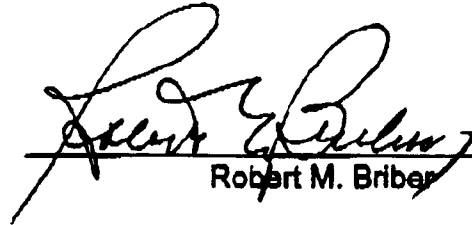
1. The ARB **HOLDS** that jurisdiction lies over the Respondent pursuant to N.Y. Educ. Law § 6526 (McKinney Supp. 2000) & N.Y. Pub. Health Law §§ 230(7) & 230-a (McKinney Supp. 2000).
2. The ARB **AFFIRMS** the Committee's Determination that the Respondent committed professional misconduct.
3. The ARB **AFFIRMS** the Committee's Determination censuring and reprimanding the Respondent.
4. The ARB **PLACES** a permanent restriction on any future New York Medical License the Respondent may receive to require that prior to receiving the license, the Respondent undergo a psychiatric examination and prove his fitness practice medicine before a BPMC Committee.

**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 Thomas Gerrowe, M.D.

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

Dated: August 9, 2000

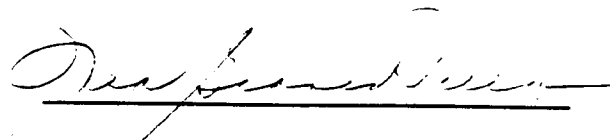


Robert M. Briber

In the Matter of Thomas Gerrowe, M.D.

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

Dated: July, 2000

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

Thea Graves Pellman

In the Matter of Thomas Gerrowe, M.D.

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

Dated: 8/19, 2000

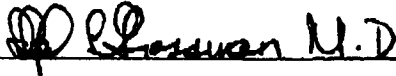


Winston S. Price, M.D.

In the Matter of Thomas Gerrowe, M.D.

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

Dated: August 14, 2000



Stanley L. Grossman, M.D.

In the Matter of Thomas Gerrowe, M.D.

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

Dated: Aug 9, 2000

Therese G. Lynch M.D.

Therese G. Lynch, M.D.