



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*

August 23, 2002

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Roland Imperial, M.D.  
#102-868 Quince Orchard Blvd.  
Gaithersburg, Maryland 20878

Paul Robert Mahar, Esq.  
NYS Department of Health  
Office of Professional Medical Conduct  
433 River Street – 1<sup>st</sup> Floor Annex  
Troy, New York 12180-2299

**RE: In the Matter of Roland Imperial, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 02-106 ) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:djh  
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH  
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

In the Matter of

Roland Imperial, 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. 02-126

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

For the Department of Health (Petitioner):

Paul Robert Maher, Esq.

For the Respondent:

Pro Se

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2002), the ARB considers the penalty to impose against the Respondent's License to practice medicine in New York (License) following disciplinary action against the Respondent's medical license in a sister state. After a hearing below, a BPMC Committee voted to revoke the Respondent's License. On review from that Committee's Determination, the Respondent challenges the underlying action in the other state and rulings at the hearing about admission of evidence. After reviewing the record and the review submissions from each party, we affirm the Committee's Determination in full.

**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(9)(b) & (9)(d) (McKinney Supp. 2002) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from another state (Maryland) found the Respondent guilty for professional misconduct

[§6530(9)(b)] and/or took disciplinary action against the Respondent's medical license in that state [§6530(9)(d)], for,

- conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York.

The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the Respondent's misconduct in Maryland would constitute misconduct if committed in New York, under the following categories:

- practicing medicine fraudulently, a violation under N. Y. Educ. Law §§ 6530(2) (McKinney Supp. 2002);
- practicing medicine with negligence on more than one occasion, a violation under N.Y. Educ. Law § 6530(3)(McKinney Supp. 2002);
- practicing medicine with gross negligence, a violation under N.Y. Educ. Law § 6530(4)(McKinney Supp. 2002);
- practicing medicine with incompetence on more than one occasion, a violation under N.Y. Educ. Law § 6530(5)(McKinney Supp. 2002);
- practicing medicine with gross incompetence a violation under N.Y. Educ. Law § 6530(6)(McKinney Supp. 2002);
- failing to comply with a federal, state or local law, rule or regulation that governs medical practice, a violation under N.Y. Educ. Law §6530(16)(McKinney Supp. 2002), and/or
- failing to maintain accurate patient records, a violation under N.Y. Educ. Law § 6530(32)(McKinney Supp. 2002).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney 2002), 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 evidence before the Committee demonstrated that the Maryland Department of Health and Mental Hygiene, Board of Physician Quality Assurance (Maryland Board) ordered a Summary Suspension of the Respondent's Maryland medical license for prescribing contraindicated medication and for failure to:

- document adequately patient physical examinations, symptoms, diagnoses, plans of treatment and level of billing to Medicare;
- prescribe medicine appropriately;
- assess and evaluate patient symptoms;
- conduct necessary studies and laboratory tests;
- meet standards for delivering medical and surgical care;
- comply with the Center for Disease Control's guidelines on universal precautions, display those guidelines in his office,
- comply with a Maryland Board subpoena, and,
- comply with a lawful investigation by the Maryland Board.

On April 24, 2001, the Maryland Board issued a Final Decision upholding the Summary Suspension and ordering that the Respondent's Maryland license remain on suspension until the Respondent completes courses in medical record keeping and internal medicine and then appears before the Maryland Board. If the Board terminates the suspension, the Respondent would then serve two years on probation.

The Committee determined that the Respondent's conduct in Maryland would constitute misconduct under New York Law as:

- practicing fraudulently,
- practicing medicine with negligence on more than one occasion,

- practicing medicine with gross negligence,
- practicing medicine with incompetence on more than one occasion,
- practicing medicine with gross incompetence, and,
- failing to maintain accurate records.

The Committee dismissed the charge concerning violating federal, state or local laws, rules or regulations, because the Statement of Charges failed to specify what laws, rules or regulations that the Petitioner alleged that the Respondent violated. The Committee held that the Respondent's conduct in Maryland made him liable for disciplinary action against his License pursuant to N. Y. Educ. Law §§ 6530(9)(b) & (9)(d). The Committee voted to revoke the Respondent's License, due to the multiple deficiencies the Maryland Board found in the Respondent's practice.

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

The Committee rendered their Determination on April 29, 2002. This proceeding commenced on May 6, 2002, when the ARB received the Respondent'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 response brief. The record closed when the ARB received the response brief on or about July 15, 2002.

The Respondent's brief challenged the underlying action in Maryland, rulings by the Maryland Administrative Law Judge and conduct by a Maryland investigator. The Respondent also asserts his innocence of any misconduct. The Respondent also alleges error by the Committee's Administrative Officer for refusing to receive all the documentation that the Respondent submitted in evidence at the hearing. The Respondent alleges that the Administrative

Officer's ruling denied the Respondent his right to file an answer in the proceeding. In response, the Petitioner argues that the Respondent's brief seeks improperly to use the ARB proceeding to re-litigate the Maryland disciplinary proceeding. The Petitioner argues that the Respondent's brief lacks merit.

### **Determination**

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent's Maryland conduct made the Respondent liable for disciplinary action under N. Y. Educ. Law §§ 6530(9)(b) & (9)(d). We also affirm the Committee's Determination to revoke the Respondent's License.

The ARB rejects the Respondent's attempt to use this forum to re-litigate the Maryland disciplinary proceeding. In a proceeding under N.Y. Pub. Health Law § 230(10)(p) and N. Y. Educ. Law §§ 6530(9)(b) & (9)(d), the Committee and/or the ARB must first determine whether another state found a licensee guilty for or disciplined a licensee for misconduct in that other state. The proof here demonstrates that Maryland found the Respondent guilty for misconduct and disciplined the Respondent. The Committee and the ARB lack any authority to review the underlying Maryland action for errors. The Maryland Board's Decision binds the ARB and the Committee on the facts and conclusions the Maryland Board found and made. The Respondent should address his challenges to the Maryland Board's Order to the Maryland courts.

After determining that the Maryland Board found the Respondent guilty for and disciplined the Respondent for misconduct, we must then determine whether the misconduct in Maryland would constitute misconduct under New York Law. The Maryland Board's Order [Petitioner Exhibit 5] listed numerous instances in which the Respondent's care for patients

breached the standard for delivery of care. In New York, the failure to provide care according to accepted standards constitutes negligence and when that failure rises to egregious levels the failure constitutes gross negligence. In New York, a lack of skill or knowledge necessary to practice safely and effectively constitutes incompetence in practice and may rise to the level of gross incompetence. The Maryland Order listed numerous instances in which the Respondent demonstrated incompetence in practice, such as prescribing contraindicated medications, prescribing medication in excessive doses and failing to comply with universal precautions. The Maryland Order also found that the Respondent committed numerous failures in documenting patient care. In New York, those documentation errors constitute failure to maintain accurate records. We hold that the Maryland Order provided sufficient grounds to find that the Respondent's conduct in Maryland constituted practicing with gross negligence, gross incompetence, negligence on more than one occasion and incompetence on more than one occasion. The Respondent's conduct would also amount to failure to maintain accurate records. We hold that the Respondent's Maryland conduct and the Maryland Order made the Respondent liable for disciplinary action against his License pursuant to N.Y. Educ. Law §6530(9)(b) & (9)(d).

The Committee voted to revoke the Respondent's License. The record showed that the Respondent placed his patients at risk by failing to provide care under acceptable standards, by prescribing medications in excessive dosages and with contraindications and by failing to observe universal precautions. The Respondent has refused to show any remorse for his conduct or recognize the need to change his practice pattern. We conclude that the Respondent remains at risk to continue providing inadequate care if he continues in practice. We hold that the Committee acted appropriately in revoking the Respondent's License.



In addition to attempting to re-litigate the Maryland proceeding in this review, the Respondent also alleged error by the Committee's Administrative Officer because the Officer refused to accept an exhibit that the Respondent offered at the hearing. The Administrative Officer found the document constituted an attempt to re-litigate the Maryland proceeding at the Committee hearing. The Respondent argued on review that the Administrative Officer's ruling violated the Respondent's right to file an answer under N.Y. Pub. Health Law § 230(10)(p). The ARB finds no validity in that argument.

Under N.Y. Pub. Health Law § 230(10)(p), a respondent in a Direct Referral Proceeding must file an answer to the Statement of Charges or the charges are deemed admitted. This statute places an obligation on a respondent to address the charges, rather an obligation on an Administrative Officer to receive into evidence any document or documents that a respondent calls an answer. The record from the hearing shows clearly that the Respondent denied the allegations against him. The Administrative Officer made no ruling that the Respondent failed to file an answer and no ruling that the Respondent admitted the charges, so the exclusion of the Respondent's exhibit caused the Respondent no prejudice as far as the Respondent's obligation to file an answer.

**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 revoke the Respondent's License.

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 Roland Imperial, M.D.**

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

Dated: August 18, 2002

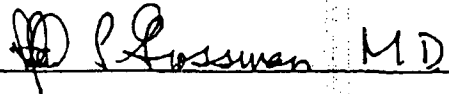
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Winston S. Price, M.D.

In the Matter of Roland Imperial, M.D.

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

Dated: August 16, 2002

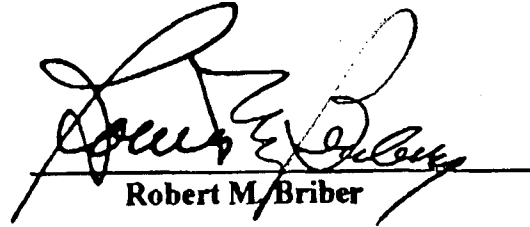
 M.D.

Stanley L. Grossman, M.D.

**In the Matter of Roland Imperial, M.D.**

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

**Dated: August 15, 2002**

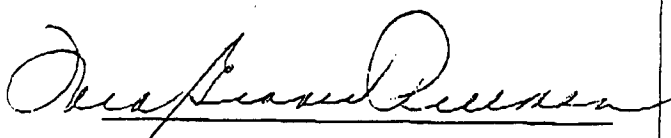


Robert M. Briber

In the Matter of Roland Imperial, M.D.

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

Dated: Aug 13, 2002



Thea Graves Pellman

In the Matter of Roland Imperial, M.D.

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

Dated: Aug 12, 2002

Therese G. Lynch M.D.

Therese G. Lynch, M.D.