



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

May 29, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Hedley Building – 4th Floor
433 River Street
Troy, New York 12180

Kevin Maloney, M.D.
10 Barberry Lane
Rye, New York 10580

Kevin Maloney, M.D.
144 East Boston Post Road
Mamaroneck, New York 10543

RE: In the Matter of Kevin Maloney, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-52) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 "Tyone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

In the Matter of

Kevin Maloney, 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. 01-52

COPY

**Before ARB Members Grossman, Lynch, Pellman, and Briber¹
Administrative Law Judge James F. Horan drafted the Determination**

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

**Paul Robert Maher, Esq.
Pro Se**

After a hearing below, a BPMC Committee found the Respondent committed misconduct due to a prior administrative determination that found the Respondent guilty for violations under the Medicaid Program. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 2001), the Petitioner asks the ARB to modify that Determination by assessing some sanction against the Respondent for his misconduct. After considering the hearing record and the submissions from the parties, we vote 4-0 to censure and reprimand the Respondent for the misconduct.

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent committed professional misconduct as defined under N. Y. Educ. Law §§ 6530(9)(c)(McKinney Supp. 2001). That statute defines misconduct to include engaging in conduct that results in a determination in an adjudicatory proceeding that the Respondent violated a state or federal statute or regulation. The charges allege specifically that the former

¹ ARB Member Winston Price, M.D. took no part in the review on this case. The ARB reviewed the case with a four member quorum, see Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

Department of Social Services found the Respondent guilty, following a hearing, for submitting false claims to and failing to maintain adequate records for the Medicaid Program. An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law § 230(10)(p)(McKinney Supp. 2001), before a BPMC Committee, who rendered the Determination which the ARB now reviews. In such a Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The hearing record indicated that the former Department of Social Services (DSS)² found the Respondent guilty, in 1995, for:

- submitting false claims to the Medicaid Program, and,
- failure to maintain records that fully disclosed the necessity for, the nature of and the extent of the medical services that the Respondent ordered.

As a sanction, DSS excluded the Respondent from the Medicaid Program for five years and ordered the Respondent to make restitution amounting to \$383,340.00, plus interest.

The Committee found that the Respondent's conduct, that resulted in the DSS Determination, constituted misconduct under § 6530(9)(c). In considering whether to assess a penalty for the misconduct, the Committee found several mitigating factors in the case:

- the misconduct took place in 1988-1989
- the Respondent performed all the testing and services for which he billed,
- the Respondent made full restitution,
- the Respondent himself disclosed the violations on his License re-registration,
- the Respondent has donated significant time and professional assistance to his community, and,
- recent audits on the Respondent's practice revealed no problems.

The Committee voted to take no action against the Respondent's License.

² The New York Legislature dissolved DSS in 1997 and transferred its functions to other agencies (1997 Laws of New York , Chap. 436).

Review History and Issues

The Committee rendered their Determination on February 28, 2001. This proceeding commenced on March 16, 2001, 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 April 16, 2001.

The Petitioner argues that the Respondent's wrongdoing should not go without punishment, because misconduct involving professional integrity requires redress. The Petitioner recommended that the ARB issue a Censure and Reprimand. In reply, the Respondent indicated that he has self-reported the misconduct finding for several years now and has attended countless hearings over the years at state medical boards, hospitals and health plans concerning the misconduct. The Respondent argues that a Censure and Reprimand would result in a report to the National Practitioner Data Bank and lead to other investigations over the matter. The Respondent argues that he has already paid a price and experienced a censure/reprimand due to the DSS action.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent committed professional misconduct. The Respondent made no challenge to that Determination. We overturn the Committee and vote to censure and reprimand the Respondent. We find the Respondent's misconduct serious, but we agree with the Committee that the mitigating factors in this case demonstrate no need to impose a severe penalty against the Respondent. We agree with the Petitioner, however, that the Respondent's

conduct warrants some penalty against his License. Due to the mitigating factors in the case, we conclude that a Censure and Reprimand provides the proper penalty.

ORDER

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

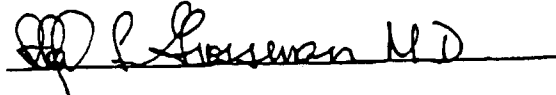
1. The ARB **AFFIRMS** the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB **OVERTURNS** the Committee's Determination to take no action against the Respondent's License.
3. The ARB votes 4-0 to **CENSURE AND REPRIMAND** the Respondent.

Robert M. Briber
Thea Graves Pellman
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

In the Matter of Kevin Maloney, M.D.

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

Dated: May 13, 2001

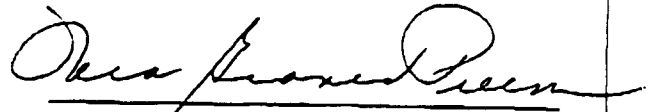
A handwritten signature in black ink, appearing to read "Stanley L. Grossman M.D.", written over a horizontal line.

Stanley L Grossman, M.D.

In the Matter of Kevin Maloney, M.D.

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

Dated: May 21, 2001

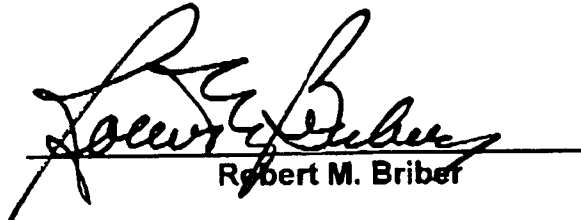


Thea Graves Pellman

In the Matter of Kevin Maloney, M.D.

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

Dated: May 16, 2001



Robert M. Briber

In the Matter of Kevin Maloney, M.D.

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

Dated: May 16, 2001

Therese G. Lynch M.D.

Therese G. Lynch, M.D.



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

February 28, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Hedley Building – 4th Floor
433 River Street
Troy, New York 12180

Kevin Maloney, M.D.
10 Barberry Lane
Rye, New York 10580

Kevin Maloney, M.D.
144 East Boston Post Road
Mamaroneck, New York 10543

RE: In the Matter of Kevin Maloney, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-52) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

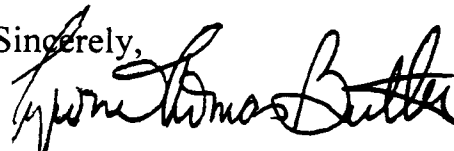
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

DETERMINATION

AND

ORDER

BPMC #01-52

IN THE MATTER
OF
KEVIN MALONEY, M.D.

A Notice of Referral Proceeding and Statement of Charges, both dated, November 21, 2000, were served upon the Respondent, **KEVIN MALONEY, M.D.**

MICHAEL R. GOLDING, M.D., Chairperson, **MOHAMMAD GHAZI-MOGHADAM, M.D.** and **STEPHEN E. WEAR, Ph.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on February 15, 2001, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person on his own behalf.

Evidence was received and transcripts of these proceeding were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such case, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(c). A copy of the Notice of Referral Proceeding and the Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Kevin Maloney, M.D., the Respondent
Sr. Terese Warganz
Paula Maloney, Esq., the Respondent's wife

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous unless otherwise stated.

1. **KEVIN MALONEY, M.D.**, the Respondent, was authorized to practice medicine in New York State on October 30, 1981, by the issuance of license number 148317 by the New York State Education Department. (Pet's Ex. 4)

2. On May 19, 1995, the Respondent was found guilty by the State of New York, Department of Social Services (hereinafter "DSS"), after an adjudicatory proceeding, of submitting false claims, and failure to maintain records that fully disclosed the necessity for, and the nature and extent of, services that Respondent ordered. The Respondent was excluded from participation in the Medicaid program for five (5) years and ordered to make restitution in the amount of \$383,340.00, plus interest. (Pet's Ex. 5)

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct resulting in the DSS disciplinary action against Respondent constitutes misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient); and/or

- New York Education Law §6530(35) (ordering excessive tests or treatment not warranted by the condition of the patient).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent is charged with professional misconduct by reason of having violated New York State Education Law §6530(9)(c) by reason of having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct pursuant to New York law.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that on May 19, 1995, the Respondent was found guilty by the State of New York, Department of Social Services, after an adjudicatory proceeding, of submitting false claims, and failure to maintain records that fully disclosed the necessity for, and the nature and extent of, services that Respondent ordered. The Respondent was excluded from participation in the Medicaid program for five (5) years and ordered to make restitution in the amount of \$383,340.00 plus interest.

The Respondent testified at the instant hearing and the Hearing Committee was very impressed by his candor and sincerity, and his ready admission of past mistakes.

There are some mitigating factors in the record which the Hearing Committee has taken into consideration in making its determination:

- Although the Order excluding the Respondent from the Medicaid program was issued in 1995, the incidents upon which the Order was based occurred 12-13 years ago, in 1988 and 1989.
- The testing and services which were the basis of the Department of Social Services action, were actually performed. They were inappropriate, but not fraudulent.
- The Respondent has made full restitution to the Medicaid program as ordered.
- The Respondent himself disclosed his Medicaid program violations in subsequent applications for medical license renewal with the New York State Education Department.
- The Respondent has contributed a significant amount of his time and professional assistance to his community. He speaks fluent Spanish and provides an important service by operating a free medical clinic (St. Rita's Clinic – Most Holy Trinity Parish, Mamaroneck, N.Y.) every Friday for uninsured and low-income patients.
- Recent audits of the Respondents medical practice (1996-1998-2000) by Oxford Health Plans were satisfactory.
- The Hearing Committee is convinced that the Respondent is truly embarrassed and contrite regarding these charges.
- The Hearing Committee is convinced that there will be no repetition of this conduct by the Respondent.

Given the above-cited circumstances, the Hearing Committee believes that any action against the Respondent's New York State license would be unwarranted and would serve no useful purpose. The current charges relate to incidents which occurred 12-13

APPENDIX I

STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

KEVIN MALONEY, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: KEVIN MALONEY, M.D.
10 BARBERRY LANE
RYE, NY 10580

KEVIN MALONEY, M.D.
144 EAST BOSTON POST ROAD
MAMARONECK, N.Y. 10543

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 17th day of January, 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

EXHIBIT

Handwritten signature and date:
J. E. V. 3/19/01

If you intend to present sworn testimony, the number of witnesses an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before January 8th, 2001.


Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before January 8th, 2001, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION
THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR
EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN
ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
November 21, 2000


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
Office of Professional Medical Conduct
433 River Street - Suite 303
Troy, New York 12180
(518) 402-0820

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

IN THE MATTER
OF
KEVIN MALONEY, M.D.

STATEMENT
OF
CHARGES

KEVIN MALONEY, M.D., the Respondent, was authorized to practice medicine in New York state on October 30, 1981, by the issuance of license number 148317 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 19, 1995, the Respondent was found guilty by the State of New York, Department of Social Services (hereinafter "DSS"), after an adjudicatory proceeding, of submitting false claims, and failure to maintain records that fully disclosed the necessity for, and the nature and extent of, services that Respondent ordered, and was excluded from participation in the Medicaid program for five (5) years and ordered to make restitution in the amount of \$383,340.00, plus interest.

B. The conduct resulting in the DSS disciplinary action against Respondent constitutes misconduct under the laws of New York state, pursuant to the following sections of New York state law:


1. New York Education Law §6530(2) (practicing the profession fraudulently);
2. New York Education Law §6530(16) (willful or grossly negligent failure to comply with substantive provisions of federal, state or local rules governing the practice of medicine);
3. New York Education Law §6530(21) (willfully making or filing a false report);
4. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient); and/or
5. New York Education Law §6530(35) (ordering excessive tests or treatment not warranted by the condition of the patient).

SPECIFICATION

Respondent is charged with professional misconduct by reason of having violated New York Education Law §6530(9)(c) by reason of having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct pursuant to New York law in that Petitioner charges;

1. The facts in paragraphs A and/or B.

DATED: *Nov. 21*, 2000
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct