



STATE OF NEW YORK DEPARTMENT OF HEALTH

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Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

October 25, 2000

PUBLIC

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anthony Benigno, Esq.
NYS Department of Health
433 River Street – Fourth Floor
Troy, New York 12180

Carolyn Shearer, Esq.
Hinman, Straub, Pigors & Manning, P.C.
121 State Street
Albany, New York 12207-1693

Janardhan Bokka Reddy, M.D.
959 Gloucester Place
Schenectady, New York 12309

RE: In the Matter of Janardhan Bokka Reddy, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-184) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 "Tyfone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyfone 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

Janardhan Bokka Reddy, 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. 00-184

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

**For the Department of Health (Petitioner): Anthony M. Benigno, Esq.
For the Respondent: Carolyn Shearer, Esq.**

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by violating a condition on his License to practice medicine in New York (License), practicing fraudulently and failing to maintain accurate records. The Committee voted to suspend the Respondent's License for six months, to place the respondent on probation and to fine the Respondent. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 2000), both parties ask the ARB to nullify or modify that Determination. The Respondent alleges errors by the Committee in assessing evidence and by the Committee's Administrative Officer in ruling on motions. The Petitioner asks the ARB to overturn the Committee's penalty and to revoke the Respondent's License. After reviewing the record and the submissions by the parties, we affirm the Determination that the Respondent committed misconduct, but we overturn the penalty the Committee imposed. We vote 4-0 to revoke the Respondent's License.

¹ ARB Member Therese Lynch, M.D. recused herself from participating in this case. The ARB reviewed the case with a four member quorum, see Matter of Wolkoff v. Chassin, 89 N.Y.2d 250(1996).

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(4), 6530(6), 6530(29) & 6530(32)(McKinney Supp. 2000) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- practicing medicine with gross negligence,
- practicing medicine with gross incompetence,
- violating a condition on his License, and,
- failing to maintain an accurate record.

The incompetence, negligence and records charges concerned the care the Respondent provided to one person, Patient M. The charges also alleged that the Respondent violated a condition on his License by practicing medicine without an approved monitor. The fraud charges alleged that the Respondent made false statements to Investigators from the Office for Professional Medical Conduct. The Respondent denied the charges and the matter proceeded to hearing before the BPMC Committee, who rendered the Determination now on review.

The Committee dismissed the charges that the Respondent practiced with gross negligence or gross incompetence in surgical treatment for Patient M. During the surgery on Patient M, the Respondent transected an aorto bi-femoral bypass. The Committee sustained the charge that the Respondent failed to maintain an accurate record for the Patient.

As to the monitoring charges, the Committee found that the Respondent entered into a Consent Agreement with OPMC on January 7, 1999, which ended a prior disciplinary action against the Respondent. That Consent Agreement provided that the Respondent could practice medicine only under monitoring by another physician, whom OPMC had approved. The Committee also found that the Respondent received information about the monitoring condition through:

- a letter from OPMC, containing the Consent Agreement, that the Respondent received at his residence on January 8, 1999,

- a January 14, 1999 letter from Nathan P. Reed, M.D., the Medical Director for the OPMC Physicians Monitoring Program, and,
- a January 20, 1999 letter from Michael S. Jakubowski, M.D., Vice President for Medical Affairs at Ellis Hospital in Schenectady.

The Committee found further that the Respondent practiced medicine on several occasions at St. Clare's Hospital, Ellis Hospital and Bellevue Hospital from the time he signed the Consent Agreement to February 24, 1999, when OPMC approved the Respondent's monitor.

On the fraud charges, the Committee found that the Respondent made false statements to two OPMC Investigators. The Committee determined that the Respondent stated falsely that he never read the Consent Agreement, during an interview with Cheryl Ratner on February 19, 1999. The Committee found that the Respondent stated falsely that he did not recognize the signature on the mail return receipt for the letter to his residence from January 8, 1999. The Committee found that the signature belonged to the Respondent's wife Kumudu Bokka Reddy [Committee Finding of Fact (FF) 7]. The Committee made that finding by comparing the signature on the postal return receipt with the signature for Kumuda Bokka Reddy on file in licensing documents from the New York State Education Department. The Committee found further that the Respondent made false statements during a January 11, 2000 interview, to Robert O'Keefe, by stating 1.) that another physician, Dr. Lirio, transected the aorto bi-femoral graft in Patient M and 2.) that the Respondent discussed with Dr. Lirio the Patient's history for the pre-existing aorto bi-femoral graft. The Committee concluded that the Respondent made the false statements knowingly, willfully and with intent to mislead and the Committee held the false statements constituted fraud.

The Committee concluded that the Respondent lacked credibility as a witness and stated that the Respondent displayed selective recall, gave self-serving answers and showed an eagerness to assign blame to others. The Committee determined that the Respondent lacked moral integrity. The Committee voted to impose a severe penalty, short of revocation. The Committee

- suspended the Respondent's License for five years and stayed all but six months,

- fined the Respondent Ten Thousand Dollars (\$10,000.00),
- required that the Respondent complete an ethics course during the suspension, and,
- placed the Respondent on probation for five years, under the conditions the Committee specified at pages 20-23 in their Determination.

The probation terms included a requirement that the Respondent practice with a monitor.

Review History and Issues

The Committee rendered their Determination on June 27, 2000. This proceeding commenced on July 10, 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 and response brief. The record closed when the ARB received the response brief on August 21, 2000.

The Petitioner asks that the ARB overrule the Committee and revoke the Respondent's License. The Petitioner argues that the Respondent demonstrated an utter lack of respect for the Board's authority to protect the public by disobeying the provisions on the Consent Agreement that allowed the Respondent to practice only with a monitor. The Petitioner argues further that the Respondent demonstrated that he lacked moral integrity by making false statements to the OPMC Investigators. The Petitioner contended that either the Consent Agreement violations or the false statements, standing alone, would warrant revocation under prior ARB Determinations. In a separate letter, the Petitioner argued that the ARB should refuse to accept the brief from the Respondent that raised issues for review, because the Respondent filed no review notice.

The Respondent argues that the evidence fails to prove that the Respondent made two false statements, knowingly and with intent to deceive. The Respondent argues further that the record for Patient M may have lacked some detail, but created no impact on patient care. As to

practice monitoring, the Respondent argues that he made a good faith effort to comply with the Order and he challenges the means by which the Committee determined when the Respondent received actual notice concerning the monitoring requirement. Specifically, the Respondent argued that only a handwriting expert, rather than the Committee, could say whether the signature on the January 8, 1999 postal receipt belonged to the Respondent's wife. The Respondent also raised a procedural challenge to rulings by the Committee's Administrative Officer. The Administrative Officer refused to remove the Committee Chair after the Committee Chair contacted Albany Memorial Hospital to inquire about the Respondent's privileges at the Hospital. The Administrative Officer also refused to remove the other physician on the Committee, who sat on the Committee in the prior disciplinary case against the Respondent. The Respondent requested that the ARB overrule the Committee's Determination, or in the alternative, reduce the penalty.

Determination

Therese Lynch, M.D., an ARB Member, recused herself from participating in this case, because she sat on the Investigative Committee in the prior disciplinary action against the Respondent. The remaining ARB members proceeded as a quorum to consider the record and the parties' submissions. The ARB accepts the Respondent's review brief. We affirm the Committee's Determination dismissing the gross negligence and gross incompetence charges concerning Patient M. The Petitioner raised no challenge to the Determination on those charges. We defer on the procedural issues that the Respondent raised. We affirm the Committee's Determination to sustain misconduct charges against the Respondent. We overturn the Committee's Determination on penalty and we vote 4-0 to revoke the Respondent's License.

The Respondent's Brief: We accepted the Respondent's brief and considered the issues he raised for review, even though only the Petitioner filed a review notice. In practice before the ARB, once either party files a review notice, the ARB allows both parties to file briefs raising issues for review, Matter of Jacob Neuman, M.D., ARB 97-34, 1997 WL 1053262 (N.Y.D.O.H. - Admin. Rev. Bd.).

Procedural Issues: The Respondent asked the ARB to overrule the Committee's Determination, due to an ex-parte communication by the Committee Chair and prior information about the Respondent that the Committee's other physician may have learned about the case from a prior disciplinary action against the Respondent.

Under our authority from N.Y. Pub. Health Law § 230-c(4)(b), the ARB may review whether the Committee made a Determination consistent with their findings and conclusions and whether the Committee imposed an appropriate penalty, within the statutory range for penalties. We interpret that authority to limit us from being able to invalidate a Committee Determination on the legal grounds that the Respondent raised. The statute does permit the ARB to remand a Determination "to the Committee" for reconsideration or further proceedings. We interpret the language "to the Committee" to mean only the Committee that rendered the Determination on review, rather than to mean that we may remand for a proceeding before a completely new Committee. Clearly, this Respondent would want a remand only before a new Committee, without the members against whom the Respondent complained. We defer on the procedural issues and we leave the Respondent to address those issues to the courts.

Determination on the Charges: The Respondent's brief argued that no evidence supported the charge that the Respondent violated the Consent Agreement deliberately. The Respondent's brief [page 9-10] concedes, however, that the Respondent received notice about the

monitoring requirement no later than January 27, 1999. The Committee found that the Respondent performed procedures at least nineteen times following that notice [Committee Finding of Fact 11, pages 6-8]. That conduct contradicts the Respondent's assertion about acting in good faith and it proves that the Respondent violated the condition on his License.

The Committee found that the Respondent actually received notice concerning about the monitoring condition earlier than January 27, 1999. The Committee found that the Respondent received notice about the condition by return receipt mail on January 8, 1999. The Respondent denied signing for that letter and the Respondent's brief attacks the Committee's basis for finding that the Respondent's wife signed for the letter. The Committee made their finding by comparing the signature on the letter with the signature on licensing documents. The Respondent argued that only a handwriting expert could make such a comparison [Respondent's Brief page 11]. We disagree. In Matter of Terra v. Department of Health, 199 A.D.2d 577, 604 N.Y.S.2d 644 (3rd Dept. 1993), a BPMC Committee made a finding by comparing a physician's signature on medical records with the signature on the physician's licensing documents. The Appellate Division for the Third Judicial Department upheld that finding and ruled such comparison appropriate for that Committee, as the fact finder. We hold that the Committee in this case acted appropriately in making the comparison at issue now.

Even before receiving the January 8, 1999 letter containing the Consent Agreement, the Respondent signed the Consent Agreement on December 24, 1998. The Committee rejected the Respondent's claim that the Respondent never read the Order before he signed it. A Committee may reject a Respondent's explanation for his conduct, Matter of Brestin v. Commissioner of Education, 116 A.D.2d 357, 501 N.Y.S.2d 923 (3rd Dept. 1986). The Committee could conclude

that the Respondent's signature on the Consent Agreement meant that the Respondent read the Agreement before signing it.

The Respondent also alleged error by the Committee in finding that the Respondent made a false statement in claiming that Dr. Lirio actually transected the graft in Patient M. The Respondent argued that no reasonable basis existed for the Committee to 1.) credit testimony at hearing, by Dr. Lirio and Nurse Jean Burger, that the Respondent had transected the graft and 2.) reject the Respondent's testimony that Dr. Lirio transected the graft. We affirm the Committee. We owe the Committee as fact finder deference in their judgements about witness credibility. We see no reason to upset that judgement in this case.

The Respondent also challenged the Committee's Determination that the Respondent committed fraud in making false statements to the OPMC Investigators. The Respondent argued that even if he made false statements, no grounds existed for a finding that the Respondent made the statements knowingly and with intent to deceive. A committee may, however, infer knowledge and intent properly from facts that the Committee finds, Choudhry v. Sobol, 170 A.D.2d 893, 566 N.Y.S.2d 723 (3rd Dept. 1991). The Committee in this case gave complete explanations for their reasons for rejecting the Respondent's explanations and inferring the Respondent's knowledge and his intent to mislead in making the false statements he made to the two Investigators.

As to the charge that the Respondent failed to maintain an accurate record for Patient M, the Respondent conceded that he could have dictated a better operative note for Patient M, but argued that the deficiencies in the record posed no potential for patient harm. We affirm the Committee's Determination on the record. A physician fails to maintain an accurate medical record when the record fails to convey objectively meaningful medical information concerning

the patient treated to subsequent treating physicians, Matter of Bogdan v. N.Y Bd. for Prof. Med. Cond., 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993). The Committee concluded that the Respondent's record for Patient M failed to reflect the care for the Patient adequately [Finding of Fact 30, page 12]. The Committee need make no finding that the inadequate record could cause patient harm. If the Committee did find a link between the inadequate record and patient care, such record would also prove negligence in addition to inaccurate record keeping, Matter of Bogdan v. N.Y Bd. for Prof. Med. Cond., (supra).

Penalty: The Committee determined that the Respondent deliberately violated a condition on his License and that the Respondent then gave false statements to OPMC Investigators knowingly and with intent to deceive. The Committee also concluded that the Respondent lacks moral integrity and that the Respondent displayed an eagerness to assign blame to others. The Committee stated that they believed that the Respondent's conduct warranted a penalty less severe than revocation, but failed to state what factors in the record they found mitigating. The Committee also failed to indicate why they concluded that the Respondent would obey probation terms now, when they found that the Respondent already violated conditions on his License deliberately and then made false statements about the violations. The ARB may substitute our judgement for the Committee's in making determinations on penalty, Matter of Minielly v. State Bd. for Prof. Med. Cond., 205 A.D.2d 940, 613 N.Y.S.2d 759 (3rd Dept. 1994). We elect to do so in this case.

The Respondent signed the Consent Agreement admitting to practicing with negligence on more than one occasion. That Consent Agreement provided for practice monitoring to assure patient protection. The Respondent clearly learned nothing from going through the prior proceeding, as the Respondent violated the Consent Agreement's terms immediately. The ARB can certainly consider that failure to learn from the prior proceeding in making a Determination

here. In addition to failing to learn from the earlier proceeding, the Respondent also failed to show remorse for his misconduct, by blaming others and by refusing to admit mistakes. Such conduct suggests that the Respondent remains at risk to repeat his misconduct. In his conduct since signing the Consent Agreement, the Respondent has demonstrated that he lacks moral integrity. We conclude from all these circumstances that license revocation constitutes the only appropriate penalty for the Respondent's misconduct.

ORDER

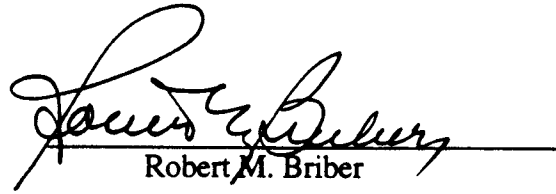
NOW, with this Determination as our basis, the ARB renders the following **ORDER**:

1. The ARB **AFFIRMS** the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB **OVERRULES** the Committee's Determination to suspend the Respondent's License, to fine him and to place him on probation.
3. The ARB **REVOKES** the Respondent's License.

Robert M. Briber
Thea Graves Pellman
Winston S. Price, M.D.
Stanley L. Grossman, M.D.

In the Matter of Janardhan Bokka Reddy, M.D.

Robert M. Briber, an ARB Member, concurs in the Determination and Order in the
Matter of Dr. Reddy.
Dated: September 7, 2000



Robert M. Briber

In the Matter of Janardhan Bokka Reddy, M.D.

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

Dated: Oct 12, 2000

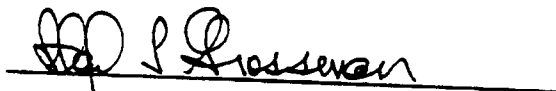
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Winston S. Price, M.D.

In the Matter of Janardhan Bokka Reddy, M.D.

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

Dated: September 7, 2000

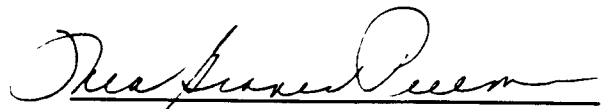
A handwritten signature in cursive script, appearing to read "Stanley L. Grossman", is written over a horizontal line.

Stanley L Grossman, M.D.

In the Matter of Janardhan Bokka Reddy, M.D.

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

Dated: Sept 8, 2000



Thea Graves Pellman