



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

November 25, 1998

Dennis P. Whalen
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anthony Scher, Esq.
Wood & Scher
14 Harwood Court - Suite 512
Scarsdale, NY 10583

Kalimah Jenkins, Esq.
NYS Department of Health
ESP Corning Tower - Room 2509
Albany, NY 12237

Emilio Salazar, M.D.
338 Shea Drive
New Milford, NJ 07646

RE: In the Matter of Emilio Salazar, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.98-213) 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.

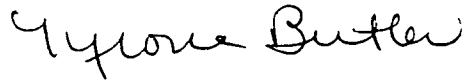
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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 cursive script that reads "Tyrone Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH (Petitioner)

COPY

In The Matter Of

Emilio Salazar, M.D. (Respondent)

**Administrative Review
Board (ARB)
Determination and
Order 98 - 213**

**Proceeding to review a Determination by a Hearing Committee (Committee)
from the Board for Professional Medical Conduct (BPMC)**

**Before Board Members : Briber, Grossman, Lynch, Price & Shapiro.
Administrative Law Judge James F. Horan served as the Board's Administrative Officer.**

**For the Respondent: Anthony Z. Scher, Esq.
For the Petitioner: Kalimah J. Jenkins, Esq.**

After a hearing pursuant to N.Y. Pub. Health Law § § 230(10) (e) & 230(10)(p)(McKinney's Supp. 1998), a BPMC Committee determined that the Respondent committed professional misconduct by knowingly submitting false information in applications for state licensure and for employment at a health care facility. As a sanction for this professional misconduct, the Committee voted to suspend the Respondent's New York Medical License for one year, to stay the final ten months in the suspension, to fine the Respondent and to place the Respondent on probation for three years. In this proceeding, pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1998), both parties ask the ARB to overrule the Committee's Determination. The Respondent asks the ARB to dismiss the charges in the interests of justice, or in the alternative, to reduce the sanction the Committee imposed. The Petitioner requests that the ARB sustain additional charges and asks that the ARB revoke the Respondent's License. After considering the record, the Committee's Determination and the parties' briefs, we sustain the Committee's Determination on the charges and as to the sanctions to impose, except that we reduce the amount of the fine and we make a small change in the Committee's Order placing the Respondent on probation.

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)(d) (McKinney Supp. 1998), because:

- another state (New Jersey) denied the Respondent a license due to conduct that would constitute misconduct if the Respondent committed such conduct in New York.

The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the Respondent's conduct

would constitute misconduct in New York under the following categories:

- practicing the profession fraudulently, a violation under N. Y. Educ. Law § 6530(2) (McKinney Supp. 1998);
- committing conduct in practice that evidences moral unfitness, a violation under N. Y. Educ. Law § 6530(20) (McKinney Supp. 1998); and,
- willfully making or filing a false report, a violation under N. Y. Educ. Law § 6530(21) (McKinney Supp. 1998).

An expedited hearing (Direct Referral Proceeding) ensued on those charges, pursuant to N.Y. Pub. Health Law § 230(10)(p)(McKinney Supp. 1998), before a BPMC Committee, who then 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, Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The Petitioner filed further charges arising from the Respondent's 1995 Application for Licensure in New York (N.Y. Application) and his 1995 and 1996 applications for employment at Bronx-Lebanon Hospital Center (Bronx Lebanon Applications). Those charges alleged that the Respondent gave answers on those applications that constitute:

- practicing the profession fraudulently, a violation under N. Y. Educ. Law § 6530(2) (McKinney Supp. 1998);
- committing conduct in practice that evidences moral unfitness, a violation under N. Y. Educ. Law § 6530(20) (McKinney Supp. 1998); and,
- willfully making or filing a false report, a violation under N. Y. Educ. Law § 6530(21) (McKinney Supp. 1998).

The same Committee considered those charges, pursuant to N.Y. Pub. Health Law § 230(10)(e)(McKinney Supp. 1998) and also rendered their decision on those charges in the Determination now on review.

The Committee determined that the New Jersey Board of Medical Examiners (New Jersey Board) denied the Respondent a medical license because:

- the Respondent submitted two moral character affidavits containing conflicting

information about whether a hospital had ever terminated the Respondent from a residency program, and,

- the Respondent failed to note his 1990-1991 employment as a surgical assistant at St. Joseph's Hospital and Medical Center in Patterson, New Jersey (St. Joseph's Employment) on the New Jersey Application.

The Committee determined that the New Jersey Board denied the Respondent licensure for committing conduct that would amount to fraud and willfully filing a false report, if the Respondent had committed such conduct in New York. The Committee sustained the charge that the Respondent's conduct amounted to a misconduct violation under N. Y. Educ. Law § 6530(9)(d) (McKinney Supp. 1998). The Committee determined further that the Respondent practiced medicine fraudulently and willfully filed a false report in New York:

- by denying on his N. Y. Application that any hospital had terminated him from a residency program, when in fact Jewish Hospital in Cincinnati, Ohio (Jewish Hospital) terminated him from a residency program in 1981, due to his immigration status; and,
- by failing to disclose the termination from Jewish Hospital on the Bronx-Lebanon Applications.

The Committee dismissed charges that the Respondent's conduct evidenced moral unfitness in practicing medicine.

As a sanction, the Committee voted to suspend the Respondent's License to practice for one year, to stay the final ten months in the suspension, to fine the Respondent Ten Thousand Dollars (\$10,000.00) and to place the Respondent on probation for three years. The Committee stated that they took a serious view concerning the Respondent's failure to file truthful applications, but noted that all the false filings related to the same issues: the Jewish Hospital termination that resulted from the Respondent's immigrant status and the St. Joseph's Hospital Employment. The Committee listed several mitigating factors that influenced them against imposing a more severe penalty, such as:

- the Jewish Hospital termination involved no professional deficiencies in patient care
- Bronx-Lebanon Hospital commended the Respondent for his work and character a:

- a resident and holds him in high regard as a physician in the Emergency Room;
- no institution at which the Respondent practiced has ever taken issue with his care for patients; and,
- the Respondent's termination at Jewish Hospital, due to his immigration status, would present no ground for denying the Respondent licensure or employment.

Although the Committee placed the Respondent on probation, the Committee specified no probation terms.

Review History and Issues

This proceeding commenced on October 1, 1998 when the ARB received the Petitioner's Notice requesting review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and the Respondent's brief and reply brief. The record closed when the ARB received the Respondent's reply brief on November 9, 1998.

The Petitioner challenges the Committee's Determination to dismiss the moral unfitnes charges and challenges the penalty the Committee imposed. The Petitioner raised the following issues

- Given the Respondent's New Jersey misconduct, the Committee rendered an inappropriate penalty.
- The Committee erred in failing to find that the Respondent's New Jersey misconduct evidenced moral unfitnes in practicing.
- Given the Committee's findings that the Respondent practiced fraudulently and willfully filed false reports in New York, the Committee imposed an inappropriate penalty.
- The Committee made findings beyond the charges' scope and failed to make findings responding to the charges.
- The Committee erred by failing to find that the Respondent's New York conduct evidenced moral unfitnes.
- The Committee considered inappropriate mitigating factors in determining the penalty

The Petitioner asks that the ARB revoke the Respondent's License to practice in New York State.

In his reply to the Petitioner's brief, the Respondent argues that the Committee has imposed too harsh a penalty already and asks that the ARB to reject the Petitioner's request for an increase in the penalty.

In his brief, the Respondent's counsel argues that the Respondent committed fraud only in a nominal sense, because he viewed his separation from employment at Jewish Hospital as a technicality arising from his immigration status rather than as a termination. Counsel contends that the Respondent could have reasonably believed that the subsequent applications he completed questioned about only terminations due to patient care issues. The Respondent's brief also points to testimony from the Emergency Services Chief at Bronx-Lebanon, who stated that he experienced no problems with the Respondent's credibility. The Respondent asks the ARB to dismiss the charges against the Respondent in the interests of justice or to reduce the penalty, to bring the penalty into line with cases, that the Respondent contends established precedents for dealing with the conduct at issue here.

Determination

All ARB Members participated in this case, considered the record and considered the parties' briefs. We sustain the Committee's Determination on the charges. We also sustain the Committee's Determination to suspend the Respondent's License for one year, to stay the final ten months of the suspension, to place the Respondent on probation for three years and to fine the Respondent. We modify the Committee's penalty by reducing the fine and by making one change concerning the probation terms.

We reject the Petitioner's request that we hold that the Respondent's conduct in New York and New Jersey evidenced moral unfitness. We agree with the Committee that the Respondent's conduct fell firmly within the misconduct definitions for filing a false instrument and for practicing fraudulently. We also reject the Respondent's request that we dismiss the remaining charges in the interests of justice. The Respondent's actions amounted to serious misconduct, that warrants a severe

penalty. Mitigating factors in the record relate to how severe a penalty the Committee or the ARB should impose, rather than to the Respondent's guilt on the charges. We turn now to considering the penalty.

The systems for licensing and credentialing physicians provide one means for state licensing boards and health care facilities to protect the public. Those systems must rely on a physician's integrity to answer application questions truthfully, so that the boards or the facilities may review a physician's entire history and determine whether something in the physician's past raises a question about his ability to provide acceptable care, his conduct towards his patients and his compliance with legal requirements and professional standards. New York courts have held that providing untruthful answers on licensing or credentialing applications can provide sufficient grounds for revoking a professional license, Matter of Jadoo v. DeBuono, 235 A.D.2d 644, 652 N.Y.S.2d 408 (third Dept. 1997). The Courts have also overturned a revocation penalty for application fraud, when mitigating factors in the record show revocation would constitute too harsh a sanction, Matter of Sarfo v. DeBuono, 235 A.D.2d 938, 652 N.Y.S.2d 852 (Third Dept. 1997). We agree with the Committee that the Respondent engaged in repeated and serious misconduct by withholding information on licensing and credentialing applications and we also agree with the Committee that the mitigating factors that the Committee identified would justify a penalty less severe than revocation.

Nothing in this record shows that the Respondent poses any danger to patients. We also see no motive in the Respondent's conduct that would have defeated efforts by the states or any health care facility to protect patients. The Committee determined that the information the Respondent withheld on the applications would have resulted in neither license nor employment denial. We conclude that the sanctions in the Committee's penalty will provide adequate punishment for the Respondent's actions and deter the Respondent and others from committing such misconduct in the future. We reject the notion that only revocation can serve as a deterrent to physicians. An actual suspension, a fine, in addition to the lost income resulting from the suspension, and a substantial period on probation provide an appropriate sanction and a sanction consistent with the Respondent's conduct and with the mitigating information in the record. We modify the Committee's penalty to reduce the fine amount to Five Thousand Dollars (\$5000.00). We hold that the smaller fine would

constitute a sufficient financial penalty along with the Respondent's lost income during the suspension. We note further that the Committee imposed probation, but provided no probation terms. We modify their Order as to probation, only to provide that - the Respondent shall serve three years probation under those conditions that the Director of the Office for Professional Medical Conduct shall impose, pursuant to her authority under N.Y. Pub. Health Law § 230(18)(McKinney Supp. 1998).

ORDER

NOW, based upon this Determination, the Review Board renders the following **ORDER**:

1. The ARB **SUSTAINS** the Committee's Determination that a.) another state denied the Respondent a license for conduct that would constitute misconduct if he had committed the conduct in New York, b.) the Respondent practiced fraudulently and c.) the Respondent willfully filed false reports.
2. The ARB **SUSTAINS** the Committee's Determination dismissing the charges that the Respondent committed conduct that evidenced moral unfitness in practice.
3. The ARB **SUSTAINS** the Committee's Determination suspending the Respondent's License for one year, staying the last ten months suspension and placing the Respondent on probation for three years.
4. The ARB **MODIFIES** the Committee's Determination on probation to read:

"the Respondent shall serve three years probation under those conditions that the Director of the Office for Professional Medical Conduct shall impose, pursuant to her authority under N.Y. Pub. Health Law § 230(18)(McKinney Supp. 1998)".
5. The ARB **MODIFIES** the Committee's Determination imposing a fine against the Respondent, by decreasing the fine amount to Five Thousand Dollars (\$5000.00).
6. The Respondent shall pay that sum to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 1245, Empire State Plaza Albany, New York 12237 within thirty (30) days of the effective date of this Order.
7. Any civil penalty not paid by the prescribed date shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is not limited to the

imposition of interest, late payment charges and collection fees, referral to the New York State Department of Taxation and Finance for collection, and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32).

8. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

Robert M. Briber

Sumner Shapiro

Winston S. Price, M.D.

Stanley L. Grossman, M.D.

Therese G. Lynch, M.D.

In The Matter Of Emilio Salazar, M.D.

Winston S. Price, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Salazar.

Dated: 11/24, 1998

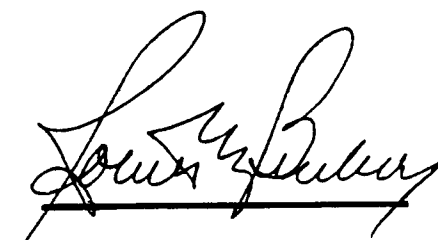
A handwritten signature in black ink, appearing to read 'W.S. Price', is written over a solid horizontal line.

Winston S. Price, M.D.

In The Matter Of Emilio Salazar, M.D.

Robert M. Briber, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Salazar.

Dated : November 23 , 1998



Robert M. Briber

In The Matter Of Emilio Salazar, M.D.

Sumner Shapiro, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Salazar.

DATED: November 20, 1998

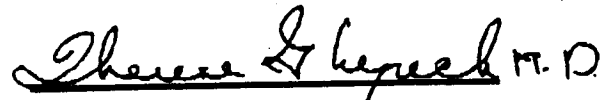
” .


Sumner Shapiro

In The Matter Of Emilio Salazar, M.D.

Therese G. Lynch, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Salazar.

Dated: 11/19, 1998

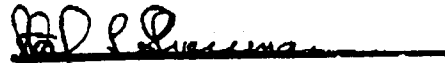


Therese G. Lynch, M.D.

In The Matter Of Emilio Salazar, M.D.

Stanley L. Grossman, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Salazar.

Dated : 11/18, 1998



Stanley L. Grossman, M.D.