



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

January 17, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Eduardo A. Sanchez, M.D.
135 Rockaway Turnpike, Suite 108
Lawrence, New York 11559

Sylvia Porter Finkelstein, Esq.
NYS Department of Health
5 Penn Plaza – Suite 601
New York, New York 10001

Boruch H. Waldman, Esq.
c/o Law Firm of Anthony D. Denaro
62 Nichols Court, Suite 200
Hempstead, New York 11550

RE: In the Matter of Eduardo A. Sanchez, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-268) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:cah

Enclosure

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

In the Matter of

Eduardo A. Sanchez, 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. 00-268

COPY

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

For the Department of Health (Petitioner):

Silvia P. Finklestein, Esq.

For the Respondent:

Boruch H. Waldman, Esq.

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by abusing two patients during examinations. The Committee voted to suspend the Respondent's New York Medical License (License) for thirty days, to limit his License and to place him on probation for five years. 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 argues that the Committee erred in the evidence they found credible and the Petitioner argues that the Committee failed to impose a penalty strong enough to protect patients from future misconduct by the Respondent. After considering the hearing record and the submissions from the parties, the ARB votes 1.) to affirm the Committee's Determination that the Respondent abused two patients and 2.) to sustain an additional misconduct specification. We also hold that the Committee imposed an inappropriate penalty for the Respondent's abusive conduct. We overturn that penalty and revoke the Respondent's License.

Committee Determination on the Charges

The proceeding commenced by a Summary Order from the Commissioner of Health, pursuant to N.Y. Pub. Health Law § 230(12)(a). The Summary Order suspended the Respondent's License, upon the Commissioner's Determination that the Respondent's practice constituted an imminent danger to the public health. The Petitioner's Statement of Charges alleged that the Respondent violated N. Y. Educ. Law §§ 6530 (2-4), 6530(20) & 6530(31-32)(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,
- engaging in conduct that evidences moral unfitness,
- willfully harassing, abusing or intimidating a patient, and,
- failing to maintain accurate records.

The charges accused the Respondent of committing sexual abuse against two patients and submitting false information on his 1999 application (Application) for re-registration as a physician in New York State. The record refers to the Patients as A and B to protect their privacy. The Respondent denied the charges. A hearing on the charges and the Summary Order ensued before the BPMC Committee who rendered the Determination now on review. The ARB review addresses the Committee's Determination on the charges and penalty only, as the ARB lacks the authority to review Summary Orders [see Pub. Health Law § 230-c (1)].

The Committee found that the Respondent saw Patient A on March 13, 2000, for complaints that included nasal congestion and throat and ear pain. The Committee's findings indicated that during an examination on that date, the Respondent:

- pulled down the Patient's pantihose and panties to the Patient's knees;
- touched and spread the Patient's buttocks;

- touched his own genital area with one hand, while continuing to touch the Patient's buttocks with his other hand;
- pressed his erect penis against the Patients buttocks and touched the Patient's left inguinal area;
- took the Patient's left hand and touched it across the Respondent's groin area; and,
- ran his hands over the Patient's breasts.

The Committee found further that the Respondent saw Patient B on January 26, 1999 for complaints that included flu, chest pain, backache and cough. The Committee found that, during that examination, the Respondent:

- pulled down the Patient's pants and underwear,
- spread and exposed the Patient's buttocks,
- touched the Patient's left inguinal area with his left hand and her buttocks with his right hand, and,
- touched the Patient's suprapubic area.

The Committee determined that the Respondent failed to maintain accurate records concerning the treatment for either Patient, that the record for A reflected questions the Respondent never asked the Patient and that the Respondent altered the record for Patient B.

In reaching their findings, the Committee assessed credibility among witnesses at the hearing. The Committee found Patients A and B credible in their testimony. The Committee also found the Petitioner's expert, Sheldon Alter, M.D., credible in his testimony about generally accepted medical standards. The Committee found the Respondent unpersuasive and found his answers to questions contradictory, inconsistent, unresponsive and evasive.

The Committee sustained the specifications that the Respondent's conduct constituted willfully abusing a patient and failing to maintain accurate patient records. The Committee also sustained the specifications that the Respondent's conduct towards Patients A and B evidenced moral unfitness in medical practice. The Committee made no findings concerning the charges that the Respondent entered false information on the Application and dismissed charges that alleged that the Respondent's answers on the Application constituted engaging in conduct that

evidenced moral unfitness. The Committee also dismissed the charges that the Respondent's conduct constituted practicing fraudulently and practicing with gross negligence and negligence on more than one occasion. The Committee voted to suspend the Respondent's License for one year and to stay the suspension for all but thirty days. The Committee also voted to place two limitations on the Respondent's License requiring that he 1.) examine female patients only in a chaperone's presence and 2.) provide all female patients with an examination gown. The Committee voted further to place the Respondent on probation for five years.

Review History and Issues

The Committee rendered their Determination on September 27, 2000. This proceeding commenced on October 5, 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 Petitioner's brief and the Respondent's response brief. The record closed when the ARB received the response brief on November 20, 2000.

The Petitioner asks the ARB to overturn the penalty the Committee imposed and to revoke the Respondent's License. The Petitioner asks the ARB to consider the following factors that the Petitioner described as aggravating:

- the abuse took place during medical examinations,
- the conduct involved two patients over the course of fourteen months,
- the Respondent abused a poor and under served population,
- the Respondent showed no remorse, and,
- Patient A has suffered from depression following the Respondent's conduct.

The Petitioner argues that the ARB has held previously that sexual abuse constitutes grounds for license revocation and that revocation alone can protect patients from a physician who would abuse patients for his own sexual gratification.

The Respondent asks that the ARB dismiss the charges and exonerate the Respondent. The Respondent's brief argues that the probation the Committee ordered has resulted in the Respondent losing malpractice insurance coverage and the standing to seek reimbursement through Medicare and Medicaid. The Respondent contends that the case turned on credibility issues and on the Committee's decision to credit uncorroborated testimony by the Patients and to ignore denials by the Respondent and testimony by the Respondent's former office staff. The Respondent asks the ARB to consider why a physician who spent eighteen years building a practice would throw that all away, to do what the Patients here allege.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's factual findings and their Determination to sustain the specifications charging that the Respondent willfully abused Patients A and B, failed to maintain accurate records and engaged in conduct towards Patients A and B that evidenced moral unfitness. On our own motion, the ARB overturns the Committee and sustains the charge that the Respondent's conduct towards Patients A and B constituted fraud in practicing medicine. We also overturn the Committee and vote to revoke the Respondent's License.

The Respondent bases his request for dismissal on arguments that the Committee erred in their assessment on the testimony by witnesses. The Respondent asks the ARB, in effect, to overturn the observations that the Committee made from hearing the witnesses' live testimony

and to substitute impressions the Respondent would have us draw from reading the hearing transcripts. The ARB declines that request. The ARB Members served on BPMC Hearing Committees prior to our appointments to the ARB, so we know that reading testimony from a transcript provides a poor substitute for observing witnesses directly. In our role in reviewing a case, the ARB owes the Committee as fact finder deference in their judgements on credibility. The Committee in this case made extensive findings of fact [Committee Determination pages 7-8] as to why they credited the testimony by the Patients and rejected the testimony by the Respondent. In addition to the Patients' testimony, corroborating evidence existed in statements the Patients made shortly following the examinations at issue here. The Committee also made extensive citations to the Respondent's testimony at the hearing that the Committee found contradictory or evasive. We see no error in the Committee's judgement on credibility. We hold that the proof the Committee found credible provided preponderant evidence that the Respondent engaged in conduct that violated N. Y. Educ. Law §§ 6530 (20) & 6530(31-32)(McKinney Supp. 2000), by willfully abusing a patient, engaging in conduct that evidenced moral unfitness and failing to maintain accurate records.

Under our review authority from Pub. Health Law § 230-c(4)(a), the Review Board may substitute our judgment for that of the Committee in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 AD 2d 940, 613 NYS 2d 759 (Third Dept. 1994). The ARB may also choose to substitute our judgement and amend a Committee Determination on our own motion, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). We elect to exercise that authority in this case and hold that the Respondent's conduct also constituted fraud in medical practice.

To sustain a charge that a licensee practiced medicine fraudulently, requires a committee or the ARB to find that (1) a licensee made a false representation, whether by words, conduct or by concealing that which the licensee should have disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation, Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (Third Dept. 1966), aff'd, 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). The committee or ARB may infer the licensee's knowledge and intent properly from facts that such committee finds, but must state specifically the inferences it draws regarding knowledge and intent, Choudhry v. Sobol, 170 A.D.2d 893, 566 N.Y.S.2d 723 (Third Dept. 1991). In this case, the evidence demonstrated that the Respondent touched the Patients inappropriately, while representing falsely that he was conducting a medical examination on the Patients for cold or flu symptoms. We infer that the Respondent knew he acted for his own sexual gratification and that he intended to mislead the Patients about his true intentions, in order to accomplish his goal. We hold that such conduct constituted practicing fraudulently.

We now consider the appropriate penalty for such misconduct. Our review authority from Pub. Health Law § 230-c(4)(a) also authorizes the ARB to substitute our judgment for that of the Committee in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 Ad 2d 86, 606 NYS 2d 381 (Third Dept. 1993). We overturn the Committee's Determination to suspend the Respondent's License for a short time, to limit the License and to place the Respondent on probation. Although the Committee's made detailed factual findings on the charges concerning Patients A and B and on their credibility judgements, the Committee provided no discussion on their reasons for the penalty they imposed. We hold the penalty they imposed will provide insufficient protection against a Respondent who committed repeated sexual abuse, will provide

an insufficient sanction for that conduct and will provide an insufficient deterrent against such conduct by others. The Respondent violated the trust that his Patients placed in him and forfeited his privilege to hold a medical license in New York State. We vote to revoke the Respondent's License.

In addition to the charges that concerned the examinations on Patients A and B, the Petitioner's Statement of Charges also alleged that the Respondent gave false information on his 1999 Application. The Committee made no factual findings on those allegations, although the Committee did dismiss the charge that the Application constituted conduct that evidenced moral unfitness. The ARB considered remanding this case to the Committee for findings on the Application charge. We decided against a remand, because the conduct involving Patients A and B constituted far more serious misconduct. We saw no reason to delay a final Determination on those charges to remand over the Application charge.

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 suspend and then limit the Respondent's License.
3. The ARB **REVOKES** 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 Eduardo A. Sanchez, M.D.

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

Dated: 1/12/01, 2000

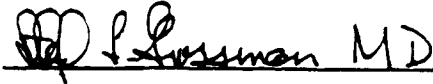
A handwritten signature in black ink, appearing to read 'W.S. Price', is written over a solid horizontal line.

Winston S. Price, M.D.

In the Matter of Eduardo A. Sanchez, M.D.

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

Dated: December 29, 2000

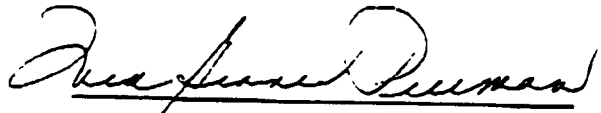


Stanley L. Grossman, M.D.

In the Matter of Eduardo A. Sanchez, M.D.

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

Dated: Dec 28, 2000

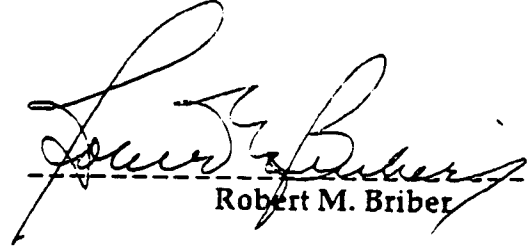


Thea Graves Pellman

In the Matter of Eduardo A. Sanchez, M.D.

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

Dated: December 26, 2000



Robert M. Briber

In the Matter of Eduardo A. Sanchez, M.D.

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

Dated: Dec. 27, 2000



Therese G. Lynch, M.D.