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

April 17, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anthony Velez, M.D.
420 East 64th Street
New York, New York 10021-7853

Anthony Velez, M.D.
5 Beekman Street
New York, New York 10038

Marcia E. Kaplan, Esq.
NYS Department of Health
5 Penn Plaza – 6th Floor
New York, New York 10001

Edward J. Yun, Esq.
Nathan Dembin & Associates, P.C.
225 Broadway, Suite 1400
New York, New York 10007

RE: In the Matter of Anthony Velez, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-307) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

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

Anthony Velez, M.D. (Respondent)

A proceeding to review a Determination by a Committee (Committee) from the Board for Professional Medical Conduct (BPMC)

Administrative Review Board (ARB)

Determination and Order No. 00-307

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

For the Department of Health (Petitioner): **Marcia E. Kaplan, Esq.**
For the Respondent: **Edward J. Yun, Esq.**

After a hearing below, a BPMC Committee sustained professional misconduct charges against the Respondent, upon finding that the Respondent's care for certain patients indicated a severe lack of knowledge or skill necessary to practice medicine. The Committee revoked the Respondent's License to practice medicine in New York State (License). In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 2001), the Respondent asks the ARB to nullify or modify the Committee's Determination. After reviewing the record below and the parties' review submissions, we affirm the Committee's Determination that the Respondent committed repeated and serious professional misconduct in administering medication to several patients, that placed the patients at risk. We affirm the Committee's Determination to revoke the Respondent's License, because we agree with the Committee that the Respondent placed patients at life threatening risks, without providing necessary life support systems and without any insight into his errors.

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(3-6), 6530(24), 6530(32) & 6530(35)(McKinney Supp. 2000) by committing professional misconduct under the following specifications:

- 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,
- performing professional responsibilities he knew or had reason to know were beyond his competence,
- ordering treatment unwarranted by a patient's condition, and,
- failing to maintain accurate records.

The charges related to the treatment the Respondent-Psychiatrist provided to twelve persons, Patients A-L. The record refers to the Patients by letters to protect their privacy. A hearing ensued before the BPMC Committee who rendered the Determination now on review.

The Committee found that the Respondent failed to document evaluations, physical history, laboratory tests, diagnoses or treatment plans for Patients A-L. The Committee also found that the Respondent administered:

- intravenous (IV) Valium inappropriately, in an office setting, to Patients B, C, D, F, G, I and J;
- IV Valium and intramuscular (IM) Demerol together, a contraindication, to Patients C, G and J; and,
- IM Valium without appropriate medical indication to Patient C.

Further, the Committee found that the Respondent deviated from minimally acceptable care standards by:

- administering and prescribing antibiotics to Patients C, F, G, H, I and J;

- administering and prescribing Dexamethasone to Patient G, without appropriate justification and beyond the Respondent's competence;
- administering injectable Toradol to Patients C, H and J, without appropriate justification and beyond the Respondent's competence.

In addition, the Committee found that the Respondent practiced outside the practice of psychiatry by treating non-psychiatric complaints, rather than referring the Patients. Finally, the Committee found that the Respondent failed to maintain accurate records for Patients A-L.

In making their findings, the Committee relied on testimony by the Petitioner's expert, Alan Medina, M.D. The Committee gave minimal weight to the testimony by the Respondent's expert, Leo Maniace, M.D., an anesthesiologist, who never practiced psychiatry. Dr. Maniace testified that he knew the standards for administering IV medicine for anesthesia, but did not know the standards for administering medicine for psychiatry nor adequate record standards for a psychiatrist. The Committee found that the Respondent's testimony lacked credibility and found that his actions and testimony raised questions about the Respondent's overall medical judgement.

The Committee voted to revoke the Respondent's License. The Committee concluded that administering IV Valium and/or IM Demerol, alone or with other medications, placed Patients at unnecessary life threatening risks. The Committee concluded further that the Respondent failed to recognize the risks in which he placed the Patients, failed to take responsibility for his dangerous practices and failed to take even the most rudimentary precautions. The Committee also concluded that the Respondent placed Patients at life threatening risk without recognizing that he could treat Patients more safely and without providing necessary life support systems.

Review History and Issues

The Committee rendered their Determination on November 10, 2000. This proceeding commenced on November 27, 2000, 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 February 16, 2001.

The Respondent's brief argues that the case involved IV Valium care to a few patients from May 1998-October 1999. The brief contends that no problem existed with the medication choice, but rather with the medication route and the brief contends that no patient harm or adverse reactions resulted. The Respondent argues that, under N.Y.Educ Law § 6527(4)(e) (McKinney Supp. 2001), a physician may use whatever medical care treats patients effectively. The Respondent called the Committee unreasonable for rejecting testimony by the Respondent's expert, who had experience in administering IV Valium. The Respondent points out that in addition to causing no patient harm, the Respondent had no history for prior sanctions or patient harm. The Respondent argues that he can learn from his mistakes and will follow the Department of Health's directive to cease administering IV Valium. For those reasons, the Respondent contends that the Committee imposed an overly harsh sanction. The Respondent asks that the ARB impose a less severe sanction.

The Petitioner asks the ARB to reject the Respondent's request that the ARB act beyond our scope of review and substitute our judgement on credibility. The Petitioner argues that the Respondent misinterpreted Educ. Law. § 6527(4)(e). The Petitioner states that alternative medicine does not insulate the Respondent when treatment deviates from standards. The Petitioner argues that no penalty other than revocation would provide an appropriate sanction for the Respondent's conduct.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent committed professional misconduct and we affirm the Committee's Determination to revoke the Respondent's License.

The Respondent alleged error by the Committee for rejecting testimony by the Respondent's expert, and the Respondent requests in effect that the ARB rely on the testimony from the Respondent's expert in overturning the Committee. The Respondent's request would require the ARB to substitute our judgement on credibility for the Committee, even though the Committee viewed the live testimony by the expert, while the ARB reviewed the testimony only from reading the hearing transcripts. We reject the Respondent's request, because we see no error by the Committee. 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 stated clearly that they rejected the testimony by Dr. Maniace because he never practiced psychiatry and because he testified that he knew nothing about the medicine administration standards for psychiatrists. The Respondent argued that Dr. Maniace had administered IV Valium, but Dr. Maniace admitted during his testimony that he had administered IV Valium only during anesthesia administration in a hospital setting.

The Respondent also argued that the Respondent may administer Valium by any route as long as the he treats Patients effectively. As the Petitioner's brief points out, however, no matter what the therapy a physician employs, a physician must still comply with basic care standards, Matter of Gonzalez v. N.Y.S. Dept. of Health, 232 A.D.2d 886, 648 N.Y.S2d 827 (3rd Dept.

1986). The Committee in this case found that the Respondent practiced below accepted care standards, because IV Valium or IM Demerol placed the Patients at risk and the Respondent failed to recognize the risk or to take the most rudimentary precautions. The Respondent also failed to indicate during his testimony why he failed to administer Valium orally, when that method posed no such risks as the IV method posed.

In requesting a reduction in the penalty, the Respondent argued that he would abide by the directives by the Department of Health to cease the IV and IM treatments. As we noted above, the Respondent has yet to explain why he started to administer the medications by those routes. The Committee found also that the Respondent failed to recognize his errors. The ARB finds that the Respondent's refusal to recognize his errors leaves the Respondent at risk to repeat those errors if he remains in practice. The Committee also concluded that the Respondent's errors and his testimony implicated his entire medical practice. We agree with the Committee that revocation will provide the only appropriate penalty in this case.

ORDER

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

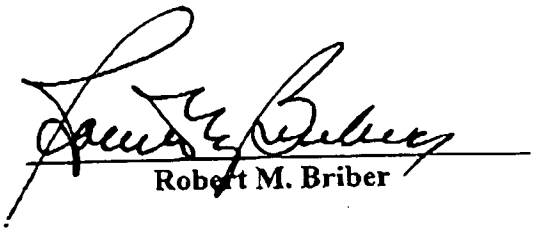
1. The ARB **AFFIRMS** the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB **AFFIRMS** the Committee's Determination to revoke the Respondent's License.

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 Anthony Velez, M.D.

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

Dated: 3/13/2001

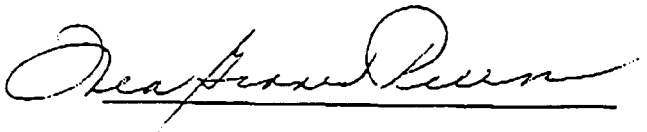


Robert M. Briber

In the Matter of Anthony Velez, M.D.

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

Dated: 3/14, 2001



Thea Graves Pellman

In the Matter of Anthony Velez, M.D.

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

Dated: 4/13, **2001**

Winston S. Price, M.D.

In the Matter of Anthony Velez, M.D.

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

Dated: March 16, 2001

S. L. Grossman M.D.

Stanley L Grossman, M.D.

In the Matter of Anthony Velez, M.D.

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

Dated: March 13, **2001**

Therese G Lynch M.D

Therese G. Lynch, M.D.