



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

November 6, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
& Robert Maher, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Ralph A. Erbaio, Jr., Esq.
Lifshutz, Polland & Hoffman
675 Third Avenue
New York, New York 10017

Ivan D. Baraque, M.D.
77-18 141 Street – Apartment B
Kew Garden Hills, NY 11367

Ivan D. Baraque, M.D.
865 Cypress Avenue
Ridgewood, New York 11385

RE: In the Matter of Ivan D. Baraque, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-164) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 "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

Ivan D. Baraque, 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. 01-164

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):

Paul Robert Maher, Esq.

For the Respondent:

Ralph A. Erbaio, Esq.

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by engaging in conduct that resulted in his conviction for a crime under Federal Law. The Committee voted to suspend the Respondent's New York Medical License for two years. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 2001), both parties ask the ARB to modify that Determination. The Petitioner asks the ARB to revoke the Respondent's License, while the Respondent asks that the ARB reduce the penalty to a stayed suspension, with a fine and probation. After reviewing the record and the parties' review submissions, we vote 4-1 to affirm the two-year suspension. We vote 5-0 to give the Respondent credit against the time on suspension for four months that the Respondent spent under incarceration from the Federal conviction.

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)(a)(ii) (McKinney Supp. 2001). That statute defines professional misconduct to include engaging in conduct that results in a criminal

conviction under Federal Law. The charges related to the Respondent's June 2000 conviction, in the United States District Court for the Eastern District of Tennessee, for mail fraud. 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 an Initial Determination. In the Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The Respondent's plea agreement from the Federal criminal case [Petitioner's Exhibit 7, §6] revealed that the Respondent applied for a disability policy with Provident Life Insurance Company in December 1993. In June 1994, the Respondent claimed a back injury from changing a tire. The Respondent received over \$77,000.00 from Provident. In the Federal criminal proceeding, the Respondent entered a guilty plea for mail fraud, for filing a claim for full disability, when the Respondent actually worked part-time. The District Court sentenced the Respondent to four months imprisonment at a half way house, three years supervised release and \$60,000.00 in restitution.

The Committee sustained the charge that the Respondent's conduct constituted professional misconduct under N. Y. Educ. Law §§ 6530(9)(a)(ii) and the Committee voted to suspend the Respondent's License for two years. The Committee rejected revocation as a sanction. They concluded that the crime amounted to an aberration and they found that the crime unrelated to patient care or billing for patient care.

Review History and Issues

The Committee rendered their Determination on July 20, 2001. This proceeding commenced on July 26, 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 August 23, 2001.

The Petitioner's brief asks that the ARB overturn the Hearing Committee and revoke the Respondent's License. The Petitioner argues that the Respondent's crime did relate to his practice, because the Respondent made untrue claims about his ability to practice. The Petitioner also argues that the Committee's sanction fails to protect the public, because false insurance claims harm the public and because a penalty that minimizes fraud will harm efforts to combat fraud.

In reply, the Respondent argues that the Committee found correctly that the Respondent's conduct bore no relation to his medical practice. The Respondent argues that he has learned an indelible lesson from the criminal proceeding and asks the ARB to consider a reduction in the sanction that would include a fine, a stay of a majority of the suspension and probation.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent's conduct amounted to professional misconduct under N. Y. Educ. Law §§ 6530(9)(a)(ii). Neither party challenged the Committee's Determination on the charges. We affirm the Committee's Determination on penalty, with a modification to the time that the Respondent must serve on suspension.

The ARB rejects the Petitioner's request that we revoke the Respondent's License. We hold that the imprisonment and restitution under the Federal conviction and an actual suspension of his License will constitute a sufficient sanction for the Respondent's misconduct and a deterrent to such misconduct by others. By a 4-1 vote, we reject the Respondent's request that we stay a majority of the suspension. We disagree with the Respondent and Committee that the Respondent's crime had no connection to medical practice. The Respondent engaged in a

criminal scheme that misrepresented his ability to practice medicine in order to gain benefits the Respondent did not deserve.

By a 5-0 vote, we modify the suspension to provide that the Respondent receive credit against the twenty-four month suspension, for the time the Respondent spent away from practice during his four month imprisonment under the Federal conviction. The ARB has recognized such "time-served" credit previously in calculating suspensions, Matter of Richard M. Koenig, ARB No. 93-19, 1993 WL944049 (NYDOH Adm. Rev. Bd). The remaining twenty months in the suspension shall run retroactive to the date the Committee's suspension order became effective in July 2001.

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 due to his Federal criminal conviction.
2. The ARB votes 4-1 to affirm the Committee's Determination to suspend the Respondent's License for two years.
3. The ARB votes 5-0 to grant the Respondent credit against the time on suspension for the four months the Respondent spent in Federal incarceration under his criminal conviction. The remaining twenty months in the suspension shall run from the date in July 2001, when the Committee's suspension order became effective.

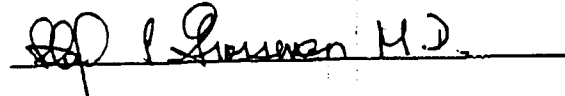
Robert M. Briber
Thea Graves Pellman
Winston S. Price, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

In the Matter of Ivan D. Baraque, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Baraque.

Dated: ~~November 1~~, 2001

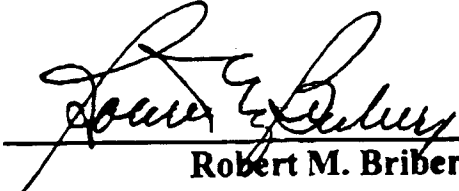
Handwritten signature of Stanley L. Grossman, M.D. in cursive script, written over a horizontal line.

Stanley L Grossman, M.D.

In the Matter of Ivan D. Baraque, M.D.

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

Dated: September 27, 2001



Robert M. Briber

In the Matter of Ivan D. Baraque, M.D.

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

Dated: Sept 27, 2001

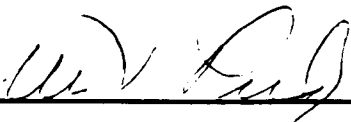


Therese G. Lynch, M.D.

In the Matter of Ivan D. Baraque, M.D.

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

Dated: 12/24, 2001



Winston S. Price, M.D.

In the Matter of Ivan D. Baraque, M.D.

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

Dated: Oct 1, 2001



Thea Graves Pellman