



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen

Executive Deputy Commissioner

July 20, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mourad Bottros, M.D.
5 Hastings Circle
Pittsford, New York 14534

Mourad Bottros, M.D.
1801 Long Pond
Rochester, New York 14626

Bradley C. Mohr, Esq.
NYS Department of Health
Corning Tower Room 2503
Empire State Plaza
Albany, New York 12237

John R. Parrinello, Esq.
Redmond & Parrinello, LLP
400 Executive Office Building
Rochester, New York 14614

RE: In the Matter of Mourad Ramsey Bottros, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 97-218A) 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.

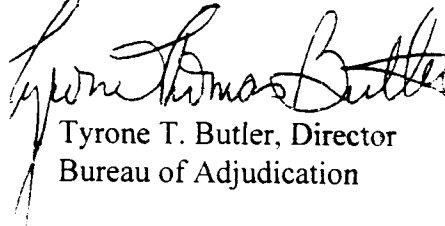
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla
Enclosure

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

COPY

In the Matter of

Mourad Ramsey Bottros, MD. (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. 97-218A

Before ARB Members Grossman, Shapiro and Price¹.
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner):

Bradley Mohr, Esq.

For the Respondent:

John R. Parinello, Esq.

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinnéy's Supp. 1999), we reconsider the penalty to impose against the Respondent's medical license in New York, for submitting a fraudulent application for licensure in another state. Our prior Order in this matter revoked the Respondent's License, but the Appellate Division for the Third Judicial Department held that penalty excessive and remanded for the ARB to impose a different sanction². Upon reviewing the record, the Appellate Division's decision and additional briefs by the parties, the quorum participating in this review votes 3-0 to suspend the Respondent's License for one year and to fine him Ten Thousand Dollars (\$10,000.00).

¹ ARB Members Therese Lynch M.D. and Robert Briber recused themselves from participating in this case.

² Matter of Bottros v. DeBuono, A.D.2d, N.Y.S.2d (Third Dept. 1998)

The Proceeding to This Point

In 1990 the Respondent signed a Consent Agreement [Petitioner Exhibit 3] with BPMC to settle a prior disciplinary proceeding. In the Consent Agreement, the Respondent admitted to practicing medicine with negligence on more than one occasion, while treating two patients. The Consent Agreement suspended the Respondent's License for two years, stayed the suspension and placed the Respondent on probation. In 1996, the Board of Licensure in Medicine of the State of Maine (Maine Board) voted to deny preliminarily the Respondent's request to renew his License in Maine, because the Respondent had obtained the License by fraud and deceit, by failing to disclose the New York Consent Agreement. The Maine Board informed the Respondent that their action would become final unless the Respondent requested a hearing. The Respondent made no request for a hearing.

The present New York disciplinary proceeding began when the Petitioner filed charges alleging that the Respondent violated N. Y. Educ. Law §§6530(9)(b)&(d)(McKinney's Supp. 1997), because:

- another state's a duly authorized professional disciplinary agency found the Respondent guilty for committing acts in that state, which would constitute professional misconduct under New York Law, if the Respondent had committed the conduct in New York State, and,
- another state's duly authorized professional disciplinary agency took disciplinary action against the Respondent in that state for conduct which would constitute misconduct under New York Law, if the Respondent had committed the misconduct in New York State.

The Petitioner alleged further that the Respondent's conduct in Maine would have amounted to obtaining a license fraudulently, a violation under N. Y. Educ. Law §§6530(1)(McKinney's Supp. 1997), if the Respondent had committed the conduct in New York State.

A hearing ensued pursuant to N.Y. Pub. Health Law § 230(10)(p) (McKinney's Supp. 1997), a statute that provides for an expedited hearing when the case against a licensee arises from an administrative adjudication in another jurisdiction. In such an expedited hearing, 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 NY2d 250 (1996). The Committee that conducted the hearing rendered a report sustaining the charges.

The Committee found that the Maine Board took disciplinary action against the Respondent's Maine License, by refusing to renew the Respondent's Maine License, pursuant to Title 32 Maine Revised Statutes Annotated § 3282-A(2)(A), due to the Respondent's false answers on license renewal applications, to questions as to whether any other state had disciplined him. The Maine Board found that by answering "no" on the renewal applications, the Respondent failed to report that New York had suspended the Respondent's License, stayed the suspension and placed the Respondent on probation for two years, under an August 6, 1990 Consent Order between the Respondent and BPMC. The Maine statute, under which the Maine Board acted, provided that the Maine Board could refuse to renew a license for fraud and deceit in obtaining a license. The Committee found further that at the same time the Maine Board informed the Respondent concerning the non-renewal, the Maine Board's Executive Director, Mr. McPeck, sent the Respondent's former attorney a letter (McPeck Letter), indicating that Mr. McPeck would delete the words fraud and deceit from the Maine Board's Mandatory Disciplinary Action Report concerning the Respondent's case.

The Committee voted to censure and reprimand the Respondent for his conduct. In rejecting revocation as a penalty, the Committee stated that they remained unconvinced about whether the Petitioner proved intent and noted they found three mitigating factors:

- the Respondent pursued no hearing in Maine, because he believed the McPeck Letter removed fraud and deceit as an issue in the case;
- the Respondent lacked concern or appreciation for the responsibilities to sign forms, due to language problems and practice pressures; and,
- the charges involved no issues relating to the Respondent's competence as a physician.

The Committee also noted that they found the Maine renewal applications [Respondent's Exhibits H & M] ambiguous in their wording and that the Respondent testified that he misunderstood the date on which his New York Probation took effect.

The Committee rendered their Determination on September 11, 1997. The Petitioner then requested administrative review by the ARB, pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1997), through a Notice we received on September 17, 1997. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and reply brief and the Petitioner's brief and reply brief. The Board received the Respondent's brief on October 22, 1997, the Petitioner's brief on October 21, 1997, the Respondent's reply after November 4, 1997 and the Petitioner's reply after November 3, 1997.

The Petitioner raised three issues for review:

- A. The Committee imposed an inadequate penalty against a second time offender who committed repeated fraud in applying for a medical license.
- B. The Committee erred by allowing the Respondent to relitigate the fraud finding by Maine.
- C. The Committee's statement, that the record contained unconvincing evidence concerning intent, conflicted with the Committee's Determination to sustain the charges against the Respondent.

The Petitioner asked that the Board modify the Committee's Determination, by correcting the Committee's errors and by overturning the Committee's Penalty and revoking the Respondent's License.

The Respondent raised three issues on review:

1. Maine took no disciplinary action and made no findings that the Respondent committed misconduct. Instead, the Maine License non-renewal resulted from a compromise between the parties and the McPeck Letter modified the Maine Board Letter, that indicated that the Maine Board refused to renew the Maine License due to fraud or deceit.
2. The Petitioner failed to show that the Respondent's conduct in Maine would amount to misconduct in New York, because the Maine Board made no reference to fraud or deceit as the basis for their action.
3. If the Board did sustain the charges, the Respondent requested that we also sustain the Committee's Penalty, because any penalty beyond censure and reprimand would be incommensurate with the offense and with the mitigating factors in the case.

The Respondent asked that the ARB overturn the Committee's guilty findings, or dismiss the charges in the interests of justice, or sustain the sanction the Committee imposed.

After considering the record and the parties' briefs, the ARB voted 4-0 to sustain the Committees' Determination on the charges, to overturn the Committee's Determination on the penalty and to revoke the Respondent's License. At the time five members on the ARB were Robert Briber, Sumner Shapiro, William Stewart, M.D., Winston Price, M.D. and Edward Sinnott, M.D. Member Robert Briber recused himself from participating in the case, because he signed the Consent Order that resulted in the Respondent going on the New York Probation in 1990.

The quorum who did participate in the case rejected the Respondent's contention that Maine took no disciplinary action against him. The quorum held that a compromise ending a disciplinary action and removing a licensee's ability to practice medicine in a state constituted a

disciplinary action, Matter of Sternberg v. Administrative Review Board for Prof. Med. Cond., 235 AD2d 945, 652 NYS2d 855 (1997).

Having determined that Maine disciplined the Respondent, the ARB concluded that the Respondent's conduct in Maine would have constituted obtaining a license fraudulently, if the Respondent had committed the conduct in New York. Fraud under the Education Law constitutes: 1.) a false representation, by words, conduct or concealment; 2.) that a licensee knows to be false; 3.) through which the licensee intends to mislead, Sherman v. Board of Regents, 24 AD2d 315, 266 NYS2d 39 (Third Dept. 1966), *affd.* 19 NY2d 679, 278 NYS 2d 870. Providing false answers on applications constitutes fraud, Matter of Jadoo v. DeBuono, __ AD2d __, 651 NYS2d 738 (Third Dept. 1997). The Maine Board informed the Respondent that they refused to renew his Maine License, because he had answered falsely on an application, by denying that another state had disciplined him and by failing to report the disciplinary action by New York. The Maine Board cited, as their authority for that action, the Maine Statute that permits non-renewals for fraud and deceit in obtaining a license. The Respondent failed to request a hearing to challenge that Determination, because the Maine Board agreed to remove mention about fraud and deceit from their report about the action. Entering a compromise that resulted in losing the ability to practice in Maine and waiving an adjudication on the merits raised the inference that the allegations had merit, Matter of Sternberg v. Administrative Review Board for Prof. Med. Cond., (supra). Aside from the Maine Determination [Petitioner's Exhibit 4], the record contained sufficient evidence to prove the Respondent's fraudulent conduct. The ARB may find fraudulent intent by inference from the facts in the record and may reject a Respondent's exculpatory explanations for the conduct, Matter of VanGaasbeek v. Chassin, 198 AD2d 512, 603 NYS2d 223 (Third Dept. 1993). The Respondent introduced his 1992 and 1994 Maine Renewal Applications [Respondent's Exhibits H and M], which demonstrated that the Respondent had answered a question falsely, by denying that any other state had disciplined him professionally. We held that the evidence supported the inference that the Respondent knew those answers to be false, because

the Respondent had entered into a 1990 Consent Agreement with New York, in which he agreed to accept a stayed suspension and two years on probation to settle a disciplinary action against him, involving charges that he practiced with negligence on more than one occasion [Petitioner's Exhibit 3].

The ARB held that the Committee's censure and reprimand constituted an inadequate penalty for the Respondent's misconduct. We noted that making fraudulent statements on applications, standing alone, provided sufficient grounds on which to revoke the Respondent's License, because the fraudulent statements demonstrated that the Respondent lacks the integrity to practice medicine in New York, Matter of Bezar v. DeBuono, __ AD2d __, 659 NYS2d 547 (Third Dept. 1997); Matter of Glassman, 208 AD2d 1060; 617 NYS 2d 413 (Third Dept. 1994). We also distinguished the facts in this case from those in Matter of Sarfo v. DeBuono, __ AD2d __, 652 NYS2d 852 (Third Dept. 1997). In Sarfo, the Appellate Division found license revocation too severe a penalty against a physician for fraudulent answers on an employment application. In that case, the Court found mitigating evidence due to a letter that Dr. Sarfo sent to the employer subsequent to the application, in which he admitted that he had misrepresented his Medicaid status in his prior application. The ARB found no such mitigating evidence in the Respondent's case, because nothing in the record indicated that the Respondent ever attempted to notify Maine about his false statements, even though the renewal applications contain language requiring that the licensee notify Maine about any change in their status from what the licensee reported on the application [see Petitioners Brief, footnote page 7].

In addition to the charges the Committee sustained, the Respondent had a prior disciplinary history in New York following the 1990 Consent Order. The ARB may consider such prior misconduct in determining the appropriate penalty in this case, Matter of Teruel v. DeBuono, slip opinion, 1997 WL 720748, (Third Dept. November 20, 1997). The ARB concluded that the Respondent failed to learn from his prior time on probation, that professional misconduct can lead to severe consequences. We saw no reason to believe that a further term on probation would

provide an adequate remedy for the Respondent's misconduct in this case. Retraining or continuing education would provide no practical remedy either, as neither sanction can aid a Respondent who lacks integrity, Matter of Bezar v. DeBuono, (supra).

The Proceeding On Remand

In annulling the revocation Order, the Appellate Division found the penalty incommensurate with the offense. The Court found that the Respondent's conduct reflected neither upon his competence as a practicing physician nor suggested abusing his license for personal aggrandizement. The Court noted that six physicians had testified, at the BPMC hearing, concerning the Respondent's dedication and ability and the Court noted further that the Respondent had complied with and completed successfully the probationary term from the prior disciplinary matter. The Appellate Division found that revocation would deprive the public of a skilled practitioner. The Court stated that they found the situation similar to the Sarfo case, in which they also annulled a revocation penalty, in a case involving misrepresentations on an application, but involving no issues relating to a physician's competency to practice.

Following the Appellate Division's decision, the ARB offered the parties an opportunity to submit further briefs concerning the appropriate penalty. The Respondent's brief asked the ARB to uphold the censure and reprimand penalty that the Committee had imposed and the brief characterized any other penalty as excessive. The Respondent argued that the evidence showed that the Respondent had no intention to act fraudulently and that the Respondent received no direct or indirect gain from his conduct. The Petitioner requested an actual period on suspension no longer than three years and a Ten Thousand Dollar (\$10,000.00) fine. The Petitioner noted that the

fraudulent conduct on the Maine application constituted a second disciplinary offense and that the conduct occurred during the probationary period from the prior disciplinary proceeding.

Final ARB Determination

Two ARB Members, Mr. Briber and Dr. Lynch recused themselves from participating in this case. Dr. Lynch knows the Respondent professionally and Mr. Briber signed the Consent Order in the first disciplinary proceeding on behalf of BPMC. Mr. Shapiro and Drs. Grossman and Price proceeded to review the case as a three member quorum, see Matter of Wolkoff v. Chassin (supra). Neither Drs. Lynch nor Grossman served on the ARB when we considered this case originally. They replaced Drs. Stewart and Sinnott on the ARB in June 1998.

After considering the Appellate Division's decision and the additional briefs from the parties, the quorum votes 3-0 to fine the Respondent Ten Thousand Dollars (\$10,000.00) and to suspend the Respondent from practice for one year.

The Respondent's brief asserted that the Respondent acted without intent to commit fraud. We have already ruled that the acts in this case raised an inference that the Respondent made intentional misrepresentations on the Maine applications and the Appellate Division has sustained that determination on the charges. The ARB, therefore, refuses to consider the Respondent's attempt to reargue our prior finding on the charges.

We also reject the Respondent's request that we limit the penalty in this case to a censure and reprimand. That penalty would provide an insufficient sanction for the Respondent's deliberate and repeated misconduct. The Respondent already has served two years on probation following the earlier BPMC proceeding. That penalty failed to deter the Respondent from further

misconduct. We conclude that a less severe penalty such as a censure and reprimand would provide no incentive to deter the Respondent from future misconduct.

We conclude further that an additional period on probation would constitute an insufficient sanction as well. In overturning our revocation order, the Appellate Division compared the facts in this case to those in Sarfo, another case in which the Court had annulled a revocation order arising from misrepresentations on an application. We noted in our prior decision in this case, however, that we found the cases distinguishable. Dr. Sarfo had submitted an employment application containing misrepresentations, but with the application pending, he provided the prospective employer with the information he had withheld previously. Dr. Sarfo also had no prior disciplinary history with BPMC. On remand in the Sarfo case, we placed Dr. Sarfo on probation for three years. The Respondent in this proceeding made no attempt to advise Maine about the misrepresentations on his applications. The Respondent also had a prior disciplinary history involving patient care issues. The ARB finds that the Respondent committed more serious misconduct than Dr. Sarfo and that the Respondent's conduct warrants a more severe penalty than an additional term on probation.

We hold that the Respondent's deliberate misrepresentations and his prior disciplinary history warrant an actual period on suspension and a Ten Thousand Dollar (\$10,000.00) fine. We find the three year suspension that the Petitioner recommended excessive. We suspend the Respondent's License for one year. We also give the Respondent credit for and stay the suspension for any time equal to the time that he spent away from practice under our earlier revocation order. (i.e. if the Respondent spent one month away from practice under our prior order, before the Court restored his License, the Respondent will be on suspension for only eleven months under this determination.)

ORDER

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

1. The ARB **SUSPENDS** the Respondent's License to practice medicine in New York State for one year, with the Respondent to receive credit toward the suspension for any time he spent away from practice under our earlier order in this case.

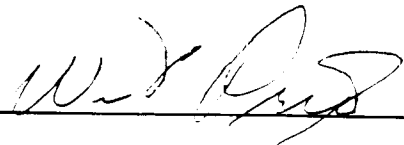
2. The ARB **FINES** the Respondent Ten Thousand Dollars (\$10,000.00).

Sumner Shapiro
Winston S. Price, M.D.
Stanley L. Grossman, M.D.

In the Matter of Mourad Ramsey Bottros, M.D.

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

Dated: July 16, 1999



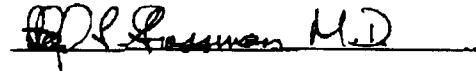
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Winston S. Price, M.D.

In the Matter of Mourad Ramsey Bottros, M.D.

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

Dated: May 21, 1999



Stanley L. Grossman, M.D.

In the Matter of Mourad Ramsey Bottros, M.D.

Sumner Shapiro, an ARB Member concurs in the
Determination and Order in the Matter of Dr. Bottros.

Dated: May 21, 1999



Sumner Shapiro