



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

PUBLIC

October 1, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anne H. Gayle, Esq.
& Marcia Kaplan, Esq.
NYS Department of Health
5 Penn Plaza – 6th Floor
New York, New York 10001

Anthony Z. Scher, Esq.
Wood & Scher
Attorneys at Law
The Harwood Building
Scarsdale, New York 10583

Safwat A. Youssef, M.D.
410 Bard Avenue
Staten Island, New York 10310

RE: In the Matter of Safwat Attia Youssef, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-191) 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.

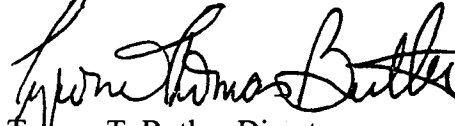
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Safwat Attia Youssef, 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. 02-191

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):

Marcia E. Kaplan, Esq.

For the Respondent:

Anthony Z. Scher, Esq.

After a hearing below, a BPMC Committee found that the Respondent committed professional misconduct by practicing medicine fraudulently, with negligence and gross negligence and by failing to maintain accurate patient records. The Committee voted to revoke 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 2002), both parties ask the ARB to nullify or modify that Determination. After reviewing the Committee's Determination, the hearing record and the parties' review submissions, the ARB remands this case to the Committee to correct or clarify inconsistencies between the Committee's conclusions and the Committee's Order.

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(2-6) & 6530(32)(McKinney Supp. 2002) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- practicing with negligence on more than one occasion,

- practicing with gross negligence,
- practicing with incompetence on more than one occasion,
- practicing with gross incompetence, and,
- failing to maintain accurate records.

The charges involved 1.) the care that the Respondent provided for eight persons, Patients A-H, 2.) the Respondent's applications to Empire Blue Cross and Blue Shield Managed Care Networks (Blue Cross) and 3.) the Respondent's billings to and conduct toward two other persons, Patients I and J. The record refers to the Patients by initials to protect patient privacy. A hearing on the charges followed before the Committee that rendered the Determination now on review.

The Committee dismissed all charges relating to Patients I and J and all charges alleging incompetence and gross incompetence. The Committee sustained the charge that the Respondent committed gross incompetence by performing surgery on the wrong finger on Patient F. The Committee also found that the Respondent practiced fraudulently by submitting false billings concerning care for Patient A and by making intentionally false answers on applications to Blue Cross. The Determination by the Committee also found negligence on more than one occasion in the care the Respondent rendered to Patients A-B and D-H and found failure to maintain accurate records in for Patients A-H. The Committee also found that the Respondent maintained records so poor in quality that the Committee found the record keeping constituted negligence.

The Committee voted to revoke the Respondent's License. The Committee concluded that the Respondent exhibited a disturbing pattern of sloppy care and extremely substandard records and that the Respondent refused to accept responsibility for his errors. The Committee also noted that the Respondent committed fraud.

As relevant on this review, although the Committee's Determination indicated that the Committee sustained thirteen misconduct specifications against the Respondent [Committee Determination page 79], the Committee's Order at page 81 of the Determination indicated that the Committee had not sustained some of those same specifications. For example, the Committee's conclusions at page 73-74 indicated that the Committee sustained Specifications Twelve and Sixteen relating to fraud in billings concerning Patient A and in answers on

applications to Blue Cross. The Committee's Order stated that Specification Twelve and Sixteen were "Not Sustained".

Review History and Issues

The Committee rendered their Determination on June 12, 2002. This proceeding commenced on June 27, 2002, 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 response brief and the Respondent's brief. The record closed when the ARB received the response brief on August 8, 2002.

The Petitioner's brief limits the issue on review to a request that the ARB correct inconsistencies between the Committee's Determination and the Order. The Petitioner asks the ARB to conform the Order to the Committee's findings and correct the plain drafting errors. The Petitioner's brief attaches a chart in which the Petitioner identifies the errors the Petitioner alleges to appear in the Determination and Order. The Petitioner's brief also attaches a draft Order. The Petitioner contends that the draft Order will correct the errors.

The Respondent submitted as his brief a copy of an Order to Show Cause that the Respondent filed with the Appellate Division for the Third Department. The Respondent's brief requests that the ARB vacate and annul the Committee's Order. The Respondent contends that the Committee sustained mostly negligence charges and that the Committee based the negligence findings almost exclusively on poor record keeping. The Respondent argued that the Committee's Administrative Officer erred in providing the Committee the proper instruction on what constitutes poor record keeping and that the Committee erred in drawing an adverse inference from the Respondent's failure to address certain issues in direct testimony. The

Respondent also argued bias by the Committee due to the Respondent's Egyptian background following the September 11, 2001 attacks on the World Trade Center.

The Petitioner's reply brief argued that the Respondent's brief raised matters beyond the ARB's scope of review.

Determination

The ARB has considered the record and the parties' briefs. In reviewing a Committee's Determination under Pub. Health Law § 230-c (1), we determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law. Under Pub. Health Law § 230-c (4)(b), the ARB may remand a case to the Committee for reconsideration or further proceedings. We remand this case to the Committee for the Committee to address, clarify and/or correct the inconsistencies between the Committee's Determination and the Order. We defer to the courts to address the legal issues that the Respondent has raised.

The Respondent's brief raised several legal challenges to the Committee's Determination, such as bias, error by the Committee's Administrative Officer and error in drawing adverse inferences. The Respondent asked that we annul the Committee's Determination on those grounds. The ARB interprets our authority to restrict us from annulling a Determination on legal grounds. We may remand a case to the Committee that rendered a Determination, for further proceedings. We assume that the Respondent would find such a remand an inadequate remedy in this case, as the Respondent has alleged bias by the Committee that rendered this Determination. We leave the Respondent to raise his legal issues before the courts.

We hold, however, that our remand authority provides the proper remedy for the issue that the Petitioner raised for review. We agree that inconsistencies appear between the

Committee's Order and Determination. The Petitioner suggested that the inconsistencies resulted from drafting errors. We leave the Committee to explain how the inconsistencies occurred, to clarify their Order or to correct the errors and/or inconsistencies. The record on remand will contain the review submissions from the parties. We direct the Committee to render an Amended Final Determination and we ask the Committee to render that Determination as expeditiously as possible. Upon receiving the Amended Final Determination, either party may request ARB review under Pub. Health Law § 230-c (4)(b), or if neither party requests review, the Respondent may bring the matter to the courts.

ORDER

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

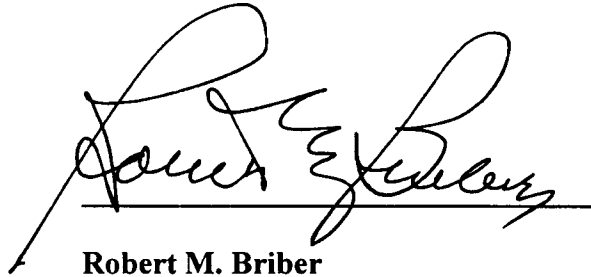
The ARB remands this case to the Committee for further proceedings consistent with the ARB Determination in this matter.

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 Safwat Attia Youssef, M.D.

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

Dated: Sept-27, 2002



Robert M. Briber

In the Matter of Safwat Attia Youssef, M.D.

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

Dated: 9/27, 2002

A handwritten signature in cursive script, reading "Thea G. Pellman", written over a horizontal line.

Thea Graves Pellman

In the Matter of Safwat Attia Youssef, M.D.

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

Dated: Sept 26, 2002

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

Winston S. Price, M.D.

In the Matter of Safwat Attia Youssef, M.D.

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

Dated: Sept 27, 2002

Therese G Lynch M.D.

Therese G. Lynch, M.D.

In the Matter of Safwat Attia Youssef, M.D.

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

Dated: Sept 27, 2002

Therese G Lynch M.D

Therese G. Lynch, M.D.