



# 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*

## PUBLIC

Dennis P. Whalen  
*Executive Deputy Commissioner*

June 11, 2003

### CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kenneth C. Carlson, M.D.  
158 Union Avenue  
Peekskill, New York 10566

Robert Bogan, Esq.  
NYS Department of Health  
433 River Street, Suite 303  
Troy, New York 12180

**RE: In the Matter of Kenneth C. Carlson, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-33) 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.

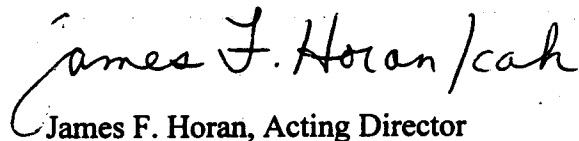
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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 "James F. Horan / cah". The signature is written in a cursive style with a large initial 'J' and 'H'.

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah  
Enclosure

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

**In the Matter of**

**Kenneth C. Carlson, 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. 03-33**

**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):  
For the Respondent:**

**Paul Robert Maher, Esq.  
Pro Se**

After a hearing below pursuant to N.Y. Pub. Health Law § 230(10)(p)(McKinney Supp. 2003), a BPMC Committee determined that the Respondent committed professional misconduct, due to the Respondent's repeated convictions for crimes under New York Law. The Committee voted to suspend the Respondent's License to practice medicine in New York (License) for two years. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a), the Petitioner asks the ARB to overrule the Committee and revoke the Respondent's License. After considering the hearing record and a brief from the Petitioner, the ARB votes 3-2 to affirm the Committee's Determination to impose a two-year, definite suspension.

**Committee Determination on the Charges**

The Petitioner charged that the Respondent violated N. Y. Educ. Law § 6530(9)(a)(ii)(McKinney Supp. 2003) by engaging in conduct that resulted in the Respondent's conviction for a crime under New York Law. An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p), before a BPMC Committee, which

rendered the Determination now on review. 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 evidence before the Committee revealed the Respondent's convictions on five separate charges, in various courts, over three years for:

- Reckless Endangerment, a Class A misdemeanor, in White Plains City Court, in September 1998;
- Aggravated Unlicensed Operation of a Motor Vehicle, Third Degree, a misdemeanor, in White Plains City Court in September 1998;
- Criminal Contempt First Degree, a Class E felony, in Westchester County Court, in April 1999;
- Forgery Third Degree, a Class A misdemeanor, in Buchanan Village Justice Court, in May 2001; and,
- Criminal Contempt First Degree, a Class E felony, in Westchester County Court, in February 2002.

The Respondent received fines for the first two convictions, and probation for the third and fourth. With the fourth conviction, the Westchester County Court also issued an order of protection to the Respondent's ex-wife. For the fifth conviction the Respondent received eighty-five days incarceration and a five-month extension on previous probation.

The Committee concluded that the Respondent's criminal conduct constituted professional misconduct and concluded that the Respondent's conduct demonstrated a disregard for the law inconsistent with physicians' expected conduct. The Committee also concluded that the Respondent has engaged in therapy to deal with psychological problems and attended Alcoholics Anonymous meetings to deal with addictive tendencies. The record also revealed that the Respondent entered into a Consent Agreement with BPMC in 1998, in which the Respondent consented to an indefinite license suspension, with a one-year minimum suspension.

The Committee decided against revoking the Respondent's License. The Committee voted to suspend the Respondent's License for a further two years, to postpone any application

by the Respondent to regain his License. The Committee stated that the two-year definite suspension would impress upon the Respondent that the Respondent's future practice will depend on his ability to avoid further criminal behavior or professional misconduct.

### **Review History and Issues**

The Committee rendered their Determination on February 6, 2003. This proceeding commenced on February 20, 2003, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and the Petitioner's brief. The Respondent filed no response brief. The record closed when the ARB received the Petitioner's brief on March 24, 2003.

The Petitioner asked that the ARB overturn the Committee and revoke the Respondent's License. The Petitioner argued that the Committee's Determination on penalty failed to protect the public.

### **Determination**

The ARB has considered the record and the Petitioner's brief. We affirm the Committee's Determination that the Respondent committed professional misconduct and we vote 3-2 to affirm the Committee's Determination to suspend the Respondent's License for two years.

Although the Petitioner argued that the Committee's Determination failed to protect the public, the Petitioner's brief conceded that the Respondent's conduct involved other than the most serious offenses. The ARB majority concludes that the Committee's Determination on penalty will protect the public. The Respondent will spend two years on definite suspension. At that suspension's conclusion, the Respondent will return to the suspension under the 1998 Consent

Agreement. The Respondent must still satisfy the reinstatement conditions he agreed to, under the Consent Agreement, in order to regain his License. The Respondent has also taken his own steps to deal with his psychological problems and addictions. If the Respondent should regain his License at some date under the Consent Agreement, the ARB recommends that the reinstatement terms should include requirements that the Respondent continue to engage in treatment for anger management.

**ORDER**

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

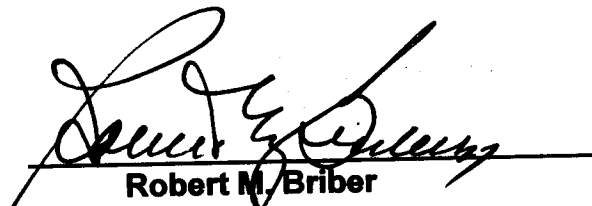
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB votes 3-2 to affirm the Committee's Determination to suspend the Respondent's License for two years, as we discussed in our Determination.

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 Kenneth C. Carlson, M.D.**

**Robert M. Briber**, an ARB Member, affirms that he participated in the consideration of this case and that this Determination reflects the decision by the majority of the ARB in the Matter of Dr. Carlson.

**Dated: May 29, 2003**

  
**Robert M. Briber**



**In the Matter of Kenneth C. Carlson, M.D.**

**Thea Graves Pellman**, an ARB Member, affirms that she participated in the consideration of this case and that this Determination reflects the decision of the majority in the Matter of Dr. Carlson.

Dated: June 3, 2003

A handwritten signature in cursive script, appearing to read 'Thea Graves Pellman', written over a horizontal line.

**Thea Graves Pellman**

In the Matter of Kenneth C. Carlson, M.D.

Winston S. Price, M.D., an ARB Member, affirms that he participated in the consideration of this case and that this Determination reflects the decision by the majority of the ARB in the Matter of Dr. Carlson.

Dated: 05/29, 2003

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

Winston S. Price, M.D

In the Matter of Kenneth C. Carlson, M.D.

Stanley L. Grossman, an ARB Member, affirms that he participated in the consideration of this case and that this Determination reflects the decision by the majority of the ARB in the Matter of Dr. Carlson.

Dated: May 28, 2003

Stanley L. Grossman, M.D.

Stanley L. Grossman, M.D.

**In the Matter of Kenneth C. Carlson, M.D.**

**Therese G. Lynch, M.D.**, an ARB Member, affirms that she participated in the consideration of this case and that this Determination reflects the decision of the ARB in the Matter of Dr. Carlson.

Dated: May 27, 2003

*Therese G. Lynch M.D.*

**Therese G. Lynch, M.D.**