



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*

November 17, 2003

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Rajeev Kassal, M.D.  
REDACTED

Richard P. Jacobson, Esq.  
1683 Western Avenue  
Albany, New York 12203

Ihor B. Evanick, Esq.  
NYS Department of Health  
Corning Tower Room 2512  
Empire State Plaza  
Albany, New York 12237-0032

**RE: In the Matter of Rajeev Kassal, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-219) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

REDACTED

Sean D. O'Brien, Director  
Bureau of Adjudication

SDO: nm  
Enclosure

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

**COPY**

**In the Matter of**

**Rajeev Kassal, 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. 03-219**

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

**For the Department of Health (Petitioner):  
For the Respondent:**

**Ihor B. Evanick, Esq.  
Richard P. Jacobson, Esq.**

After a hearing below, a BPMC Committee found that the Respondent committed professional misconduct by willfully filing false reports. The Committee voted to censure and reprimand the Respondent. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2003), the Respondent asks the ARB to nullify that Determination and overturn the censure and reprimand. After reviewing the record and the submissions from the parties, we affirm the Committee's Determination that the Respondent filed false reports by submitting three applications that contained misrepresentations, but we modify, in part, the reasoning for sustaining the charges. We affirm the censure and reprimand sanction.

**Committee Determination on the Charges**

The Petitioner commenced the proceeding by Filing a Statement of Charges [Petitioner's Hearing Exhibit 1] with BPMC alleging that the Respondent violated N. Y. Educ. Law §§ 6530(2), 6530(14), 6530(20) & 6530(21) (McKinney Supp. 2003) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- committing violations under Pub. Health § 2805-k,
- engaging in conduct that evidences moral unfitness, and,
- willfully filing a false report.

The Statement contained ten Factual Allegations charging the Respondent with failing to provide information about an uncompleted residency at New York University Medical Center (NYU Residency) in applications to Stony Brook University Hospital (Stony Brook Application), Nyack Hospital (Nyack Application) and to New York State Education Department (SED Application). The Respondent challenged the allegations and a hearing followed before the Committee that rendered the Determination now on review.

The evidence in the record demonstrated that the Respondent held a limited permit to practice medicine in New York from October 1996 to October 1998, that the Respondent held a residency at NYU from 1992-1993 and that, subsequent to the NYU Residency, the Respondent submitted the Nyack, Stony Brook and SED Applications. The Committee found that during the NYU Residency, the Residency Program placed the Respondent on probation, classified the Respondent as a sub-intern and informed the Respondent that he would receive no position in the Program in the following academic year. In the Nyack Application, the Committee found that the Respondent failed to report the NYU Residency or the circumstances under which the Respondent left NYU. In the Stony Brook Application, the Committee found that the Respondent reported the NYU Residency in one portion on the Application, but failed to report the Residency in another portion. In the SED Application, the Committee found that the Respondent answered "no" to a question asking whether any facility ever restricted or terminated the Respondent's training, employment or privileges.

In their Determination on the charges, the Committee dismissed the misconduct specifications that charged the Respondent with practicing fraudulently, committing violations under Pub. Health Law § 2805-k and engaging in conduct that evidenced moral unfitness. The Committee sustained the charge that the Respondent willfully made and filed false reports. The Committee found that the Respondent failed to report clearly and properly his uncompleted NYU

Residency, the probation during the Residency and the non-renewal of the contract for the NYU Residency on the Nyack, Stony Brook and SED Applications. The Committee also found mitigating circumstances in the case and found the Respondent aware of his errors. The Committee voted to censure and reprimand the Respondent.

### **Review History and Issues**

The Committee rendered their Determination on August 20, 2003. This proceeding commenced on September 2, 2003, when the ARB received the Petitioner'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 October 9, 2003.

The Respondent asks that the ARB overturn the Committee, dismiss the charges and eliminate the penalty. The Respondent contends that the Committee made a determination inconsistent with their findings on the Stony Brook and SED Application charges and that the Committee made a factual error concerning the Nyack Application findings. The Respondent also called the censure and reprimand sanction unwarranted.

The Petitioner asks that the ARB defer to the Committee as the fact-finder and uphold the Committee's Determination on the charges. The Petitioner argues further that a censure and reprimand represents a less than onerous penalty in a case in which the Committee found that the Respondent made fraudulent misrepresentations on the three Applications.

### Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent willfully filed false reports and we affirm the Committee's Determination to censure and reprimand the Respondent.

To prove willfully filing a false report, a committee must establish that a licensee made or filed a false statement willfully, which requires a knowing or deliberate act, Matter of Brestin v. Comm. of Educ., 116 A.D.2d 357, 501 N.Y.S.2d 923 (Third Dept. 1986). A committee may reject a licensee's explanation for erroneous reports (such as resulting from inadvertence or carelessness) and draw the inference that the licensee intended or was aware of the misrepresentation, with other evidence as the basis, Matter of Brestin v. Comm. of Educ., (supra).

In the Nyack Application, the Committee found that the Respondent failed to report to Nyack the Respondent's residency at NYU. The Respondent conceded at hearing that he failed to mention the NYU residency on the Nyack Application [Hearing Transcript page 42]. The Nyack Application and the Respondent's admission establish that the Respondent willfully filed a false report. The Respondent's brief argued that the Committee may have sustained that factual allegations concerning the Nyack Application due to confusion over whether the Respondent ever worked at Nyack. The ARB fails to see the point in that argument. The Committee sustained the specification that the Respondent filed a false report by concluding that the Respondent misrepresented his background to his benefit. The ARB holds that the Respondent filed the false report merely by misrepresenting his background. Nothing in the provisions in Educ. Law §6530(21) limits the statute's application to instances only when filing a false report resulted in gaining employment or another benefit. As the Brestin case pointed out, the proof must only

show that the Respondent filed a false report willfully. We disagree with the contention in the Respondent's brief that the Committee's finding on that charge was misplaced. We also see no reason to dismiss this charge. Further, we hold that the false statements on the Nyack Application, standing alone, provide sufficient grounds on which to censure and reprimand the Respondent.

As to the Stony Brook Application, the Respondent listed the NYU Residency on one portion of the Application, but failed to list the Residency on another portion. The Committee determined that the failure to list the NYU Residency in both portions on the Application misrepresented the Respondent's background. The ARB holds that the misrepresentation amounted to willfully filing a false report. We affirm the Committee's determination on that charge. The Committee also indicated that they found the misrepresentation "no serious matter". That finding may explain why the Committee dismissed the fraud and moral unfitness charges on that Application and why the Committee limited the sanction to a censure and reprimand.

As to the SED Application, the Committee found that the Respondent failed to list accurately the NYU Residency on the Application. We hold that such failure constituted willfully filing a false report.

The Respondent's brief points out that the charges at issue in this review involve no patient care problems, Medicaid fraud or improper conduct as a physician. The Committee found that the Respondent's conduct in making misrepresentations on the Applications at issue constituted less than serious conduct. We agree with both the Respondent and the Committee. We disagree, however, with the Respondent's contention that censure and reprimand constitutes a serious or onerous penalty. A censure and reprimand amounts to no time lost from practice, no fine, no restriction on a license and no probation or other supervision. Although the Committee

found that the Respondent engaged in misrepresentations on the Applications, the Committee found nothing in the misrepresentations that elevated the conduct to more serious misconduct such as fraud or moral unfitness. The Committee also found mitigating factors to persuade the Committee against imposing more serious sanctions such as a suspension, fine, license limitation or probation. We agree with the Committee that a censure and reprimand provides an appropriate sanction, consistent with the Committee's findings and conclusions.

**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 by willfully filing false reports.
2. The ARB affirms the Committee's Determination to censure and reprimand the Respondent.

Robert M. Briber  
Thea Graves Pellman  
Datta G. Wagle, M.D.  
Stanley L. Grossman, M.D.  
Therese G. Lynch, M.D.



**In the Matter of Rajeev Kassal, M.D.**

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

**Dated: November 11, 2003**

REDACTED

**Robert M. Briber**

**In the Matter of Rajeev Kassal, M.D.**

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

Dated: 2N.14, 2003

REDACTED

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**Thea Graves Pellman**

**In the Matter of Rajeev Kassal, M.D.**

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

**Dated:** November 11, 2003

REDACTED

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

in the Matter of Rajeev Kassal, M.D.

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

Dated: November 13, 200

REDACTED

Stanley L Grossman, M.D.

**In the Matter of Rajeev Kassal, M.D.**

**Datta G. Wagle, M.D.,** an ARB Member concurs in the Determination and Order in the

Matter of Dr. Kassal.

Dated: 11/27, 2003

REDACTED

[Signature]  
**Datta G. Wagle, M.D.**