



# 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.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

March 28, 2000

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Robert Maher, Esq.  
NYS Department of Health  
433 River Street – Fourth Floor  
Troy, New York 12180

Wilfred T. Friedman, Esq.  
36 West 44<sup>th</sup> Street  
New York, New York 10036

Eric Ader, D.O.  
34 Rita Court  
North Massapequa, New York 11758

**RE: In the Matter of Eric Ader, D.O.**

Dear Parties:

Enclosed please find the Determination and Order (No. 00-02) 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.

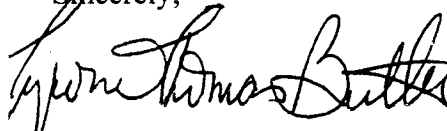
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

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

COPY

In the Matter of

Eric Ader, D.O. (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. 00-02

Before ARB Members Grossman, Lynch, Shapiro and Briber<sup>1</sup>  
Administrative Law Judge James F. Horan drafted the Determination

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

Paul Robert Maher, Esq.  
Wilfred T. Freidman, P.C.

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct, due to his criminal conviction for Driving While Intoxicated. The Committee voted to Censure and Reprimand the Respondent. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 1999), the Petitioner asks the ARB to nullify the Committee Determination and to revoke the Respondent's License to practice medicine in New York State (License). After considering the record and reviewing submissions by each party, we affirm the Committee's Determination. We hold that the Respondent's alcohol related problems present no danger to the public, because 1.) the Respondent has already surrendered his License temporarily and 2.) the Respondent's License will remain inactive until the Respondent can prove to a BPMC Restoration Committee that alcohol no longer incapacitates the Respondent from practicing medicine safely.

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<sup>1</sup> ARB Member Winston Price, M.D. was unable to participate in the Deliberations in this case. The ARB proceeded to review this case with a four member quorum, see Matter of Wolkoff v. Chassin, 89 N.Y.2d 250(1996).

### Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent committed professional misconduct under the definition in N. Y. Educ. Law §6530(9)(a)(I)(McKinney Supp. 1999-2000), due to his New York criminal conviction for driving while intoxicated (DWI). An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 1999-2000), before a BPMC Committee, who rendered the Determination which the ARB now reviews. In such a 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 Committee determined that the Respondent was convicted for DWI, a Class E Felony, in August 1998. In September 1998, the Nassau County Court revoked the Respondent driver's license and sentenced the Respondent to serve ninety days in jail, to spend five years on probation and to pay a Three Thousand Five Hundred Dollar (\$3,500.00) Fine. The Committee made further findings that the conviction constituted the Respondent's third DWI conviction since 1993 and the Respondent's fifth alcohol related arrest. The Committee noted that the Respondent surrendered his Medical License in 1992, regained the License following a restoration hearing in 1995 and surrendered the License temporarily again in 1997. The Respondent possesses no current active License to practice medicine in New York.

The Committee voted to censure and reprimand the Respondent. The Committee concluded that the Respondent poses no danger to the public health due to his currently inactive Medical License. To regain that License, the Respondent must take part in a Restoration proceeding pursuant to N. Y. Pub. Health Law § 230.13(a)(McKinney Supp. 1999-2000) and convince a BPMC Restoration Committee that the Respondent no longer suffers any impairment. The Committee concluded, from testimony at the hearing, that the Respondent is making a

sincere effort to remain sober and that, despite the recidivism, the Respondent should receive an opportunity to recover and turn his life around. The Committee felt that a future Restoration Committee would consider the Respondent's history if the Respondent applied for Restoration and that Restoration Committee would have the authority to impose appropriate conditions on any restored License.

### **Review History and Issues**

The Committee rendered their Determination on January 4, 2000. This proceeding commenced on January 5, 2000, 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 February 23, 2000.

The Petitioner argues that the Committee erred by failing to revoke the Respondent's Medical License. The Petitioner argues that the censure and reprimand the Committee imposed fails to protect the public and constitutes an attempt by the Committee to divest itself from responsibility and defer to a Restoration Committee to impose the appropriate penalty in the case.

The Respondent answers that the Committee clearly considered revocation as a penalty and rejected revocation for the reasons the Committee stated. The Respondent argues that the law provides a range of penalties for misconduct and mandates no specific penalty for any offense. The Respondent also argues that the Restoration Committee remains a large hurdle for the Respondent to overcome if the Respondent is to regain his Medical License and that any

Restoration Order will include time on probation. The Respondent asks the ARB to affirm the Committee's Determination.

### **Determination**

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent's DWI conviction constitutes misconduct under N. Y. Educ. Law § 6530(9)(a)(McKinney Supp. 1999-2000). We vote further to sustain the Committee's Determination to censure and reprimand the Respondent for his misconduct.

The ARB considers the Respondent's DWI conviction serious misconduct and we recognize the danger that drunken drivers pose to society. The courts have already dealt with the danger that the Respondent posed to society as an impaired driver by incarcerating the Respondent and revoking his driver's license. An impaired physician also poses risks to society. In assessing a sanction against any physician with the Respondent's alcohol history, a Committee or the ARB would have to protect the public by removing the Respondent from practice and imposing conditions that would require the Respondent to enter into alcohol and substance abuse treatment. The Respondent has already entered into a temporary license surrender pursuant to N. Y. Pub. Health Law § 230(13)(a)(McKinney Supp. 1999-2000). Under that statute, the Respondent's License will remain inactive until such time as the Respondent can prove to a BPMC Restoration Committee that the Respondent no longer suffers any incapacity in practice due to alcohol impairment.

The ARB agrees with the Committee that the License Surrender provides sufficient protection to the public in this case so that no need exists to impose any sanction more severe than a censure and reprimand. The Petitioner's brief argues that the Committee's penalty fails to protect the public, but the Petitioner fails to explain where the danger to the public lies if the Respondent's License remains inactive due to the Surrender. The Respondent could only regain

that License if he can prove to a Restoration Committee that the Respondent no longer suffers impairment [see N. Y. Pub. Health Law § 230(13)(a)(McKinney Supp. 1999-2000)]. Any Restoration Committee would learn the facts about the Respondent's alcohol related criminal record and the Committee would have the authority to impose conditions on any license they restore. Even if the ARB did revoke the Respondent's License, the Respondent would have an opportunity some years later to apply for license restoration from the Board of Regents, by again trying to prove that the Respondent has recovered from any impairment. The ARB can see no reason why revocation would then provide any greater protection to the public in this case than the existing temporary surrender. Under the terms in § 230(13)(a), the Respondent was able to obtain the Temporary Surrender only because his impairment had never resulted in patient harm.

The Petitioner's brief also argued that the Committee's duty required that the Committee revoke the Respondent's License. The ARB disagrees. As the Respondent's brief pointed out, the permissible penalties for misconduct under N. Y. Pub. Health Law § 230-a (McKinney Supp. 1999-2000) provide Committees and the ARB a wide range of sanctions to assess against physicians who commit misconduct. That statute imposes no automatic penalties for any offense and the courts have indicated that in imposing penalties, Committees and the ARB should judge each case on its "own peculiar facts and circumstances", Matter of Bezar v. DeBuono, 240 A.D.2d 978, 659 N.Y.S.2d 547 (Third Dept. 1997).

The ARB agrees with the Committee that the Respondent should receive the opportunity to recover and turn his life around. While the Respondent attempts that recovery, his License will remain inactive, so the Respondent will pose no danger to the public health. We conclude that the chance someday to regain his License may enhance the Respondent's efforts to remain sober and continue his recovery.

## 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 **AFFIRMS** the Committee's Determination to censure and reprimand the Respondent.
3. The Respondent's License **SHALL REMAIN INACTIVE**, pursuant to N. Y. Pub. Health Law § 230(13)(a)(McKinney Supp. 1999), until such time as the Respondent can establish to a BPMC Restoration Committee that the Respondent no longer suffers any incapacity in medical practice due to any impairment.

**Robert M. Briber  
Sumner Shapiro  
Stanley L. Grossman, M.D.  
Therese G. Lynch, M.D.**



**In the Matter of Eric Ader, D.O.**

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

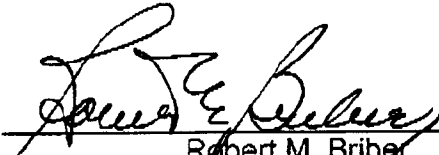
**Dated: March 2, 2000**

  
Sumner Shapiro

**In the Matter of Eric Ader, D.O.**

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

Dated: March 3, 2000

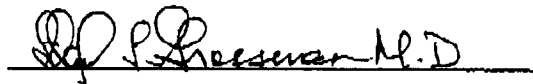


Robert M. Briber

In the Matter of Eric Ader, D.O.

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

Dated: March 23, 2000

A handwritten signature in cursive script, appearing to read "S. L. Grossman M.D.", is written over a horizontal line.

Stanley L. Grossman, M.D.

**In the Matter of Eric Ader, D.O.**

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

Dated: 3/3, 2000

*Therese G Lynch M.D.*

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