



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

August 16, 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Terrence Sheehan, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

Allen C. Chamberlin, M.D.
57 West 57th Street – Suite 505
New York, New York 10019

Anthony Z. Scher, Esq.
Wood & Scher, Esqs.
222 Bloomingdale Road – Suite 311
White Plains, New York 10605

RE: In the Matter of Allen C. Chamberlin, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-38) 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.

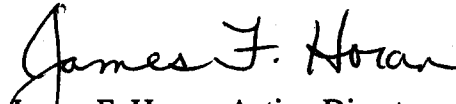
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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


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

Allen C. Chamberlin, 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. 07-38

COPY

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

For the Department of Health (Petitioner): Terrance Sheehan, Esq.
For the Respondent: Anthony Z. Scher, Esq.

After a proceeding below to reconsider a disciplinary sanction, a BPMC Committee determined to revoke the Respondent's License to practice medicine in New York State (License) and to fine the Respondent \$ 30,000.00 for practicing medicine fraudulently, engaging in conduct that evidenced moral unfitness, willfully filing false reports, practicing with negligence on more than one occasion in treating eight patients and failing to maintain accurate patient records. In this administrative review pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2007), the Respondent asks the ARB to reduce the penalty to an actual suspension and probation. After considering the record below and the review submissions by both parties, the ARB affirms the Committee's Determination to revoke the Respondent's License and to fine the Respondent \$ 30,000.00.

The Case To This Point

After an initial hearing in 2004-2005, the Committee found that the Respondent billed insurance carriers falsely for performing anterior cruciate ligament (ACL) repairs on three patients. The Committee found that the Respondent never performed the ACL repairs. The

Committee found that the false billing amounted to fraud in practicing medicine, engaging in conduct that evidences moral unfitness and willfully filing false reports. The Committee found further that the Respondent practiced with negligence on more than one occasion and failed to maintain accurate medical records for those three patients and for five other patients, who received surgery or epidural pain blocks from the Respondent. The Committee voted to revoke the Respondent's License and to fine the Respondent \$10,000.00 for each case in which the Respondent billed falsely.

Following the Committee's Determination, the Respondent challenged the Determination before the New York State Supreme Court Appellate Division for the Third Judicial Department. In Chamberlin v. New York State Board for Professional Medical Conduct, 34 A.D.3d 1097, 825 N.Y.S.2d 172 (3rd Dept. 2006), the Court affirmed most of the Committee's factual findings and the Committee's conclusions that the Respondent practiced fraudulently, practiced with negligence on more than one occasion, engaged in conduct that evidenced moral unfitness, willfully filed false reports and failed to maintain accurate records. The Court held, however, that no evidence supported a finding by the Committee that a complete examination was missing from the records of five of the patients at issue in the case. The Court noted that the Committee's findings on the examinations formed a basis for the Committee's findings on the negligence and failure to maintain accurate records charges. The Court returned the matter to the Committee for a re-determination on penalty, because the Committee's original determination failed to assess the penalty separately as to each charge and specification.

The Committee convened again on February 2, 2007 to review the Court's decision and arguments that the parties submitted on penalty. The Committee found no reason to modify or reduce the prior penalty. The Respondent then moved for administrative review.

Review History and Issues

The Committee rendered their Determination after reconsideration on February 17, 2007. This proceeding commenced on February 27, 2007, when the ARB received the Respondent's

Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, Appellate Division's decision and the Petitioner's and the Respondent's briefs. The record closed when the ARB received the Respondent's brief on April 12, 2007. The ARB conducted deliberations in this case on June 15, 2007.

The Respondent requests that the ARB reduce the penalty in this matter to an actual suspension, with the Respondent receiving credit for time he has actually served away from practice under the Committee's revocation order. The Respondent recommends further that a period of probation follow the actual suspension. The Respondent argues that this case amounts to a dispute between a physician and insurance companies. The Respondent contends that the questions about the ACL repairs and the procedures on the other patients at issue do not constitute misconduct that warrants license revocation.

The Petitioner argues that the Appellate Division made only a *de minimis* adjustment to the Committee's original Determination and that the Committee's major findings remain and support revocation and a separate fine.

ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL §230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993); in determining guilt on

the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3rd Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3rd Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3rd Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

Determination

The ARB has considered the record and the parties' briefs. The ARB affirms the Committee to revoke the Respondent's License and to fine the Respondent \$30,000.00.

The Appellate Division upheld a determination that the Respondent billed falsely for ACL repair surgery for three patients. The ARB holds that the false billings constituted fraud in practice, engaging in conduct that evidences moral unfitness and willfully filing false reports. The ARB concludes that the Respondent's use of his License to commit fraudulent conduct, standing alone, provides sufficient grounds to revoke the Respondent's License. We also hold that each instance of fraudulent conduct warrants a separate \$10,000.00 fine. The Appellate Division also upheld the Committee's Determination that the Respondent subjected all eight patients at issue in this proceeding to unnecessary surgeries or epidural blocks, notwithstanding potential risks. The ARB holds that such repeated acts of negligence also provide grounds, standing alone, to revoke the Respondent's License.

The Respondent's brief to the ARB attempted to minimize the Respondent's conduct, to reargue some of the Committee's findings and to recast this case as only a billing dispute between the Respondent and insurance companies. The ARB finds the Respondent's arguments unconvincing. The ARB agrees with the Petitioner that the Appellate Division made only a limited change in the Committee's Determination and that the remaining findings and conclusions provide more than sufficient grounds to affirm the determination to revoke the Respondent's License and to impose a significant fine.

ORDER

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

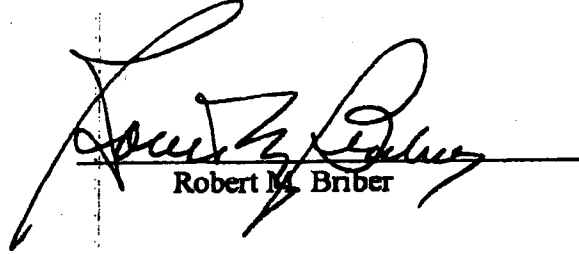
1. The ARB affirms the Committee's Determination revoking the Respondent's License.
2. The ARB affirms the Committee's Determination to fine the Respondent's \$30,000.00.

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 Allen C. Chamberlin, M.D.

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

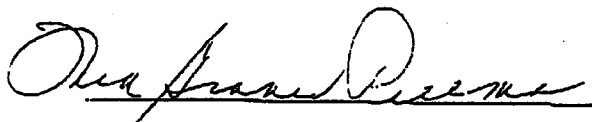
Dated: August 13, 2007


Robert M. Briber

In the Matter of Allan C. Chamberlin, M.D.

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

Dated: Aug 14, 2007



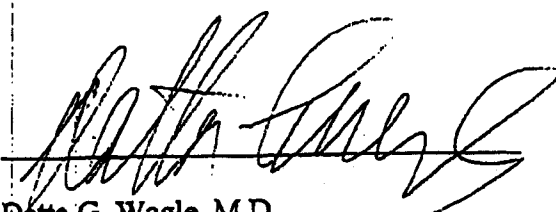
Thea Graves Pellman

In the Matter of Allen C. Chamberlin, M.D.

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

Matter of Dr. Chamberlin.

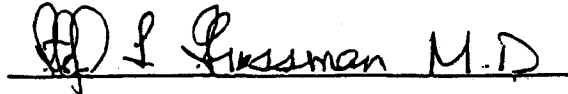
Dated: 8/14/, 2007


Datta G. Wagle, M.D.

In the Matter of Allan C. Chamberlin, M.D.

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

Dated: August 14, 2007

Handwritten signature of Stanley L. Grossman, M.D. in cursive script, underlined.

Stanley L Grossman, M.D.

In the Matter of Allen C. Chamberlin, M.D.

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

Dated: August 13, 2007

Therese G. Lynch M.D.

Therese G. Lynch, M.D.