



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

December 29, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Stuart Edwin Strausberg, D.O.
11718 Barrington Court
Los Angeles, California 90009

Carolyn Shearer, Esq.
Bond, Schoeneck & King, PLLC
111 Washington Avenue
Albany, New York 12110-2211

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180

RE: In the Matter of Stuart Edwin Strausberg, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-199) 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.

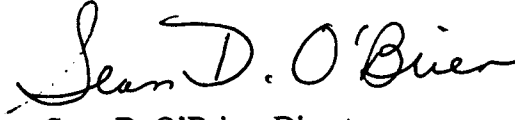
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

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

In the Matter of

Stuart Edwin Strausberg, D.O. (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. 04-199

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):
For the Respondent:**

**Paul Robert Maher, Esq.
Carolyn Shearer, Esq.**

The Respondent holds a medical license in California in addition to his license to practice medicine in New York (License). In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2004), the ARB considers the action to take against the Respondent's License following disciplinary action against the Respondent by California, for using cocaine and violating the California drug statutes. After a hearing below, a BPMC Committee voted to revoke the Respondent's License, stay the revocation, suspend the Respondent's License and place the Respondent on probation following the suspension. On this review, the Petitioner asks the ARB to revoke the Respondent's License, with no stay and the Respondent asks that the ARB dismiss a charge that the Committee sustained and reduce the time the Respondent must spend on probation. After reviewing the hearing record and review submissions, the ARB affirms the Committee's Determination that the Respondent committed professional misconduct and we modify the penalty the Committee imposed. We vote 3-2 to suspend the Respondent's License until he completes the probation he currently serves against his California license and, thereafter, we place the Respondent on probation for life.

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(9)(b) & 6530(9)(d) (McKinney Supp. 2004) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from a sister state (California) found that the Respondent guilty for misconduct [6530(9)(b)] or took action against the Respondent's License in that state [6530(9)(d)], for,
- conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York.

The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the Respondent's misconduct in California would constitute misconduct if committed in New York as:

- being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having a similar effect, a violation under N. Y. Educ. Law § 6530(8) (McKinney Supp. 2004)
- willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules or regulations governing the practice of medicine, a violation under N. Y. Educ. Law § 6530(16) (McKinney Supp. 2004), and,
- engaging in conduct that evidences moral unfitness, a violation under N. Y. Educ. Law § 6530(20) (McKinney Supp. 2004).

An expedited hearing (Direct Referral Proceeding) followed pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 2003), before a BPMC Committee, which 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 record shows that the Osteopathic Medical Board of California (California Board) revoked the Respondent's California medical license, stayed the revocation and placed the Respondent on probation that will run until July 2012. The probation includes:

- paying \$ 5000.00 in costs;
- a prohibition against prescribing, administering, dispensing or possessing controlled substances;
- enrollment and participation in California's Diversion Program;
- abstention from using or possessing controlled substances or alcohol;
- submission to drug testing;
- psychiatric treatment; and,
- completing successfully several continuing medical education courses.

The evidence indicated that the Respondent entered into a Stipulated Settlement with the California Board admitted all charges and allegations in a Disciplinary Petition against the Respondent [Hearing Exhibit 5]. The Petition charged that in September 2002, the Respondent injected cocaine into both his arms, while with his wife and two prostitutes, who were also injecting cocaine. In July 2002, the California Board had placed the Respondent on probation for prior cocaine use.

The Committee found that the California Board's Order made the Respondent liable for disciplinary action against his License pursuant to Educ. Law §§ 6530(9)(b) & 6530(9)(d). The

Committee concluded that the Respondent's California conduct would constitute misconduct in New York as:

- dependence on or habitual use of narcotics or other drugs;
- willful or grossly negligent failure to comply with federal, state or local laws, rules or regulations regulating medical practice; and,
- conduct in the practice of medicine that evidences moral unfitness.

The Committee indicated that they considered revoking the Respondent's License because the Respondent's most recent offense came only two months into probation on a prior drug offense, the Respondent provided only fragmentary corroborating evidence on his abstinence since the October 2002 offense and the Respondent failed to exhibit an understanding about the gravity of his problem. The Committee voted to stay revocation of the Respondent's License because no evidence indicated that the Respondent ever practiced medicine while under the influence of cocaine and because the Respondent produced some evidence about sobriety and compliance with the California probation, albeit less information than the Committee would have preferred. The Committee voted to suspend the Respondent's License for two years and allow the Respondent to return to practice on lifetime probation, if the Respondent could comply with conditions in the Committee's Order.

Review History and Issues

The Committee rendered their Determination on August 27, 2004. This proceeding commenced on August 31, 2004, 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 October 4, 2004.

The Petitioner asks that the ARB overrule the Committee and revoke the Respondent's License. The Petitioner contends that Respondent's latest offense in California constituted a violation of a prior probation, only two months after that prior probation went into effect. The Petitioner argues that the Committee found that the Respondent provided "remarkably fragmentary" evidence of compliance with the current California probation. As to the Committee's finding that the Respondent committed no patient harm, the Petitioner contends that Educ. Law § 6530(8) defines professional misconduct to include dependence on or habitual use of narcotics and makes no requirement that such dependence result in patient harm.

The Respondent asks that the ARB reduce the lifetime probation penalty that the Committee imposed. The Respondent contends that he is fully committed to recovery and that probation and compliance monitoring can protect the public adequately from future misconduct. The Respondent also challenges the Committee's Determination that the Respondent's conduct in California constitutes a violation of a statute governing medical practice.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent committed professional misconduct. We modify the Committee's Determination on penalty.

Under Educ. Law §§ 6530(9)(b) & 6530(9)(d), BPMC may take disciplinary action against the Respondent's License because the California Board disciplined the Respondent in California for conduct that would constitute misconduct in New York. The Petitioner charged

that the Respondent's cocaine usage in California would constitute misconduct in New York under Educ. Law §§ 6530(8), 6530(16) & 6530(20). Those sections define misconduct to include narcotics addiction or abuse; willful or grossly negligent failure to comply with laws governing medical practice; and, engaging in conduct that evidences moral unfitness in practice. The ARB concludes that the Respondent's cocaine usage in California clearly demonstrated narcotic abuse and addiction, a violation under § 6530(8). That misconduct specification alone provides the ground on which to take disciplinary action against the Respondent's License. The Respondent argues that the Respondent's conduct in California would not have amounted to a willful or grossly negligent failure to comply with a statute governing practice. We leave the Respondent to challenge in the courts whether the California conduct would also have violated §§ 6530(16) or 6530(20).

On the penalty, we vote 3-2 to modify the stayed revocation, suspension and probation penalty that the Committee imposed. The two members in dissent would revoke the Respondent's License. The three members, who vote to modify, reject the Respondent's request that we reduce the lifetime probation. The majority shares the Committee's concern about the Respondent's fragmentary evidence concerning compliance with his California probation. We agree that the Respondent's hearing testimony reflected too much focus on aiding other addicts and little enough understanding about the gravity of the Respondent's problem. The majority concludes that the Respondent must continue in recovery under the probation that California has imposed against the Respondent's License in that state. We vote, therefore, to suspend the Respondent's License until he completes successfully the requirements under the California probation. If the Respondent chooses to return to practice in New York thereafter, then the Respondent will practice on probation for life under the terms that appear in the Committee's

Order at Paragraphs 3.a-3.d, 4, 6-9,11-14 and 16-18. We delete from the probation the paragraphs that referred to consequences from violating the probation, because Pub. Health Law § 230(19) already lays out the procedures for probation violation hearings.

ORDER

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

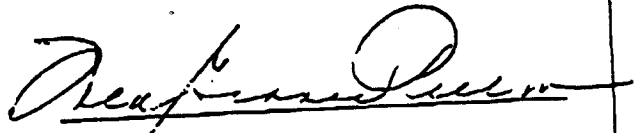
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB votes 3-2 to modify the Committee's Determination to revoke the Respondent's License, stay the revocation, suspend the Respondent's License for two years and to place the Respondent on probation for life following the suspension.
3. The ARB suspends the Respondent until such time as the Respondent completes fully and successfully the probation under the California Board's Order.
4. If the Respondent completes the California probation fully and successfully and chooses to return to New York to practice, the ARB places the Respondent on probation for life under the terms in the Committee's Order that the ARB referred to in our Determination.

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 Stuart Edwin Strausberg, D.O.

Thea Graves Pellman, an ARB Member affirms that she participated in the deliberations in the Matter of Dr. Strausberg and that this Determination reflects the decision by the majority in this matter.

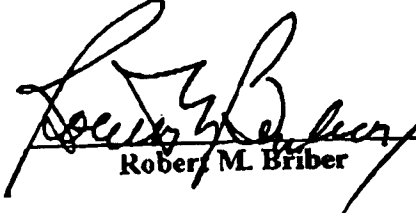
Dated: Nov. 19, 2004


Thea Graves Pellman

In the Matter of Stuart Edwin Strausberg, D.O.

Robert M. Briber, an ARB Member, affirms that he participated in the deliberations in the Matter of Dr. Strausberg and that this Determination reflects the decision by the ARB majority in this matter.

Dated: November 18, 2004

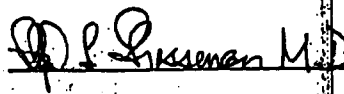


Robert M. Briber

In the Matter of Stuart Edwin Strausberg, D.O.

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

Dated: December 29, 2004

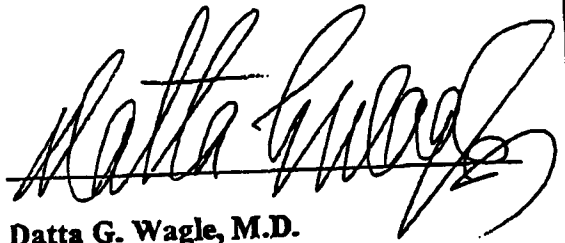


Stanley L Grossman, M.D.

In the Matter of Stuart Edwin Strausberg, D.O.

Datta G. Wagle, M.D., an ARB Member affirms that he participated in the deliberations the Matter of Dr. Strausberg and that this Determination reflects the decision by the majority in this matter.

Dated: 11/21, 2004


Datta G. Wagle, M.D.

In the Matter of Stuart Edwin Strausberg, D.O.

Therese G. Lynch, M.D., an ARB Member affirms that she participated in the deliberations in the Matter of Dr. Strausberg and that this Determination reflects the decision by the majority in this matter.

Dated: November 17, 2004

Therese G. Lynch M.D.

Therese G. Lynch, M.D.