



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

November 30, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anthony Benigno, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237-0032

Jeffrey M. Rubin, Esq.
Rubin & Shang
9 East 40th Street
New York, New York 10016

Rodolfo Byrne, M.D.
196 Graham Avenue
Brooklyn, New York 11206

RE: In the Matter of Rodolfo Byrne, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-177) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:cah
Enclosure

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

In the Matter of

Rodolfo Byrne, M.D. (“Respondent”)

**A proceeding to review a Determination by a
Hearing Committee from the Board for
Professional Medical Conduct (“BPMC”)**

Administrative Review Board (“ARB”)

Determination and Order No. 01-177

COPY

**Before ARB Members Grossman, Lynch, Pellman, Briber and Price
Administrative Law Judge Marc P. Zylberberg drafted this Determination**

For the Department of Health (“Department”): Anthony M. Benigno, Esq.

**For Dr. Rodolfo Byrne (“Respondent”): Jeffrey M. Rubin, Esq.
Law Offices of Rubin & Shang**

After a Hearing below, a BPMC Hearing Committee (“Committee”) determined that Respondent had violated the terms of his probation. The Committee voted to revoke the Respondent’s license to practice medicine in New York State.

In this proceeding, pursuant to New York Public Health Law §230-c(4)(a)(“P.H.L.”), Respondent asks the ARB to reduce the penalty imposed by the Committee.

After considering the Hearing record and the submissions by the parties, we vote unanimously to affirm the Committee’s Determination as to its findings and we vote unanimously to sustain the Committee’s penalty of revocation.

Committee Determination on the Charges

On December 14, 1999, Dr. Byrne entered into a Consent Agreement with the New York State Board of Professional Medical Conduct. The Consent Agreement Order (BPMC No. 99-311) imposed a penalty of a five (5) year suspension of Dr. Byrne's medical license with the suspension being stayed contingent on the compliance by Dr. Byrne of certain terms of probation. The Department commenced the violation of probation proceeding by notice on April 18, 2001. The Department alleged that Respondent violated paragraphs 4, 7, 8, 9, and 11(d) of the terms of probation.

A Hearing ensued, on June 19, 2001, before the Committee that rendered the Determination and Order now on review.

The Committee found that the Department established by a preponderance of the evidence that Respondent had violated the terms of his probation. Specifically, Respondent violated paragraph numbers 7 and 9 by failing to successfully complete a course of personalized CME and paragraph number 11(d) by failing to maintain medical malpractice insurance at the required limits.

The Committee's decision indicates that Respondent failed to contact OPMC for clarification on his required participation in an approved personalized CME course. In addition, Respondent did not submit documentation that his attendance at annual medical conferences and meetings had been submitted to OPMC for approval.

Review History and Issues

The Committee rendered their Determination on August 8, 2001. This proceeding commenced on August 22, 2001, when the ARB received Respondent's Request for Review. The record for review contained the Committee's Determination and Order, the Hearing record,

Respondent's brief and Department's reply brief. The record closed when the ARB received the Department's reply brief on October 17, 2001.

Respondent argues that:

1. The penalty of revocation, imposed by the Committee, is excessive, unreasonable, arbitrary and capricious.
2. He attempted to comply with the terms of probation.
3. He practiced under the scrutiny of his probation monitor without any claims made against him by any patient.
4. If the Committee found a violation, the appropriate penalty should have been the imposition of the suspension agreed to in the Consent Order (five years), until such time that he complied with the conditions of probation.
5. It is improper and arbitrary to penalize him because of his age and work status.

In response to Respondent's brief, the Department argues that:

1. P.H.L. §230(19) allows the Hearing Committee to impose any of the sanctions authorized by P.H.L. §230-a.
2. Respondent agreed to the terms of probation in the 1999 Consent Order and he understood his obligations but chose not to comply with certain terms for his own personal reasons and benefits.
3. The Committee's determination of the penalty was appropriate.

Determination

The Committee unanimously determined that Respondent's license to practice medicine in New York be revoked. The Committee believed it was clear that Respondent lacked insight as to the limitations of his medical skill and knowledge. The Committee observed that

Respondent was trained as a radiation oncologist and received no additional training when he changed to a general medical practice in the mid-1980's.

In the 1999 Consent Order, Respondent did not contest allegations that he practiced medicine with incompetence in his treatment of several patients. This was considered an acknowledgement that Respondent recognized that his abilities did not meet acceptable standards. Therefore, a requirement was imposed that Dr. Byrne raise his level of medical skills through a significant amount of additional medical training and education.

The ARB has considered the record and the parties' briefs. We affirm the Committee's findings and conclusions. We find that Respondent has not complied with the terms of probation which terms he had agreed to and understood. Dr. Byrne did not raise his level of medical skills through a significant amount of additional medical training and education as he agreed to in the Consent Order and the terms of probation. The ARB finds that the Committee did not penalize Respondent because of his age and work status but because of his failure to comply with specific and clear probationary requirements contained in the 1999 Consent Order.

Respondent's remaining arguments, to the extent not specifically addressed, have been examined and found to be without merit.

ORDER

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

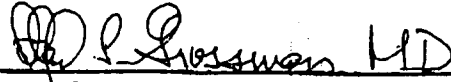
1. The ARB **AFFIRMS** the Committee's Determination that Respondent violated the terms of his probation; and
2. The ARB **AFFIRMS** the Committee's Determination that Respondent's license to practice medicine be revoked.

Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.
Thea Graves Pellman
Robert M. Briber
Winston S. Price, M.D.

In the Matter of Rodolfo Byrne, M.D.

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

Dated: November 23 2001

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

Stanley L. Grossman, M.D.

In the Matter of Rodolfo Byrne, M.D.

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

Dated: November 21, 2001



Therese G. Lynch, M.D.

In the Matter of Rodolfo Byrne, M.D.

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

Dated: Nov 29, 2001

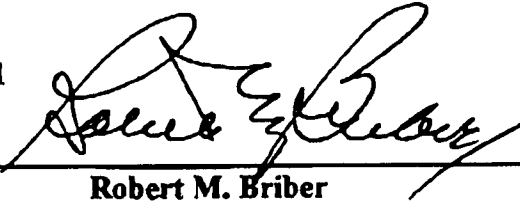


Thea Graves Pellman

In the Matter of Rodolfo Byrne, M.D.

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

Dated: November 23, 2001

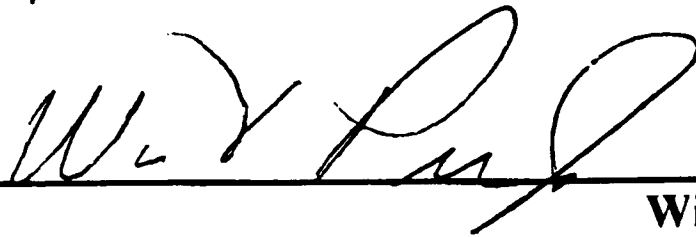
A handwritten signature in cursive script, appearing to read "Robert M. Briber", written over a horizontal line.

Robert M. Briber

In the Matter of Rodolfo Byrne, M.D.

**Winston S. Price, an ARB Member concurs in the Determination of the
Matter of Dr. Byrne.**

Dated: 11/24, 2001

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

Winston S. Price