



# 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*

May 22, 2006

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Agmasie Birhan Woldie, M.D.  
1000 Riverwalk Boulevard – Apt. 1209  
Shreveport, LA 71105

Denise L. Quarles, Esq.  
Quarles & Associates, P.C.  
36 West 44<sup>th</sup> Street, Suite 816  
New York, New York 10036

Ann Hroncich Gayle, Esq.  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs  
90 Church Street – 4<sup>th</sup> Floor  
New York, New York 10007-2919 "

**RE: In the Matter of Agmasie Birhan Woldie, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 06-34) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 "O".

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**

**Agmasie Birhan Woldie, 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. 06-34**

**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:**

**Anne Hroncich Gayle, Esq.  
Denise L. Quarles, Esq.**

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by kissing a patient, whom the Respondent provided care for during a hospital stay. The Committee voted to censure and reprimand the Respondent. In this proceeding pursuant to N.Y. Pub. Health Law (PHL) § 230-c (4)(a)(McKinney 2006), both parties ask the ARB to modify the Committee's Determination. After considering the hearing record and the review submissions by both parties, the ARB votes 5-0 to affirm the Committee's Determination that the Respondent committed misconduct and 4-1 to affirm the Committee's Determination on penalty.

**Committee Determination on the Charges**

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law (EL) §§ 6530(20) & 6530(31)(McKinney Supp. 2006) by committing professional misconduct under the following specifications:

- engaging in conduct in the practice of medicine that evidences moral unfitness, and,
- willfully harassing, abusing or intimidating a patient.

The charges involved the Respondent's conduct toward a single patient (Patient A) during the Respondent's medical residency at St. Vincent's Medical Center on Staten Island. The record refers to the Patient by an initial to protect her privacy.

The Respondent holds no medical license in New York. The Committee found that they held jurisdiction over the Respondent because he practiced medicine in New York at the time at issue in this case.

The evidence at hearing demonstrated, and the Respondent conceded, that the Respondent treated Patient A in May 2002, during her hospitalization for pyelonephritis, that the Respondent would check the Patient for signs of fever by placing the Respondent's hands on the Patient's cheeks and forehead, and that on May 5, 2002, the Respondent gave the Patient the Respondent's home and cellular telephone numbers. The Committee noted that, although the Patient became uncomfortable when the Respondent touched the Patient on the neck and cheek, such touching failed to constitute misconduct. The Committee found that it was not uncommon to check a patient for fever by touching the neck and cheek, as well as using a thermometer. The Committee found the Respondent acted inappropriately in giving the Patient his telephone numbers, but the Committee concluded that this conduct also failed to constitute professional misconduct.

The dispute at the hearing centered on whether the Respondent kissed Patient A. Patient A testified that the Respondent kissed her on the lips, during the same visit on which the Respondent provided the Patient the Respondent's phone numbers. A friend of Patient A and a nurse from St. Vincent's also testified that Patient A complained about the kiss promptly. The Respondent did not attend the hearing in person but spoke by telephone and denied kissing the Patient.

By a 2-1 vote, the Committee determined that the Respondent did kiss Patient A. The Committee members in the majority found Patient A testified credibly, found corroboration in testimony that the Patient complained promptly about the kiss and found no reason for the Patient to fabricate her testimony. The Committee found the Respondent less than credible in his denial.

The Committee majority determined that the Respondent's conduct amounted to willfully harassing a patient and engaging in conduct that evidences moral unfitness in the practice of medicine. The Committee majority voted to censure and reprimand the Respondent. The Committee found little likelihood that the Respondent would repeat such misconduct. The Respondent underwent an evaluation by the Committee for Physician's Health (CPH) following the incident and later returned to St. Vincent's to finish his residency.

### **Review History and Issues**

The Committee rendered their Determination on February 27, 2006. This proceeding commenced on March 9 and 14, 2006, when the ARB received the Petitioner's and then the Respondent's Notices requesting Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and reply brief and the Respondent's brief and reply brief. The record closed when the ARB received the Respondent's reply brief on April 25, 2006.

The Respondent requests that the ARB nullify the Committee's Determination. The Respondent alleges that the Committee erred in their judgment on credibility, that the Petitioner failed to prove the charges by preponderance of the evidence and that the Committee imposed an overly harsh penalty.

The Petitioner argues that the sanction the Committee imposed fails to protect the public. The Petitioner requests that the ARB modify the sanction to include terms of probation, with a toll on the probation until such time as the Respondent returns to practice medicine in New York.

### 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 (3<sup>rd</sup> 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 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> 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 (3<sup>rd</sup> 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 votes 5-0 to affirm the Determination that the Respondent committed professional misconduct. The ARB votes 4-1 to affirm the Committee's Determination to censure and reprimand the Respondent.

The ARB sees no error in the Committee's Determination to credit the testimony by Patient A. We agree that no reason appeared in the record for the Patient to fabricate her testimony. The Committee noted that the Respondent held a stake in the outcome of the proceeding and the Committee found the Respondent less than credible in part due to the Respondent's failure to provide a reasoned explanation for his referral to CPH. The Committee also found corroboration for the Patient's testimony in the Patient's prompt complaints to her friend and to the nurse. The ARB concludes that the Respondent engaged in conduct that evidenced moral unfitness and willfully harassed a patient when the Respondent kissed Patient A.

The ARB majority finds censure and reprimand represents the appropriate penalty in this case. The Respondent returned to work at St. Vincent's following the incident with Patient A and the Respondent committed no further inappropriate behavior. This sanction will follow the Respondent and the Respondent will have to report the sanction on subsequent licensing,

employment and staff privilege applications. One ARB member dissents from this holding and would add probation to the penalty, if the Respondent ever returns to practice in New York State.

**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.

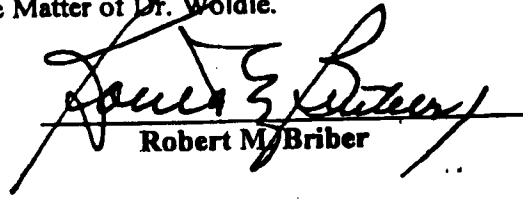
Robert M. Briber  
Thea Graves Pellman  
Datta G. Wagle, M.D.  
Stanley L. Grossman, M.D.  
Therese G. Lynch, M.D.



**In the Matter of Agmasie Birhan Woldie, M.D.**

**Robert M. Briber, an ARB Member, affirms that he participated in this case and that this Determination reflects the Decision by the ARB in the Matter of Dr. Woldie.**

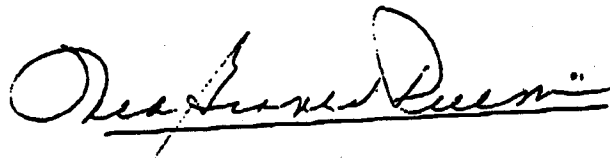
**Dated: May 19, 2006**

  
Robert M. Briber

In the Matter of Agmasie Birhan Woldie, M.D.

Thea Graves Pellman, an ARB Member affirms that she participated in this case and that this Determination reflects the Decision by the ARB in the Matter of Dr. Woldie.

Dated: May 17, 2006

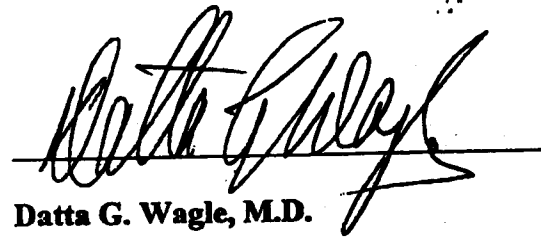


Thea Graves Pellman

**In the Matter of Agmasie Birhan Woldie, M.D.**

Datta G. Wagle, M.D., an ARB Member affirms that he participated in this case and that this Determination reflects the Decision by the ARB in the Matter of Dr. Woldie.

Dated: 5/18, 2006

  
Datta G. Wagle, M.D.

In the Matter of Agmasie Birhan Woldie, M.D.

Stanley L. Grossman, an ARB Member affirms that he participated in this case and that this Determination reflects the Decision by the ARB in the Matter of Dr. Woldie.

Dated: May 17, 2006

Stanley L. Grossman M.D.

Stanley L Grossman, M.D.

In the Matter of Agmasie Birhan Woldie, M.D.

Therese G. Lynch, M.D., an ARB Member affirms that she participated in this case and that this Determination reflects the Decision by the ARB in the Matter of Dr. Woldie.

Dated: May 17, 2006

*Therese G. Lynch, M.D.*

Therese G. Lynch, M.D.