



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

July 26, 2004
Dennis P. Whalen
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Theodore J. Sabot, M.D.
23 Walden Lane
Pittsfield, Massachusetts 01201

Theodore J. Sabot, M.D.
29 Jones Avenue
Chatham, New York 01237

PUBLIC

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

RE: In the Matter of Theodore J. Sabot, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-101) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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, appearing to read "Sean D. O'Brien". The signature is written in a cursive style with a large initial "S".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

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

In the Matter of

Theodore J. Sabot, 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. 04-101

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.
Pro Se**

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2003), the ARB considers the penalty to assess against the Respondent's license to practice medicine in New York State following the Respondent's Federal criminal conviction for Health Care Fraud. After a hearing below, a BPMC Committee voted to censure and reprimand the Respondent and to place him on probation for ten years, with a restriction on his practice. The Respondent then sought administrative review and argued that the Committee's practice restriction, in effect, revoked the Respondent's License. In response, the Petitioner argued that the Respondent's conduct warrants revocation as the penalty. After reviewing the hearing record and the Committee's Determination, the ARB affirms the Committee's Determination that the Respondent's committed misconduct and the Determination to place the Respondent on probation for ten years. We modify the probation terms and we overturn the Committee's Determination to censure and reprimand the Respondent. We vote to suspend the Respondent's License for five years and to stay the suspension in full.

Committee Determination on the Charges

The Petitioner charged that the Respondent violated N. Y. Educ. Law § 6530(9)(a)(ii) by engaging in conduct that resulted in the Respondent's conviction for a crime under Federal Law. The proceeding commenced by a Summary Order from the Commissioner of Health, pursuant to N.Y. Pub. Health Law § 230(12)(b). The Order suspended the Respondent's License summarily, upon the Commissioner's Determination that the Respondent was convicted for acts constituting a felony. An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 2003). In the 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 ARB review addresses the Committee's Determination on the charges and penalty only, as the ARB lacks the authority to review Summary Orders [see Pub. Health Law § 230-c (1)].

The Petitioner also charged that the Respondent violated N. Y. Educ. Law §§ 6530(2) & 6530(20) (McKinney Supp. 2004) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently, and,
- engaging in conduct that evidences moral unfitness.

Those charges concerned an application that the Respondent submitted in connection with employment. A BPMC Committee considered the Direct Referral charge and the fraud/moral unfitness charges at the same hearing. Following the hearing, the Committee rendered the Determination now on review.

The evidence at hearing showed that the Respondent entered a guilty plea in September 1985, in California Superior Court, to submitting false claims to the Medi-Cal Program that exceeded \$400,000.00. In 1990, the New York of Regents stayed the revocation of the Respondent's License and placed the Respondent on probation for one year for the conduct that resulted in the California conviction. In November 1994, the Respondent submitted an application to the Rensselaer County Civil Service Commission, on which the Respondent answered "no" to the question: "have you ever been convicted of any crime". The Respondent filled out another application subsequently in which he answered the same question correctly and filed an explanation regarding the California conviction. In January 2003, the Respondent entered a guilty plea in the United States District Court for Northern New York to Health Care Fraud, for:

- knowingly and willfully executing a scheme and artifice to defraud a Health Care Benefit Program,
- by causing the Rensselaer County Mental Health Department to submit claims for services the Respondent furnished,
- at a time when the Respondent was suspended from the Medicare Program.

The Court sentenced the Respondent to four months imprisonment, three years supervised release, four months home detention, a \$5000.00 fine, a \$100.00 assessment and \$2,211.33 in restitution.

The Committee concluded that the 2003 Federal Conviction made the Respondent liable for disciplinary action against his License pursuant to Educ. Law § 6530(9)(a)(ii). The Committee concluded that the Respondent's initial incorrect answer on the 1994 Rensselaer County Application failed to provide a basis to conclude that the Respondent practiced

fraudulently or engaged in conduct that evidenced moral unfitness. The Committee determined that the Respondent's Federal Conviction warranted a significant penalty, but the Committee decided against revoking or suspending the Respondent's License. The Committee voted to censure and reprimand the Respondent and to place the Respondent on probation for ten years. The probation terms restricted the Respondent to practice in a facility licensed or operated by New York State, in a setting that provides care to an underserved population [Committee Order, Paragraph 2.A.].

Review History and Issues

The Committee rendered their Determination on May 10, 2004. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's response brief. The record closed when the ARB received the response brief on June 17, 2004.

The Respondent challenges the Committee's penalty and argues that the Committee erred by placing the Respondent on probation for ten years, basing the penalty in part on the need to deter the Respondent from future misconduct, basing the penalty in part on the Respondent's attempt to deny personal responsibility for the 2003 conviction and requiring the Respondent to provide care to an underserved population. The Respondent also argues that by restricting his practice to any setting that receives either Federal funding or Federal reimbursement, the Committee has in affect revoked his License. The Respondent contends that any facility that receives Federal funding or Medicaid/Medicare reimbursement would be unable to hire the Respondent.

The Petitioner argues that the Committee failed to impose a significant penalty for the Respondent's conduct and the Petitioner faults the Committee for failing to consider the Respondent's 1985 California conviction as an aggravating factor in arriving at a penalty in this case. The Petitioner argues that the Respondent's repeated criminal conduct warrants license revocation as a penalty.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent committed professional misconduct, but we modify the penalty that the Committee imposed. We suspend the Respondent's License for five years and stay the suspension in full. We affirm the Determination to place the Respondent on probation for ten years, but we modify the probation terms.

The ARB considered whether the conduct at issue in this case did demonstrate a pattern of misconduct that would warrant revocation. After extensive discussion on the case, we determined unanimously that the Respondent's conduct warrants a penalty less severe than revocation, if we can fashion a penalty that will provide proper oversight over the Respondent's practice, to assure that he commits no further misconduct. The Committee also indicated their intent to impose a penalty less severe than revocation, but the Committee, in effect, revoked the Respondent's License by imposing oversight that limited the Respondent's practice to facilities unable to hire the Respondent. The ARB modifies the Committee's Determination to remove the probation condition that imposed that restriction, Paragraph 2.A. in the Committee's Order.

The Committee imposed the practice restriction in the former Paragraph 2.A. due to their concern over the billing for the Respondent's services. Federal rules appear to have restricted the

Respondent already from employment in any facility that receives government funding or reimbursement, which would leave the Respondent to private practice. We share the Committee's concerns over the Respondent's past billing problems and we conclude that we must substitute a different condition to oversee the Respondent's billing practices. We substitute a new Paragraph 2.A. to read:

"2.A. Within thirty (30) days of the effective date of the Order, Respondent shall practice medicine only when monitored by a licensed physician proposed by Respondent and subject to the written approval of the Director of the Office for Professional Medical Conduct (OPMC).

- a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least quarterly and shall examine a selection of records, including billing records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.*
- b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.*
- c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.*
- d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order"*

The Respondent's brief argued against ten years on probation as unnecessary deterrence and punishment. After our extensive discussions, we conclude that the lengthy probation with monitoring provides the only sanction that will allow the proper oversight with continued practice. Without such oversight in place, the ARB would have been left with no choice, other than revoking the Respondent's License.

We also overturn the Committee's Determination to censure and reprimand the Respondent. We vote to suspend the Respondent's License for five years and to stay the suspension in full.

ORDER

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

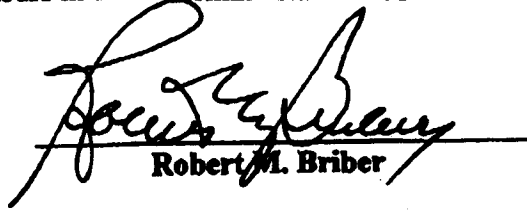
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the Committee's Determination to censure and reprimand the Respondent.
3. The ARB suspends the Respondent's License for five years and stays the suspension in full.
4. The ARB affirms the Committee's Determination to place the Respondent on probation for ten years, but we modify Paragraph 2.A. in the probation terms, as we discussed 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 Theodore J. Sabot, M.D.

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

Dated: July 19, 2004



Robert M. Briber

In the Matter of Theodore J. Sabot, M.D.

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

Dated: July 2³, 2004

A handwritten signature in cursive script that reads "Thea Graves Pellman". The signature is written in black ink and is positioned above the printed name.

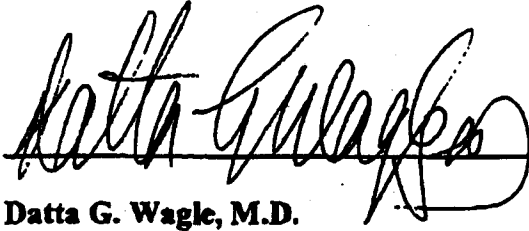
Thea Graves Pellman

In the Matter of Theodore J. Sabot, M.D.

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

Matter of Dr. Sabot.

Dated: 7/21/, 2004



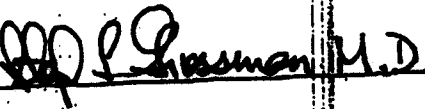
Datta G. Wagle, M.D.

In the Matter of Theodore J. Sabot, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Sabot.

Dated: July 21, 2004

 Stanley L. Grossman, M.D.

Stanley L. Grossman, M.D.

In the Matter of Theodore J. Sabot, M.D.

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

Dated: July 19, 2004

Therese G. Lynch M.D.

Therese G. Lynch, M.D.