



# 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

February 27, 2004

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Bruce M. Forester, M.D.  
55 Northway  
Bronxville, New York 10708

Bruce M. Forester, M.D.  
51 East 73 Street  
New York, New York 10021

Robert Bogan, Esq.  
Paul Robert Maher, Esq.  
NYS Department of Health  
Hedley Park Place  
433 River Street - 4<sup>th</sup> Floor  
Troy, New York 12180

James R. Denlea, Esq.  
Barry B. Cepelewicz, M.D., J.D.  
Meiselman, Denlea, Packman & Eberz  
1311 Mamaroneck Avenue  
White Plains, New York 10602

**RE: In the Matter of Bruce M. Forester, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-212) 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.

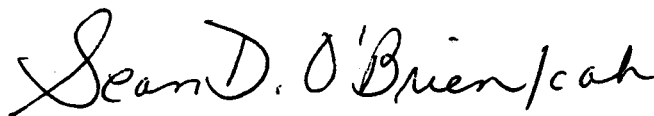
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

**Bruce M. Forester, 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. 03-212**

**COPY**

**Before ARB Members Grossman, Lynch, Pellman and Briber<sup>1</sup>  
Administrative Law Judge James F. Horan drafted the Determination**

**For the Department of Health (Petitioner):  
For the Respondent:**

**Paul Robert Maher, Esq.  
James R. Denlea, Esq.**

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by engaging in conduct that resulted in his conviction for crimes under Federal Law. As a sanction for that misconduct, the Committee voted for a stayed suspension of the Respondent's New York medical license (License), a fine, community service and probation. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2004), the Petitioner asks the ARB to modify that Determination by overturning the Committee and revoking the Respondent's License. After considering the hearing record and the parties' review submissions, the ARB votes to affirm the Committee's Determination in full.

**Committee Determination on the Charges**

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent committed professional misconduct under the definition in N. Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 2004) by engaging in conduct that resulted in the Respondent's

<sup>1</sup> ARB Member Datta G. Wagle, M.D., recused himself from participating in the case because he served on the Hearing Committee, prior to his appointment to the ARB. The ARB proceeded to consider the case with a four member quorum, see Matter of Wolkoff v. Chassin, 89 NY2d 250 (1996).

conviction for a crime under Federal Law. An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney 2004), before a BPMC Committee, which rendered the Determination now on review. In the Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The evidence before the Committee demonstrated that the Respondent entered guilty pleas in the United States District Court for the Southern District of New York on one count of Health Care Fraud, a Class C Felony, and on eleven counts of making False Statements Relating to Health Care Matters, Class D felonies. Title 18 U.S.C. § 1347 defines Health Care Fraud as knowingly and willfully executing a scheme or artifice to defraud any health benefit program to obtain, by false pretenses, representations or promises, any money or property owned by any health benefit program. Title 18 U.S.C. § 1035(a) makes it a crime, in relation to a health care benefit program, to knowingly and willfully:

- 1.) falsify, conceal or cover up by any trick, scheme or device a material fact; or,
- 2.) make any materially false, fictitious or fraudulent statements, representations or make or use any materially false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry.

All the counts arose from the Respondent's billings to Fortis Benefits Insurance Company (Fortis) for sessions that a Patient (J.C.) skipped. The District Court sentenced the Respondent to one month imprisonment, two years supervised release (including five months home confinement), a \$10,000.00 fine, \$15, 013.28 restitution and a \$120.00 assessment.

The Committee found that the Respondent's criminal convictions made the Respondent subject to disciplinary action against his License pursuant to Educ. Law §6530(a)(ii). The Committee rejected the Respondent's arguments that he made the statements to Fortis from ignorance rather than an intent to mislead, because the Respondent made guilty pleas to charges that required knowing and willful acts as an element in the crimes.

The Committee rejected the Petitioner's request to revoke the Respondent's License. Although the Committee found that the Respondent's conduct warranted a serious sanction, the

Committee concluded that the Respondent received a severe punishment from the criminal process. The Committee also concluded that the billings represented the only problem with the Respondent's billings or quality of care since the Respondent began medical practice in 1966. The Committee noted that the record contained numerous letters from colleagues and patients attesting to the Respondent's dedication to patients and his professional excellence. The Committee found the Respondent unlikely to repeat his criminal conduct. The Committee voted to suspend the Respondent's License for five years, to stay the suspension in full, to fine the Respondent \$10,000.00, to order the Respondent to perform community service and to place the Respondent on probation for three years, under the terms that appear in the Committee's Order.

#### **Review History and Issues**

The Committee rendered their Determination on August 6, 2003. This proceeding commenced on August 19, 2003, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and response brief and the Respondent's brief and response brief. The record closed when the ARB received the Respondent's response brief on September 30, 2003.

The Respondent asks that the ARB overturn the Committee and revoke the Respondent's License. The Petitioner argues that the Respondent demonstrated dishonesty in billing and that the Respondent gave false testimony at his BPMC hearing. The Petitioner contends that such conduct demonstrates the Respondent's unfitness to practice medicine.

The Respondent contends that the Committee rendered an appropriate Determination in a case that amounted mostly to a billing dispute. The Respondent asks the ARB to reject the Petitioner's request to overturn the Committee, because the Petitioner failed to file a timely brief

with the ARB and because the Petitioner failed to address the many mitigating factors which the Committee mentioned in their Determination.

### **Determination**

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the conduct, that resulted in the Respondent's criminal conviction, constitutes professional misconduct under N. Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 2004).

Although the Respondent described this case as a billing dispute, the Respondent's brief made no contention that the Committee erred in their Determination on the charges.

The Respondent contended that the Petitioner failed to file submissions in a timely manner. That contention raises a jurisdictional matter that the ARB would normally address before turning to other issues. At the time we met to deliberate on this case, however, it became clear immediately in the discussion that the ARB members agreed with the Committee's Determination on the penalty. We saw no need, therefore, to deal with the procedural issue, because we will reject the request to overturn the Committee on the merits.

We agree with the Committee that the Respondent's conduct warrants a severe sanction. We conclude that the sentence under the Respondent's criminal conviction and sanctions that the Committee imposed constitute a sufficiently harsh penalty. We also agree with the Committee that this case represents an isolated incident in the Respondent's career and that the Respondent presents no risk to repeat such conduct.

**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 suspend the Respondent's License, to stay the suspension and to place the Respondent on probation for three years under the terms that appear in the Committee's Order, to order the Respondent to perform community service and to fine the Respondent \$10,000.00.

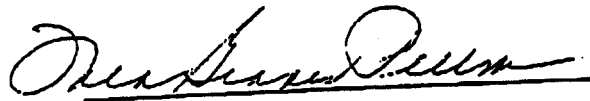
Robert M. Briber  
Thea Graves Pellman  
Stanley L. Grossman, M.D.  
Therese G. Lynch, M.D.

In the Matter of Bruce M. Forester, M.D.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Forester.

Dated: 2/25/04, 2004



Thea Graves Pellman



In the Matter of Bruce M. Forester, M.D.

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

Dated: 02/24/04, 2004

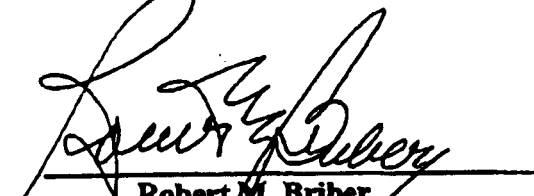
Stanley L. Grossman, M.D.

Stanley L. Grossman, M.D.

**In the Matter of Bruce M. Forester, M.D.**

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

**Dated: February 23, 2004**



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**Robert M. Briber**

In the Matter of Bruce M. Forester, M.D.

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

Dated: February 23, 2004

*Therese G. Lynch M.D.*

**Therese G. Lynch, M.D.**