



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

December 7, 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

James R. Caputo, M.D.

Redacted Address

Timothy J. Mahar, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Michael Paul Ringwood, Esq.
Smith, Sovik, Kendrick & Sugnet, P.C.
250 South Clinton Street – Suite 600
Syracuse, New York 13202-1252

RE: In the Matter of James R. Caputo, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-271) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

Although Respondent was represented by counsel, he chose to offer the opening and closing statements and to cross-examine the Department's expert. He also testified regarding his care of the six patients. Respondent clearly has a stake in the outcome of these proceedings. Although he appeared sincere, knowledgeable and dedicated to his profession, several aspects of his testimony were troubling. Respondent demonstrated a capacity to perform prohibited actions in that he admitted to using forceps on multiple occasions in a hospital during a period when the hospital had suspended and/or limited his privileges to do so. In addition, the evidence established that Respondent attempted to cover up his failure to recognize and treat Patient E's low hematocrit level by writing a discharge summary which implied that Patient E received iron therapy in the hospital.

51

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This, btw, is but another complete fabrication and wholly unsupported by the facts and the medical record.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license should be suspended for two years; however, after 30 days of actual suspension, the remainder of the period of suspension should be stayed provided that Respondent complies with certain terms of probation. The Committee determined further that Respondent's license to practice medicine as a physician in New York

State should be permanently limited to prohibit him from performing high forceps and midforceps rotations or deliveries. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Hearing Committee believes that Respondent has the requisite knowledge and skill to practice medicine safely, but that he has repeatedly failed to exercise the care that a reasonably prudent physician would exercise under the circumstances. The Committee sought to fashion a penalty that would permit Respondent to continue to practice his chosen profession while ensuring the safety of his patients.

The Committee feels that 30 days of actual suspension must be imposed to provide a period of time during which Respondent can reflect upon his prior misconduct and redirect his energy and focus towards practicing medicine within accepted standards. In addition, Respondent's inability to practice for that period of time will serve as a penalty by having a significant monetary impact.

A suspension of Respondent's license, stayed after 30 days for the remainder of a two-year period provided Respondent complies with terms of probation, is necessary to ensure that Respondent practices medicine within accepted standards. In spite of his

knowledge and skill, Respondent has managed the care of his patients in ways that expose them to unnecessary risk. Under the terms of probation, the Director of the Office of Professional Medical Conduct will be able to review Respondent's professional performance and take action if necessary.

The Committee believes that Respondent's license to practice medicine must also be limited to prohibit him from performing high forceps and midforceps rotations or deliveries.

Although midforceps operations are within the accepted standard of care under appropriate circumstances, Respondent's conduct shows that he does not recognize the risks associated with their use. Respondent professes great skill in using forceps and seems to derive satisfaction from exhibiting this ability. His judgment concerning whether the appropriate circumstances for forceps use exist, however, appears clouded by his desire to display his professed ability. An example of Respondent's impaired judgment in this regard was evidenced by his persistence in performing midforceps operations in a hospital after his privileges to perform that operation were suspended. Respondent had other viable options to safely address the medical circumstances of his patients; however, he blatantly disregarded the terms imposed upon his hospital privileges, professing to do so out of necessity.

The Hearing Committee recognizes that this limitation will

remove one tool from Respondent's armamentarium; however, a cesarean section is an acceptable alternative. The reality is that many obstetricians practice safely within the accepted standard of care without performing midforceps operations. The Committee unanimously determined that Respondent's over-confidence and his unwillingness to alter his use of midforceps strongly dictates the imposition of a prohibition against their use.

The three sustained specifications of gross negligence, taken separately, would warrant the suspension and probation imposed. The sustained specification of negligence on more than one occasion, considered separately, would also warrant the suspension and probation imposed.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Fourth, Fifth, Sixth and Thirteenth Specifications of professional misconduct, as set forth in the Statement of Charges, (Exhibit #1) are **SUSTAINED**;
2. The First through Third, Seventh through Twelfth and Fifteenth through Twentieth Specifications of professional misconduct, as set forth in the Statement of Charges are **DISMISSED**;
3. Respondent's license to practice medicine as a physician in New York State is hereby **SUSPENDED FOR A PERIOD OF TWO YEARS**;



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

April 10, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

James R. Caputo, M.D.

Address Redacted

Timothy J. Mahar, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Michael Paul Ringwood, Esq.
Smith, Sovik, Kendrick & Sugnet, P.C.
250 South Clinton Street - Suite 600
Syracuse, New York 13202-1252

RE: In the Matter of James R. Caputo, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-271) 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

Respondent relies on his opinion about his skill in using forceps. The Respondent demonstrated impaired judgment in this regard by continuing to use forceps after his hospital suspended the Respondent's privileges to perform forceps deliveries. The ARB sees no alternative but to ban the Respondent from using mid and high forceps.

The ARB modifies the Committee's Determination and we suspend the Respondent's License for three years. We stay all but thirty days of that suspension, on the condition that the Respondent comply with the provisions in this Determination concerning probation. The ARB agrees with the Committee about the need to impress upon the Respondent a concern for safety rather than a reliance on his own skill. The ARB concludes that actual time on suspension will provide the Respondent time to reflect on the need to change his practice and impress on the Respondent that his continued refusal to practice according to accepted standards can result in the Respondent's permanent removal from medical practice.

The ARB agrees with the Committee concerning the need to impose a period of probation on the Respondent's License. The ARB modifies the Committee's Determination to increase the probation period from two years to three years. The ARB concludes that the three-year period will provide greater protection to the public by assuring that the Respondent is practicing by accepted standards. The ARB also modifies the probation by adding a practice monitor. The Respondent's prior refusal to abide by the restrictions his hospital imposed on forceps delivery leads the ARB to conclude that greater oversight will be necessary over the Respondent. The ARB amends the Probation Terms in the Committee's Order to add a new paragraph 8 to read:

" 8. Within thirty (30) days of the effective date of the Order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in Obstetrics/Gynecology, proposed by Respondent and subject to the written approval of the Director of OPMC.

" a. The 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

June 6, 2002

James Caputo, M.D.
739 Irving Avenue
Suite 300
Syracuse, New York 13210

Re: Privilege Status

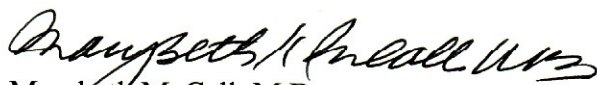
Dear Dr. Caputo:

This letter confirms that as of March 31, 2002, Dr. Badawy lifted any and all requirements that you seek a consultation prior to undertaking any operative vaginal delivery. Thus, currently your obstetrical privileges are not subject to any restriction or condition.

Likewise, the six-month review of your obstetrical admissions concluded in March of 2002.

Finally, as was identified earlier this month, the letter you received on October 19, 2001 was incorrect. Your clinical privileges for operative vaginal deliveries were never suspended. The noted pre-procedure consultation was required, but the privileges themselves were never suspended. Your privilege sheet as printed from the computer system currently is attached. I will file a correction of this reference with the National Practitioner Databank and the New York State Office of Professional Medical Conduct.

Sincerely,



Marybeth McCall, M.D.
Chief Medical Officer

Cc: Dr. Shawky Babawy