



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

March 9, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Tribeca Medical, P.C.
280 Riverside Drive, Suite 5K
New York, New York 10025

Mark B. Watson, Esq.
Robert H. Jaffe & Associates, P.A.
8 Mountain Avenue
Springfield, New Jersey 07081-1728

Francis Ruddy, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
90 Church Street – 4th Floor
New York, New York 10007

RE: In the Matter of Tribeca Medical, P.C.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-190) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Redacted Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

In the Matter of

Tribeca Medical, P.C. (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. 08-190

COPY

Before ARB Members Lynch, Pellman, Wagle and Wilson¹
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Francis Ruddy, Esq.
Division of Legal Affairs, NYS Dept. of Health

For the Respondent: Mark B. Watson, Esq.
Robert H. Jaffe & Associates, P.A.

After a hearing, a BPMC Committee determined that the Respondent engaged in professional misconduct by failing to comply with provisions in law relating to medical professional corporations. The Respondent made no appearance at the hearing and failed to file an answer to the charges. The Committee voted to annul the Respondent's corporate certification. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2009), the Respondent asks the ARB to nullify the Committee's Determination, to remand for a new hearing and to allow the Respondent to file an answer to the charges. After considering the record below and the parties' review submissions, the ARB affirms the Committee's Determination.

¹ ARB Member Richard Milone, M.D. did not participate in this case. The ARB proceeded to consider the case with a four-member quorum, Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent-Professional Corporation committed professional misconduct under the definition in New York Education Law (EL) §§ 6530(16) (McKinney 2009) by engaging in the willful or grossly negligent failure to comply with substantial provisions of State Law that govern the practice of medicine. The Petitioner charged that the Respondent violated New York Business Corporation Law (BCL) § 1503(McKinney 2009). The provisions in BCL § 1503 permit only licensed physicians to organize, hold stock in, direct and/or serve as an officer in a medical professional corporation, such as the Respondent. The Petitioner's Statement of Charges alleged that unqualified individuals, who held no medical licensure, were instrumental in operating and controlling the Respondent and handling its finances. The Petitioner charged further that the Respondent evaded the legal restrictions on incorporation, ownership and/or control of medical professional corporations by concealing from regulatory oversight the fact that unqualified individuals incorporated, owned, operated and/or controlled the Petitioner.

The Respondent failed to appear at the hearing or at a pre-hearing conference and no one appeared on the Respondent's behalf at the hearing or pre-hearing. The Administrative Officer for the Committee ruled that the Petitioner made effective service upon the Respondent. The Administrative Officer also ruled that the Respondent failed to file an answer no later than ten days prior to the hearing date. Under PHL § 230(10)(c), any unanswered charge shall be deemed admitted. The hearing proceeded in the Respondent's absence and the Committee rendered the Determination now on review.

The Committee found that unqualified individuals were instrumental in operating and controlling the Respondent. The Committee found further that the Respondent filed a certificate of incorporation with the New York Secretary of State that listed Alfred Halima, M.D. as the sole shareholder, director and officer of the Respondent and as the individual duly authorized by law to practice medicine. The records of the Department of State show a change in ownership in the Respondent in June 2006 from Dr. Halima to Raphael Cilento, M.D. The Committee found

a further transfer in ownership thereafter from Dr. Cilento to Prasad Chalasani, M.D. The Committee also found that Dr. Halima surrendered his license to practice in June 2008. A BPMC Hearing Committee revoked Dr. Cilento's license in 2007. The ARB revoked Dr. Chalasani's license in 2008. The Committee determined, as a result of the surrender and the revocations, that there was no shareholder in the Respondent authorized by law to practice medicine. The Committee voted to annul the Respondent's incorporation pursuant to BCL § 1503(f).

Review History and Issues

The Committee rendered their Determination on October 6, 2008. This proceeding commenced on October 21, 2008, when the ARB received a Notice from Robert A. Jaffe & Associates a.) indicating that the Respondent retained that law firm to represent the Respondent's interests and b.) requesting a review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's reply brief. The record closed when the ARB received the reply brief on December 1, 2008.

The Respondent argues that it was unaware of any action against it until late October 2008 and that it has still not been formally served with the Committee's Determination. The Respondent requests that the ARB nullify the Committee's Determination, remand the matter for further proceedings and allow the Respondent to file an answer to the charges.

The Petitioner opposes the request for review and argues that Petitioner made proper legal service on the Respondent-Corporation by serving the New York Secretary of State, the agent for service under the BCL.

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 (3rd 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 (3rd Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3rd 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 (3rd 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 denies the request that we annul the Committee's Determination, that we remand for further proceedings and that we allow the Respondent to file an answer to the charges. The Committee found that the Petitioner made proper and effective service on the Respondent and the Respondent's review brief made no challenge to that finding. The Respondent argued instead that it was unaware of the Committee's Determination and that it was never served formally. The ARB sees no grounds on which to overturn the Committee.

The failure to file an answer resulted in the Committee's Determination to deem the charges admitted. That admission and the proof before the Committee demonstrated that unqualified persons incorporated and operated the Respondent. The ARB finds that annulment under BCL § 1503(f) constituted an appropriate penalty that was consistent with the Committee's findings and conclusions.

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 annul the Respondent's corporate certification.

Thea Graves Pellman
Datta G. Wagle, M.D.
Linda Prescott Wilson
Therese G. Lynch, M.D.

In the Matter of Tribeca Medical, P.C.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the
Matter of Tribeca Medical, P.C.

Dated: 4 March, 2009

Redacted Signature

Linda Prescott Wilson

In the Matter of Tribeca Medical, P.C.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the Matter of Tribeca Medical, P.C.

Dated: March 4, 2009

Redacted Signature

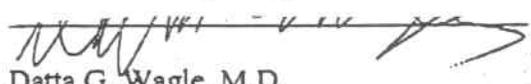
Thea Graves Pellman

In the Matter of Tribeca Medical, P.C.

Datta G. Wagle, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Tribeca Medical, P.C.

Dated: 3/3/ 2009

Redacted Signature


Datta G. Wagle, M.D.

In the Matter of Tribeca Medical, P.C.

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Tribeca Medical, P.C.

Dated: March 2, 2009.

Redacted Signature


Therese G. Lynch, M.D.