

NEW YORK
state department of
HEALTH

Public

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

November 9, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Tae Kyu Park, M.D.
724 Eighth Avenue
Brooklyn, New York 11215-4204

Joseph C. Schioppi, Esq.
123-35 82nd Road, Suite 2L
Kew Gardens, New York 11415

Claudia Morales Bloch, Esq.
NYS Department of Health
145 Huguenot Street
New Rochelle, New York 10801

RE: In the Matter of Tae Kyu Park, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-203) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

In the Matter of

Tae Kyu Park, 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. 11-203

COPY

Before ARB Members D'Anna, Koenig, Wagle, Wilson and Milone
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Claudia Morales Bloch, Esq.
For the Respondent: Joseph C. Scioppi, Esq.

After a hearing below, a BPMC Committee determined that the Respondent practiced with repeated and egregious negligence in treating patients and the Committee voted to revoke the Respondent's license to practice medicine in New York State. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2011), the Respondent asks the ARB to review and overturn the Committee's Determination. After considering the record below and the parties' review submissions, the ARB votes to affirm the Committee in full.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(2-6) & 6530(32) (McKinney 2011) by committing professional misconduct under the following specifications:

- practicing with negligence on more than one occasion,
- practicing with gross negligence,

- practicing with incompetence on more than one occasion,
- practicing medicine with gross incompetence, and,
- failing to maintain accurate patient records.

The charges concerned the treatment that the Respondent provided to five persons [Patients A-E], the adequacy of the testing and examinations the Respondent performed and the Respondent's practice in prescribing controlled substances. Following the hearing, the Committee rendered the Determination now on review.

The Committee determined that the Respondent failed consistently to: maintain records to reflect the care and treatment to the Patients, order and assess diagnostic tests, obtain adequate medical histories, perform physicals, rule out underlying medical issues and causes of symptoms, make diagnoses, develop treatment plans and/or justify prescribing medications. The Committee found that the Respondent treated Patient A for weight management over the course of 18 years and prescribed phentermine for years without: determining whether there were contraindications, ordering blood work to monitor for adverse effects or weighing the Patient to determine if treatment was effective. In addition, the Committee noted that the Respondent's records contained little evidence that the Respondent ordered blood work or other tests, except for Patient B. The Respondent did order blood work a number of times over the years for Patient B and those tests showed elevated cholesterol triglycerides and blood glucose levels. Such results could indicate heart or diabetes, but the Respondent did nothing to follow-up on such information. Further, the Committee found that the Respondent maintained Patients B-E on potentially habit forming medications such as Vicodin and Percocet, with little or no justifications for prescribing. The Respondent treated Patient B and that Patient's spouse for over 20 years and the Respondent maintained Patient B on pain medications for years merely on the

complaint of back pain, without attempting to diagnose the pain's cause or identifying alternative treatments. The Respondent prescribed pain killers for Patient C without seeing the Patient. The Committee found that the Respondent prescribed pain killers for Patients D and E without diagnosis, medical indication, justification and/or ruling out underlying disorders.

The Committee sustained the charges that the Respondent failed to maintain accurate patient records and that the Respondent practiced with negligence on more than one occasion and gross negligence. The Committee dismissed the incompetence and gross incompetence charges. In making their conclusions, the Committee relied on testimony by the Petitioner's expert witness, Lewis Bass, M.D. The Committee indicated that Dr. Bass gave credible and detailed testimony about the standard of care, using the Respondent's medical records to show the multitude of ways that the Respondent failed to meet the standard of care. Dr. Bass testified that the Respondent's practice of maintaining patients on potentially habit forming medications with little or no justification constituted a significant deviation from acceptable standards of care. The Committee also relied upon testimony from the Respondent in making findings. The Committee found that the Respondent's testimony revealed little understanding or training in weight management and a shallow depth of knowledge in practicing internal medicine. The Committee also found the Respondent uninformed concerning use of and contraindications of medications. The Committee indicated that the Respondent provided strong evidence that the Respondent's patients were seeing the Respondent to obtain drugs. The Respondent told the Committee that the Respondent ceased prescribing pain medications upon learning he was under investigation. Patients who had been coming to the Respondent for many years stopped coming after the Respondent stopped writing the pain medication prescriptions.

The Respondent conceded to deficiencies in his record keeping. The Committee found little awareness by the Respondent, however, concerning significant deviations from acceptable practice standards. The Committee also found that the Respondent failed to remain current in training to practice internal medicine. The Committee concluded that the breadth and scope of the Respondent's deviations from the accepted standards of medical practice present the risk of potentially grave consequences to the Respondent's patients. The Committee found insufficient evidence of incompetence or gross incompetence. The Committee voted to revoke the Respondent's License.

Review History and Issues

The Committee rendered their Determination on August 17, 2011. This proceeding commenced on August 31, 2011, when the ARB received the Respondent's Notice 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 October 11, 2011.

The Respondent argued that the Committee made a decision against the weight of the evidence and that procedural errors in the proceeding denied the Respondent a fair and impartial hearing. The Respondent stated that the Petitioner called no patients or civilians as witnesses and that only the medical records of certain patients entered the record. The Respondent noted that the Committee dismissed certain factual allegations concerning the treatment for Patients A, B C and E and that the Committee dismissed the specifications alleging practice with gross

incompetence and incompetence on more than one occasion. The Respondent asked the ARB to consider his testimony, medical background and spot-less record and to overturn the Committee.

The Petitioner argues that the Respondent has failed to specify what findings the Committee made which went against the weight of the evidence and what procedural shortcomings denied the Respondent a fair and impartial hearing. The Petitioner contends that overwhelming evidence supported the findings that the Respondent practiced with negligence on more than one occasion and gross negligence, and that the Respondent placed patients at the potential risk of grave consequences. The Petitioner requested that the ARB sustain the Committee in full.

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 has considered the record and the parties' briefs. We affirm the Committee's Determination in full.

The Respondent's brief made reference to procedural shortcomings but cited nothing specifically. The Respondent faulted the Petitioner for presenting no patients as witnesses, but the testimony by a physician-expert and documentation from medical records can provide sufficient credible evidence on which to sustain misconduct charges against a physician, Matter of Nenno v. State of New York Department of Health, 210 A.D.2d 827, 620 N.Y.S.2d 589 (3rd Dept. 1994). The Respondent was free to present patients as witnesses if he felt patients could

have provided relevant information on the charges. In sustaining the charges, the Committee relied, in large part, on the Respondent's own testimony and own records. The Respondent also conceded to deficiencies in his record keeping. The ARB finds that the testimony by the Respondent and Dr. Bass and the Respondent's records in evidence established that the Respondent practiced with gross negligence, negligence on more than one occasion and that the Respondent failed to maintain accurate patient records. The Respondent noted that the Committee dismissed some factual allegations and some misconduct specifications. We find nothing inconsistent in the Committee's decision to sustain some charges and to dismiss others. The Committee's Determination shows that they considered each allegation and all the evidence and that they weighed the evidence in a fair and thorough manner.

The ARB affirms the Committee's Determination to revoke the Respondent's License. The Respondent engaged in serious deviations from accepted medical standards in prescribing controlled substances without proper testing or indication. The Committee concluded that the Respondent continued to present a grave risk to patients and that the Respondent failed to see the deficiencies in his practice. The Committee made no finding that the Respondent showed remorse for his misconduct or that the Respondent realized the need to change his practice. The ARB agrees with the Committee that the Respondent would remain a danger if he remains in practice and we see no alternative to revoking the Respondent's License.

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 sustains the Committee's Determination to revoke the Respondent's License.

Peter S. Koenig, Sr.
Datta G. Wagle, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Tae Kyu Park, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the
Matter of Dr. Park.

Dated: 3 November, 2011

REDACTED SIGNATURE

Linda Prescott Wilson

In the Matter of Tae Kyu Park, M.D.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the
Matter of Dr. Park.

Dated: _____ November 2, 2011

REDACTED SIGNATURE

Peter S. Koenig, Sr.

In the Matter of Tae Kyu Park, M.D.

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

Dated: 11/3, 2011

REDACTED SIGNATURE

~~_____~~
Datta G. Wagle, M.D.

In the Matter of Tae Kyu Park, M.D.

Richard D. Milone, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Park.

Dated: November 2, 2011

REDACTED SIGNATURE _____

Richard D. Milone, M.D.

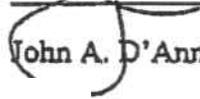
In the Matter of Tae Kyu Park, M.D.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the

Matter of Dr. Park.

Dated: Nov 8, 2011

REDACTED SIGNATURE


John A. D'Anna, M.D.