



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

Public

Wendy E. Saunders
Chief of Staff

March 3, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Prasad Chalasani, M.D.
299 Oakley Court
Mill Neck, New York 11765

Ariel Amino, Esq.
Law Offices of Ariel Aminov
107-06 71st Road, Suite 2
Forest Hills, New York 11375

Mark L. Furman, Esq.
Hoffman, Polland & Furman, PLLC
220 East 42nd Street – Suite 435
New York, New York 10017

Denise Lepicier, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

RE: In the Matter of Prasad Chalasani, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.07-233) 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.

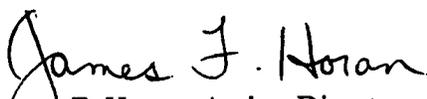
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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


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

Prasad Chalasani, 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. 07-233

COPY

Before ARB Members Grossman, Lynch, Pellman and Wagle ¹
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Denise Lepicier, Esq.
For the Respondent: Mark L. Furman, Esq.

After a hearing below, a BPMC Committee determined that the Respondent violated a prior disciplinary probation and the Committee voted to suspend the Respondent's license to practice medicine in New York State (License) for one year. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2008), both parties ask the ARB to modify the Committee's Determination. The Petitioner asks that ARB revoke the Respondent's License. The Respondent requests that the ARB eliminate any remaining time on suspension and return the Respondent to practice. After reviewing the record below and the parties' review submissions, the ARB affirms the Committee's Determination that the Respondent violated probation. The ARB overturns the Committee's Determination to suspend the Respondent's License for one year and we vote 4-0 to revoke the Respondent's License.

¹ ARB Member Linda Prescott Wilson recused herself from participating in this case, because she served on the Hearing Committee in this matter. The ARB proceeded to review the case with a four-member quorum, see Matter of Wolkoff v. Chassin, 89 N.Y.2d 250(1996).

Committee Determination on the Charges

The Committee conducted a hearing pursuant to PHL § 230(19). In the Statement of Charges, the Petitioner alleged that the Respondent committed professional misconduct under the definition in New York Education Law (EL) § 6530(29) (McKinney 2008) by violating Probation Terms to which the Respondent consented under a November 2003 Consent Agreement with the Office for Professional Medical Conduct (OPMC). The Petitioner charged that the Respondent failed to:

- respond in a timely manner to written requests by OPMC to verify compliance with the Probation Terms;
- apprise OPMC in a timely and current manner concerning all employment and practice locations;
- maintain excess medical malpractice coverage within the limits that the Probation Terms required; and,
- arrange for a practice monitor at all practice locations.

The Petitioner charged further that the Respondent denied in a 2005 staff appointment application that the Respondent's License had ever been suspended or placed on probation. Following a hearing on the charges, the Committee rendered the Determination now on review.

The evidence demonstrated that the Respondent entered into a 2003 Consent Order in which the Respondent agreed not to contest charges that the Respondent practiced with negligence on more than one occasion in treating two patients. The Respondent agreed to accept as a penalty a thirty-six month suspension, fully stayed, and thirty-six months on probation. The Probation Terms included requirements that the Respondent: respond in a timely manner to OPMC requests for verification of compliance with the Consent Order, apprise OPMC in a timely and current manner concerning all employment and practice locations, maintain excess medical malpractice coverage within the limits that the Probation Terms required and arrange for a practice monitor at all practice locations.

The Committee found that the Respondent was responsible for understanding and adhering to the Terms of the Consent Order. The Committee determined that the Respondent violated the terms of the Order, that the Respondent failed to fully accept or appreciate his responsibility to adhere to the terms of the Order and that the Respondent's own testimony and writings reflected the Respondent's ongoing failure to accept the Terms of Probation. The Committee found that the Respondent failed to respond in a timely manner to written OPMC requests for verification of compliance with probation, failed to keep OPMC apprised of all practice locations in a timely and current manner, failed to maintain excess malpractice coverage within limits that the Probation Terms specified and failed to obtain a practice monitor at all practice locations. The Committee also found that the Respondent willfully provided a false answer on a reappointment application for the Medical Staff at Nassau Health Care Corporation (Application) by answering "No" to a question as to whether the Respondent's License was ever suspended or placed on probation voluntarily or involuntarily. The Committee found, however, that the Respondent's answer failed to amount to fraud. The Committee concluded that the Respondent violated the Probation Terms and that the Respondent failed to accept responsibility for his misconduct.

The Committee indicated that placing the Respondent on further probation would be untenable because the Respondent failed to appreciate the responsibility to cooperate and be responsive to OPMC. The Committee also noted that the Respondent engaged in multiple and varied probation violations. The Committee voted to suspend the Respondent's License for one year.

Review History and Issues

The Committee rendered their Determination on October 24, 2007. This proceeding commenced on November 8 and 13, 2007, when the ARB received the Petitioner's and the Respondent's Notices requesting Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and reply brief and the Respondent's

brief and reply brief. The record closed when the ARB received the reply brief on December 24, 2007.

The Petitioner asks that the ARB overturn the Committee and find that the Respondent's false answer on the Application did amount to fraud. In addition, the Petitioner requests that the ARB overturn the Committee and revoke the Respondent's License.

The Respondent argues that the Committee imposed an overly harsh penalty and that the Committee relied on non-adjudicated charges from the prior disciplinary proceeding in making the Committee's Determination. The Respondent asks that the ARB affirm the Committee's Determination that the Respondent did not engage in fraud. The Respondent also asks that the ARB eliminate any remaining suspension and return the Respondent to practice.

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 that the Respondent violated probation. We decline the Petitioner's request that we find that the Respondent committed fraud. We overturn the Committee's Determination to suspend the Respondent's License. The ARB votes 4-0 to revoke the Respondent's License.

The Petitioner's Brief (Point II, page 11) argued that the Committee erred by failing to find that the Respondent committed fraud in answering falsely on the Application. The ARB finds no error by the Committee because the Petitioner's Notice of Probation Violation Letter

[Committee Determination, Appendix A] contained no allegation that the Respondent committed fraud. The charges alleged that the Respondent violated Probation. The Committee would have denied the Respondent due process if the Committee had taken disciplinary action against the Respondent with uncharged conduct as the basis for such disciplinary action, Dhabuwala v. State Bd. For Prof. Med. Conduct, 225 A.D.2d 209, 651 N.Y.S.2d 249 (3rd Dept. 1996). The ARB holds that the Committee acted appropriately, by finding instead, that the Respondent's answer on the Application provided further evidence that the Respondent failed to accept his probationary status.

The ARB also rejects the Respondent's contention that the Committee relied on non-adjudicated charges from the initial disciplinary action in making the Committee's Determination. The Respondent's Brief [page 3] indicated that the Respondent based the contention concerning the non-adjudicated charges on a passage in the first paragraph of the Committee's Conclusions of Law [Committee Determination, page 5]. That passage involved instructions from the Committee's Administrative Officer that unproven allegations from the prior disciplinary action, concerning failure to provide accurate information, could be considered to determine whether the Respondent received "heightened" notice that providing false information constituted misconduct. The ARB finds that this passage constitutes instructions from the Administrative Officer only, rather than conclusions by the Committee. The Respondent's brief quoted no conclusions from the Committee concerning the unproven allegations. The Committee concluded that the Respondent's conduct in providing false information on the Application provided further evidence of the Respondent's failure to accept probationary status. The ARB sees no error in that conclusion by the Committee.

The ARB overturns the Committee's Determination to suspend the Respondent's License for one year and we vote 4-0 to revoke the Respondent's License. The evidence before the Committee established that the Respondent violated several probation conditions. The Respondent's brief argued that the violations could not be considered in a vacuum. The ARB finds the Respondent's arguments on review, in effect, repeated the arguments that the Committee found unconvincing. The ARB agrees with the Committee that the Respondent engaged in multiple and varied violations. We agree further that further probation would provide an insufficient penalty for the Respondent's continuing misconduct. The Respondent engaged in misconduct in providing patient care and then ignored the steps put into place to assure that the Respondent would correct the deficiencies in his practice that resulted in the repeated negligence.

The Respondent entered into a Consent Agreement and accepted a stayed three-year suspension and probation as a condition to settle the prior disciplinary action. The Respondent ignored the second chance he received and engaged in numerous and repeated violations of the Probation Terms. The Respondent compounded the violations by providing false information on the Application. At the very least, for a violation of probation, the Respondent should serve the three-year suspension that the prior Consent Order stayed. The ARB questions, however, whether any suspension would serve to impress upon the Respondent the need to correct his practice. The Respondent refused to abide by the Probation and the ARB sees no reason on this record to believe that the Respondent will change his practice after the end of a suspension, with no further restrictions upon him. The ARB sees no reason to risk patient safety and provide the Respondent another chance after he squandered the opportunity that the Consent Decree offered. The ARB concludes that the Respondent's pattern of misconduct has demonstrated his unfitness to practice medicine in New York State.

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 overturns the Committee's Determination to suspend the Respondent's License.
3. The ARB votes 4-0 to revoke the Respondent's License.

Thea Graves Pellman
Datta G. Wagle, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

In the Matter of Prasad Chalasani, M.D.

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

Dated: Feb 29, 2008

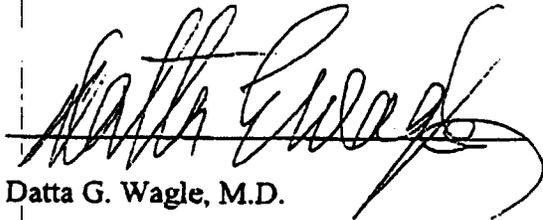


Thea Graves Pellman

In the Matter of Prasad Chalasani, M.D.

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

Dated: 2/25/, 2008

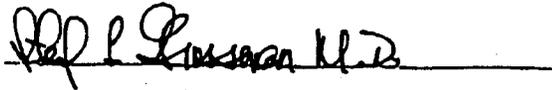


Datta G. Wagle, M.D.

In the Matter of Prasad Chalasani, M.D.

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

Dated: February 26, 2008

A handwritten signature in black ink, appearing to read "Stanley L. Grossman M.D.", is written over a horizontal line.

Stanley L. Grossman, M.D.

In the Matter of Prasad Chalasani, M.D.

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

Dated: February 25, 2008



Therese G. Lynch, M.D.