



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

September 13, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Robert Maher, Esq.
NYS Department of Health
Hedley Park Place
433 River Street – Annex
Troy, New York 12180

Carolyn Shearer, Esq.
Bond, Schoeneck & King, PLLC
111 Washington Avenue
Albany, New York 12210-2211

Azhar Tahir, M.D.
7434 Route 54
Bath, New York 14810

Azhar Tahir, M.D.
REDACTED

RE: In the Matter of Azhar Tahir, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-112) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:nm

Enclosure

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

COPY

In the Matter of

Azhar Tahir, 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. 04-112

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

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

**Paul Robert Maher, Esq.
Carolyn Shearer, Esq.**

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2004), the ARB considers the action to take against the Respondent's License to practice medicine in New York (License) following the Respondent's criminal conviction for submitting fraudulent billings for his professional services. After a hearing below, a BPMC Committee found that the Respondent's actions constituted professional misconduct and placed the Respondent's License on probation for ten years, under the terms that appear in the Committee's Order. The Petitioner then requested review and asks the ARB to overturn the Committee and revoke the Respondent's License. The Respondent moves to dismiss the Petitioner's review notice for failure to file a timely brief. After reviewing the Committee's Determination and the parties review submissions, we reject the Respondent's request that we dismiss the proceeding. We affirm the Committee's Determination that the Respondent committed professional misconduct. We overturn the Committee's Determination on penalty and vote to revoke the Respondent's License.

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law §§ 6530(9)(a)(i) (McKinney Supp. 2004) by engaging in conduct that resulted in the Respondent's conviction for a crime under New York Law. An expedited hearing (Direct Referral Proceeding) followed pursuant to Pub. Health Law §230(10)(p), before the BPMC Committee that 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 record demonstrates that the Respondent entered a guilty plea, in County Court for Steuben County, New York, on July 23, 2003, to a.) Grand Larceny in the Third Degree, a Class D Felony and 2.) Participating in a Scheme to Defraud in the First Degree, a Class E Felony. The Court sentenced the Respondent to six months home confinement, five years on probation and community service. The Respondent also agreed to make restitution amounting to \$651,723.00. The record in the criminal case indicated that the conviction arose from billings to the Medicaid and Medicare Programs, the New York State Insurance Fund (Worker's Compensation) and the Excellus Health Plan. The Respondent's Plea Agreement (Hearing Exhibit 5) admitted that the Respondent submitted billings, with intent to defraud, in claims for:

- comprehensive office visits, when the Respondent performed lesser services,
- claims for tests the Respondent never performed, and,
- claims in Worker's Compensation cases for treatment unrelated to a work accident or injury.

The Respondent's Agreement admitted that the Programs and Insurers paid the Respondent funds to which the Respondent was not entitled.

The Committee found that the Respondent's criminal conduct made the Respondent liable for disciplinary action against his License pursuant to Educ. Law §§ 6530(9)(a)(i). The Committee voted to place the Respondent's License on probation under the Terms that appear at Paragraph 3 in the Committee's Order. The Terms restrict the Respondent to practice in an underserved area (Paragraph 3.B.). The Committee noted that, at the Direct Referral Proceeding, the Respondent denied any intentional involvement in billing irregularities and described any irregularities as mistakes by his wife, who handled the billings. The Committee found that denial inconsistent with the language in the Plea Agreement and with the answers the Respondent gave at his guilty plea (Hearing Exhibit 6). The Committee found, however, that little likelihood existed that the Respondent would repeat his conduct and the Committee stated that the ten year License probation would remind the Respondent about his legal and ethical obligations.

Review History and Issues

The Committee rendered their Determination on May 24, 2004. This proceeding commenced on June 3, 2004, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the parties' brief and the Respondent's reply brief. The record closed when the ARB received the reply brief on July 28, 2004.

The Petitioner asks the ARB to overturn the Committee and revoke the Respondent's License. The Petitioner argues that the Respondent's fraudulent conduct impacts adversely on health care costs and the public's respect for the medical profession. The Petitioner also argues

that ten years on probation fails to serve as an adequate sanction or deterrent for those who cheat the system and enrich themselves by over-billing.

The Respondent's brief argues that the Committee weighed mitigating factors appropriately and fashioned a penalty that will allow the Respondent to continue in practice, fulfill his restitution obligations and to serve medically underserved communities.

In reply to the Petitioner's brief, the Respondent moves to dismiss the Petitioner's Review Notice for failure to perfect the Notice in a timely fashion. The Respondent notes that the Administrative Officer for the ARB granted the parties an extension in filing review briefs until July 20, 2004. The Administrative Officer granted the extension at the Respondent's request. The Petitioner failed to serve their brief until July 26, 2004. The Respondent argues that the late brief constitutes a jurisdictional defect.

Determination

The ARB has considered the record and the parties' briefs. We reject the Respondent's request that we dismiss the Review Notice. We affirm the Committee's Determination that the Respondent's criminal conviction made the Respondent liable for disciplinary action against his License, pursuant to Educ. Law § 6530(9)(a)(i). We overturn the Committee and revoke the Respondent's License.

Motion To Dismiss: We disagree with the Respondent's contention that the Petitioner's late brief constituted a defect in jurisdiction that would require the ARB to dismiss the Petitioner's Review Notice. Clearly, the failure to file a review notice in a timely manner constitutes a defect in jurisdiction, Matter of Weg v. DeBuono, 269 A.D.2d 683, 703 N.Y.S.2d

301 (3rd Dept. 2000). The courts have made no ruling to the effect that filing a late brief constitutes a jurisdictional defect as well.

In reviewing whether a party failed to perfect a review due to a late brief, the ARB has looked to the facts in the case and considered prejudice to the other party and any delay in the review process in determining whether to dismiss. In *Matter of Frederick Diaz*, ARB 01-202, 2002 WL 31924104 (NYSDOH-Admin. Rev. Bd.), the ARB dismissed a review notice when Dr. Diaz failed to file a brief by the time the ARB met to deliberate on his case, even though the ARB had granted the Respondent an extension in the time to file the brief, after he missed an initial filing date. In *Matter of Said Dounel*, ARB 00-269, 2000 WL 33181462 (NYSDOH-Admin. Rev. Bd.), the ARB refused to dismiss a review notice when the Department of Health served a brief late on Dr. Dounel, because Dr. Dounel still received the opportunity to file a reply brief prior to the time the ARB deliberated in the case. We find the facts in the present case more similar to the facts in *Dounel* than to the facts in *Diaz*. In the present case, the Petitioner served their brief six days late, but the Respondent suffered no prejudice, because the Respondent received the opportunity to respond and make the dismissal motion. The late brief also caused no delay in the case, as the ARB was still able to review the matter at our scheduled deliberations in August 2004.

We leave the Respondent to raise with the courts the issue as to whether filing a late brief constitutes a jurisdictional defect.

Penalty: We disagree with the arguments in the Respondent's brief to the effect that the Respondent has shown contrition and that the Respondent presents as no danger to repeat the Respondent's misconduct. In his testimony at the hearing, the Respondent refused to accept responsibility for his criminal conduct. He referred to his misconduct merely as billing

irregularities and he attempted to blame the billings on his wife. The ARB concludes from this record that the Respondent's refusal to admit his wrongdoing leaves the Respondent at risk to repeat his misconduct.

We disagree with the Committee that ten years on license probation will provide an adequate sanction in this case. The Respondent engaged in a deliberate and criminal scheme to defraud insurers, betrayed the trust in the medical profession and used his License to obtain money that he never earned. The Respondent proved his unfitness to practice medicine in this State and to provide care to any New York citizen, including those living in under served areas. The ARB sees no reason to allow the Respondent to retain his License merely to insure that he reimburses the money that he obtained through fraud. The ARB votes 5-0 to revoke 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 overturns the Committee's Determination to place the Respondent's License on probation.
3. The ARB revokes the Respondent's License.

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

In the Matter of Azhar Tahir, M.D.

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

Dated: Sept 7, 2004

REDACTED

~~Robert M. Briber~~

In the Matter of Azhar Tahir, M.D.

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

Dated: Sept. 8, 2004

REDACTED

Thea Graves Pellman

In the Matter of Azhar Tahir, M.D.

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

Matter of Dr. Tahir.

Dated: 9/9/, 2004

REDACTED

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

In the Matter of Azhar Tahir, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Tahir.

Dated: September 10, 2004

REDACTED

Stanley L. Grossman, M.D.

In the Matter of Azhar Tahir, M.D.

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

Dated: Sept 8, 2004

REDACTED

Therese G. Lynch, M.D.