



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

June 7, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sudarshan Kumar, M.B.B.S.
171 East 84th Street, Apt. 24E
New York, New York 10016

Anthony M. Benigno, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Sudarshan Kumar, M.B.B.S.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-27) 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.

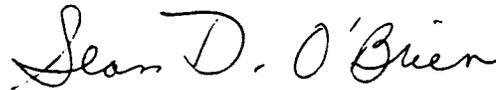
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

A handwritten signature in cursive script that reads "Sean D. O'Brien".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah
Enclosure

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

In the Matter of

Sudarshan Kumar, M.B.B.S. (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. 04-27

COPY

**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:**

**Anthony Benigno, Esq.
Pro Se**

After a hearing below, a BPMC Committee determined that the Respondent engaged in professional misconduct due to habitual alcohol abuse, fraud in practice and filing a false report. The Committee voted to suspend the Respondent's license to practice medicine in New York State (License), to stay the suspension and to place the Respondent on probation. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2004), the Petitioner asks the ARB to modify that Determination by affirming an additional charge and increasing the penalty. After considering the record below, we reject the request to sustain an additional charge, to revoke the Respondent's License or to impose an actual suspension. We modify the Determination to increase the period on the stayed suspension/probation from three years to five years.

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(2), 6530(8) & 6530(21)(McKinney Supp. 2004) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- being a habitual user of alcohol, or being dependent on alcohol or other substances, and,
- willfully making or filing a false report.

The fraud and false report charges dealt with answers the Respondent made on an application for a hospital appointment and with statements that the Respondent made to the staff from the Office for Professional Medical Conduct (OPMC). A hearing on the charges followed before a BPMC Committee.

On the charges relating to alcohol use, the Committee found overwhelming evidence to prove the Respondent's habitual use of and dependence upon alcohol. The Respondent reported himself for his alcohol problem to OPMC in June 2001. The record also revealed that Beth Israel Medical Center, in 1994, and Malcolm Grow Medical Center (at Andrew's Air Force Base), in 2001, had curtailed the Respondent's professional privileges due to alcohol consumption. The Respondent participates currently in an alcohol-monitoring program that the Committee for Physician's Health administers.

On the fraud and false report charges, the Committee found that the Respondent lied knowingly and intentionally in his answers on an application for appointment at St. Agnes Hospital in White Plains, NY. The Committee also found that the Respondent lied knowingly and intentionally in an interview with OPMC Investigator Donald Reinhard concerning positive tests for alcohol. The Committee found that the Petitioner failed to prove by preponderant evidence that the Respondent lied knowingly and intentionally to Joann Dawson, Director of the OPMC Physician Monitoring Program, concerning prior alcohol treatment (Dawson Interview). The Committee sustained the charge that the Respondent willfully filed a false report and the Committee sustained two of three charges that the Respondent practiced fraudulently.

The Committee voted to suspend the Respondent's License for three years to stay the suspension and to place the Respondent on probation for three years, under the terms that appear as an Appendix to the Committee's Determination. The probation terms included a requirement

for impairment monitoring. The Committee found the Respondent a skilled physician, who never caused patient harm due to alcohol use.

Review History and Issues

The Committee rendered their Determination on February 9, 2004. This proceeding commenced on February 18, 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 Petitioner's brief and the Respondent's reply brief. The record closed when the ARB received the reply brief on March 24, 2004.

The Petitioner's brief asks that the ARB overturn the Committee on both the charges and the penalty. The Petitioner argues that the Committee made an inconsistent Determination by failing to sustain the charge that the Respondent committed fraud during the Dawson Interview. The Petitioner notes that the Committee found Ms. Dawson a credible witness and found the Respondent's testimony evasive. The Petitioner asks that the ARB find that the Respondent made a knowing and intentionally false answer when he denied to Ms. Dawson that the Respondent had received no alcohol treatment prior to 2001. The record revealed that the Respondent received alcohol treatment following an alcohol related suspension from Beth Israel in 1994. On the penalty, the Petitioner cites to several prior ARB or BPMC Committee Determinations that imposed license revocations for fraud and filing false reports. The Petitioner asks that the ARB overturn the Committee and revoke the Respondent's License, or in the alternative, that the ARB impose a period of actual License suspension. The Petitioner also asks that, if the ARB imposes a penalty less severe than revocation, the ARB provide for impairment monitoring for five years, to ensure that the Respondent reaches a solid recovery.

In reply, the Respondent argues that he came forward to OPMC voluntarily to report his alcohol problem and that he never intended to mislead anyone or practice fraudulently. The Respondent indicated that his Department's Associate Chair monitors the Respondent's work and that the Associate Chair appeared on the Respondent's behalf at the hearing. The Respondent continues to submit to random urine samples and to attend group therapy and Alcoholics Anonymous meetings. He asks to be able to continue practicing medicine.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination on the charges. We modify the Committee's Determination on the penalty to increase the stayed suspension and probation from three years to five years.

We reject the Petitioner's request that we overturn the Committee and sustain the additional fraud charge relating to the Dawson Interview. To overturn the Committee, we would have to disregard the Committee's judgment on witness credibility. We see no reason to do so in this case. We defer to the Committee in their judgment as fact-finder.

We also reject the Petitioner's request that we revoke the Respondent's License or place the Respondent's License on actual suspension. We find mitigating factors in this case, due to Respondent's voluntary reporting to OPMC and his efforts at recovery over the last few years.

We agree with the Petitioner that we should increase the period for the stayed suspension/probation from three years to five years. The expert witnesses on dependency testified at the hearing that physicians who remain in recovery beyond five years present as better candidates to remain in recovery permanently. We conclude that five years on probation,

under the terms that appear in the Appendix to the Committee's Determination, will ensure that the Respondent continues in recovery.

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, but we decline to sustain additional charges.
2. The ARB affirms the Committee's Determination to suspend the Respondent's License, stay the suspension and place the Respondent on probation under the terms that appear in the Appendix to the Committee's Determination.
3. The ARB modifies the Committee's Determination to increase the period for the stayed suspension/probation from three years to five years.

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 Sudarshan Kumar, M.B.B.S.

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

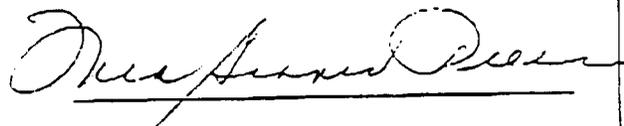
Dated: June 3, 2004


Robert M. Briber

In the Matter of Sudarshan Kumar, M.B.B.S.

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

Dated: June 4, 2004

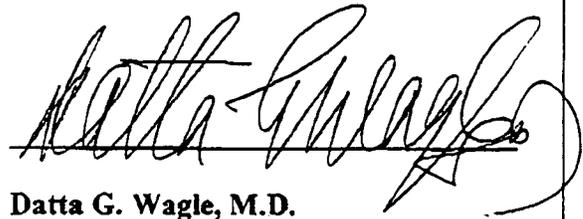


Thea Graves Pellman

In the Matter of Sudarshan Kumar, M.B.B.S.

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

Dated: 8/4, 2004



Datta G. Wagle, M.D.

In the Matter of Sudarshan Kumar, M.B.B.S.

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

Dated: 06/04, 2004

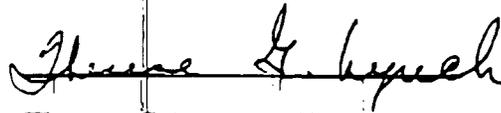
Stanley L. Grossman, M.D.

Stanley L Grossman, M.D.

In the Matter of Sudarshan Kumar, M.B.S.

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

Dated: June 5, 2004



Therese G. Lynch, M.D.