



# 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

June 23, 2008

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Richard J. Zahnleuter, Esq.  
NYS Department of Health  
ESP – Corning Tower – Room 2512  
Albany, New York 12237

Jatinder S. Bakshi, M.D.

Redacted Address

Kurt Lundgren, Esq.  
5 West Main Street – Suite 211  
Elmsford, New York 10523

**RE: In the Matter of Jatinder S. Bakshi, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 08-22) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

Jatinder S. Bakshi, 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. 08-22

COPY

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

For the Department of Health (Petitioner): Richard J. Zahnleuter, Esq.  
For the Respondent: Kurt Lundgren, Esq.

The Respondent holds a license to practice medicine in New York (License) and specializes in neurology. After a hearing below, a BPMC Committee determined that the Respondent practiced with negligence and incompetence on more than one occasion and failed to maintain accurate patient records. The Committee voted to suspend the Respondent's license for eighteen months, to stay the suspension and to place the Respondent on probation for eighteen months, under the terms that appear at Appendix III to the Committee's Determination. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2008), the Petitioner and the Respondent ask the ARB to overturn the Committee's Determination on penalty. After reviewing the record below and the parties' review submissions, the ARB affirms the Committee's Determination that the Respondent committed professional misconduct and we affirm the Determination to suspend the Respondent's License and to stay the suspension in full. The ARB overturns the Committee's Determination to place the Respondent on probation and we vote 5-0 to limit the Respondent to practice in a government operated or government licensed medical facility.

### Committee Determination on the Charges

The Committee conducted a hearing on charges that the Respondent violated New York Education Law (EL) §§ 6530(3-6) & 6530(32) (McKinney 2008) by committing professional misconduct under the following specifications:

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

The charges related to the care that the Respondent provided to five persons (Patients A-E) for injuries the Patients received in automobile accidents. The record refers to the Patients by initials to protect patient privacy. The Respondent denied the charges. Following the hearing, the Committee rendered the Determination now on review.

The Committee dismissed the gross negligence and gross incompetence charges. The Committee found that the Respondent practiced with negligence on more than one occasion and incompetence on more than one occasion and failed to maintain accurate records in treating all Patients A-E. The Committee found that the Respondent failed to elicit and document information concerning the mechanism of injury and force of impact, as well as the status of patient bowel and bladder function following the accidents for each of the five patients. The Committee found that such information is critical when evaluating possible neurological injuries. For four of the Patients, the Committee found that the Respondent's records contained no evidence of referrals to Gregg Szerlip, D.O., an anesthesiologist with a pain management practice. The records also contained no copy of any report by Dr. Szerlip. The Committee found that the absence of such information compromised the Respondent's ability to coordinate care with Dr. Szerlip. The Committee also faulted the Respondent for relying on pre-printed patient evaluation forms. The Committee found these forms provided no substitute for an appropriate patient history, focused on a particular patient's background and complaints.

The Committee voted to suspend the Respondent's License for eighteen months, to stay the suspension and to place the Respondent on probation for eighteen months. The Committee noted that the Respondent's testimony at hearing contained a number of inconsistent explanations and that the Respondent tended to blame others. The Committee also noted the Respondent practices wholly without supervision and without any hospital affiliation to monitor the Respondent's care for patients. The Committee concluded that a period of monitoring was necessary to ensure that the Respondent's history taking and record keeping will comply with the standards of the profession. The Committee found that probation with monitoring would ensure that the Respondent would comply with applicable standards of practice. The Committee felt that the suspension, even with a stay, would demonstrate to the Respondent the seriousness of his deficiencies.

#### Review History and Issues

The Committee rendered their Determination on February 7, 2008. This proceeding commenced on or about February 25, 2008, when the ARB received separate notices from the Petitioner and the Respondent requesting administrative 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 Petitioner's reply brief on April 7, 2008.

Both parties restricted their review briefs to requests for the ARB to modify the penalty the Committee imposed.

The Petitioner notes that the Respondent has held a medical license since 1984. The Petitioner argues that the evidence at hearing revealed a fundamental deficiency in the Respondent in the essential diagnostic task of obtaining adequate patient histories. The Petitioner

contends that only revocation provides the appropriate sanction for an experienced physician with a fundamental deficiency in so essential a diagnostic task.

The Respondent asks that the ARB reject the Petitioner's appeal as deficient on its face. The Respondent challenges the Committee's penalty as unduly harsh when reviewed in comparison with the penalties that BPMC has accepted in certain other cases that the Respondent's brief discusses. The Respondent's Brief argues that this proceeding against the Respondent has solidified in his mind the need to avoid mistakes/omissions in the future such as those at issue in the charges. The Respondent asks that the ARB reduce the penalty to a censure and reprimand.

#### 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 (3<sup>rd</sup> 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 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> 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 (3<sup>rd</sup> 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. The ARB affirms the Committee's Determination that the Respondent practiced with negligence on more than one occasion and incompetence on more than one occasion and that the Respondent failed to maintain accurate patient records. Neither party challenged the Committee's Determination on the charges. The ARB affirms the Committee's Determination to suspend the Respondent's License for eighteen months and to stay the suspension in full. We overturn the Committee's Determination to place the Respondent on probation and we vote 5-0 to limit the Respondent's License as we set forth below.

The Committee identified deficiencies in the Respondent's practice in an essential diagnostic task. The Committee also found the Respondent's ability to coordinate care inadequate in cases in which the Respondent referred patients to Dr. Szerlip. The Committee also found that the Respondent blamed other for his deficiencies. This tendency to blame others indicates that the Respondent fails to recognize his deficiencies and the need to change his practice. The Committee also noted that the Respondent practices without supervision or any monitoring.

The ARB agrees with the Committee about the need to monitor the Respondent to ensure that he improves the deficiencies in his practice. The ARB disagrees with the Committee that monitoring during an eighteen-month probation will provide sufficient assurance and protection for patients. Due to the Respondent's failure to recognize his deficiencies and the need to change his practice, the ARB concludes that we must take the Respondent out of unsupervised practice and place the Respondent permanently within a structure that will provide review over the Respondent's patient care.

The ARB modifies the Committee's Determination to remove the probation. The ARB limits the Respondent's License to practice only in a government licensed facility, such as a hospital holding licensure under PHL Article 28, or in a government operated facility, such as a hospital or infirmary operated by the United States Veteran's Administration, the United States Defense Department, or the United States Public Health Service. The ARB places that limitation on the Respondent's License because such facilities will guarantee supervision and monitoring over the Respondent's practice. We reject the contention in the Respondent's review brief that the experience from the hearing alone will lead the Respondent to alter his practice.

The ARB agrees with the Committee that a suspension, even with a stay, will demonstrate to the Respondent the serious nature of his deficiencies. The ARB concludes that the License limitation and the stayed suspension will ensure patient protection, so the ARB rejects the Petitioner's request that the ARB 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 affirms the Committee's Determination to suspend the Respondent's License and to stay the suspension, but the ARB overturns the Committee's Determination to place the Respondent on probation.
3. The ARB limits the Respondent's License to practice in a government licensed or a government operated health facility.

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

In the Matter of Jatinder S. Bakshi, M.D.

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

Dated: *1/7/08* 2008

Redacted Signature

Linda Prescott Wilson

In the Matter of Jatinder S. Bakshi, M.D.

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

Dated: June 19, 2008

(Redacted Signature  
\_\_\_\_\_  
Thea Graves Pellman

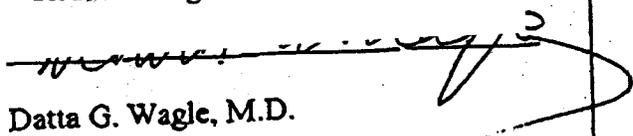
In the Matter of Jatinder S. Bakshi, M.D.

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

Matter of Dr. Bakshi.

Dated: 6/20, 2008

Redacted Signature



Datta G. Wagle, M.D.

In the Matter of Jatinder S. Bakshi, M.D.

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

Matter of Dr. Bakshi.

Dated: June 18, 2008

Redacted Signature

\_\_\_\_\_  
Stanley L Grossman, M.D.

In the Matter of Jatinder S. Bakshi, M.D.

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

Matter of Dr. Bakshi.

Dated: June 18 2008

Redacted Signature

Therese G. Lynch, M.D.