

**NEW YORK**  
state department of  
**HEALTH**

Public

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

Sue Kelly  
Executive Deputy Commissioner

November 2, 2012

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Christine Radman, Esq.  
NYS Department of Health  
90 Church Street – 4<sup>th</sup> Floor  
New York, New York 10007

William L. Wood, Esq.  
Wood & Scher  
222 Bloomingdale Road  
White Plains, New York 10605

Rohan Wijetilaka  
REDACTED

**RE: In the Matter of Rohan Wijetilaka, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 12-130) 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  
Riverview Center  
150 Broadway – Suite 355  
Albany, New York 12204

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

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

Rohan Wijetilaka, 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. 12-130

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): Christine M. Radman, Esq.  
For the Respondent: William L. Wood, Esq.

Following a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct under multiple categories in providing patient care. The Committee voted to revoke the Respondent's License to practice medicine in New York State and to fine the Respondent \$50,000.00. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c(4)(a)(McKinney 2012), the Respondent asks the ARB to nullify the Determination and the Petitioner asks the ARB to modify the Determination by increasing the fine. After reviewing the record and the review submissions from the parties, the ARB affirms the Committee's Determination in full.

Committee Determination on the Charges

Pursuant to PHL § 230 *et seq*, BPMC and its Committees function as a duly authorized professional disciplinary agency of the State of New York. The Committee in this case conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§6530(2-5), 6530(21), 6530(32) & 6530(35)(McKinney 2012) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently, a violation under EL § 6530(2);
  - practicing medicine with negligence on more than one occasion, a violation under EL § 6530(3);
  - practicing medicine with gross negligence, a violation under EL § 6530(4);
  - practicing medicine with incompetence on more than one occasion, a violation under EL § 6530(5);
  - willfully making or filing a false report, a violation under EL § 6530(21);
  - failing to maintain accurate patient records, a violation under EL § 6530(32); and,
  - ordering excessive tests or treatment unwarranted by the patient's condition, a violation under EL § 6530(35).
- The charges arose from the care that the Respondent, a cardiologist, provided to seven persons, Patients A-G. The record refers to the Patients by initials to protect patient privacy. Following the hearing, the Committee rendered the Determination now under review.
- The Committee sustained all the factual allegations and charges against the Respondent. The Committee concluded that the Respondent ordered unwarranted tests, billed for tests he never performed, failed to provide effective care to patients and acted for his own financial benefit rather than with regard for his patient's benefit.
- The Committee found that the Respondent practiced with gross negligence for failing to monitor an abdominal aortic aneurysm (AAA) in Patient A that placed the Patient at grave risk. The Committee noted that the Respondent had opportunities over the course of four years to address the AAA. The Committee also found that the Respondent failed to develop a treatment plan for shortness of breath in Patient A and failed to measure and control the Patient's blood pressure. The Committee found that the Respondent practiced with negligence on more than one occasion in treating Patients A-G by failing to develop treatment plans over the years for the Patients and for subjecting the Patients to repeated non-diagnostic tests. The Committee found that the Respondent practiced with incompetence on more than one occasion by failing to develop differential diagnoses for Patients A-G. The Committee determined that the Respondent ordered excessive tests for Patients B, D, E, F and G, administered tests to those Patients which



were either non-diagnostic or normal and made no attempt to adjust treatment or take into consideration results of the tests. The Committee determined that the Respondent practiced with fraud and willfully filed false reports by creating false records to misrepresent the treatment of patients, to conceal deficient care or to justify false billing. The Committee inferred that the Respondent intended to deceive from the pattern of administering tests without regard to results and from inconsistent testimony by the Respondent regarding production and alteration of records. The Committee found that the Respondent failed to maintain accurate records for Patients A to G because the Respondent failed to take accurate patient histories and to document treatment plans.

In making their findings and conclusions, the Committee relied on testimony by the Petitioner's expert witness, Steven R. Bergman, M.D., Ph.D., the Chief of Cardiology at Beth Israel Medical Center in New York City. The Committee noted that Dr. Bergman conducts research, maintains an active clinical practice and supervises medical students, residents and fellows and that Dr. Bergman's re-certifications in Nuclear Cardiology and Internal Medicine were in progress. The Committee found Dr. Bergman knowledgeable and extremely forthright in his testimony. The Respondent presented expert testimony from Robert M. Siegel, M.D., an attending cardiologist at Jacobi Medical Center in the Bronx and Assistant Professor of Medicine at Albert Einstein Medical Center. Dr. Siegel holds board certifications in Cardiology, Internal Medicine and Nuclear Cardiology. The Committee found that Dr. Siegel possessed far less knowledge and experience than Dr. Bergman and the Committee accorded less weight to Dr. Siegel's testimony. The Committee stated that Dr. Siegel generally agreed with Dr. Bergman concerning care standards in cardiology and Dr. Siegel acknowledged that some of the Respondent's patient records failed to contain sufficient information to determine whether certain diagnostic tests and treatment protocols were appropriate for patients. The Committee found, however, that Dr. Siegel gave testimony at other times that was so evasive that it became disingenuous. The Respondent also testified. The Committee's Determination at pages 32-35 went into great detail concerning the reasons the Committee found that the Respondent lacked credibility as a witness.

The Committee voted to revoke the Respondent's License and to fine the Respondent \$50,000.00. The Committee highlighted the deficiencies they found in the care for Patient A such as failing to treat AAA over a period of years, failing to treat the Patient's blood pressure and failing to recognize or address the critical report of the Patient collapsing and complaining of lower abdominal pain. The Committee also noted the pattern of negligence and incompetence in treating Patients A-G over a course of years and ordering various tests, but failing to obtain adequate histories or implement appropriate treatment plans. The Committee found that the Respondent's failure to provide patients with even a minimal level of medical care and consideration for the test outcomes demonstrated that the Respondent's cared only for his own financial benefit rather than for his patients' well-being. The Committee indicated that the egregiously deficient medical care the Respondent provided would provide the grounds, standing alone, for revoking the Respondent's License. The Committee also found that the Respondent lacked the integrity necessary to practice because the Respondent altered patient records and then submitted the altered records at the hearing. The Committee imposed the \$50,000.00 fine as the sanction against the Respondent for subjecting five patients to unwarranted medical tests. The Committee also found that the Respondent showed no remorse for his conduct and failed to take any responsibility for his actions.

#### Review History and Issues

The Committee rendered their Determination on June 27, 2012. This proceeding commenced on July 11, 2012, when the ARB received the Petitioner's Notice requesting a Review. The Respondent also requested review on July 16, 2012. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and the Respondent's brief and corrected brief. The record closed when the ARB received the corrected brief on August 22, 2012.

The Respondent requested that the ARB nullify the Committee's Determination and the Respondent alleged that three errors infected the hearing with unfairness. First, the Respondent argued that the Committee's Administrative Officer erred by allowing the Petitioner to amend the Statement of Charges on the first hearing day and then refusing to grant an adjournment so that the Respondent could discuss the new charges with the Respondent's expert witness to prepare for cross-examination on the Petitioner's expert. In addition, the Respondent argued that no expert testimony supported the Committee's conclusion that the Exhibits the Respondent presented as medical records for the Patients at issue were false and had not been created in the normal course of the Respondent's practice. Finally, the Respondent argued that the Committee acted arbitrarily in finding the Petitioner's expert, Dr. Bergman, more credible than the Respondent's expert, Dr. Siegel. The Respondent argued that the Committee gave Dr. Siegel's testimony less weight because he had practiced for a shorter time than Dr. Bergman, but the Committee ignored the fact that Dr. Siegel holds current medical specialty board certifications and Dr. Bergman's certifications have lapsed. The Respondent also faulted the Committee for their suspicions over the records that the Respondent produced at the time of the hearing.

The Petitioner requests that the ARB affirm the Committee's Determination to sustain all charges and to revoke the Respondent's License and the Petitioner requests that the ARB modify the Committee's Determination by increasing the fine against the Respondent from \$50,000.00 to \$170,000.00. The Petitioner argues that the ARB should impose the fully permissible statutory fine of \$10,000.00 for every sustained specification that charged fraud and that charged unwarranted testing.

### 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. We affirm the Committee's Determination to sustain all charges against the Respondent, to revoke the Respondent's License and to fine the Respondent \$50,000.00.

The Respondent alleged error by the Committee's Administrative Officer on the grounds that the Administrative Officer permitted the Petitioner to amend the Statement of Charges on the first hearing day and then refused to grant an adjournment for the Respondent to prepare for the new charges. The ARB notes that PHL § 230-c authorizes the ARB to review a Committee's findings of fact, conclusions and the determination on penalty. Nothing in § 230-c authorizes the ARB to nullify a Committee's Determination on procedural grounds, such as an alleged error in refusing to grant an adjournment. The ARB may remand a case to a Committee for further proceedings under § 230-c(4)(b). The ARB sees no grounds to remand this case. The Administrative Officer had no authority to grant the Respondent's adjournment request because the request came on the first hearing day. Under § 230(10)(f), only the Committee may grant an adjournment in the first hearing day. The Committee considered and denied the adjournment request. The hearing regulations at Title 10 NYCRR § 51.6 do provide the Administrative Officer authority to grant an amendment in either parties' pleadings prior to a final report, as long as the amendment does not cause substantial prejudice to the other party. In this case, the amendment came before any evidence entered the record and well before either the Respondent



or his expert testified. The amendment also involved no new medical charges or new patients, but instead involved new charges that the Respondent had fabricated, with intent to deceive, medical records that the Respondent himself had presented and that the Respondent already had in his possession.

The Respondent also alleged error by the Committee in their judgments that found Dr. Bergman a more reliable expert witness than Dr. Siegel and that found that the Respondent lacked credibility in his claims that medical records he presented for the hearing were authentic. The Respondent argued that the principal reason the Committee gave Dr. Siegel's testimony less weight than Dr. Bergman's was that Dr. Siegel had practiced for a shorter time than Dr. Bergman. The ARB finds that argument unconvincing. The Committee found Dr. Bergman forthright in his testimony and found Dr. Siegel so evasive at times as to be disingenuous. We see no error by the Committee in this judgment. If a fact finder concludes that a witness is being evasive, the fact finder may reject the entire testimony by that witness. As to the judgment on the Respondent's credibility, the Committee made detailed findings of fact [Hearing Committee Determination paragraphs 114-137] and conclusions [Hearing Committee Determination pages 32-35] about the reasons they found the Respondent unreliable in his testimony. We defer to the Committee as the finder of fact in their judgment on credibility.

The ARB finds that the testimony and evidence the Committee found credible demonstrated by a preponderance of the evidence that the Respondent practiced with negligence on more than one occasion, gross negligence and incompetence on more than one occasion, failed to maintain accurate patient records and subjected patients to unwarranted tests. The ARB finds further that the Respondent fabricated records and submitted false billings. That conduct amounted to practicing fraudulently and willfully filing false reports.

The Committee found that the Respondent provided deficient medical care to all Patients at issue in this proceeding, that the Respondent practiced with gross negligence in treating Patient A, that the Respondent subjected Patients B, D, E, F and G to unnecessary tests for no reason other than the Respondent's financial benefit and that the Respondent fabricated medical records. These findings by the Committee provide sufficient grounds for revoking the Respondent's License. The Committee also imposed a \$50,000.00 fine. The ARB agrees with the Committee that the Respondent's conduct warrants a monetary penalty in addition to revocation. The Respondent subjected five Patients to unnecessary tests for the Respondent's benefit only. The ARB finds a \$10,000.00 fine appropriate in the case of each such Patient, for a fine totaling \$50,000.00. The ARB sees no reason to increase the fine and we reject the Petitioner's request for such an increase.

#### 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 revoke the Respondent's License.
3. The ARB affirms the Committee's Determination to fine the Respondent \$50,000.00.

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 Rohan Wijetilaka, M.D.

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

Dated: 27 October, 2012

REDACTED

Linda Prescott Wilson

In the Matter of Rohan Wijetilaka, M.D.

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

Dated: October 26, 2012

REDACTED

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Peter S. Koenig, Sr.

In the Matter of Rohan Wijetilaka, M.D.

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

Dated: October 29, 2012

REDACTED

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Datta G. Wagle, M.D. ✓



In the Matter of Rohan Wijetilaka, M.D.

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

Matter of Dr. Wijetilaka.

Date: October 26, 2012

REDACTED

Richard D. Milone, M.D.

In the Matter of Rohan Wijetilaka, M.D.

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

Dated: 10-29-12, 2012

REDACTED

John A. D'Anna, M.D.