

Public



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

October 27, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kirnjot Singh, M.D.

Redacted Address

Lauren B. Bristol
Furey, Kerley, Walsh, et al
2174 Jackson Avenue
Seaford, New York 11783

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
Division of Legal Affairs
433 River Street, Suite 303
Troy, New York 12180-2299

RE: In the Matter of Kirnjot Singh, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-96) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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. Hōran, Acting Director
Bureau of Adjudication

JFH:djh

Enclosure

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

In the Matter of

Kirnjot Singh, 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. 08-96

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):
For the Respondent:

Robert Bogan, Esq.
Lauren B. Bristol, Esq.

Following a hearing below, a BPMC Committee found that the Respondent engaged in conduct in another state that would amount to professional misconduct under New York Law. The Committee voted to revoke on the Respondent's License to practice medicine in New York State (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2008), the Respondent argues that the Committee imposed an inappropriate penalty that is inconsistent with the Committee's findings of fact and the Respondent asks the ARB to reduce the penalty. After reviewing the hearing record and the review submissions from the parties, the ARB votes 4-1 to affirm the Committee's Determination.

Committee Determination on the Charges

The Committee conducted a hearing in this matter under the expedited hearing procedures (Direct Referral Hearing) in PHL § 230(10)(p). The Petitioner charged that the Respondent violated N. Y. Education Law (EL) §§ 6530(9)(b) & 6530(9)(d) by committing

professional misconduct, because the duly authorized professional disciplinary agency from another state, Indiana,

- found the Respondent guilty for improper professional conduct [6530(9)(b)], and/or,
- took disciplinary action against the Respondent's medical license in that state [6530(9)(d)],

for conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York. The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the Respondent's misconduct in Indiana would constitute misconduct if committed in New York, under the following specifications:

- failure to comply with substantial provisions under federal, state or local laws, rules or regulations governing the practice of medicine, a violation under EL § 6530(16);
- exercising undue influence over a patient, a violation under EL § 6530(17); and,
- engaging in conduct that evidences moral unfitness in the practice of medicine, a violation under EL §6530(20).

Following the Direct Referral Proceeding (Proceeding), the Committee rendered the Determination now on review. In the Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The evidence at the Proceeding indicated that the Medical Licensing Board of the State of Indiana (Indiana Board) entered into a Stipulation with the Respondent that placed the Respondent's Indiana medical license on indefinite probation. The Stipulation settled charges that the Respondent engaged in immoral conduct in the delivery of medical services by engaging in sexual contact with a patient in a medical office on the same date as the Respondent saw the patient for the first time. At the Proceeding, the Respondent testified that a patient came to his orthopedic practice complaining about back pain. The Respondent claimed that he discharged the

patient, that the patient came back to the Respondent's office after hours and that the Respondent and patient engaged in consensual sexual relations.

The Committee determined that the Respondent engaged in conduct that resulted in disciplinary action and misconduct findings by the Indiana Board and that the Respondent's conduct in Indiana would constitute professional misconduct in New York. The Committee voted 2-1 to revoke the Respondent's License. The Committee rejected the Respondent as a credible witness in his explanation about the encounter at issue in this case. The Committee expressed serious reservations about the putative discharge of the patient and noted that the Respondent left open the back door to his office to facilitate the after-hours rendezvous. The Committee also commented on a letter in evidence that indicated that the Respondent had been accused of boundary violations with other patients. The Committee member who dissented from the vote for revocation would have placed the Respondent on probation similar to that which the Indiana Board imposed.

Review History and Issues

The Committee rendered their Determination on June 13, 2008. The Respondent submitted a Notice of Review on June 24, 2008. On June 27, 2008, the Respondent's current counsel entered an appearance in writing on the Respondent's behalf. Counsel for both parties requested extensions subsequently in the date for filing review submissions. Counsel received the extensions. The record in the Review included the hearing record, the Respondent's brief and the Petitioner's reply brief. The record closed when the ARB received the Petitioner's reply on September 19, 2008.

The Respondent argues that the Indiana Board heard the patient in the Respondent's case and that the Indiana Board placed the Respondent on probation with the safety net of a chaperone, education and training on boundary issues. The Indiana Board also required

psychological testing and such testing revealed no issues for concern and resulted in no recommendations for therapy or treatment. The Respondent argues further that the Committee misinterpreted the letter in evidence that referred to boundary violations. In addition, the Respondent argues that the charges at the Direct Referral Hearing made no reference to any additional boundary violations. The Respondent expresses his remorse and his realization that he used bad judgment when he engaged in sexual contact with the patient in Indiana. The Respondent asks that the ARB overturn the Committee and impose a penalty against the Respondent similar to that which the Indiana Board imposed.

In reply, the Petitioner argues that the Petitioner engaged in moral misconduct and exercised undue influence over a patient. The Petitioner contends that the Committee imposed an appropriate sanction.

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 parties' review submissions. We affirm the Committee's Determination that the Respondent's conduct amounted to professional misconduct and made the Respondent liable for disciplinary action against his License. Neither party challenged the Committee's Determination on that ground. We vote 4-1 affirm the Committee's Determination to revoke the Respondent's License.

The ARB agrees with the Committee that the facts present a troubling picture about the Respondent's encounter with the patient in Indiana. In one day, the patient came to the Respondent for treatment, the Respondent and the patient discussed the possibility that the patient could obtain employment at a hospital the Respondent was planning on opening, the Respondent discharged the patient and the patient returned to the office following normal working hours and engaged in sexual conduct with the Respondent. The Committee found the Respondent neither credible nor persuasive in his testimony and expressed serious reservations with the Respondent's assertion that he discharged the patient from care prior to the sexual encounter. The Committee noted that the Respondent left the back door to his office open after normal working hours to facilitate the clandestine rendezvous.

The ARB concludes that the Respondent did far more than merely exercising poor judgment. The ARB majority finds that the Respondent demonstrated moral unfitness in practice and exercised undue influence over a patient. The Respondent took advantage of the patient and the situation and he demonstrated his unfitness to hold a License in New York State. One ARB member dissented from the vote for revocation. The dissenting member would impose the same penalty against the Respondent in New York that the Indiana Board imposed in that 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 affirms the Committee's Determination to revoke the Respondent's license.

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

In the Matter of Kirnjot Singh, M.D.

Linda Prescott Wilson, an ARB Member affirms that she took part in the consideration of this case and that this Determination and Order represents the decision of the ARB majority in the Matter of Dr. Singh.

Dated 29 October, 2008

Redacted Signature


Linda Prescott Wilson

In the Matter of Kirnjot Singh, M.D.

Thea Graves Pellman, an ARB Member affirms that she took part in the consideration of this case and that this Determination and Order represents the decision of the ARB majority in the Matter of Dr. Singh.

Dated: 10-24-08, 2008

Redacted Signature

Thea Graves Pellman

In the Matter of Kirnjot Singh, M.D.

Datta G. Wagle, M.D., an ARB Member affirms that he took part in the consideration of this case and that this Determination and Order represents the decision of the ARB majority in the Matter of Dr. Singh.

Dated: 10/25/, 2008

Redacted Signature

v v i
Datta G. Wagle, M.D.

In the Matter of Kimjot Singh, M.D.

Stanley L. Grossman, an ARB Member affirms that he took part in the consideration of this case and that this Determination and Order represents the decision of the ARB majority in the Matter of Dr. Singh.

Dated: October 23, 2008

Redacted Signature

Stanley L. Grossman, M.D.

In the Matter of Kirnjot Singh, M.D.

Therese G. Lynch, M.D., an ARB Member affirms that she took part in the consideration of this case and that this Determination and Order represents the decision of the ARB majority in the Matter of Dr. Singh.

Dated: October 23, 2008

Redacted Signature

Therese G. Lynch, M.D.