



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

December 27, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Claudia Morales Bloch, Esq.
NYS Department of Health
145 Huguenot Street
New Rochelle, New York 10801

Lisa Gail Aptaker, M.D.
50 West 97th Street - Apartment 4G
New York, New York 10025

RE: In the Matter of Lisa Gail Aptaker, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-188) 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.

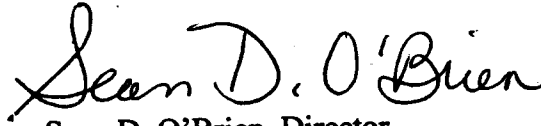
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either certified 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". The signature is written in black ink and is positioned above the printed name and title.

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

Lisa Gail Aptaker, 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. 06-188

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:**

**Claudia Morales Bloch, Esq.
Pro Se**

After a hearing below pursuant to New York Public Health Law (PHL) § 230(10)(e) (McKinney Supp. 2006), a BPMC Committee (Hearing Committee) determined that the Respondent committed professional misconduct. The Committee voted to suspend the Respondent's License to practice medicine in New York State (License), to place the Respondent on probation following the suspension and to reaffirm an earlier order that the Respondent undergo a psychiatric evaluation. In this proceeding pursuant to PHL § 230-c (4)(a), both parties ask the ARB to nullify or modify the Hearing Committee's Determination. After reviewing the hearing record and the parties' review submissions, the ARB votes to affirm the Committee's Determination that the Respondent committed professional misconduct. The ARB overturns the Committee's Determination on penalty and the ARB votes 5-0 to revoke the Respondent's License.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(2), 6530(9)(d) & 6530(15) (McKinney Supp. 2006) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- failing to comply with a BPMC order, and,
- engaging in conduct that results in the denial of an application for licensure in another state and that would amount to misconduct if committed in New York.

The charges relate to an order by a prior BPMC Committee (Impairment Committee) ordering that the Respondent undergo a psychiatric evaluation and to applications that the Respondent submitted to the Florida Board of Medicine and the United States Army Medical Department.

The Respondent denied the charges and a hearing followed.

The evidence at hearing showed that the Respondent appeared on January 19, 2005 at a hearing pursuant to PHL § 230(7), concerning possible impairment. The Impairment Committee that conducted that proceeding found reason to believe that the Respondent may be impaired by mental or psychiatric disability and ordered that the Respondent submit to a psychiatric examination by Zev. Wm. Labins, M.D., no later than February 18, 2005. The Respondent acknowledged during the current proceeding that she never made any formal requests or attempts to contact Dr. Labins [Hearing Committee Findings of Fact 16 and 17]. In the current proceeding, the Hearing Committee determined that the failure to comply with the Impairment Committee's Order under PHL § 230(7) amounted to professional misconduct.

The Hearing Committee found further that the Respondent entered the United States Army in January 2005. The Committee found that as part of that process to enter the Army, the Respondent submitted a Personnel Data Sheet. In June 2005, the Commander of the United States Army Medical Department Center and School issued a final decision approving findings of a Faculty Board that the Respondent knowingly made false statements with the intent to mislead or deceive in answering questions on the Personnel Data Sheet. The Army found that

the Respondent attempted to mislead the Army about a proceeding before the Florida Medical Board. The Army found that the Florida Medical Board had required the Respondent to appear before the Board concerning her health status as an impaired, hindered or otherwise restricted practitioner. The Hearing Committee accepted the findings by the Army and with those findings as the basis, the Hearing Committee determined that the Respondent practiced medicine fraudulently.

The Hearing Committee dismissed charges arising from a decision by the Florida Medical Board to deny the Respondent a license in that state. The Florida Board licensing action involved answers the Respondent made on a Florida licensure application concerning the reasons the Respondent left Harlem Hospital.

In reaching their findings and conclusions on the charges, the Hearing Committee found credible the testimony by two witnesses for the Petitioner, Tonia Dandridge, a Medical Conduct Investigator and Captain James Jones, United States Army. Captain Jones commanded a company at Fort Sam Houston that provided administrative and command control support to officers in training at the Army Medical Department. The Respondent also testified for the Petitioner and on her own behalf. The Committee found that the Respondent lied deliberately to the Committee when she testified that she had informed the Army about New York's Order for psychiatric examination. The Committee also found incredible testimony by the Respondent that she never received Health Department notices and letters that went to the Respondent's permanent address in New York City, where the Respondent resides with her mother. The Committee also found troubling the Respondent's description of herself as a "non-white woman". The Committee noted that in Respondent's Florida Licensure application, the Respondent checked off that she was Caucasian [Hearing Exhibit 7].

The Committee voted to suspend the Respondent's License for six years, to stay the last two years of the suspension and to place the Respondent on probation for two years, under terms that appear as Appendix II to the Committee's Determination. The Committee also ordered that the Respondent submit to a psychiatric evaluation during the suspension. The Committee stated that they decided against revoking the Respondent's License, because the Respondent had

caused no patient harm and because the Committee questioned flaws in the Department's case. The Committee faulted the Department for submitting an affidavit to the Committee, which the Committee found false, and the Committee also expressed concerns over documents from a BPMC investigative committee that the Florida Board received "anonymously".

Review History and Issues

The Committee rendered their Determination on August 16, 2006. This proceeding commenced on August 24, 2006, when the ARB received the Petitioner's Notice requesting a Review. The Respondent filed a request for review also. 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 both reply briefs on October 5, 2006.

The Respondent contends that the Hearing Committee erred in accepting the testimony by Captain Jones and in relying on the findings by the Army. The Respondent argues further that the evidence in the case fails to support the charges and that the Petitioner's counsel has engaged in a pattern of inappropriate conduct and misrepresentations to ruin the Respondent's career. The Respondent argues that any penalty against her is inappropriate due to the Department's conduct. The Respondent asks that the ARB reinstate her License.

The Petitioner asks that the ARB overrule the Committee and sustain the charges concerning the Respondent's Florida Licensure application. The Petitioner asks further that the ARB overturn the Committee and revoke the Respondent's License.

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 the parties' briefs. We affirm the Committee's Determination that the Respondent committed professional misconduct by failing to comply with the Impairment Committee's Order and by making deliberate misrepresentations to the Army concerning the Florida Board's inquiries into the Respondent's health and impairment status. We overturn the Committee and revoke the Respondent's License.

The evidence before the Committee made clear that the Impairment Committee ordered the Respondent to undergo a psychiatric evaluation almost two years ago and that the Respondent has failed to undergo that evaluation. We affirm the Committee's Determination to rely upon the Army's Determination that the Respondent made deliberate misrepresentations on her Personnel Data Sheet and we affirm the Committee's Determination that the misrepresentation on the Personnel Data Sheet amounted to practicing fraudulently. The Respondent completed the Personnel Data Sheet as part of the process to enter the Army Medical Department.

We find that revocation constitutes the appropriate penalty in this case. The Respondent has failed to undergo an evaluation and the ARB sees nothing in this record to indicate that the Respondent ever intends to undergo an evaluation. The Respondent has given no assurance that she will comply with the evaluation and she asks the ARB now for the immediate reinstatement of her License. The ARB and the Committee lack the authority under PHL § 230-a to suspend

the Respondent's License indefinitely until the Respondent complies and the ARB sees no value from imposing a suspension with a definite term such as the Committee ordered. If the ARB approved the Hearing Committee's Order suspending the Respondent for four years and if at the end of the four years, the Respondent still has refused an evaluation, the Respondent would get back her License. The Petitioner could then bring a further action for failure to comply and another Committee could decide whether the continued noncompliance finally warrants revocation. The ARB sees no reason to wait any longer than we have waited already. In addition to her failure to comply, the Respondent has also engaged in fraudulent conduct to conceal from the Army questions that Florida raised about the Respondent's health status.

We agree with the Committee that the Petitioner's case contained flaws and we would hope that the Department will look into the release of information and the affidavit. We find those flaws fail to excuse the Respondent's conduct. The Respondent has attempted to deflect attention from her misconduct and to blame others for her situation. The Respondent alone, however, bears the responsibility for her failure to comply and her fraudulent conduct. Without the evaluation, the ARB is unable to assure that the Respondent can practice safely, so patients remain at risk from the Respondent's continued practice. The ARB sees no alternative but to revoke the Respondent's License.

ORDER

NOW, with this Determination as our basis, the ARB renders the following **ORDER**:

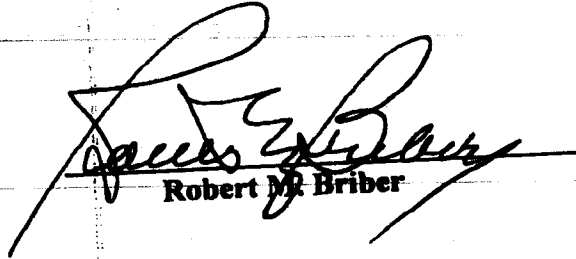
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the Committee's Determination to suspend the Respondent's License and to place the Respondent on probation following the suspension.
3. The ARB revokes the Respondent's License.

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 Lisa Gail Aptaker, M.D.

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

Dated: December 20, 2006



Robert M. Briber

In the Matter of Lisa Gail Aptaker, M.D.

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

Dated: Dec 21, 2006



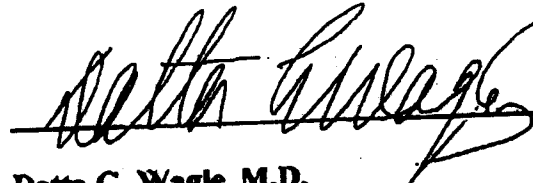
Thea Graves Pellman

In the Matter of Lisa Gail Aptaker, M.D.

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

Matter of Dr. Aptaker

Dated: 12/23/, 2006



A handwritten signature in cursive script, appearing to read "Datta G. Wagle", written over a horizontal line.

Datta G. Wagle, M.D.

In the Matter of Lisa Gail Aptaker, M.D.

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

Matter of Dr. Aptaker.

Dated December 21, 2006

Stanley L. Grossman M.D.

Stanley L. Grossman, M.D.

In the Matter of Lisa Gail Aptaker, M.D.

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

Dated: December 20, 2006

Therese G. Lynch M.D.

Therese G. Lynch, M.D.