



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

December 5, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Xi Peng Yin, M.D.
200 Carman Avenue
East Meadow, New York

Nathan L. Dembin, Esq.
225 Broadway, Suite 1400
New York, New York 10007

Dianne Abeloff, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza
New York, New York 10001

RE: In the Matter of Xi Peng Yin, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-202) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah

Enclosure

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

COPY

In the Matter of

Xi Peng Yin, 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. 00-202

**Before ARB Members Grossman, Lynch, Pellman, Price and Briber
Administrative Law Judge James F. Horan drafted the Determination**

For the Department of Health (Petitioner):

Dianne Abeloff, Esq.

For the Respondent:

Nathan L. Dembin, Esq.

After a hearing below, a BPMC Committee determined that the Respondent practiced medicine in with negligence on more than one occasion and violated a statute governing medical practice, by dispensing the drug Viagra to an undercover investigator in large quantities and without an examination. The Committee voted to suspend the Respondent's New York Medical License (License) for three years, stayed the suspension and placed the Respondent on probation for three years, under terms that appear as Appendix II in the Committee's Determination. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 2000), the Petitioner asks the ARB to modify the Committee's Determination by sustaining additional misconduct specifications and by revoking the Respondent's License. After reviewing the hearing record and the parties' review submissions, the ARB votes 3-2 to sustain the Committee's Determination in full.

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(2-6) & 6530(16) (McKinney Supp. 2000) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- 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,
- willful or grossly negligent failure to comply with substantial provisions of state law with regard to practicing medicine, and,
- engaging in conduct that evidences moral unfitness.

The charges arose from the Respondent's conduct in dispensing the drug Viagra to an undercover investigator and to patients the record identifies as Patients 2-101. The record identifies the Patients by number to protect patient privacy. A hearing on the charges ensued before a BPMC Committee who rendered the Determination now on review.

The Committee found that the Respondent dispensed Viagra to Food and Drug Administration Investigator Harold Moy on November 13, 1998 & January 27, 1999. On the first date, the Respondent asked the Investigator for \$440.00 for 40 Viagra tablets, without examining the Investigator, taking his blood pressure, listening to his heart and lungs or questioning the Investigator about medical history, sexual function or medications the Investigator may have been taking. On the second date, the Investigator indicated that he wanted to purchase Viagra for two friends. The Respondent provided two bottles of Viagra to the Investigator without asking questions about the friends' health. The Committee also found that the Respondent had no pre-existing relationships with Patients 2-101 and that many of the patients were visitors from Mainland China.

The Committee sustained the charge that the Respondent violated a statute, N.Y. Educ. Law § 6807(2)(a)(McKinney Supp. 2000), by dispensing drugs in more than a seventy-two hour

supply. The Committee found further that the Respondent practiced medicine with negligence on more than one occasion by failing to perform an adequate history and physical examination before dispensing Viagra to the Investigator. The Committee dismissed charges that the Respondent practiced with negligence on more than one occasion in dispensing to Patients 2-101. The Committee determined that the Respondent evaluated those Patients appropriately. The Committee also voted to dismiss the incompetence, gross negligence, moral unfitness and fraud charges. The Committee voted to suspend the respondent's License for three years, stay the suspension and place the Respondent on probation under the terms that appear at Appendix II to the Committee's Determination. The Committee noted that the Respondent cooperated with the investigation that resulted in the BPMC Hearing and that the Respondent frequently donated his services to the Chinese community.

Review History and Issues

The Committee rendered their Determination on July 31, 2000. This proceeding commenced on August 11, 2000, when the ARB received the Petitioner'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 response brief. The record closed when the ARB received the response brief on September 25, 2000.

The Petitioner requests that the ARB modify the Committee's Determination on the charges and overrule the Committee's determination on penalty. The Petitioner argues that the Committee should sustain the fraud charge, because the Respondent sold the Investigator Viagra without examining the Investigator and because the Respondent sold the Investigator Viagra, knowing that the Investigator intended the Viagra for use by friends. The Petitioner also argues that the ARB should sustain the gross negligence charge because the Respondent never examined or established a physician-patient relationship with Investigator and the Investigator's friends. The Petitioner asks the ARB to revoke the Respondent's License for dispensing drugs in

violation of the Education Law, in other than good faith medical practice and for failing to maintain accurate patient records. The Petitioner argues that the Respondent abused his privilege to practice by exchanging drugs for money.

In reply, the Respondent argues that the ARB may impose no penalty for any act by the Respondent in dispensing for the Investigator's friends, because the Petitioner's Statement of Charges contained no allegations concerning dispensing to the Investigator's friends. The Respondent contends that no basis exists to modify or overturn the Committee.

Determination

The ARB has considered the record and the parties' briefs. We vote 3-2 to sustain the Committee's Determination on the Charges and the Penalty.

Dr. Price, Dr. Lynch and Mr. Briber agree with the Committee in full and see no need to modify or overrule the Committee's judgement. The majority holds that the stayed suspension and probation provide the appropriate remedy in this case, in which the Committee found no greed or fraudulent motivation for the Respondent's conduct. Dr. Grossman and Ms. Pellman would hold that the Respondent committed fraud and gross negligence. They would also hold that the Respondent demonstrated that he was practicing medicine in other than good faith by dispensing drugs in the quantities that violated Educ. Law § 6807(2)(a).

ORDER

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

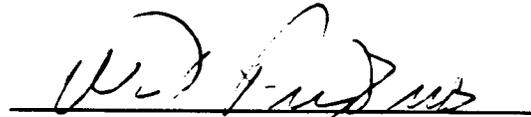
1. The ARB votes 3-2 to **AFFIRM** the Committee's Determination that the Respondent committed professional misconduct by practicing medicine with negligence on more than one occasion and by willfully or with gross negligence violating a statute governing medical practice.
2. The ARB votes 3-2 to **AFFIRM** the Committee's Determination to suspend the Respondent's License for three years, to stay the suspension and to place the Respondent on probation under the terms in Appendix II to the Committee's Determination.

Robert M. Briber
Thea Graves Pellman
Winston S. Price, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

In the Matter of Xi Peng Yin, M.D.

Winston S. Price, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Yin.

Dated: 12/1/, 2000

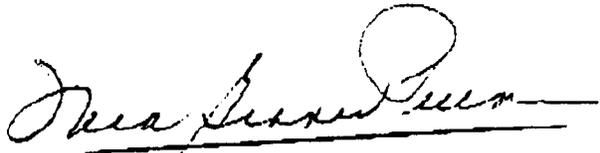
A handwritten signature in black ink, appearing to read "W. S. Price", is written over a horizontal line.

Winston S. Price, M.D.

In the Matter of Xi Peng Yin, M.D.

Thea Graves Pellman, an ARB Member, affirms that she participated in this case and that this Determination and Order reflects the majority's decision in the Matter of Dr. Yin.

Dated: Nov. 29, 2000

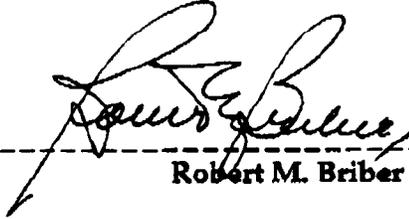


Thea Graves Pellman

In the Matter of Xi Peng Yin, M.D.

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

Dated: November 24, 2000



Robert M. Briber

In the Matter of Xi Peng Yin, M.D.

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

Dated: Nov 24, 2000

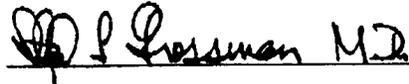


Therese G. Lynch, M.D.

In the Matter of Xi Peng Yin, M.D.

Stanley L. Grossman, an ARB Member, affirms that he participated in this case and that this Determination and Order reflects the majority's decision in the Matter of Dr. Yin.

Dated: November 22, 2000

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Stanley L Grossman, M.D.