



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

March 11, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Felipe Tanseco Juan, M.D.
1652 Rt. 565
Sussex, New York 07461

Felipe Tanseco Juan, M.D.
456 E. 18th Street
Paterson, New Jersey 07514

Paul Robert Maher, Esq.
NYS Department of Health
433 River Street
Troy, New York 12180

RE: In the Matter of Felipe Tanseco Juan, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-331) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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, appearing to read "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

In the Matter of

Felipe Tanseco Juan, 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. 02-331

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

**For the Department of Health (Petitioner): Paul Robert Maher, Esq.
For the Respondent: Pro Se**

After a hearing below, a BPMC Committee determined that the Respondent's professional misconduct in another state made the Respondent liable for action against his New York Medical License (License). The Committee voted to suspend the Respondent's License for two years. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2002), the Petitioner asks the ARB to modify that Determination and increase the penalty. After considering the review record, we modify the suspension that the Committee imposed, we place the Respondent on probation for five years following the suspension and we limit the Respondent's License to prohibit him from practicing bariatric medicine.

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(9)(b) & (9)(d) (McKinney Supp. 2003) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from another state (New Jersey) found the Respondent guilty for professional misconduct [§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 New Jersey would constitute misconduct if committed in New York, under the following categories:

- practicing medicine with negligence on more than one occasion, a violation under N. Y. Educ. Law §§ 6530(3) (McKinney Supp. 2003);
- practicing medicine with incompetence on more than one occasion, a violation under N.Y. Educ. Law § 6530(5)(McKinney Supp. 2003);
- failing to maintain accurate records, a violation under N.Y. Educ. Law § 6530(32), and,
- delegating professional responsibilities to an unqualified person, a violation under N.Y. Educ. Law § 6530(25)(McKinney Supp. 2003).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney 2002), before a BPMC Committee, which rendered the Determination now on review. In the Direct Referral 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 Committee determined that the Respondent and the State of New Jersey Board of Medical Examiners (New Jersey Board) entered into a Consent Order in October 2001. The Consent Order reprimanded the Respondent for indiscriminate prescribing of controlled

substances to patients in the Respondent's practice of bariatric medicine. The Consent Order also provided for a stayed two-year suspension on the Respondent's New Jersey Medical License, two years on probation and a requirement that the Respondent undertake at least fifty hours continuing medical education in bariatric medicine. In addition, as a condition to staying the suspension, the Consent Order required that the Respondent cease practicing bariatric medicine until the Respondent completes and passes the examination of the American Board of Bariatric Medicine. The Consent Order also required that the Respondent pay costs and penalties totaling \$ 20,942.98.

The Committee determined that the Respondent's conduct in New Jersey would have constituted practicing with negligence on more than one occasion if the Respondent had committed such conduct in New York. The Committee found the Respondent liable for action against his License pursuant to N. Y. Educ. Law §§6530(9)(b) & 6530(9)(d). The Committee's Determination noted that concerns arose in New Jersey over the Respondent's practice after findings from undercover investigations revealed that the Respondent engaged in the indiscriminate prescribing of controlled substances.

The Committee voted to suspend the Respondent's License for two years and to stay that suspension only upon verification that the Respondent has received an unrestricted license to practice medicine in New Jersey. The Committee noted that the Respondent's testimony at the hearing attempted to blame others for his problems and failed to address the New Jersey Board's findings about indiscriminate prescribing. The Committee stated that the record provided little evidence that the Respondent could practice safely, so the Committee found that the actual suspension provided the minimum protection to the public.

Review History and Issues

The Committee rendered their Determination on October 25, 2002. This proceeding commenced on November 6, 2002, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and the Petitioner's brief. The Respondent filed no brief or response brief with the ARB. The record closed when the ARB received the Petitioner's brief on November 25, 2002.

The Petitioner argues that the Committee's Determination fails to provide adequate protection to the public, because the Respondent could commence a full and unrestricted practice in New York after serving the suspension, without demonstrating any competency on his part. The Petitioner requests that the ARB overturn the Committee and revoke the Respondent's License, or in the alternative, that the ARB place the Respondent on probation for three years following the suspension.

The Respondent made no submission to the Review Board.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent's conduct would have constituted negligence on more than one occasion if the Respondent had committed such conduct in New York. We also affirm the Committee's Determination that the New Jersey conduct made the Respondent liable for action against his License pursuant to N. Y. Educ. Law §§ 6530(9)(b) & (9)(d). The ARB votes 5-0, however, to modify the Determination the Committee made on penalty.

The ARB shares the Committee's concern about the indiscriminate prescribing finding against the Respondent by the New Jersey Board and we agree with the Committee that the Respondent's testimony at the hearing did nothing to relieve our concern about indiscriminate prescribing. Although the prescribing finding in the New Jersey Consent Order may have related only to prescriptions for diet pills, a physician's prescribing patterns reflect on that physician's entire practice and reflect on a physician's ability and willingness to comply with acceptable practice standards in any field of medical practice. Prescribing controlled substances indiscriminately also reflects a disregard for patient safety.

The ARB agrees with the Committee that the Respondent should serve actual time on suspension in New York. We modify the Committee's Determination, however, because we conclude that the suspension should extend until the Respondent regains an unrestricted license in New Jersey. The time-limited suspension that the Committee imposed could allow the Respondent to return to practice in New York without taking the remedial steps that the New Jersey Board imposed on the Respondent's License in that state and could actually encourage the Respondent to leave New Jersey without satisfying those remedial steps. The ARB also modifies the Committee's Determination to place the Respondent on probation for five years, under the terms that appear as the Appendix to this Determination. The terms include a requirement that the Respondent practice under a monitor. We also vote to ban the Respondent from practicing bariatric medicine, the specialty in which the Respondent practiced negligently. We impose the probation and the practice ban due to our concern about the risk that the Respondent will continue his indiscriminate prescribing pattern upon regaining his New York License.

ORDER

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

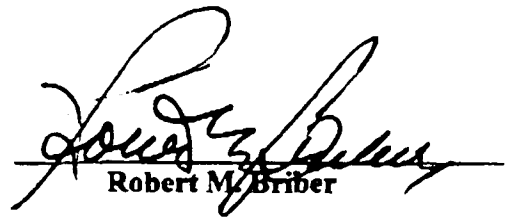
1. The ARB affirms the Committee's Determination that the Respondent's conduct in New Jersey would have constituted professional misconduct in New York and that the conduct made the Respondent liable for action against his New York License pursuant to Educ. Law §§ 6530(9)(b) & (9)(d).
2. The ARB modifies the penalty that the Committee imposed.
3. The ARB suspends the Respondent's License until such time as the Respondent regains an unrestricted medical license in New Jersey.
4. The ARB places the Respondent on probation for five years, under the terms that appear in the Appendix to this Determination.
5. The ARB limits the Respondent License to ban the Respondent from practicing bariatric medicine in New York.

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 Felipe Tanseco Juan, M.D.

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

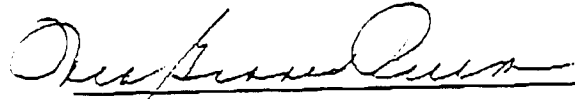
Dated: February 7, 2003


Robert M. Briber

In the Matter of Felipe Tanseco Juan, M.D.

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

Dated: 3/3, 2003



Thea Graves Pellman

72 55 10709 FAX 7105379090 THERESE LYNCH 201

In the Matter of Felipe Tanseco Juan, M.D.

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

Dated: February 8, 2003

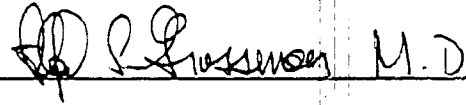


Therese G. Lynch, M.D.

In the Matter of Felipe Tanseco Juan, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the Matter of Dr. Juan.

Dated: February 9, 2003

 M.D.

Stanley L Grossman, M.D.

In the Matter of Felipe Tanseco Juan, M.D.

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

Dated: Mar 1, 2003

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

Winston S. Price, M.D.

Appendix

Terms of Probation

1. The Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. The Respondent shall submit written notification to the New York State Department of Health addressed to the Director, OPMC, to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of the Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. The Respondent's professional performance shall be reviewed by the Director of OPMC. This review shall may include at least a quarterly a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices. The Director shall also conduct random record reviews, interviews and/or audits.
6. The Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.

- a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
 - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
8. The Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. **Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.**

