



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

Public

Dennis P. Whalen
Executive Deputy Commissioner

April 20, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rony Chatelain, P.A.
135 Old East Neck Road
Melville, New York 11747

Jacques Nazaire, Esq.
60 East 42nd Street
New York, New York 10165

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

RE: In the Matter of Rony Chatelain, P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. BPMC No. 06-13) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

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

In the Matter of

Rony Chatelain, P.A. (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. 06-13

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:**

**Robert Bogan, Esq.
Jacques Nazaire, Esq.**

Following a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct, by engaging in conduct that resulted in two felony convictions, within six weeks, for driving under the influence of alcohol. The Committee voted to suspend the Respondent's License to practice as a physician assistant (License), to stay the suspension in part and to place the Respondent on probation. In this proceeding pursuant to N.Y. Pub. Health Law (PHL) § 230-c (4)(a)(McKinney 2006), the Petitioner asks the ARB to modify that Determination and to revoke the Respondent's License. After considering the hearing record and the review submissions from the parties, the ARB overturns the Committee and revokes the Respondent's License.

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). In the hearing, the Petitioner alleged that the Respondent violated N. Y. Educ. Law (EL) § 6530(9)(a)(i)(McKinney Supp. 2006) by engaging in conduct that resulted in a criminal conviction under New York Law. In a Direct

Referral Proceeding, the statute limits the Committee to considering whether a criminal conviction occurred, and if the Committee determines a conviction occurred, the Committee then determines the nature and the extent of the penalty to impose against the licensee, Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). The Direct Referral Proceeding began under a December 12, 2005 Commissioner's Order, pursuant to PHL §230(12)(b), which suspended the Respondent's License summarily, due to a felony conviction.

The evidence at the hearing demonstrated that the Respondent entered a guilty plea in Nassau County Court on September 15, 2005 to driving while intoxicated (DWI) and aggravated, unlicensed operation of a motor vehicle in the second degree. The DWI conviction constituted a felony due to a prior DWI conviction within the previous three years (2003 Conviction). The unlicensed operation charge arose because the Respondent was driving even though the Respondent's driver license was revoked following the 2003 Conviction. The Court sentenced the Respondent to four weeks of intermittent imprisonment, one year further driver's license revocation, five years on probation and fines, fees and surcharges totaling \$1,795.00. The Respondent was also convicted on October 27, 2005 in New York State Supreme Court for Suffolk County of operating a motor vehicle under the influence of alcohol, as a felony. For that conviction, the Respondent received five years probation, a further one-year driver license suspension and a fine and surcharge totaling \$1,295.00.

The Committee determined that the Respondent's criminal convictions under New York Law made the Respondent liable for disciplinary action against his License. The Committee voted to suspend the Respondent's License for three years, to stay the suspension for all but six months and to place the Respondent's License on probation for five years. In addition to the two convictions in 2005 and the 2003 Conviction, the Respondent admitted at hearing to another DWI conviction in 1997. The Committee also found the Respondent's testimony vague, elusive and hard to follow. The Committee also found contradictions between the Respondent's testimony on direct and cross-examination. The Committee found that a statement by the Respondent on cross-examination indicated that the Respondent could have been on his way to work at the time of one of his DWI arrests in 2005. The Committee found that the Respondent

produced no reliable prognosis on the Respondent's ability to practice in the future and found that the Respondent has participated in no program such as AA. The Committee also expressed concern over whether the Respondent recognizes or admits his alcohol problem. The Committee found mitigation only in the Respondent's statement that he needed to continue to work as a Physician Assistant to support his children at home. The Committee stated that they felt that the penalty they imposed would protect the public.

Review History and Issues

The Committee rendered their Determination on January 30, 2006. This proceeding commenced on February 8, 2006, 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 reply brief. The record closed when the ARB received the reply brief on March 16, 2006.

The Petitioner asks that the ARB overturn the Committee and revoke the Respondent's License. The Petitioner notes that the penalty the Committee imposed fails to protect the public and fails to even require an evaluation about the severity of the Respondent's alcohol problem. The Petitioner argues that the Respondent will pose a danger to his patients until he faces his alcohol problem.

The Respondent argues that any increase in penalty in this case would deny the Respondent due process. The Respondent contends that he has received an evaluation from New Pathway Counseling Services, that he now participates in AA and that he has never practiced while drunk.

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's felony DWI convictions provide the basis for disciplinary action against the Respondent's License pursuant to EL§ 6530(9)(a)(i). We overturn the Committee's Determination on penalty and vote unanimously to revoke the Respondent's License.

The record in this proceeding reveals that the Respondent suffers from a serious alcohol problem that the Respondent has failed to address up until this time. The penalty the Committee imposed relies on probation restrictions on the Respondent's License. The ARB notes that the Respondent has already demonstrated poor compliance with restrictions on his driver's license by driving on a revoked license and by continuing to drive under the influence of alcohol after numerous arrests and sanctions. The Committee found the Respondent's testimony at hearing less than credible and questioned his willingness to address his problem. The ARB notes that the Respondent failed to participate in AA prior to his hearing. Although the Respondent claims to be participating in AA presently, the ARB questions whether the Respondent began participating in AA from a sincere desire to confront his problem or merely as a response to criticism in the Committee's Determination concerning the failure to participate in AA. The Committee found little mitigation in this record. The ARB finds no mitigation.

The record in this proceeding convinces the ARB that probation will provide insufficient protection to the public. The record fails to provide sufficient evidence about the Respondent's ability to remain compliant with treatment programs. The Respondent's convictions occurred only last year and the Respondent entered AA only since the Hearing Committee rendered its Determination earlier this year. The ARB concludes that the repeat violations demonstrate a serious alcohol problem that makes the Respondent unfit for practice until the Respondent has demonstrated compliance with treatment over a sustained period.

The ARB votes to revoke the Respondent's License. The Respondent will have an opportunity to petition the Board of Regents for reinstatement after three years. That three year-period will give the Respondent the opportunity to prove whether he has truly confronted his problem.

ORDER

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

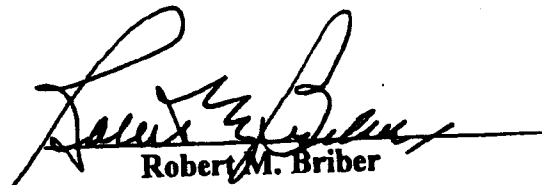
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the Committee's Determination to suspend the Respondent's License, stay the suspension and place the Respondent on probation.
3. The ARB revokes the Respondent's License.

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 Rony Chatelain, P.A.

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

Dated: April 16, 2006

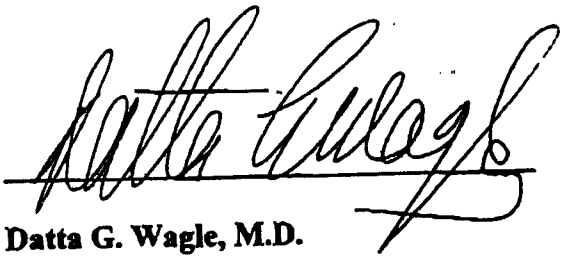


Robert M. Briber

In the Matter of Rony Chatelain, P.A.

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

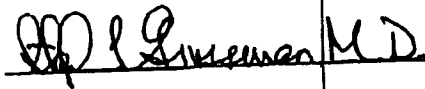
Dated: 4/16/, 2006


Datta G. Wagle, M.D.

In the Matter of Rony Chatelain, P.A.

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

Dated: April 14, 2006

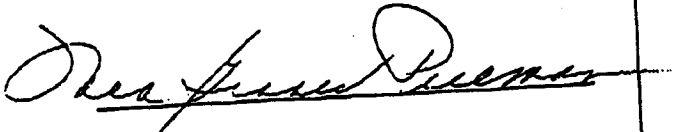
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Stanley L Grossman, M.D.

In the Matter of Rony Chatelain, P.A.

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

Dated: Apr. 18, 2006


Thea Graves Pellman

In the Matter of Rony Chatelain P.A.

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

Dated: April 15, 2006

Therese G Lynch M.D

Therese G. Lynch, M.D.