



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 18, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Alben G. Goldstein, M.D.
611 S. Carlin Springs Road
Suite 202
Arlington, Virginia 22204

Joel Abelow, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street, 1st Flr. Annex
Troy, New York 12180

RE: In the Matter of Alben G. Goldstein, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-226) 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.

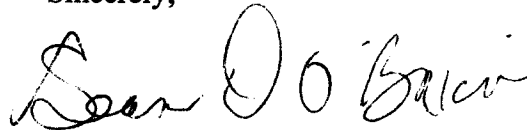
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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".

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

Alben G. Goldstein, 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. 06-226

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:**

**Joel E. Ablove, Esq.
Pro Se**

The Respondent holds a license to practice medicine in New York State (License) and a license to practice in Virginia. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney Supp. 2006), the ARB determines the penalty to impose against the Respondent's License following a disciplinary action in Virginia concerning patient care. After a hearing below pursuant to PHL § 230(10)(p), a BPMC Hearing Committee determined that disciplinary findings against Respondent in Virginia made the Respondent liable for action against his License and the Committee voted to place the Respondent on probation and ordered that the Respondent complete continuing medical education (CME) courses, in addition to probation and CME requirements from Virginia. The Petitioner then requested review and asked the ARB to overturn the Committee and revoke the Respondent's License. After reviewing the Committee's Determination, the record below and the review submissions from the parties, the ARB overturns the Committee's Determination and we vote 5-0 to revoke 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 that Hearing, the Petitioner charged that the Respondent violated N. Y. Education Law (EL) §§ 6530(9)(b) & (9)(d) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from another state, Virginia, 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 Virginia would constitute misconduct if committed in New York, under the following specifications:

- practicing the profession with negligence on more than one occasion, a violation under EL § 6530(3),
- practicing the profession with incompetence on more than one occasion, a violation under EL § 6530(5),
- exercising undue influence over a patient, a violation under EL § 6530(17), and,
- failing to maintain accurate patient records, a violation under EL § 6530(32).

In a Direct Referral Hearing, 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 before the Committee demonstrated that the Virginia Board of Medicine (Virginia Board) issued an Order on September 19, 2005, which placed the Respondent on indefinite probation and required him to complete thirty hours of CME courses for practicing in a manner that endangered the health and welfare of patients and for performing acts likely to deceive, defraud or harm the public. The Virginia Order specified that the Respondent should complete the CME in the areas of record keeping, professional boundaries and addiction medicine. The Virginia Order [Hearing Exhibit 6] made findings concerning the Respondent's treatment for and/or interaction with five persons (Patients A, B, C, D and G). The Order stated that the Respondent:

- prescribed opioid pain medication for Patient A without performing regular examinations, testing or review related to treatment and without monitoring the Patient's compliance with medication as prescribed,
- provided a prescription for opioids for Patient A prior to the projected date for a refill and with little or no attention to patterns of abuse,
- failed to create a comprehensive treatment plan to manage the Patient's pain and relied solely on escalating doses of opioids,
- failed to detect and treat Patient A's weight loss from 106 pounds on October 26, 2000 to 70 pounds on December 1, 2000,
- failed to perform regular examinations, testing and reviews on Patients B and C or monitor those Patients' compliance with medication as prescribed,
- often provided the Patients with a prescription for opioids prior to the projected date for refill, with little or no attention to patterns of abuse,
- failed to create a comprehensive treatment plan to manage the pain for Patients B and C,
- failed to perform regular examinations, testing or review on Patient G or to monitor the Patient's compliance with medication as prescribed,

- after learning about Patient G's excessive use and admission to a facility for substance abuse and detoxification, failed to obtain records and to establish a treatment plan to manage the Patient's pain,
- failed to maintain accurate records for Patients A, B, C, D and G, and,
- assisted Patient C enroll in prescription drug assistance programs and a housing assistance program for the disabled, but then requested and received a camera lens valued at approximately \$400.00.

The record indicated further that the Respondent requested \$5,000.00 to \$6,000.00 from Patient A, which included a "gift" of \$1000.00. The Patient's attorney disbursed \$3,813.32 to the Respondent, purportedly for all outstanding expenses owed. The Patient later wrote the Respondent a check for \$5,600.00

The Committee concluded that the Respondent's conduct in Virginia would constitute misconduct in New York as practicing the profession with incompetence and negligence on more than one occasion, failing to maintain a record which accurately reflects the treatment of the patient and exercising undue influence over a patient, including the promotion of the sale of services, goods, appliances or drugs in such a manner as to exploit the patient for financial gain of the licensee or a third party.

The Committee rejected a request by the Petitioner that the Committee revoke the Respondent's License. The Committee concluded that they could protect patients in New York by imposing a period of probation and ordering that the Respondent complete CME courses in addition to those provided for under the Virginia Order.

Review History and Issues

The Committee rendered their Determination on September 27, 2006. This proceeding commenced on October 3, 2006, 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 review submissions by the Petitioner and Respondent. The record closed when the ARB received the Petitioner's submission on November 3, 2006.

The Petitioner requests that the ARB overturn the Committee and revoke the Respondent's License. The Petitioner argues that the Respondent's misconduct warrants revocation and that New York should not spare the Respondent that penalty merely because Virginia imposed a less severe sanction. The Petitioner argues further that the Respondent failed to express remorse or accept responsibility for his conduct and that the Respondent remains unable to comprehend the wrongfulness of his actions.

The Respondent argues that New York lacks the authority to act against him because he does not practice in and does not maintain a license in New York. He makes reference to conversations that he had with the Petitioner's prosecutor outside the Direct Referral Hearing and the Respondent makes objections to certain procedures at the Hearing. The Respondent also argues that the penalty that the Committee imposed will provide adequate protection for New York's citizens.

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 conduct in Virginia would constitute misconduct in New

York and that the Virginia Order makes the Respondent liable for disciplinary action against his License. The ARB overturns the Committee and revokes the Respondent's License.

We hold that the Committee and the ARB hold jurisdiction over this matter because EL §6502(1) provides that a medical license remains effective for the life of the holder unless revoked, annulled or suspended. The Respondent's License remains in effect whether or not he registers and practices here. The Respondent made the argument that this statute violates equal protection. Until a court makes such a determination, EL § 6502(1) continues to bind the ARB and the Committee. Neither the Committee nor the ARB hold the authority to nullify an act of the New York Legislature.

The Respondent's brief to the ARB made reference to conversations that the Respondent claims to have held with the Petitioner's hearing prosecutor. As those conversations do not appear in the hearing record, the conversations are not matters for the ARB to review.

In paragraph 5 of his brief, the Respondent indicated that the Committee's Administrative Officer, Judge John Wiley¹, barred a document from the record that the Petitioner attempted to introduce. The Respondent called the attempt at introduction to the ARB's attention. Apparently the Respondent feels that the attempt at introducing the document may have constituted misconduct by the Petitioner. The ARB sees no prejudice to the Respondent from the attempt to introduce the document at issue. The Administrative Officer kept the potentially prejudicial document out of the record and away from the Committee's consideration. Further, on this review, the Petitioner restricted argument to the hearing record only and made no attempt to bring any outside matters to the attention of the ARB.

The Respondent's brief, at paragraph 6, alleges prejudice to the Respondent because the Petitioner's counsel read the findings of the Virginia Board into the hearing record as his closing

argument. The Respondent argues that he suffered prejudice due to “duplicated testimony and evidence already presented”. The ARB sees no prejudice to the Respondent. Closing argument is the time for the parties to comment on evidence in the record. The prosecutor presented no additional testimony. We also note that the Respondent made no objection to the Petitioner’s closing at the Hearing [Hearing Transcript, pages 31-32].

The parties review submissions centered on whether the penalty the Committee imposed would protect New York’s citizens. The ARB agrees with the Petitioner that the penalties that the Committee and the Virginia Board imposed fail to protect the public. The ARB sees no reason to defer to the Virginia Board’s judgment in this case, as the ARB must assure protection for our citizens. Although the Respondent argues that he has no intention to return to practice in New York, the Respondent’s stated intentions bind him in no way legally. Under EL § 6502(1), the Respondent could still return to New York to practice as long as he files a registration and pays a registration, unless the Respondent’s License is revoke, suspended or annulled.

The ARB concludes that the Respondent’s conduct in Virginia warrants revocation. The Respondent displayed a disregard for his patients and a regard only for his own financial gain, by exercising undue influence on his patients. The Respondent’s engaged in particularly egregious misconduct in his interactions with Patient A, in expecting a large financial gift from the Patient, while failing to detect or treat the Patient’s shocking weight loss and in refilling opioid prescriptions with little or no attention to patterns of abuse. The Respondent showed no remorse at hearing, no insight into his deficiencies and no intent to change his behavior. Instead, the Respondent attempted to reargue the Virginia Board’s findings. We conclude from the Respondent’s testimony at hearing that the Respondent has learned nothing from the proceeding

¹ The Respondent’s brief identified the Administrative Officer incorrectly as “John Y. Lee”.

in Virginia and that he remains at risk to repeat his misconduct in New York if the Respondent retains his License. The ARB votes 5-0 to revoke that License.

ORDER

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

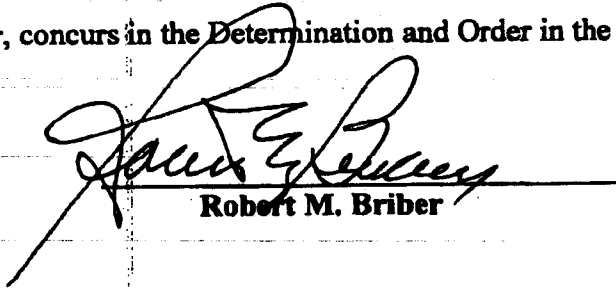
1. The ARB affirms the Committee's Determination that the Respondent's conduct in Virginia would amount to professional misconduct if the Respondent engaged in such conduct in New York and that such conduct makes the Respondent subject to action against his License.
2. The ARB overturns the Committee's Determination to place the Respondent's License on probation and to require that the Respondent complete continuing medical education courses.
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 Alben G. Goldstein, M.D.

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

Dated: December 16, 2006

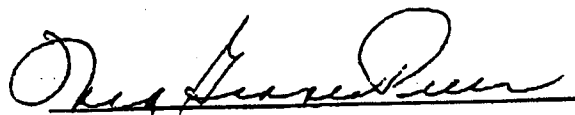


Robert M. Briber

In the Matter of Alben G. Goldstein, M.D.

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

Dated Dec 13, 2006



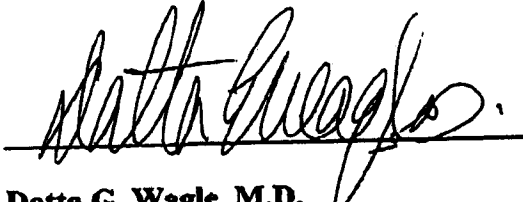
Thea Graves Pellman

In the Matter of Alben G. Goldstein, M.D.

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

Matter of Dr. Goldstein.

Dated: 12/16/, 2006

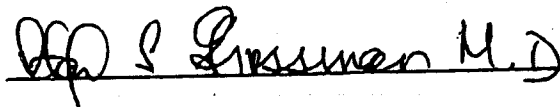


Datta G. Wagle, M.D.

In the Matter of Alben G. Goldstein, M.D.

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

Dated: December 15 2006



Stanley L. Grossman, M.D.

In the Matter of Alben G. Goldstein, M.D.

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

Dated: December 13, 2006.

Therese G. Lynch M.D.

Therese G. Lynch, M.D.