



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

December 28, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

William Tursi, M.D.
741 Jewett Avenue
Staten Island, New York 10314

William Tursi, M.D.
454 Edinboro Road
Staten Island, New York 10306

William Tursi, M.D.
774 Manor Road
Staten Island, New York 10314

Anthony Z. Scher, Esq.
Wood & Scher
222 Bloomingdale Road, Suite 311
White Plains, New York 10605

Robert Bogan, Esq.
Joel E. Abelove, Esq.
NYS Department of Health
Hedley Building - 4th Floor
433 River Street
Troy, New York 12180

RE: In the Matter of William Tursi, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-242) 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.

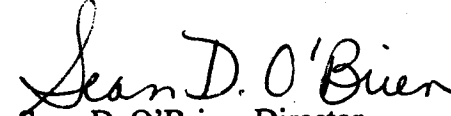
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Enclosure

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

In the Matter of

William Tursi, 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. 06-242

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):

Joel Abelow, Esq.

For the Respondent:

Anthony Z. Scher, Esq.

Following a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct, by engaging in conduct that resulted in a criminal conviction under Federal Law. The Committee voted to suspend the Respondent's License to practice as a physician (License) for one year and to require that the Respondent complete ten hours continuing medical education. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2006), the Petitioner asks the ARB to modify that Determination, sustain an additional misconduct charge and to revoke the Respondent's License. After considering the hearing record and the review submissions from the parties, the ARB affirms the Committee's Determination in full.

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)(ii)(McKinney Supp. 2006) by engaging in conduct that resulted in a criminal conviction under Federal 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 an August 18, 2006 Commissioner's Order, pursuant to PHL §230(12)(b), which suspended the Respondent's License summarily, due to a felony conviction.

The Petitioner also charged that the Respondent committed professional misconduct by violating EL §§ 6530(2-3) & 6530(21) under the following specifications:

- practicing the profession fraudulently,
- practicing the profession with negligence on more than one occasion, and
- willfully filing a false report required by law.

All the charges related to entries in medical reports for one person.

The evidence at the hearing demonstrated that the Respondent entered a guilty plea in the United States District Court for the Eastern District of New York, to violating Title 18 United States Code § 1001, False Statements. The conviction involved the submission of an August 14, 2000 Merchant Marine Personnel Physical Examination Report (Report), for Patient RS, to the United States Coast Guard. The Report contained false answers to questions by concealing the existence of a medical condition, hypertension, and the medications for that condition. The Court sentenced the Respondent to six months home confinement, community service, a \$5000.00 fine and a \$100.00 assessment. The evidence also demonstrated that the Respondent prepared Coast Guard Reports for Patient RS in 1989 and 1995, which concealed the Patient's hypertension and the medication the Patient took for the condition. Patient RS was a pilot on the Staten Island Ferry and the Coast Guard requires a review on the health of persons in such jobs every five years. Patient RS was the pilot in charge on the Staten Island Ferry on the day the Ferry crashed, resulting in the deaths and injuries of several persons. At the Federal Court sentencing proceeding, United States District Judge Edward Korman stated that the prosecution had failed to prove that the medications that Patient RS took were the cause for the Ferry accident.

The Committee determined that the Respondent's Federal conviction made the Respondent liable for disciplinary action against his License under EL § 6530(9)(a)(ii). The Committee found that the Respondent testified that he also falsified Coast Guard Reports in 1989 and 1995. The Committee also sustained charges that falsifying the Reports constituted practicing fraudulently and intentionally filing false reports. The Committee dismissed charges that the Respondent practiced with negligence on more than one occasion.

As a sanction for the Respondent's misconduct, the Committee voted to suspend the Respondent's License for one year, retroactive to the Commissioner's Summary Suspension Order on August 18, 2006, and to require that the Respondent complete ten hours of CME courses in medical ethics. The Committee found that mitigating factors in the record made License revocation too severe a sanction. The Committee found that the Respondent admitted his actions were wrong, that the Federal Judge found that the medications the Patient took were not the cause of the Ferry accident, that the Respondent suffered a traumatic experience in the criminal court process and that the Respondent felt that falsifying the Reports would cause no harm because the Respondent's condition and medications would not effect the ability of Patient RS to perform his job.

Review History and Issues

The Committee rendered their Determination on October 30, 2006. This proceeding commenced on November 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 December 7, 2006.

The Petitioner asks that the ARB modify the Committee's Determination by sustaining the additional charge that the Respondent's conduct also amounted to practicing with negligence. The Petitioner argued that the Committee erred in concluding that negligence in practice

amounts to carelessness rather than intentional falsification. The Petitioner argues that negligence means a deviation from acceptable practice standards or an error in a chart that could effect subsequent treatment. The Petitioner contends that the Committee also erred in finding mitigation in the record. The Petitioner argues that the Respondent's intentional misconduct kept his Patient's condition from review at great risk to the public safety. The Petitioner argued further that the Federal Court showed leniency in sentencing the Respondent because the Court felt the Respondent would lose his medical License as a result of his conviction. The Petitioner contends that allowing the Respondent to retain his License will do nothing to discourage others from engaging in such misconduct. The Petitioner asks that the ARB revoke the Respondent's License or in the alternative that the ARB suspend the Respondent's License for a substantial period and then limit the Respondent's License thereafter to practice in a supervised setting.

In reply, the Respondent concedes he did something wrong and that a disciplinary sanction is appropriate. He argues, however, that he was not placing the public in any danger by aiding someone with controlled blood pressure to retain a job as a ferry pilot. The Respondent also contends that he has received an appropriate sanction in the Federal Court's sentence and in the Committee's Determination to suspend 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 in full. The Respondent's action in falsifying the Coast Guard Reports constituted misconduct as fraud and as willfully filing a false report, rather than as negligence. The Respondent's conduct warrants a severe sanction, but a sanction less severe than revocation. The ARB agrees with the Committee that nothing in the record indicates that the Respondent's misconduct resulted in harm to anyone and we agree that a License suspension together with the Court's sentence provides the proper sanction here. We disagree with the Petitioner's argument that to apply a sanction less severe than revocation would encourage anyone to mimic the Respondent's conduct. As a result of trying to accommodate a patient's baseless fear concerning his employment, the Respondent now stands convicted of a felony, sentenced to home confinement and to pay a fine and suspended from medical practice for one year. The Committee has made a well-reasoned judgment on all the facts in this case and has imposed an appropriate penalty.

ORDER

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

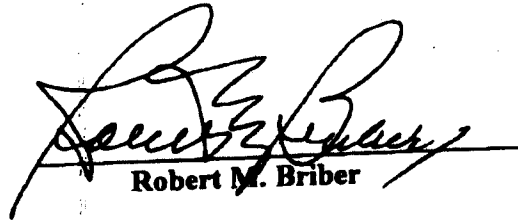
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to suspend the Respondent's License for one year, retroactive to August 16, 2006.
3. The ARB affirms the Committee Order that the Respondent complete ten hours CME in medical ethics prior to the time that the suspension ends.

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 William Tursi, M.D.

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

Dated: December 26, 2006

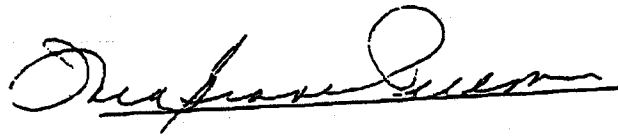


Robert M. Briber

In the Matter of William Tursi, M.D.

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

Dated: Dec 27, 2006

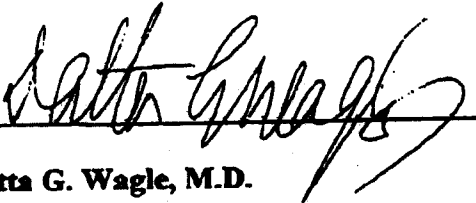


Thea Graves Pellman

In the Matter of William Tursi, M.D.

**Datta G. Wagle, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Dr. Tursi.**

Dated: 12/23/, 2006

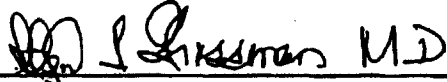


Datta G. Wagle, M.D.

In the Matter of William Tursi, M.D.

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

Dated: December 21, 2006

A handwritten signature in black ink, appearing to read "Stanley L. Grossman M.D.", is written above a horizontal line.

Stanley L Grossman, M.D.

In the Matter of William Tursi, M.D.

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

Dated: December 20, 2006

Therese G. Lynch M.D.

Therese G. Lynch, M.D.

In the Matter of William Tursi, M.D.

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

Dated: December 20 2006

Therese G. Lynch M.D.

Therese G. Lynch, M.D.