

NEW YORK
state department of
HEALTH

Public

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

February 27, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Courtney Berry, Esq.
NYS Department of Health
90 Church Street -- 4th Floor
New York, New York 10007

Maria DeJesus, M.D.
REDACTED ADDRESS

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

RE: In the Matter of Maria Audrie DeJesus, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-31) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

REDACTED SIGNATURE

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

-----X
IN THE MATTER : DETERMINATION
: :
OF : AND **COPY**
: :
MARIA AUDRIE DEJESUS, M.D. : ORDER
-----X

BPMC #12-31

A Notice of Hearing and Statement of Charges, both dated November 21, 2011, were served upon MARIE AUDRIE DEJESUS, M.D., Respondent. JACQUELINE H. GROGAN, Ed.D., Chairperson, JAY A. ROSENBLUM, M.D. and RALPH W. LIEBLING, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. CHRISTINE C. TRASKOS, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health ("the Department") appeared by JAMES DERING, General Counsel, by COURTNEY BERRY, ESQ., of Counsel. The Respondent appeared by WOOD & SCHER, ANTHONY Z. SCHER ESQ., of COUNSEL. Evidence was received and witnesses sworn and heard, and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

PROCEDURAL HISTORY

Pre-Hearing Conference: January 10, 2012

Hearing Date: January 10, 2012

Witnesses for Petitioner: Paul Gerardi, M.D.
Mary Malone, RN

Witnesses for Respondent: Maria DeJesus, M.D.
Imelda Cruz-Banting, M.D.
Father Sancho Garrote
Anna Krol, M.D.

Deliberation Held: January 10, 2012

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (§230 et seq of the Public Health Law of the State of New York [hereinafter "P.H.L."]).

This case was brought by the New York State Department of Health, Office of Professional Medical Conduct (hereinafter "Petitioner" or "Department") pursuant to §230 of the P.H.L. Maria Audrie DeJesus, M.D., ("Respondent") is charged with Two (2) specifications of professional misconduct, as defined in §6530 of the Education Law of the State of New York ("Education Law"). The charges include fraudulent practice of medicine and willfully making or filing a false report. A copy of the Notice of Hearing and

Statement of Charges is attached to this Determination and Order as Appendix I. The Respondent filed a timely Answer and denies the factual allegations and specifications of misconduct contained in the Statement of Charges.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Unless otherwise noted, all findings and conclusions set forth below are the unanimous determinations of the Hearing Committee. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. Numbers below in parentheses refer to exhibits (denoted by the prefix "Ex.") or transcript page numbers ("T."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Having heard testimony and considered documentary evidence presented by the Petitioner and Respondent, the Hearing Committee hereby makes the following findings of fact:

1. Respondent was authorized to practice medicine in New York State on May 8, 1997, by the issuance of license number 206602 by the New York State Education Department. (Dept. Ex.2)

2. Respondent graduated from medical school in 1986 from the University of Santo Thomas in Manila, Philippines. (T. 30)

3. Respondent came to the United States in 1987 and worked as a physical therapist for several years at Columbia University. She

started her residency at New York Medical College, Westchester County Medical Center and became board certified in neurology in 1998. (T. 30-31)

4. At present, Respondent has a private practice at 175 Memorial Highway, Suite 210, New Rochelle, New York. (T.31)

5. Paul Gerardi, M.D. is a cardiologist with South Shore Cardiology. His group practice has an office located at 175 Memorial Highway, New Rochelle, New York. (T. 11-12)

6. Respondent and South Shore Cardiology shared office space, but Respondent has no professional association with South Shore Cardiology. (T.12)

7. Dr. Gerardi does not know the Respondent either personally or professionally. (T. 13)

8. On October 20, 2008, Dr. Gerardi received an inquiry from a CVS Pharmacy in Manhattan regarding a prescription for Ambien. Dr. Gerardi had the prescription faxed to him so that he could review it. He discovered that the prescription was from his office and that someone had forged his signature. The prescription was written for Maria DeJesus for 10 mg. Ambien. (Dept. Ex. 3; Ex. T. 14-15)

9. Respondent acknowledged that she used a prescription pad belonging to another physician. (T. 20, 43)

10. Respondent signed Dr. Gerardi's name to the prescription without having his permission to do so. (T.15)

CONCLUSIONS OF LAW

Respondent is charged with two specifications alleging professional misconduct within the meaning of Education Law §6530. Education Law §6530 sets forth a number and variety of forms or types of conduct which constitute professional misconduct, However, Education Law §6530 does not provide definitions or explanations of some of the misconduct charged in this matter. During the course of their deliberations on these charges, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document entitled: Definitions of Professional Misconduct under the New York Education Law sets forth suggested definitions for gross negligence, negligence, gross incompetence, incompetence and the fraudulent practice of medicine.

Fraudulent Practice

Fraudulent practice is the intentional misrepresentation or concealment of a known fact, made in some connection with the practice of medicine. The Hearing Committee must find that (1) a false representation was made by the licensee, whether by words, conduct or concealment of that which should have been disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation. The licensee's

knowledge and intent may properly be inferred from facts found by the Hearing Committee, but the Committee must specifically state the inferences it is drawing regarding knowledge and intent.

Using the above-referenced definition as a framework for its deliberations, the Hearing Committee concluded by a preponderance of the evidence that both specifications of professional misconduct should be sustained. The rationale for the Committee's conclusions regarding each specification of misconduct is set forth below.

At the outset of the deliberations, the Hearing Committee made a determination as to the credibility of all witnesses presented by the parties. The Committee must determine the credibility of the witnesses in weighing each witness's testimony. First, the Hearing Committee must consider whether the testimony is supported or contradicted by other independent objective evidence. When the evidence is conflicting and presents a clear-cut issue as to the veracity of the opposing witnesses, it is for the Hearing Committee to pass on the credibility of the witnesses and base its inference on what it accepts as the truth. Where a witness's credibility is at issue, the Committee may properly credit one portion of the witness's testimony and, at the same time reject another. The Hearing Committee also understood that they had the option of completely rejecting the testimony of a witness where they found that the witness testified falsely on a material issue.

With regard to the testimony presented, the Hearing Committee evaluated all witnesses for possible bias or motive. The witnesses were also assessed according to their training, experience, credential and demeanor.

The Hearing Committee concluded that all witnesses that appeared at the hearing were credible. In particular they note that Respondent acknowledged upfront that she had signed Dr. Gerardi's name on his prescription pad. While Respondent over time provided different circumstances for why she wrote the script, the Hearing Committee believes that Respondent was trying to help a relative.

Factual Allegations

Based upon the Findings of Fact set forth above, the Hearing Committee makes the following unanimous determinations regarding the factual allegations contained in the Statement of Charges:

Paragraph A and A.1	Sustained
Paragraph A and A.2	Sustained
Paragraph A and A.3	Sustained

FRAUDULENT PRACTICE

The Hearing Committee has reviewed the above definition of fraud. They find that Respondent knowingly forged the signature of

Dr. Gerardi on his prescription pad for a controlled substance. There was no acquiescence by Dr. Gerardi and Respondent should not have relied on the advice of an office secretary when Respondent knew better. The Hearing Committee believes that it would have been significant if the patient had suffered an adverse effect from the Ambien and Dr. Gerardi would have been held accountable. Even if Respondent meant to be helpful to someone in distress, the Hearing Committee concludes that Respondent's actions meet the definition of fraud. The Hearing Committee sustains the First Specification.

FALSE REPORT

The Hearing Committee finds that Respondent's action of forging another physician's signature as discussed above would constitute willfully making a false report. As a result, the Hearing Committee sustains the Second Specification.

DETERMINATION AS TO PENALTY

After a full and complete review of all of the evidence presented and pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above, the Hearing Committee, by unanimous vote, determines that Respondent shall be censured and reprimanded for her misconduct.

The Hearing Committee notes that Respondent acknowledged that she had made a mistake and was very remorseful. They believe her ultimate goal was to perform a kindness for a relative and that there was no personal benefit to Respondent. Various character witnesses attested to Respondent's good standing in the community. As this was a single incident with no resulting patient harm, the Hearing Committee finds no need for probation or monitoring. They conclude that censure and reprimand is the appropriate penalty. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interest of justice.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges are SUSTAINED; and
2. Respondent is CENSURED AND REPRIMANDED; and
3. This Determination and Order shall be effective on personal service on Respondent or seven (7) days after the date of mailing of a copy to Respondent by certified mail or as provided by P.H.L. Section 230(10)(h).

DATED: New York, New York

February 27, 2012

REDACTED SIGNATURE

JACQUELINE H. GOGAN, Ed.D (CHAIR)

JAY A. ROSENBLUM, M.D.

RALPH W. LIEBLING, M.D.

TO: Courtney Berry, Esq.
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
90 Church Street- 4th Floor
New York, New York 10007

Maria DeJesus, M.D.

REDACTED ADDRESS

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

APPENDIX I

1/10/12 CS

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
Maria Audrie DeJesus, M.D.

NOTICE
OF
HEARING

TO: Maria Audrie DeJesus
REDACTED ADDRESS

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §231 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on January 10, 2012, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, N.Y. 10007, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here _____

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be

photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
November 21, 2011

REDACTED SIGNATURE

Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Courtney Berry
Associate Counsel
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, N.Y. 10007
(212)417-4450

EXHIBIT "A"

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

**IN THE MATTER
OF
MARIA AUDRIE DEJESUS, M.D.**

**STATEMENT
OF
CHARGES**

MARIA AUDRIE DEJESUS, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 8, 1997, by the issuance of license number 206602 by the New York State Education Department

FACTUAL ALLEGATIONS

- A. On or about October 20, 2008, Respondent inappropriately issued a prescription for Ambien, a controlled substance, to herself in that:
1. Respondent used a prescription pad belonging to another physician.
 2. Respondent signed another physician's name to the prescription, without that physician's permission to do so.
 3. Respondent did so knowingly and with intent to mislead.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently, as alleged in the facts of the following:

1. Paragraph A and its subparagraphs.

SECOND SPECIFICATION

FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by wilfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

2. Paragraph A and its subparagraphs.

DATE: November²⁷, 2011
New York, New York

REDACTED SIGNATURE

ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct