

March 23, 2012

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Anthony Joseph Sarro, M.D.  
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Brooklyn, New York 11211-4904

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NYS Department of Health  
90 Church Street - 4<sup>th</sup> Floor  
New York, New York 10007

**RE: In the Matter of Anthony Joseph Sarro, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 11-268) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,

REDACTED SIGNATURE

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah

Enclosure

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

In the Matter of

Anthony Joseph Sarro, 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. 11-268

**COPY**

Before ARB Members D'Anna, Koenig, Wagle, Wilson and Milone  
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Roy Nemerson, Esq.  
For the Respondent: Fredric Lewis, Esq.

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by failing to follow scientifically accepted infection control practices. The Committee voted to suspend the Respondent's license to practice medicine in New York State (License), until such time as the Respondent corrects the practices, in compliance with requirements that the Committee specified in their Determination. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2012), the Petitioner asks the ARB to modify the Committee's Determination by sustaining additional misconduct specifications and revoking the Respondent's License, or in the alternative, by placing the Respondent on probation, with a monitor, for three years following the conclusion of the suspension. After reviewing the hearing record and the review submissions, the ARB affirms the Committee's Determination on the charges and the Committee's Determination to suspend the Respondent's License. The ARB modifies the Committee's Determination to place the Respondent on probation for three years following the suspension, under the terms that the ARB lists in the Appendix to this Determination.

### Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(3), 6530(5), 6530(25), 6530(29) & 6530(47) (McKinney Supp. 2012) by committing professional misconduct under the following specifications:

- practicing medicine with negligence on more than one occasion,
- practicing medicine with incompetence on more than one occasion,
- delegating professional responsibilities to a person the Respondent knew or had reason to know lacked qualifications, training, experience or licensure to perform the responsibilities,
- violating a condition on the Respondent's License, and,
- failing to use scientifically accepted infection control practices.

The charges related to the Respondent's medical office in Brooklyn. Following the hearing the Committee rendered the Determination now on review.

The Committee found that Nurse-Investigators Ernest Clement, Mary Geary and Abby Gordon conducted an inspection at the Respondent's Office (Inspection) on June 14, 2011. The Inspection found expired drugs, medications and other items throughout the office. The Inspection also discovered contaminated instruments, discolored tubing and thick layers of dust in boxes. Further, the Inspection revealed that the Respondent failed to employ sufficient disinfection on reusable instruments that would come in contact with the vascular system, mucous membranes and non-intact skin.

The Commissioner of Health and Mental Hygiene of the City of New York (NYCDHMH) issued an Order on June 20, 2011 that required the Respondent to Cease and Desist performing procedures and seeing patients. On July 5, 2011, the Director of Surveillance, Bureau of Communicable Disease, NYCDHMH advised the Respondent concerning 19 steps the Respondent would have to satisfy in order for NYCDHMH to lift the June 20<sup>th</sup> Order. The steps emphasized reprocessing patient care equipment, hand hygiene, personal protective equipment and ensuring the safe use of multi-use medication vials. The Commissioner of Health of the New York State Health Department issued an Order on July 14, 2011 suspending the Respondent's

License summarily on the grounds that the Respondent's continued practice constituted an imminent danger to the health of the people of New York State. The Summary Order provided that it would remain in effect until the Respondent took steps to remediate the imminent danger. The Order appended two schedules listing the remediation steps. The July 5<sup>th</sup> NYCDHMH letter comprised the Summary Order's Schedule II. In addition to the requirements under Schedule II, Schedule I required training for the Respondent and responsible staff concerning infection control and included specific infections control procedures and standards the Respondent needed to follow.

The Committee sustained the charge that the Respondent failed to use scientifically accepted infection control practices. The Committee dismissed all other charges. In making their findings, the Committee relied on testimony from Nurse Clement as an expert on infection control practices and from Nurse Gordon concerning the Investigation and materials she observed in the Respondent's office. The Respondent failed to testify and the Committee drew the inference from that failure that the Respondent would have been unable to rebut the testimony by Nurses Gordon and Clement.

The Committee voted to suspend the Respondent's License until such time as the Respondent satisfies the conditions and remediation requirements in Schedules I and II under the Summary Order. The Committee determined that the public's protection required the suspension until the Respondent corrects the dangerous practices at his office.

#### Review History and Issues

The Committee rendered their Determination on November 9, 2011. This proceeding commenced on November 16, 2011, when the ARB received the Petitioner's Notice requesting a Review. The Administrative Officer for the ARB advised the parties on November 18, 2011 that the Petitioner would have until December 19, 2011 to file a review brief and that the Respondent would have until seven days after receiving the Petitioner's brief to submit a reply. The record

for review contained the Committee's Determination, the hearing record, the Petitioner's brief and a January 12, 2012 letter from the Respondent's counsel.

The Petitioner asked the ARB to overturn the Committee and revoke the Respondent's License, or in the alternative, to modify the Committee's Determination and add three years on probation to follow the suspension. The Petitioner argued that the Respondent engaged in an extended course of conduct that endangered the public and that the Respondent offered no evidence in mitigation and provided no evidence that demonstrated remorse or insight into the Respondent's practice deficiencies. The Petitioner also asked the ARB to sustain an additional misconduct specification to find that the Respondent practiced medicine with negligence on more than one occasion.

The Respondent failed to file a response brief within seven days from receiving the Petitioner's brief. By letter to the ARB on January 6, 2012, the Petitioner indicated that the Respondent's counsel had left unclaimed copies of the Petitioner's brief that the Petitioner served on the Respondent's counsel by certified mail. The Petitioner's counsel indicated that he directed the Respondent to provide a copy of the Petitioner's papers to the Respondent's counsel.

The Respondent's counsel submitted a letter to the Administrative Officer for the ARB that the ARB received on January 20, 2012. The letter attached documents from outside the hearing record. The letter complained about the prosecution against the Respondent and about persons involved in the action against the Respondent. The letter demanded action against those involved and referred to the Petitioner's request for review as a delaying tactic and a vendetta against the Respondent. The letter requested that the Administrative Officer contact the Respondent's attorney by telephone and the letter threatened legal action against those involved in the case against the Respondent. By letter to the parties on January 24, 2012, the

Administrative Officer for the ARB indicated that he would have no one party contact with either side during an administrative review. The Administrative Officer then asked if the letter from Respondent's counsel amounted to the Respondent's reply to the Petitioner's brief and asked further if the Petitioner had a position on whether the Respondent's letter amounted to a timely submission. The Respondent's counsel made no further submission. The Petitioner's counsel argued that the Respondent's letter was neither timely nor a reply brief.

#### 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 (3<sup>rd</sup> 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 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health. 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> 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 (3<sup>rd</sup> 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' submissions. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct by failing to follow accepted infection control practices. The ARB also affirms the Committee's Determination to suspend the Respondent's License until such time as he complies with the remediation measures that appear in Appendices I and II to the Summary Order. The Respondent's January 12, 2012 letter challenged neither the Committee's Determination on the charges nor the Committee's Determination on penalty. The ARB declines to sustain any further charges. We modify the Committee's Determination and place the Respondent on probation for three years following the suspension, under the terms that appear as the Appendix to this Determination.



The ARB agrees with the Committee that the conditions in the Respondent's office created a risk to the public and we agree that, suspending the Respondent's License until he corrects those conditions, represents the proper first steps to protect the public. We disagree that the suspension alone will prevent a recurrence of the Respondent's behavior. The Respondent failed to testify at his hearing, so the record contains no indication as to how the problems at the Respondent's office occurred, as to whether the Respondent realized the need to correct the problems and as to whether the Respondent now has gained insight in the need to avoid a recurrence in these conditions. The ARB finds that there should be continued scrutiny over the Respondent's practice to assure that the Respondent will follow accepted infection control procedures in the future. The terms for the three year probation include a practice monitor, to review the Respondent's records and practice and to assure that the Respondent's office staff are receiving ongoing training. The terms also provide for unannounced inspections at the Respondent's office by the Office for Professional Medical Conduct and the terms require continuing medical education in each year during the probation.

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 until the Respondent satisfies the remediation requirements that appear in the Appendices in the Committee's Determination.
3. The ARB modifies the Committee's Determination to place the Respondent on probation for three years following the suspension, under the probation terms that appear at the Appendix to this Determination, including practice monitoring and continuing medical education.

Peter S. Koenig, Sr.  
Datta G. Wagle, M.D.  
Linda Prescott Wilson  
John A. D'Anna, M.D.  
Richard D. Milone, M.D.

## Appendix

1. 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. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is 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. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of 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. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
6. 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. The 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. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.
  - 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 twice monthly, shall inspect all aspects of each practice location, shall interview staff with regard to ongoing training and competence with regard to infection control practices and shall examine a selection (no fewer than 20) 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 Director of OPMC and/or his designee shall be authorized to appear, unannounced, be admitted, and inspect any and all of the Respondent's practice locations. The Respondent shall immediately admit such inspector and cooperate in all respects with the inspection.
  9. The Respondent shall adhere to Federal and State guidelines and professional standards of care with respect to infection control practices. The Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
  10. The Respondent shall enroll in and complete successfully a continuing education program in the area of infection control. This continuing education program is subject to the OPMC Director's prior written approval and shall be successfully completed with the first 90 days of the probation period and repeated within 30 days of the first, second and third years of the probationary period.
  11. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he 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.

In the Matter of Anthony Joseph Sarro, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Sarro.

Dated: 20 March, 2012

REDACTED SIGNATURE

Linda Prescott Wilson

In the Matter of Anthony Joseph Sarro, M.D.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Sarro.

Dated: March 10, 2012

REDACTED SIGNATURE

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Peter S. Koenig, Sr.

In the Matter of Anthony Joseph Sarro, M.D.

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

Dated: March 12, 2012

REDACTED SIGNATURE

Datta G. Wagle, M.D.

In the Matter of Anthony Joseph Sarro, M.D.

Richard D. Milone, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Sarro.

Dated: March 20, 2012

REDACTED SIGNATURE

Richard D. Milone, M.D.



In the Matter of Anthony Joseph Sarro, M.D.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Sarro.

Dated: March 14, 2012

REDACTED SIGNATURE

John A. D'Anna, M.D.