



# 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 27, 2005

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Richard J. Lanham, M.D.  
2156-A Sheridan Drive  
Kenmore, New York 14223

Kevin C. Roe, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2509  
Albany, New York 12237

Mark C. Farrell, Esq.  
4455 Transit Road, Suite 2C  
Williamsville, New York 14221

**RE: In the Matter of Richard J. Lanham, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 05-180) 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.

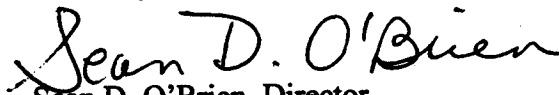
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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 black ink that reads "Sean D. O'Brien". The signature is written in a cursive style with a large initial "S".

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**

**Richard J. Lanham, M.D. (Respondent)**

**A proceeding to review a Determination by a  
Committee from the Board for Professional  
Medical Conduct (BPMC)**

**Administrative Review Board (ARB)**

**Determination and Order No. 05-180**

**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:**

**Kevin C. Roe, Esq.  
Mark G. Farrell, Esq.**

After a hearing below, a three-member BPMC Committee (Committee) found that the Respondent committed misconduct in treating six patients. The Committee voted to suspend the Respondent's License to practice medicine in New York State (License), to stay the suspension and to put the Respondent on probation, with severe restrictions on his continued medical practice. In this proceeding pursuant to N.Y. Pub. Health Law (PHL) § 230-c (4)(a)(McKinney 2005), both parties ask the ARB to modify that Determination. The Respondent requests that the ARB reverse or remand the Determination and the Petitioner asks that the ARB overturn the Committee and revoke the Respondent's License. After considering the hearing record and the parties' review submissions, the ARB votes 5-0 to affirm the Committee's Determination that the Respondent committed professional misconduct. By the same vote, we overturn the Committee's Determination on penalty and we revoke the Respondent's License.

### **Committee Determination on the Charges**

The Committee conducted a hearing pursuant to PHL § 230(10)(e) into charges alleging that the Respondent violated N. Y. Educ. Law (EL) §§ 6530(3-6)(McKinney Supp. 2005) by committing professional misconduct under the following specifications:

- practicing medicine with negligence on more than one occasion,
- practicing medicine with gross negligence,
- practicing medicine with incompetence on more than one occasion, and,
- practicing medicine with gross incompetence.

The charges related to the care the Respondent provided six persons (Patients A-H). The record refers to patients by initials to protect privacy. The Committee conducted a four-day hearing on the charges and then rendered the Determination now on review.

The Committee dismissed the specification charging that the Respondent practiced with gross incompetence. The Committee sustained allegations that the Respondent:

- prescribed narcotic analgesics without medical justification for Patients A, B, C, E and F;
- failed to obtain adequate histories and perform and or document adequate physical examinations for Patients B, D and F;
- failed to provide adequate follow-up for a markedly elevated cholesterol level for Patient A;
- failed to treat or evaluate Patient B adequately for hypertension, hyperlipidemia and obesity;
- prescribed phentermine without justification for Patient D and muscle relaxants without justification for Patient E; and,
- failed to refer Patient D, the Respondent's son, for treatment by another physician.

The Committee determined that the Respondent's conduct amounted to practicing medicine with negligence on more than one occasion, with gross negligence and with incompetence on more than one occasion.

In reaching their Determination on the charges, the Committee found the Petitioner's expert witness, Thomas Scanlon, M.D., very credible and objective. The Committee rejected testimony by the Respondent and found that the Respondent lacked a grasp of the basic fundamentals of medical treatment and record keeping. The Committee noted the Respondent's care and compassion for patients, but found those qualities failed to substitute for basic competence. The Committee concluded that the Respondent failed to grasp how to meet accepted medical standards and that the Respondent lacked any insight into his deficiencies. The Committee concluded that the Respondent's lack of insight made the Respondent a poor candidate for continuing medical education. The Committee noted that the Respondent currently performs some occupational health services activities and found the Respondent capable of conducting physical examinations and documenting those findings on a pre-printed standardized form. The Committee determined to limit the Respondent to such a practice and exclude the Respondent from medical treatment or prescribing any medications.

The Committee voted to suspend the Respondent's License for ten years, to stay the suspension and to place the Respondent on probation. The probation terms limit the Respondent to performing only activities related to occupational medical evaluations.

#### **Review History and Issues**

The Committee rendered their Determination on August 22, 2005. This proceeding commenced on August 29 & 31, 2005, when the ARB received both parties' Notices requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and the Respondent's brief. The record closed when the ARB received the Respondent's brief on October 28, 2005.

The Petitioner argues that the penalty the Committee imposed fails to address the deficiencies in the Respondent's practice. The Petitioner contends that the ARB should overturn

the Committee and revoke the Respondent's License due to the Committee's findings about the nature of the Respondent's misconduct, the Respondent's lack of insight, the futility of further education and the severe restrictions the Committee imposed. The Respondent asks further, that if the ARB decides against revocation, that the ARB make permanent the restrictions that the Committee placed on the Respondent's License, rather than making the restrictions probation terms.

The Respondent argues that the evidence at the hearing demonstrated that the Respondent's only deficiencies occurred in record keeping and that the Respondent has admitted those deficiencies and committed to correcting them. The Respondent argues that no evidence at the hearing demonstrated patient harm, incompetence or malpractice. The Respondent contends that the Committee considered irrelevant and prejudicial information about a 1990 employment termination and the surrender of the Respondent's medical license in Ohio. The Respondent contends further that the Committee's Chairperson failed to disclose a conflict of interest over her participation in a 1991 investigation concerning the Respondent. The Respondent also argues that the Committee's Determination shows an overall bias by the Committee against the Respondent. The Respondent asks that the ARB reverse the Committee's Determination or remand so that the Committee's Administrative Officer can consider the issue concerning the Chairperson's conflict of interest.

#### **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' briefs. We affirm the Committee's Determination to dismiss the gross incompetence charge. Neither party challenged the Committee's Determination on the charge. The ARB rejects the Respondent's request that we remand this matter to the Committee for further proceedings. We affirm the Committee's Determination that the Respondent practiced with negligence on more than one occasion, gross negligence and incompetence on more than one occasion. We overturn the Committee and we revoke the Respondent's License.

The Committee's Chairperson stated on the record at Hearing transcript page 7 her prior contact with the Respondent and the Respondent made no objection to the Chairperson's further participation in the case. The Respondent presented no evidence into the record concerning any further conflict by the Chairperson or any Committee member and the Respondent offered no opportunity for the Chairperson to answer any allegations concerning a further conflict. The Respondent offers no evidence to the ARB as the basis for the allegation about a further conflict. We find no reason to remand this case or to overturn the Committee's Determination due to the allegations concerning the further conflict.

We find that the Respondent's records and the testimony by Dr. Scanlon provided sufficient credible evidence to support the Committee's Determination that the Respondent practiced with negligence on more than one occasion, gross negligence and incompetence on more than one occasion in treating the Patients at issue in this proceeding. We hold that the Committee acted appropriately in concluding the Respondent's failure to document examinations and/or treatment demonstrated that the Respondent failed to perform such examinations or



provide or order such treatment. We also affirm the Committee's Determination to reject the testimony by the Respondent. We note that the Respondent demonstrated that he lacked a grasp of medical treatment and we note that the Respondent testified in an evasive manner. We conclude that the Committee based their Determination on this sufficient credible evidence and that the Committee's Determination resulted from the evidence in the record rather than from the bias that the Respondent's brief alleged.

We disagree with the Committee's conclusion that the Respondent can retain his License if he restricts his practice to occupational health activities such as conducting physical examinations and documenting findings on pre-printed forms. The Committee found that the Respondent failed to perform adequate examinations or evaluations. The Committee also found that the Respondent lacked insight into his deficiencies and that the Respondent presented as an unsuitable candidate for retraining.

The record demonstrates that the Respondent fails to practice according to accepted medical standards, that the Respondent lacks knowledge necessary to practice and lacks the insight to change his practice pattern. Evidence at the hearing indicated that the Respondent's patients consider him a caring and compassionate physician, but the Petitioner made no allegation about the Respondent being indifferent to his patients.

The ARB concludes that the Respondent's serious practice deficiencies warrant the revocation of his License.

**ORDER**

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

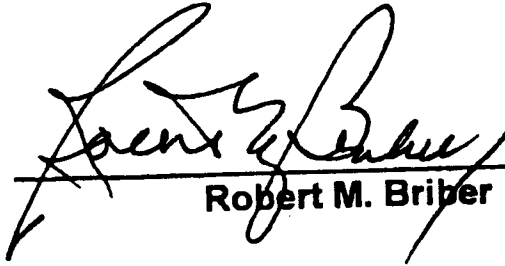
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the Committee's Determination to suspend the Respondent's License, to stay the suspension and to place the Respondent on probation.
3. The ARB votes 5-0 to revoke the Respondent's 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 Richard J. Lanham, M.D.**

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

**Dated: December 14, 2005**



Robert M. Briber

In the Matter of Richard J. Lanham, M.D.

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

Dated: 12-15, 2005

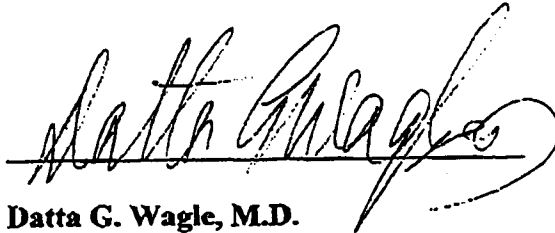


Thea Graves Pellman

**In the Matter of Richard J. Lanham, M.D.**

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

Dated: 12/18/, 2005



A handwritten signature in cursive script, reading "Datta G. Wagle", is written over a horizontal line. The signature is fluid and includes a large, sweeping flourish at the end.

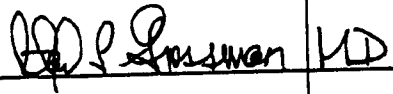
**Datta G. Wagle, M.D.**

In the Matter of Richard J. Lanham, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Lanham.

Dated: December 13, 2005

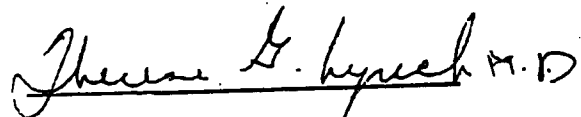
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Stanley L Grossman, M.D.

In the Matter of Richard J. Lanham, M.D.

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

Dated: Dec. 13, 2005



Therese G. Lynch, M.D.