



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

February 8, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robelto A. Osborne, M.D.
555 NE 15TH Street TH717
Miami, Florida 33132

Robelto A. Osborne, M.D.
293 Troy Avenue
Brooklyn, New York 11213

Robert Bogan, Esq.
Joel Abelove, Esq
NYS Department of Health
Office of Professional Medical Conduct
433 River Street
Troy, New York 12180

RE: In the Matter of Robelto A. Osborne, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 05-240) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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". The signature is written in black ink and is positioned above the printed name and title.

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

Robelto A. Osborne, 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. 05-240

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:**

**Robert Bogan, Esq.
Pro Se**

In this proceeding pursuant to N.Y. Pub. Health Law (PHL) § 230-c (4)(a)(McKinney Supp. 2006), the Respondent asks the ARB to nullify a Determination by a BPMC Committee, to revoke the Respondent's License to practice medicine in New York State (License). The Committee's action followed a disciplinary action in Florida that resulted in the revocation of the Respondent's medical license in that state for grossly substandard medical care for two patients. In this review, the Respondent argued that he failed to receive notice concerning the hearing in this State. After considering the hearing record and the review submissions by the parties, the ARB concludes that the Respondent received proper notice concerning the hearing below and we conclude that the Committee acted appropriately in revoking 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). The Petitioner commenced the

proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law (EL) §§ 6530(9)(b) & (9)(d) by committing professional misconduct because:

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

- practicing medicine with negligence on more than one occasion, a violation under EL § 6530(3),
- practicing medicine with gross negligence, a violation under EL § 6530(4),
- abandoning or neglecting a patient, a violation under EL § 6530(30), and,
- failing to maintain accurate patient records, a violation under EL § 6530(32).

Following the Direct Referral Proceeding, the Committee rendered the Determination now on review. In the Proceeding, 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 at the hearing demonstrated that the Florida Board of Medicine (Florida Board) revoked the Respondent's license to practice medicine in that state for:

- failure to practice medicine with the level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions, and,
- failure to keep medical records that justify the course of the patient's medical treatment.

The Florida Board's findings related to abortions that the Respondent performed on two patients. One patient suffered a severe uterine perforation during surgery, which the Respondent failed to recognize. The Florida Board noted that the first patient suffered post-operative pain and bleeding, that the Respondent failed to return the patient's calls and that the patient required a hysterectomy. That surgery recovered fetal parts. A second patient suffered a uterine tear and small intestine damage, which the Respondent failed to detect. That patient required surgery to evacuate products of conception, repair the uterine tear and complete a partial resection of the small intestine. The Florida Board also criticized the Respondent for failing to do necessary preoperative tests and for several record keeping deficiencies.

The Committee determined that the Respondent's conduct, if committed in New York, would constitute practicing with negligence on more than one occasion, gross negligence, abandoning or neglecting a patient and failing to maintain accurate patient records. The Committee sustained the charge that the Respondent's conduct made him liable for disciplinary action against his License under EL §§ 6530(9)(b) & (9)(d). The Committee determined that the Florida Board's findings involved serious deviations from the quality of care expected from physicians. The Committee also noted that the Respondent failed to appear at the hearing and offer testimony about mitigating circumstances, remorse or rehabilitation. The Committee also found little usefulness in the one Respondent's Exhibit in the hearing record, a one sentence, conclusory statement that the Respondent's medical skills "currently fall into the No Deficiencies classification and within standard of care". The Committee voted to revoke the Respondent's License.

Review History and Issues

The Committee rendered their Determination on October 28, 2005. This proceeding commenced on or about November 29, 2005, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the

hearing record, the Respondent's notice and argument and the Department's response. The record closed when the ARB received the response on December 6, 2005.

The Respondent's submission claimed that the Respondent never received the notice for the October 19, 2005 hearing in this matter. The Respondent argued that he made an agreement with the Petitioner's counsel to stay this proceeding until the Respondent exhausted his appellate rights in challenging the disciplinary action in Florida. The Respondent requests that the ARB set aside the Committee's Determination and remand this case for the Respondent to receive an opportunity to appear.

In response, the Department argues that the Respondent did receive notice concerning the hearing and the Department asks that the ARB reject the Respondent's request.

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 reject the Respondent's request for a new hearing and we affirm the Committee's Determination revoking the Respondent's License.

Petitioner's Hearing Exhibit 9 demonstrates that the Respondent received notice concerning the October hearing at the same Miami, Florida address on the Respondent's review notice. The Respondent received the opportunity to be heard and the hearing record did contain a submission from the Respondent. The hearing could proceed against the Respondent in the

Respondent's absence, as long as the Respondent received notice about the hearing and an opportunity to be heard, Matter of Sokol v. New York State Dept. of Health, 223 AD2d 774, 636 NYS2d 167 (Third Dept. 1996). Hearing Exhibit 9 also indicates that the Florida Court of Appeals has refused to re-open the Florida disciplinary findings against the Respondent.

The ARB agrees with the Committee that the Florida proceeding identified serious deficiencies in the Respondent's care for the two patients. We also agree that the record contains no evidence of remorse or mitigating factors. The Respondent did submit Exhibit A, a letter from the University of Florida Comprehensive Assessment Services for Health Care Practitioners. That Exhibit indicated that an evaluation showed that the Respondent's skills fall currently into a No Deficiencies/Within Standard of Care classification. Nothing in that exhibit, however, indicates the basis of that classification or the extent of the evaluation. The evidence in the Florida proceeding demonstrated problems with the Respondent's surgical skills, his ability to identify problems, his follow-up with patients and his failure to perform pre-operative testing. We conclude that the overwhelming weight of the evidence from the hearing demonstrated the Respondent's unfitness to practice medicine in New York State. We affirm the Committee's Determination to revoke the Respondent's License.

ORDER

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

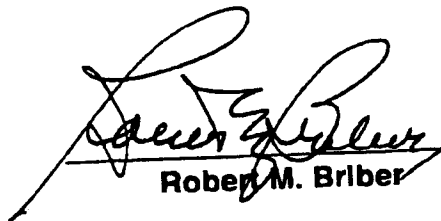
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.
3. The ARB finds that the Respondent received proper notice about the charges against him and about the time and date for the hearing below.

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 Robelto A. Osborne, M.D.

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

Dated: February 3, 2006

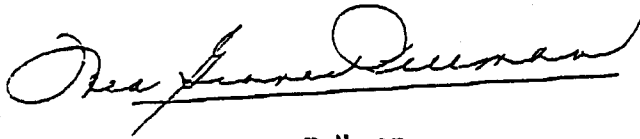


Robert M. Brilber

In the Matter of Robelto A. Osborne, M.D.

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

Dated: 2-2, 2006



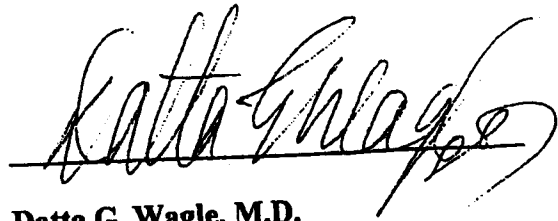
Thea Graves Pellman

In the Matter of Robelto A. Osborne, M.D.

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

Matter of Dr. Osborne.

Dated: 2/5/, 2006

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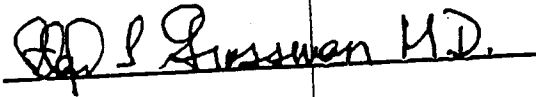
Datta G. Wagle, M.D.

In the Matter of Roberto A. Osborne, M.D.

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

Matter of Dr. Osborne.

Dated: February 2, 2006

Handwritten signature of Stanley L. Grossman, M.D. in black ink, written over a horizontal line.

Stanley L Grossman, M.D.

In the Matter of Roberto A. Osborne, M.D.

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

Dated: Feb. 1, 2006



Therese G. Lynch, M.D.