

Public



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.  
Commissioner

December 27, 2007

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Bruce M. Brady, Esq.  
Callan, Koster, Brady & Brennan, LLP  
One Whitehall Street  
New York, New York 10004

Lawrence Glass, D.O.  
25 Lenox Place  
Middletown, New York 10940

**RE: In the Matter of Lawrence Glass, D.O.**

Dear Parties:

Enclosed please find the Determination and Order (No. 07-209) 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.

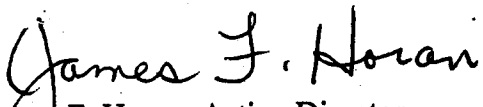
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

  
James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

In the Matter of

Lawrence Glass, D.O. (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. 07-209

COPY

Before ARB Members Grossman, Lynch, Pellman, Wagle and Wilson  
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner):

Nancy Strohmeyer, Esq.

For the Respondent:

Bruce Brady, Esq.

After a hearing below, a BPMC Committee determined that the Respondent practiced medicine with negligence on more than one occasion and failed to maintain accurate records in the Respondent's treatment of one patient. The Committee voted to suspend the Respondent's New York Medical License (License) for five years, to stay the suspension and to place the Respondent on probation for five years under terms that included practice monitoring and participating in therapy. In this proceeding pursuant to New York Public Health Law (PHL) §230-c (4)(a)(McKinney 2007), the Petitioner asks the ARB to overturn the Committee's Determination on penalty and revoke the Respondent's License. In the alternative, the Petitioner asks that the ARB modify the penalty and limit the Respondent's License to restrict him to practice in a supervised setting. After considering the hearing record and the parties' review submissions, the ARB affirms the Committee's Determination, except that we modify the Determination on penalty, by limiting the Respondent to practice in a supervised setting, as we provide below.

### Committee Determination on the Charges

The Committee conducted a hearing on charges that the Respondent violated New York Education Law (EL) §§ 6530(3-6) & 6530(32)(McKinney Supp. 2007) 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,
- practicing with gross incompetence, and,
- failing to maintain accurate patient records.

The charges involved psychiatric treatment for a single patient (Patient A). The record refers to the Patient by an initial to protect patient privacy. The Petitioner withdrew other charges during the hearing. Following the hearing, the Committee issued the Determination now on review.

The Committee sustained charges that the Respondent practiced with negligence on more than one occasion and failed to maintain accurate records. The Committee found that the Respondent failed to handle his feelings toward Patient A properly and failed to maintain a proper record for the treatment of the Patient. The Committee noted that the Respondent admitted in testimony at the hearing that the Respondent fell in love with the Patient and crossed over the appropriate physician/patient boundary. The Committee dismissed the charges alleging gross negligence, gross incompetence and incompetence on more than one occasion. In addition to relying on the Respondent's testimony in making findings, the Committee also relied on testimony from the Respondent's expert witness, Larry Joseph Seiver, M.D. The Committee found Dr. Seiver more persuasive than the expert for the Petitioner, Richard Bohn Krueger, M.D.

The Committee voted to suspend the Respondent's License for five years, to stay the suspension in full and to place the Respondent on probation under the terms that appear as Appendix II to the Committee's Determination. The probation terms include requirements that the Respondent practice with a monitor and that the Respondent engage and continue in therapy. The Committee stated that they rejected license revocation as a penalty, because the Respondent

showed misjudgment and mishandled his feelings in treating one patient only, because the Respondent shows a positive track record of service to the community and because proper monitoring and treatment will enable the Respondent to continue to practice safely.

### Review History and Issues

The Committee rendered their Determination on September 25, 2007. This proceeding commenced on October 11, 2007, 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 brief and reply brief. The record closed when the ARB received the reply brief on November 13, 2007.

The Petitioner asks that the ARB overturn the Committee and revoke the Respondent's License or that the ARB modify the Committee's Determination on penalty to limit the Respondent to practice in a supervised setting. The Petitioner argues that the Respondent committed multiple boundary violations and became emotionally involved with Patient A. The Petitioner notes that charges concerning [REDACTED] involving Patient A were withdrawn. The Petitioner contends that the Committee ignored testimony by the Respondent concerning his extensive non-therapeutic contact with Patient A and that the Committee ignored the Respondent's testimony about uncharged boundary violations with other patients. The Petitioner argues that the Respondent displayed no understanding concerning appropriate interaction with patients. The Petitioner argues further that the Committee chose an inadequate penalty to protect the public because the Committee allowed the Respondent to remain in private practice, with no supervision.

The Respondent contends that the Petitioner attempted to taint the judgment of the ARB by mentioning [REDACTED] charges that the Petitioner withdrew during the hearing. The

Respondent also challenges the Petitioner's contention that the Respondent admitted to boundary violations with patients other than Patient A. During the Respondent's testimony, he spoke about a time when Patient A was fearful of someone stalking her. The Respondent organized surveillance at the Patient's home and recruited policemen and firefighters he knew to assist in the surveillance. The Petitioner's brief describes those persons as patients of the Respondent. The Respondent contends that the policemen and firefighters were friends of his. The Respondent also contends that the Petitioner failed to elicit any expert testimony concerning the propriety of asking for help from former patients. The Respondent also challenges the Petitioner's contention that the Respondent committed a boundary violation by charging no fee to a support group the Respondent organized. The Respondent argues that no expert testimony in the record established that foregoing a fee constitutes a boundary violation. The Respondent contends that no evidence in the record establishes that the Respondent's conduct went beyond a single patient. The Respondent asks the ARB to leave the Committee's Determination without modification.

#### 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. The ARB affirms the Committee's Determination that the Respondent practiced with negligence on more than one occasion and failed to maintain accurate records. Neither party challenged the Committee's

Determination on those charges or the Committee's Determination to dismiss the incompetence and gross negligence charges. The ARB affirms the Committee's Determination to suspend the Respondent's License for five years, to stay the suspension in full and to place the Respondent on probation. The ARB modifies the Committee's Determination by limiting the Respondent to practice in a facility licensed by the government, such as under PHL Article 28, or operated by state or federal government agencies, such as the United States Veteran's Administration, the United States Military or the National Health Service.

The ARB rejects the Petitioner's request that the ARB revoke the Respondent's License. We agree with the Respondent that the record demonstrates misconduct as to one patient only. The ARB refuses to consider using uncharged conduct as the basis for a penalty, because such consideration would violate due process requirements on notice, Dhabuwala v. State Board for Professional Medical Conduct, 225 A.D.2d 209, 651 N.Y.S.2d 249 (3<sup>rd</sup> Dept. 1996). The ARB also refuses to consider charges on which the Petitioner offered no proof and which the Petitioner withdrew.

The ARB concludes that the probation the Committee imposed will provide some protection to the public from further boundary violations by providing a monitor of the Respondent's practice and by requiring the Respondent to continue in therapy. The probation, however, will provide such protection for only five years. The ARB concludes that the penalty in this case must include a measure to place the Respondent in a supervised setting permanently to assure that the Respondent avoids any further boundary violations. A government operated or license facility will provide such a supervised setting, because statutes or regulations make such facilities subject to inspection and impose upon such facilities obligations to perform quality assurance reviews over the care that staff provides at the facilities.



**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 practiced with negligence on more than one occasion and failed to maintain accurate records.
2. The ARB affirms the Committee's Determination to suspend the Respondent's License for five years, to stay the suspension in full and to place the Respondent on probation for five years under the terms that appear at Appendix II to the Committee's Determination.
3. The ARB modifies the Committee's Determination by placing a limitation on the Respondent's License to restrict the Respondent to practice in a government licensed or government operated facility.

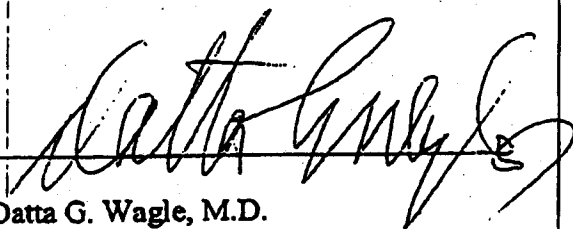
Thea Graves Pellman  
Datta G. Wagle, M.D.  
Stanley L. Grossman, M.D.  
Linda Prescott Wilson  
Therese G. Lynch, M.D.

In the Matter of Lawrence Glass D.O.

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

Matter of Dr. Glass.

Dated: 12/19/, 2007



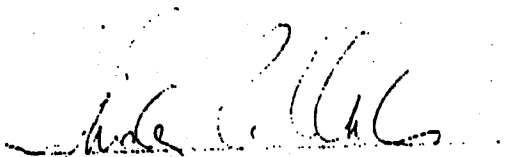
Datta G. Wagle, M.D.

In the Matter of Lawrence Glass, D.O.

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

Matter of Dr. Glass:

Dated: December, 2007

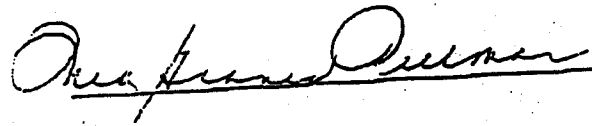


Linda Prescott Wilson

In the Matter of Lawrence Glass, D.O.

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

Dated: December 19, 2007



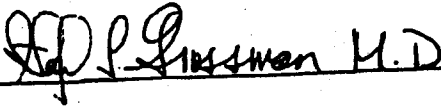
Thea Graves Pellman

In the Matter of Lawrence D.O.

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

Matter of Dr. Glass.

Dated: December 19, 2007

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

Stanley L Grossman, M.D.

In the Matter of Lawrence Glass, D.O.

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

Matter of Dr. Glass.

Dated: December 19, 2007

Therese G. Lynch M.D.

Therese G. Lynch, M.D.