

Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

November 13, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Gloria D. Sanders, M.D.

Redacted Address

Joseph H. Cahill, Esq.
NYS Department of Health
Div. Of Legal Affairs
Corning Tower, Room 2509
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Gloria D. Sanders, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-101) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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, 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

Gloria D. Sanders, 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. 09-101

COPY

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

For the Department of Health (Petitioner): Joseph H. Cahill, Esq.
For the Respondent: No Submission

Following a hearing below, a BPMC Committee found that the Respondent practiced with negligence on more than one occasion and with gross negligence in reviewing pathology slides relating to several patients. The Committee voted to suspend the Respondent's license to practice medicine in New York State (License) and to place the Respondent on probation following the suspension and to mandate continuing education. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2009), the Petitioner asks the ARB to modify the Committee's findings on some charges, to overturn the penalty the Committee imposed and to revoke the Respondent's License. After reviewing the hearing record and the Petitioner's review submission, the ARB modifies the Committee's Determination on some charges, we vote to overturn the Committee's Determination as to penalty and we vote 5-0 to revoke the Respondent's License.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(3-6) (McKinney 2009) 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 Respondent's reading and interpretation over pathology slides for seven persons (Patients A-E and G-H) over the period from October 2005 to February 2006. Following the hearing, the Committee rendered the Determination now on review.

The Committee dismissed the charges alleging practice with incompetence on more than one occasion and gross incompetence. The Committee sustained charges that the Respondent practiced with negligence on more than one occasion and gross negligence. The Committee found that the Respondent issued inaccurate pathology reports for each Patient A-E and G-H. The Committee found that six patients were exposed to the risk of unnecessary surgery and/or hormonal therapy, that two patients underwent total hysterectomies due to the Respondent's misdiagnoses of routine biopsy specimens and one patient (Patient E) went untreated for prostate cancer for several months due to the Respondent's negligent misdiagnosis. The Committee concluded that the Respondent's errors resulted from a lack of judgment rather than a lack of knowledge sufficient to practice pathology.

In making their findings and conclusions, the Committee credited testimony by the Petitioner's expert witness, Linda Trapkin, D.O. The Committee found Dr. Trapkin testified in a direct, complete and even-handed manner. The Committee found testimony by the Respondent's expert witness, James Terzian, M.D., less credible. Dr. Terzian indicated that he could not state that there was an objective standard in the practice of pathology. The Committee also noted that Dr. Terzian disagreed with the Respondent's diagnosis in a number of cases at issue in the hearing. Dr. Terzian also testified that he could not see how the Respondent's inaccurate

diagnoses could result in harm to patients. The Committee noted that both Patients A and B endured unnecessary surgeries due to the Respondent's misdiagnoses. The Committee noted that the Respondent showed no remorse or regret for the misdiagnoses, acknowledged no need to improve and no potential for harm from the misdiagnoses and blamed overwork and lack of support for the errors. The Respondent also denied that she issued the laboratory report for Patient E and the Respondent claimed that another person signed the Respondent's name to the report electronically. The Committee rejected that explanation.

The Committee rejected License revocation as a penalty. The Committee decided to suspend the Respondent's License pending the completion of continuing medical education courses in diagnostic pathology, ethics and judgment. The Committee ordered further that the Respondent practice on probation for six months following the suspension. The probation terms limited the Respondent to practice in medical facility holding a license under PHL Article.28 and required the Respondent to practice with a monitor. The Committee also ordered that the Respondent undergo a psychiatric examination during the suspension.

Review History and Issues

The Committee rendered their Determination on June 1, 2009. This proceeding commenced on June 15, 2009, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and the Petitioner's brief. The record closed when the ARB received the brief on July 15, 2009. The Respondent, who now resides in Kansas, submitted no brief or reply brief.

The Petitioner asked the ARB to correct typographical errors in the Committee's rulings on the negligence and gross negligence charges. As to the Committee's Determination on penalty, the Petitioner argued that the Committee crafted a penalty at odds with the Committee's findings and without an adequate basis in the record. The Committee ordered that the Respondent undergo a psychiatric evaluation, but the Petitioner noted that there was no

allegation in the Statement of charges involving mental disability. The Petitioner also challenged the order for a practice monitor as inadequate, because a monitor would only review the Respondent's work at some later date, such as every thirty days. The Petitioner contended that thirty days would be too long a time to wait for a corrective diagnosis if the Respondent continued to issue inaccurate reports. The Petitioner found no value to limiting the Respondent's License to practice in an Article 28 general hospital. The Petitioner pointed out that pathologists already practice generally in hospitals and that all the Respondent's misdiagnoses occurred in hospitals. The Petitioner also faulted the Committee for limiting the probation to six months. The Petitioner argued that the Respondent caused actual harm to Patients A, B and E, that the Respondent showed no remorse or regret for her errors and that the Respondent made errors in common variety specimens. The Petitioner requested that the ARB revoke the Respondent's License.

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 modify the Committee's Determination as to certain specifications of charges and we affirm the Committee's remaining rulings on the charges. We overturn the Committee's Determination on penalty and vote 5-0 to revoke the Respondent's License.

The Committee sustained charges that the Respondent practiced with negligence on more than one occasion. The Petitioner charged that the Respondent practiced with negligence in treating each Patient A-E and G-H. In the treatment of Patient C, the Petitioner alleged that the Respondent examined pathology slides from a biopsy on Patient C, failed to make an accurate diagnosis in the slides and placed the Patient at risk for unnecessary additional surgery or therapy as a result of the misdiagnosis [Factual Allegations C, C1, C2]. At the Committee's conclusions at page 11 in the Committee's Determination, the Committee sustained Allegations C, C1 and C2 and the Committee indicated that the Committee's Findings of Fact 15-20 provided the support for the Committee's Determination. In sustaining the misconduct specification concerning practice with negligence on more than one occasion, however, the Committee failed to mention the findings on Allegations C, C1 and C2 as a basis for finding negligence on more than one occasion [Committee Determination page 12]. The Petitioner's brief cited the omission concerning Allegations C, C1 and C2 as a typographical error and asked that the ARB correct the error. The ARB agrees that the Committee's Determination at page 12 should note that the Committee's findings on Allegations C, C1 and C2 also provided a basis for sustaining the practice with negligence on more than one occasion charge. The Petitioner charged that the Respondent practiced with gross negligence in treating Patient E [Allegations E-E6]. The Committee sustained each Allegation E-E6 concerning the failure to diagnose prostate cancer in Patient E and the Committee concluded that the findings on Allegations E-E6 provided the basis for sustaining the specification that charged that the Respondent practiced with gross negligence. The Committee also indicated that findings concerning Patients A, B, D, G and H provided the basis for finding practice with gross negligence [Committee Determination page 12]. The Petitioner again cited the ruling on gross negligence as a typographical error. The Statement of

Charges made no accusation that the Respondent practiced with gross negligence in treating any person other than Patient E [Committee Determination Appendix I]. The ARB agrees that the Committee's conclusion on gross negligence contains a typographical error in mentioning allegations relating to Patients A, B, D, G and H. The ARB amends that conclusion to remove the references to Patients A, B, D, G and H. A Committee may not use uncharged conduct as the basis for imposing a penalty, Dhabuwlala v. State Board for Professional Medical Conduct, 225 A.D.2d 209, 651 N.Y.S.2d 249 (3rd Dept. 1996).

The ARB overturns the penalty the Committee imposed because we find the penalty inconsistent with the Committee's findings and inappropriate to protect the public. The Committee ordered that the Respondent undergo a psychiatric evaluation. The ARB finds this order inconsistent and inappropriate because the Committee made no findings or conclusions concerning any mental disability. Further, the Petitioner brought no charges concerning mental impairment. As the ARB noted above, a Committee violates due process by imposing a penalty for uncharged conduct. The Committee also ordered that the Respondent complete continuing education courses. The ARB finds this portion of the penalty inconsistent with the Committee findings on incompetence and on remorse. The Committee rejected the charges that the Respondent practiced with incompetence, or a lack of knowledge necessary to practice medicine safely. The Committee found instead that the Respondent's errors resulted from poor judgment. The ARB finds continuing education courses inappropriate in a case in which the Committee found no deficiencies in the Respondent's medical knowledge and in which the Respondent gave no indication that she realizes the need to change her practice pattern. The Committee then provided for a very short probation period, with a practice monitor and a limitation on the practice setting. The ARB sees no way a monitor could have prevented the errors that occurred

in this case, as a monitor would only review the Respondent's work at some subsequent time, such as every thirty days later. A review thirty days after the Respondent reads a slide would do nothing to correct errors the Respondent made in finding incorrectly that a patient needed surgery, because the surgery would have taken place by the time the monitor reviews the Respondent's work. The ARB also sees no value in limiting the Respondent to practice in a hospital, because the errors at issue in this case all occurred with the Respondent working in a hospital setting.

The evidence indicates that the Respondent made repeated errors in practice that resulted in patients receiving unnecessary treatments and in one patient failing to receive treatment for cancer. The Respondent has shown no remorse for her errors and the ARB concludes that the lack of remorse means that Respondent remains at risk to repeat her misconduct if the Respondent returns to practice. The ARB has considered the range of penalties available for misconduct under PHL § 230-a and we conclude that removing the Respondent from practice provides the only means to insure the public's protection. The ARB votes 5-0 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, but we modify the Committee's findings on some sustained charges, as we indicate in our Determination.
2. The ARB overrules the Committee's Determination to suspend the Respondent and to place the Respondent on probation.
3. The ARB revokes the Respondent's License.

Thea Graves Pellman
Datta G. Wagle, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Gloria D. Sanders, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the
Matter of Dr. Sanders.

Dated: 30 October, 2009

Redacted Signature

Linda Prescott Wilson

In the Matter of Gloria D. Sanders, M.D.

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

Dated: 11-12, 2009

Redacted Signature

Thea Graves Pellman

In the Matter of Gloria D. Sanders, M.D.

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

Dated: 10/30 2009

Redacted Signature

~~Handwritten signature~~

Datta G. Wagle, M.D.

In the Matter of Gloria D. Sanders, M.D.

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

Matter of Dr. Sanders.

Dated October 23, 2009

Redacted Signature

Richard D. Milone, M.D.

In the Matter of Gloria D. Sanders, M.D.

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

Dated: 10-26-09, 2009

Redacted Signature


John A. D'Anna, M.D.