



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.  
Commissioner

Wendy E. Saunders  
Chief of Staff

May 5, 2008

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

Stephen Davis, M.D.  
Redacted Address

Stephen Davis, M.D.  
585 Schenectady Avenue  
Brooklyn, New York 11203

Robert Bogan, Esq.  
NYS Department of Health  
Hedley Building - 4<sup>th</sup> Floor  
433 River Street  
Troy, New York 12180

Ralph A. Erbaio, Jr., Esq.  
Kern, Augustine, Conroy &  
Schoppmann, P.C.  
420 Lakeville Road  
Lake Success, New York 11042

**RE: In the Matter of Stephen Davis, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 07-237) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Redated Signature

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:nm

Enclosure

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

**COPY**

In the Matter of

Stephen Davis, M.D. (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 07-237

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

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

For the Department of Health (Petitioner): Robert Bogan, Esq.  
For the Respondent: Ralph A. Erbaio, Esq.

In this proceeding pursuant to New York Public Health Law (PHL) § 230-c  
(4)(a)(McKinney 2008), the ARB considers whether to take disciplinary action against the  
Respondent's license to practice medicine in New York State (License) following the  
Respondent's criminal conviction for conduct related to the Respondent's medical practice. After  
a hearing below, a BPMC Hearing Committee determined that the Respondent's criminal  
conduct constituted professional misconduct and the Committee voted to revoke the  
Respondent's License. Upon considering the record below and the parties' review submissions,  
the ARB affirms the Committee's Determination in full.

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 alleged that the  
Respondent committed professional misconduct under the definition in N. Y. Education Law  
(EL) §§ 6530(9)(a)(i) (McKinney 2008) by engaging in conduct that resulted in a criminal

conviction under New York Law. In the Direct Referral Hearing, 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). Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence at the hearing demonstrated that the Respondent was convicted in the Criminal Court of the City of New York for Falsifying Business Records in the Second Degree, a Class A Misdemeanor under New York State Penal Law § 175.05. The criminal conviction resulted from the Respondent's practice at the Aesthetic Concepts Laser Surgical Center and the Respondent's association with Jose A. Lopez. The Respondent entered into a Plea Agreement stating that on numerous occasions, the Respondent omitted information in patient medical records to indicate falsely that the Respondent was the treating physician, when in fact, Jose Lopez was the individual who diagnosed, treated, operated on and prescribed for some of the patients. The Agreement stated further that in some instances, the Respondent was not present during the treatment of patients, yet the Respondent completed and signed medical records for the patients based on information that Jose Lopez provided. Mr. Lopez held no medical license in New York State at the time of the conduct. The Committee found that the Respondent's conduct required the intent to defraud. The Court sentenced the Respondent to time served.

The Committee voted to revoke the Respondent's License. The Committee found that enabling an unlicensed person to practice medicine in New York constituted a seriously, dangerous breach of the Respondent's responsibilities as a physician and placed at risk the patients whom Mr. Lopez treated. The Committee rejected hearing testimony in which the Respondent denied knowingly doing anything wrong, because the Respondent entered into a Plea Agreement to a crime that requires the intent to defraud. The Committee found no

mitigating factors in the Respondent's cooperation with authorities, because the cooperation began only after the Respondent's arrest, in order to increase the chances for a lenient sentence. The Committee also found that the Respondent refused to accept responsibility for his criminal behavior and that the Respondent provided virtually no evidence on which the Committee could conclude that the Respondent would not repeat his criminal conduct if given the opportunity.

#### Review History and Issues

The Committee rendered their Determination on November 1, 2007. This proceeding commenced on November 15, 2007, 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 brief and the Petitioner's reply brief. The record closed when the ARB received the reply brief on January 31, 2008.

The Respondent challenges factual conclusions by the Committee and argues that the Committee imposed an overly harsh penalty. The Respondent asserts that the Committee concluded incorrectly that the Respondent began to cooperate with prosecutors only following his own arrest and that the Respondent's cooperation was an act of self-interest. The Respondent argues that he began to cooperate with prosecutors before his arrest and he argues further that prosecutors found his cooperation enormously helpful with the successful prosecution of Jose Lopez. The Respondent also contested the Committee's findings that the Respondent denied guilt and sought to minimize his conduct. The Respondent also asserted that he would be more vigilant in the future and that his involvement with Mr. Lopez was the only aberration in an otherwise stellar career. The Respondent's brief indicated that he accepted that his criminal behavior would warrant a sanction, but argued that revocation was too harsh under the facts in

the case and in view of prior decisions by the ARB to approve sanctions less severe than revocation for similar conduct.

In reply, the Petitioner argued that in testimony at the Direct Referral hearing, the Respondent denied guilt in the criminal matter and the Respondent demonstrated that he lacked remorse. The Petitioner argued further that the record lacked evidence to assure that the Respondent would forego criminal activity if given the opportunity in the future. The Petitioner argued that the Respondent engaged in severe, criminal conduct directly and solely related to the Respondent's medical practice.

#### 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 engaged in professional misconduct and we affirm the Committee's Determination to revoke the Respondent's License.

The ARB agrees with the Committee that the Respondent's denials about deliberate misconduct contradict the Respondent's Plea Agreement and the ARB agrees that the Committee should have rejected any attempt by the Respondent to deny guilt or repudiate his guilty plea in the criminal case. The ARB affirms the Committee's conclusion that the Respondent's criminal conduct constituted professional misconduct under EL § 6530(9)(a)(i).

The ARB finds the misconduct in this case so serious that we agree that revocation constitutes the appropriate penalty. The Respondent engaged in deliberate falsification with the intent to defraud. The Respondent's fraudulent conduct was aggravated, however, because the Respondent's conduct aided an unlicensed person in treating patients. The Committee concluded correctly that such conduct placed patients at risk. The ARB finds that the Respondent's conduct demonstrated his unfitness to practice medicine in New York State.

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.

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 Stephen Davis, M.D.

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

Dated: May, 2008

Redacted Signature

~~\_\_\_\_\_~~

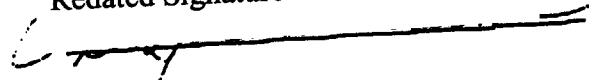
Linda Prescott Wilson

In the Matter of Stephen Davis, M.D.

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

Dated: April 28, 2008

Redated Signature



Thea Graves Pellman

In the Matter of Stephen Davis, M.D.

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

Matter of Dr. Davis.

Dated: 4/28/, 2008

Redated Signature

  
Datta G. Wagle, M.D.

In the Matter of Stephen Davis, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Davis.

Dated: April 30, 2008

Redacted Signature

Stanley L Grossman, M.D.

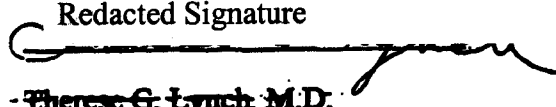
In the Matter of Stephen Davis, M.D.

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

Matter of Dr. Davis.

Date: April 28, 2008

Redacted Signature

A handwritten signature in cursive script, appearing to read "Therese G. Lynch", written over a horizontal line.

~~Therese G. Lynch, M.D.~~