



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

September 23, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John B. Halkias, M.D.


Nancy Strohmeier, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
90 Church Street – 4th Floor
New York, New York 10007

Donald W. Henderson, Esq.
Ryan & Henderson, P.C.
One Old Country Road – Suite 428
Carle Place, New York 11514

RE: In the Matter of John B. Halkias, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-73) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:djh

Enclosure

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

In the Matter of

John B. Halkias, M.D. (Respondent)

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

COPY

Administrative Review Board (ARB)

Determination and Order No. 08-73

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: Donald W. Henderson, Esq.

Following a hearing below, a BPMC Committee found that the Respondent willfully gave a false answer on an application for professional privileges. The Committee voted to fine the Respondent \$10,000.00 and to order that the Respondent complete a Continuing Medical Education (CME) course in Ethics. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2008), the Petitioner asks that the ARB affirm the additional charge that the Respondent practiced fraudulently and that the ARB overturn the Committee and revoke the Respondent's License to practice medicine in New York State (License). After reviewing the record below and the parties' review submissions, the ARB rejects the request to affirm an additional charge, sustains the decision on the false reporting charge, overturns the order that the Respondent pay a fine and affirms the order that the Respondent complete the CME course.

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMP alleging that the Respondent violated New York Education Law (EL) §§ 6530(2-5) & 6530(20-21) & 6530(44)(a) (McKinney 2008) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,

[REDACTED]

- willfully filing a false report, and,

[REDACTED]

The charges related [REDACTED] to an application that the Respondent made for staff privileges at Children's Village. Following the hearing on the charges, the Committee rendered the Determination now on review.

The Committee dismissed all charges relating to [REDACTED] and dismissed the specifications charging fraud, [REDACTED]. The Committee sustained the charge that the Respondent willfully filed a false report.

The Committee found that Westchester County Medical Center restricted the Respondent from providing direct patient care between May 1990 and July 1991. The Committee found further that the Respondent applied for staff privileges at Children's Village in September 1995. On the application for privileges, the Respondent denied ever relinquishing privileges at another facility and denied that a hospital ever reduced or terminated the Respondent's privileges. The Committee found that the Respondent knew that Westchester County Medical Center suspended and restricted the Respondent from direct patient care and the Committee found that the Respondent answered falsely on the Children's Village Application. The Committee rejected the Respondent's claims to the contrary.

The Committee voted to fine the Respondent \$10,000.00 and ordered the Respondent to complete twelve hours CME in the area of Ethics, within one year from the date of the

Committee's Determination, subject to review and approval of the CME by the Director of the Office for Professional Medical Conduct (OPMC).

Review History and Issues

The Committee rendered their Determination on May 12, 2008. This proceeding commenced on May 16, 2008 when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Department's brief and the Respondent's response brief. The record closed when the ARB received the response brief on June 25, 2008.

The Petitioner asked that the ARB overturn the Committee and sustain the additional charge that the Respondent's answer on the Children's Village Application also constituted practicing fraudulently. The Petitioner asked further that the ARB overturn the Committee and revoke the Respondent's License. The Petitioner argued that the Respondent lied knowingly on an employment application and compounded that offense by providing incredible testimony about his conduct at the hearing. The Petitioner argued that the penalty the Committee imposed would leave the Respondent in practice and totally unsupervised.

The Respondent argued that he was unaware he was under any suspension, because he continued to work and receive a salary while he was restricted from patient care. The Respondent also argued that he was unrepresented by counsel during the patient care restrictions and at the time he completed his application for employment for Children's Village.

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. The ARB votes 5-0 to reject the Petitioner's motion that we affirm the charge that the Respondent practiced fraudulently. The ARB votes 3-2 to affirm the Committee's Determination that the Respondent willfully made a false report. The ARB votes 5-0 to overturn the Committee's Determination to fine the Respondent \$10,000.00. The ARB majority affirms the Committee's Determination to order the Respondent to complete twelve CME hours in Ethics within one year from this Determination.

The ARB finds no basis to conclude that the Respondent acted fraudulently. Of all the forms that a physician must sign, the Respondent provided false information on just one. Two members found no grounds on which to sustain even the false report charge. Those two members saw the Respondent as legitimately confused about the suspension, because Westchester County Medical Center retained the Respondent on payroll during the patient care restrictions. No ARB member can see any point in fining the Respondent for the false answer on the Children's Village Application. The ARB majority agrees with the Committee that the Respondent will benefit from a twelve hour CME course in Ethics, subject to the review and written approval by the OPMC Director.

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 fine the Respondent \$10,000.00.
3. The ARB affirms the Committee's Order that the Respondent complete successfully twelve CME hours in Ethics, within one year from the effective date of the Determination and in compliance with the directions in the Committee's Determination.


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 John B. Halkias, M.D.

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

Dated Sept 4, 2008

Redacted Signature


Thea Graves Pellman

In the Matter of John B. Halkias, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the
Matter of Dr. John B. Halkias, M.D.

Date: 23 September 2008

Redacted Signature

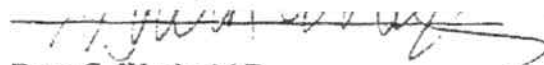
Linda Prescott Wilson

In the Matter of John B. Halkias, M.D.

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

Dated: 9/16, 2008

Redacted Signature



Datta G. Wagle, M.D.

In the Matter of John B. Halkias, M.D.

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

Matter of Dr. John B. Halkias.

Dated: September 3, 2008

Redacted Signature

~~Stanley L. Grossman, M.D.~~

Stanley L. Grossman, M.D.