

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

October 19, 2009

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Prem Nath, M.D.  
Skyview Plaza  
Route 59  
Central Nyack, New York 10960

Christine Radman, Esq.  
NYS Department of Health  
Division of Legal Affairs  
90 Church Street – 4<sup>th</sup> Floor  
New York, New York 10007

Prem Nath, M.D.  
Redacted Address

Richard F. X. Guay, Esq.  
Meyer, Suozzi, English & Klein, P.C.  
1350 Broadway – Suite 501  
New York, New York 10018-0822

Anthony Z. Scher, Esq.  
Wood & Scher Esqs.  
222 Bloomingdale Road, Suite 311  
White Plains, New York 10605

**RE: In the Matter of Prem Nath, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 09-08) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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

Prem Nath, 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. 09-08

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): Christine M. Radman, Esq.  
For the Respondent: Richard F. X. Guay, Esq.

Following a hearing, a BPMC Committee determined that the Respondent violated the terms of disciplinary probation against the Respondent's license to practice medicine in New York State (License). The Committee voted to revoke the Respondent's License, but declined a request by the Petitioner to impose a fine. 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 Determination and add a \$100,000.00 fine. After considering the hearing record and the parties' review submissions, the ARB affirms the Committee's Determination that the Respondent violated probation and we affirm the Determination to revoke the Respondent's License. The ARB modifies the Determination by fining the Respondent \$145,000.00.

### Committee Determination on the Charges

The Committee conducted a hearing, pursuant to PHL § 230(10)(p), into charges that the Respondent violated the terms under a disciplinary probation by deviating from minimum standards of care in treating a patient, or, by preparing false medical records and submitting false billings for services. All the charges related to care to or billings concerning a single person, Patient A. The record refers to the Patient by an initial to protect patient privacy. The Respondent denied the charges. Following the hearing, the Committee rendered the Determination now on review.

The evidence at hearing demonstrated that the Respondent received his License in 1977 and that the Respondent entered into a Consent Agreement with BPMC in 1999. Under the 1999 Consent Agreement, the Respondent admitted to practicing with gross negligence and failing to maintain accurate medical records. The Consent Agreement suspended the Respondent's License for thirty-six months, with twenty-seven months stayed, limited the Respondent's practice to exclude pain management and imposed five years of probation following the actual suspension period. The probation terms required at Paragraph 1 that the Respondent conduct himself in all ways in a manner befitting his professional status and conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.

The Committee found that the Respondent submitted bills to Blue Cross Blue Shield for surgery on Patient A on twenty-nine dates between January 8, 2001 and February 13, 2004 [Hearing Committee Findings of Fact (FF) 8-32, 34-37]. These total billings for Patient A amounted to more than \$212,000.00. The Committee found that the Respondent prepared an operative report for surgery on Patient A for August 13, 2003 [FF 33]. The Committee found these billing documents and the medical record false and the Committee rejected testimony by the Respondent that he performed the surgeries. The Committee noted that the Respondent held no hospital privileges at the time he billed for the surgeries. The Respondent alleged that prior treating physicians had diagnosed Patient A as suffering an immune deficiency problem, but the Committee found that the Respondent never obtained prior treatment records for Patient A. The

Respondent alleged that Patient A developed infections in various areas and the Respondent claimed that the surgeries involved incisions and draining of abscesses and then closing the wounds. The Respondent acknowledged that usual the treatment for an abscess was to leave the wound open following incision. The Committee inferred the Respondent never performed these surgeries because the Respondent:

- claimed to have used only local anesthetic when he cut deep into areas in the Patient's neck, abdominal wall and breast;
- failed to document both the type and amount of anesthesia;
- failed to document consideration of any cause for the recurrent surgeries before proceeding to the surgeries;
- failed to obtain cultures on tissue or to send excised tissue for biopsy or analysis;
- failed to document the precise anatomical locations for the abscesses;
- prepared no documentation for routine post-surgical care such as the removal of sutures; and,
- alleged that no need existed for further surgeries in 2004 and 2005, after the Patient lost health insurance coverage.

The Committee found that the Respondent's own expert witness had testified that underlying susceptibility to recurrent abscesses in a patient with an immune defect would not spontaneously resolve without exogenous treatment. The Committee also found suspicious elements in the individual billings. The Committee found great similarities in the billings for procedures on April 9, 16 & 26, 2009 and for September 9, 15 & 26, 2009. The Committee found that the Respondent may have written over the April billings in preparing the September billings and found the billings almost identical. The Committee again noted that although the Respondent claimed to have performed three surgeries on Patient A in both April and September 2001, no documentation showed the Respondent obtaining a culture, checking the wound or removing any sutures. The Committee also found that Patient A acted in concert with the Respondent to

commit fraud. The Committee noted that the Patient worked previously as an office manager in a medical practice.

The Committee found that the false billings and the false record constituted violations of the Respondent's probation. The Committee voted to revoke the Respondent's License because the Respondent engaged in fraudulent conduct while on probation. In addition to the probation from the 1999 Consent Agreement, the Respondent entered a further consent Agreement in 2005 to settle charges arising from a disciplinary action by the Connecticut Medical Board against the Respondent's medical license in that state. The Connecticut Board's action found violations by the Respondent including the storage, possession and distribution of controlled substances without proper licensing or registration. The 2005 Consent Agreement placed the Respondent on probation for two more years and restricted the Respondent from ordering, prescribing, administering and/or dispensing controlled substances during the two-year probation. The Committee concluded that two prior attempts to rehabilitate the Respondent failed to change his behavior. The Committee rejected the Petitioner's request for a fine in addition to revocation. The Committee concluded that a monetary sanction was inappropriate in a case that began with a violation of probation letter.

#### Review History and Issues

The Committee rendered their Determination on January 12, 2009. This proceeding commenced on January 26, 2009, when the ARB received the Respondent'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 reply brief. The record closed when the ARB received the reply brief on March 13, 2009. The ARB conducted deliberations in this matter on March 25, July 8 & August 12, 2009. Between the March and July deliberation dates, John D'Anna, M.D. replaced Therese Lynch, M.D. as an ARB member.

The Petitioner argued that the Committee erred in failing to assess a monetary penalty, due to a misconception. The Petitioner contended that the Committee took issue inappropriately with the Petitioner's decision to commence the proceeding against the Respondent with a Violation of Probation Letter rather than a Statement of Charges. The Petitioner noted that, under PHL § 230(19), the sanction for a violation of probation can include any penalty set out at PHL §230-a. The penalties at PHL § 230-a include both license revocation and a fine up to \$10,000.00 on each sustained specification of misconduct. The Petitioner requested that the ARB modify the Committee's Determination and impose a \$100,000.00 fine. The Petitioner argued that a \$300,000.00 fine would have been permitted under the statute, but the Petitioner called the request for the smaller fine "more measured".

The Respondent replied that the Committee acted appropriately in foregoing the option for a monetary penalty after the Committee had already imposed the ultimate sanction of license revocation. The Respondent also argued that the Respondent failed to receive due process and that the Petitioner failed to prove the charges by substantial evidence. The Respondent requested that the ARB dismiss the Petitioner's appeal.

#### 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 violated probation and we affirm the



Determination to revoke the Respondent's License. We modify the Committee's Determination and we impose a \$145,000.00 fine.

The Committee determined that the Respondent violated the 1999 Consent Agreement by billing an insurer for services the Respondent never provided and for submitting billings the Respondent knew to be false. The ARB finds that the Appendix B to the Violation of Probation Letter, at paragraphs 4 and 5, provided the Respondent notice about the charges against him by specifying the dates of the billings and specifying that the billings concerned Patient A. The Committee's Determination provided detail about the information the Committee found credible in making their findings and their inferences. The Committee acted within its authority in rejecting testimony by the Respondent and Patient A. The ARB defers to the Committee in the Committee's role as fact finder. The ARB holds that the evidence the Committee found credible demonstrated by preponderant evidence that the Respondent's fraudulent conduct constituted a violation of probation.

Under PHL § 230(19), a Committee may impose sanctions for probation violations from the list of sanctions that appear at PHL § 230-a. That list of sanctions includes revocation and fines. The ARB finds both sanctions appropriate in this case. The prior Consent Agreements against the Respondent imposed both actual license suspension and probation as penalties for the Respondent's prior misconduct. The suspension and two probationary periods failed to deter the Respondent from the misconduct that occurred in this case. Although the misconduct involved a single Patient, the misconduct involved twenty-nine false billings over a number of years. The billings requested reimbursement amounting to \$212,000.00. The ARB concludes that fraudulent conduct in the practice of medicine warrants revocation as a penalty and that the circumstances in this case also call for a financial sanction as well.

The ARB discussed how to assess the appropriate amount of a fine over the course of three deliberations. The Petitioner recommended a \$100,000.00 fine, but provided little detail about why the Petitioner recommended that amount. The ARB determined that we should impose a separate amount for each act of fraud. The ARB fines the Respondent \$5,000.00 for each of the twenty-nine instances of fraud.

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 modifies the Committee's Determination and fines the Respondent \$145,000.00.

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 Prem Nath, M.D.

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

Matter of Dr. Nath.

Dated: *10/20/09*, 2009

Redacted Signature

*L* \_\_\_\_\_  
Linda Prescott Wilson

In the Matter of Prem Nath. M.D.

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

Dated: October 8, 2009

Redacted Signature

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Thea Graves Pellman


In the Matter of Prem Nath, M.D.

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

Matter of Dr. Nath.

Dated: 10/27/ 2009

Redacted Signature

Datta G. Wagle, M.D. 

In the Matter of Prem Nath, M.D.

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

Matter of Dr. Nath.

Dated October 7, 2009

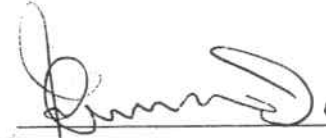
Redacted Signature

Richard D. Milone, M.D.

In the Matter of Prem Nath, M.D.

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

Dated: Oct 12, \_\_\_\_\_, 2009

  
\_\_\_\_\_  
John A. D'Anna, M.D.