



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

June 15, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anatoliy Ilizarov, M. D.
REDACTED

Courtney Berry, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

William L. Wood, Jr. Esq.
Wood & Scher
222 Bloomingdale Road
White Plains, New York 10583

NYS Department of Health
Bureau of Accounts Management
ESP – Corning Tower – Room 1717
Albany, New York 12237

RE: In the Matter of Anatoliy Ilizarov, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-234) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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

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

Anatoliy Ilizarov, M.D. (Respondent)
and Mineola Medical Practice, P.C.

Administrative Review Board (ARB)

Determination and Order No. 09-234

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

COPY

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

For the Department of Health (Petitioner): Courtney Berry, Esq.
For Respondent Ilizarov: William L. Wood, Jr., Esq.

After a hearing below, a BPMC Committee determined that the Respondent failed to comply with provisions of State law governing medical practice, failed to provide proper supervision and delegated professional responsibilities improperly. The Committee vote to censure and reprimand the Respondent and to fine him \$10,000.00. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2010), the Petitioner asks the ARB to modify that Determination by sustaining additional charges and by increasing the sanction against the Respondent. After reviewing the hearing record and the parties' review submissions, the ARB affirms the Committee in full.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(2), 6530(11), 6530(16), 6530(25) and 6530(33) (McKinney 2010) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,

- permitting, aiding or abetting an unlicensed person to perform activities requiring a license,
- failing to comply with substantial provisions of a state law governing the practice of medicine,
- delegating professional responsibilities to unqualified persons, and,
- failing to exercise appropriate supervision over persons who may practice only under a licensee's supervision.

The charges involved the Respondent's involvement with Mineola Medical Practice, P.C. (Mineola), a medical professional corporation that employed Licensed Radiologic Technicians (LRT) to perform imaging studies known as videofluorosopies (VFS).

The Committee determined that the Respondent was the sole shareholder in Mineola. Mineola operated out of a van or truck that was owned by City Testing Imaging Corporation (City). The Respondent entered into a management contract with City and its owner, Timor Ilizarov, the Respondent's cousin. Mineola performed VFS from the City van. A VFS is an imaging study that uses radiation to record body movement on videotape. The Committee found that an LRT may perform a VFS only under the immediate supervision of a physician "in the same room". Mineola employed Brian Gassman, LRT, to perform VFS, but the Committee found that no physician supervised Mr. Gassman. The Committee found further that only a physician could own and manage a medical professional corporation and that the management contract between Mineola and City delegated improperly control and dominion over Mineola to City and its non-physician owner, Timor Ilizarov.

The Committee sustained the charge that the Respondent failed to exercise appropriate supervision over a person who may only practice under supervision of a licensee. The Committee found that the Respondent allowed LRT Gassman to practice beyond the scope of his LRT license. The Committee found further that the Respondent delegated professional responsibilities to unqualified persons by allowing an LRT to perform unsupervised VFS and by delegating dominion and control over Mineola to a non-physician. The Committee also sustained the charge that the Respondent exercised willful and/or gross negligence in failing to comply

with substantial provisions of State law governing medical practice. The Committee found that the Respondent failed to comply with provisions of New York Business Corporation Law (BCL) § 1503 (McKinney 2010) relating to medical professional corporations by allowing a non-physician to operate and control Mineola. The Committee dismissed the charges that the Respondent allowed a non-licensed person, LRT Gassman, to perform activities that required a license. The Committee found that Mr. Gassman held a license as an LRT. The Committee also dismissed the charge that the Respondent practiced with fraud by forming and using his name to register Mineola, when the Respondent knew that Mineola was operated and controlled by a non-physician. The Committee found that the Petitioner failed to prove all the elements of fraud.

The Committee voted to annul the certificate of incorporation for Mineola, to censure and reprimand the Respondent and to fine the Respondent \$10,000.00. The Committee noted that several character witnesses attested to the Respondent's talent, skills and honesty. The Committee also found the Respondent contrite.

Review History and Issues

The Committee rendered their Determination on December 31, 2009. This proceeding commenced on January 11, 2010, 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 reply brief. The record closed when the ARB received the reply brief on February 23, 2010.

The Petitioner asked that the ARB overturn the Committee and affirm the fraud charge and the aiding and abetting unlicensed practice charge. The Petitioner asked further that the ARB modify the penalty by precluding the Respondent from ownership in a professional corporation, placing the Respondent on probation for three years and increasing the fine to \$20,000.00.

The Respondent opposed any increase in the sanction and argued that the Committee already imposed a severe sanction. The Respondent asked the ARB to consider his promise as a physician and to consider that the conduct at issue began 11 years ago and ended 6 years ago.

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 affirm the Committee's Determination.

The Respondent argued that the Respondent aided and abetted unlicensed practice by allowing LRT Brian Gassman and City's Owner, Timor Ilizarov, to practice medicine. The Committee rejected those arguments and the ARB agrees with the Committee. Under EL § 6521, practicing medicine means diagnosing, treating, operating or prescribing for any human disease, pain, injury, deformity or physical condition. Mr. Gassman practiced as an LRT, for which he holds licensure. He practiced for Mineola without physician supervision, but the Committee made no finding that Mr. Gassman practiced medicine and the ARB rejects the suggestion that unsupervised LRT practice amounts to the practice of medicine. The Committee also found that the Respondent delegated responsibilities to Timor Ilizarov concerning the control and dominion over a medical professional corporation. That conduct amounted to violations under BCL § 1503 and it amounted to improper delegation under EL § 6530(25). No finding by the Committee held that Timor Ilizarov diagnosed, treated, operated or prescribed.

The Committee found that the Petitioner failed to prove that the Respondent engaged in fraud in practice. In order to sustain a charge that a licensee practiced medicine fraudulently, a hearing committee must find that (1) a licensee made a false representation, whether by words, conduct or by concealing that which the licensee should have disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation, Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (Third Dept. 1966), aff'd, 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). A committee may infer the licensee's knowledge and intent properly from facts that such committee finds, but the committee must state specifically the inferences it draws regarding knowledge and intent, Choudhry v. Sobol, 170 A.D.2d 893, 566 N.Y.S.2d 723 (Third Dept. 1991). The Petitioner argued that the Committee's Findings of Fact (FF) 5-8, 9-12, 14-19, 33, 43-46 and 48-50 support a holding that the Respondent committed fraud, along with the Committee's recognition that the Respondent intentional misrepresentation constitutes fraud in practice. The ARB holds that the Committee made no specific finding that the Respondent made an intentional misrepresentation and the Committee made no inference either about an intentional misrepresentation. The FF to which the Petitioner referred concerned the improper delegation to City and Timor Ilizarov. As we noted above, that conduct amounted to violations under BCL § 1503 and EL § 6530(25).

The Petitioner requested that the ARB increase the sanction to include a bar on ownership in a medical professional corporation, three years on probation and an increase in the fine against the Respondent. The Petitioner based that request, in part, on the argument that the Respondent's conduct included fraud in practice. As we noted above, we agreed with the Committee that the Petitioner failed to prove all the elements necessary to establish fraud. The ARB concludes that the Committee imposed an appropriate sanction.

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 by failing to exercise appropriate supervision, delegating responsibilities to unqualified persons and failing to comply with substantial provisions of state law governing the practice of medicine.
2. The ARB rejects the request to affirm additional charges.
3. The ARB sustains the Committee's Determination to censure and reprimand the Respondent and to fine the Respondent \$10,000.00.

Peter S. Koenig, Sr.
Datta G. Wagle, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Anatoliy Ilizarov, M.D.

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

Dated: *14 June*, 2010

REDACTED

Linda Prescott Wilson

In the Matter of Anatoliy Ilizarov, M.D.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the
Matter of Dr. Ilizarov.

Dated: 06/14, 2010

REDACTED


Peter S. Koenig, Sr. 6

In the Matter of Anatoliy Ilizarov, M.D.

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

Dated: June 14, 2010

REDACTED

~~_____~~
Datta G. Wagle, M.D. 

In the Matter of Anatoliy Ilizarov, M.D.

Richard D. Milone, an ARB Member concurs in the Determination and Order in the
Matter of Dr. Ilizarov.

Dated: June 14, 2010

REDACTED


Richard D. Milone, M.D.

In the Matter of Anatoliy Ilizarov, M.D.

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

Dated: JUNE 15, 2010

REDACTED


John A. D'Anna, M.D.