



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.  
Commissioner

*Public*

James W. Clyne, Jr.  
Executive Deputy Commissioner

October 5, 2010

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Dennis Radoshkevich, M.D.  
REDACTED

William Wood, Esq.  
Wood & Scher  
222 Bloomingdale Road – Suite 311  
White Plains, New York 10583

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

**RE: In the Matter of Dennis Radoshkevich, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 10-186) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Hedley Park Place  
433 River Street, Fifth Floor  
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

REDACTED

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

**COPY**

**IN THE MATTER  
OF  
DENNIS RADOSHKEVICH, M.D.**

**DETERMINATION**

**AND**

**ORDER**

BPMC #10-186

**STEVEN I. SHERMAN, D.O.**, Chairperson, **JILL RABIN, M.D.** and **JOSEPH MADONIA, LCSW-R**, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, served as Administrative Officer for the Hearing Committee. The Petitioner, also referred to as the Department of Health, appeared by **THOMAS CONWAY, ESQ.**, General Counsel, **COURTNEY BERRY, ESQ.**, Associate Counsel, of Counsel. The Respondent, appeared by **WOOD & SCHER, WILLIAM L. WOOD, ESQ.**, of Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee submits this Determination and Order.

**STATEMENT OF CHARGES**

The accompanying Statement of Charges alleged two (2) specifications of professional misconduct, including allegations of fraudulent practice and failure to maintain records. The charges are more specifically set forth in the Statement of Charges dated June 11, 2010, a copy of which is

attached hereto as Appendix I and made a part of this Determination and Order. Respondent filed an Answer dated, June 18, 2010 and denied all allegations.

### **SUMMARY OF PROCEEDINGS**

Pre-Hearing Conference	July 7, 2010
Hearing Date:	July 20, 2010
Deliberation Date:	September 15, 2010

### **WITNESSES**

For the Petitioner:	Jenny Kakleas
For the Respondent:	Olaf Franzon, M.D. Lisa Eng, D.O. Marina Ivanyuk, M.D. Salvatore Ancona, M.D. Robert Molson, M.D. Dennis Radoshkevich, M.D.

### **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record available to the Hearing Committee in this matter. These Findings represent documentary evidence and testimony found persuasive by the Hearing Committee. Where there was conflicting evidence the Hearing Committee considered all of the evidence presented and rejected what was not relevant, believable, or credible in favor of the cited evidence. The Petitioner, which has the burden of proof, was required to prove its case by a preponderance of the evidence. The Hearing Committee unanimously agreed on all Findings, and all Findings were established by at least a preponderance of the evidence.

1. Dennis Radoshkevich, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 3, 2009, by the issuance of license number 253332 by the New York State Education Department.

2. At all times relevant to these charges, Respondent was a resident at Lutheran Medical Center, Brooklyn, N.Y. and therefore a "licensee" within the meaning of §230(7) of the Public Health Law. (Pet. Ex. 2)

3. On or about June 28, 2006, Respondent documented an assessment note, discharge note and an order to remove staples prior to seeing and assessing Patient A. (Pet. Ex 3; T. pp. 146 168-172; 179-180)

4. Patient A had undergone a vertical incision cesarean section on June 25, 2006. Staples are generally not removed from vertical incision cesarean sections until 10-14 days post-surgery. (Pet. Ex. 3; T. p. 151)

5. Respondent assumed that Patient A had undergone a Pfannenstiel or transverse incision cesarean section, which generally meant that staples are removed 3 days post-surgery. (T. pp. 160-161)

6. Respondent's "remove staples" order was carried out by Dr. Khan, a house physician who was junior to Respondent. ( Pet. Exs. 4-5; Resp. Ex. O; T. pp. 55, 150)

7. Dr. Lyamport, a house physician junior to Respondent, alerted Respondent to the fact that Patient A's incision was vertical. ( Pet. Ex. 4-6, Resp. Ex. O; T.150)

8. Respondent and Dr. Lyamport examined Patient A and discovered a ½-1 cm. gap in the wound site, which could open further. ( Pet. Exs. 4-5; T. pp. 152, 184-185)

9. Respondent reapplied staples to Patient A's wound without anesthesia. (Pet. Exs. 4, 6; T. p.154)

10. Respondent should have notified an attending physician or chief resident that the staples were inappropriately removed, that the wound was gapping or that he had re-applied staples to Patient A. ( Pet. Ex. 4, 6; T. pp. 164-165, 184-185)

11. Respondent altered the chart for Patient A by crossing out the original order to remove Patient A's staples and writing "Remove staples in 1 wk in clinic." Pet. Ex. 3,6; T. 96-97,155, 205)

12. Respondent failed to document that the original, inappropriate order to remove the staples had been carried out and that Respondent reapplied staples to Patient A. ( Pet. Exs. 3-6; T. 155, 164, 169, 173-174, 208-209)

13. Respondent was suspended from the Lutheran Medical Center residency program but completed his residency at St. John's hospital in 2009.( Resp. Exs. C and D; T. 140)

### **CONCLUSIONS OF LAW**

Respondent is charged with two (2) specifications alleging professional misconduct within the meaning of Education Law §6530. This statute sets forth numerous forms of conduct which constitute professional misconduct, but do not provide definitions of the various types of misconduct relevant to this proceeding. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law", sets forth suggested definitions for gross negligence, negligence, gross incompetence, incompetence and the fraudulent practice of medicine.

The following definition was utilized by the Hearing Committee during its deliberations:

Fraudulent practice is the intentional misrepresentation or concealment of a known fact, made in some connection with the practice of medicine. The Hearing Committee must find that (1) a false representation was made by the licensee, whether by words, conduct or concealment of that which should have been disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation. The licensee's knowledge and intent may properly be inferred from facts found by the Hearing Committee, but the Committee must specifically state the inferences it is drawing regarding knowledge and intent.

Using the above-referenced definition as a framework for its deliberations, the Hearing Committee concluded, by a preponderance of the evidence, that one (1) of two (2) specifications of professional misconduct should be sustained. The rationale for the Committee's conclusions regarding each specification of misconduct is set forth below.

At the outset of deliberations, the Hearing Committee made a determination as to the credibility of various witnesses presented by the parties.

Jenny Kakleas testified for the Department. Ms. Kakleas is employed as vice president of clinical operations at Lutheran Medical Center where she oversees medical staff credentialing and medical education. She was present when Respondent was interviewed at Lutheran Medical Center involving the complaint made by Patient A. The Hearing Committee found Ms. Kakleas to be a credible witness but found that she had no direct knowledge of Respondent's orientation at Lutheran.

Respondent testified on his own behalf. The Hearing Committee found that Respondent was a credible witness. He was very remorseful and acknowledged his mistake. He was straightforward in telling the Hearing Committee what lessons he had learned as a result of this incident. (T. 199)

Respondent also offered the testimony of Lisa Eng, D.O., who is in private practice in obstetrics and gynecology in Manhattan. In 2006, Dr. Eng was the residency coordinator at Lutheran Medical Center, Department of Obstetrics and Gynecology. She gave Respondent a recommendation for his residency at St. John's and expressed confidence in his skill as a physician. The Hearing Committee gave her testimony great weight.

Respondent also offered an array of other character witnesses that the Hearing Committee found credible but not helpful in resolving the charges.

**Factual allegations A and A.1 : SUSTAINED**

**Factual allegations A and A.2 : SUSTAINED**

**Factual allegations A and A.2a : NOT SUSTAINED**

**Factual allegations A and A.3: SUSTAINED**

**Factual allegations A and A.3a: NOT SUSTAINED**

**Factual allegations A and A.4: SUSTAINED**

**Factual allegations A and A.4a: NOT SUSTAINED**

### **FRAUDULENT PRACTICE**

The Hearing Committee by unanimous vote finds that the Department did not prove that Respondent acted in a fraudulent manner. The Department's only witness was the residency coordinator who could not establish that Respondent had adequate training in medical record keeping. The Hearing Committee notes there was no testimony from any of the physicians or the nurse from the OB-GYN Department from Lutheran Medical. There is nothing in the nurse progress notes regarding the re-stapling of the patient. The Hearing Committee also notes that anesthesia is not always required for this type of procedure. (T.104-105) The Hearing Committee believes that



Respondent experienced a busy shift due to the emergency C-section. They took into consideration that there is pressure from the hospital to discharge the patients by noon to turnover the beds. The Hearing Committee further acknowledges that there is a culture among the residents to pre-write progress notes prior to evaluation of the patient to save time on routine cases.

While it does not excuse Respondent's omissions, the Hearing Committee finds that Respondent was upfront in admitting his mistakes. The Hearing Committee further believes that Respondent used his basic Spanish to communicate with Patient A. They find no evidence in the record that Patient A did not understand Respondent or that an interpreter phone was readily nearby. Dr. Lyamport's statement indicates that the "patient's facial expressions did not show that she was in any pain." (Resp. Ex. O) Based on all of the evidence presented, the Hearing Committee does not conclude that Respondent intended to mislead. For the foregoing reasons, the Hearing Committee finds that Respondent's actions in this instance do not rise to the level of fraudulent practice and the First Specification is not sustained.

#### **FAILURE TO MAINTAIN RECORDS**

By his own admission, Respondent acknowledged that it was wrong for him to write notes and orders prior to seeing the patient. Further he admitted it was wrong for him to fail to document his replacement of the staples and to inform the attending of what had happened. The Hearing Committee sustains the Second Specification.

#### **DETERMINATION AS TO PENALTY**

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above determined by a unanimous vote that Respondent shall be censured and reprimanded for his

misconduct. In addition Respondent shall be required to complete a 3 hour Continuing Medical Education course in medical record keeping. This determination was reached on due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interest of justice.

Respondent acknowledged to the Hearing Committee that he learned that he should always communicate with the attending physician and properly supervise subordinates like the house physician. He further stated that a physician should never write notes before evaluating the patient. The Hearing Committee notes that Respondent administered quick and appropriate care to Patient A to prevent the incision from re-opening.

The Hearing Committee believes that Respondent incurred a serious penalty at Lutheran Memorial when he was suspended from the residency program. Even Dr.Eng testified that Respondent paid a hefty price for an isolated lapse in judgment. Respondent demonstrated that despite this set back he was able to complete his residency at St. John's, where he served as chief resident. Respondent has passed his qualifying exams and at present has an employment offer which is on hold pending the Board's decision. The Hearing Committee concludes that a censure and reprimand is the appropriate penalty in this instance along with the CME requirement for record keeping.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First Specification of Professional Misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit #1) is NOT SUSTAINED; and
2. The Second Specification of Professional Misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit #1) is SUSTAINED; and
3. Respondent is CENSURED AND REPRIMANDED
4. Respondent shall enroll and complete a continuing education program in the area of medical record keeping to be equivalent to at least 3 credit hours of Continuing Medical Education.(CME) Said CME program shall be subject to the prior written approval of the Director of OPMC and be completed within 6 months of the effective date of this Order.
5. This Order shall be effective on service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

**DATED:** New York, New York  
October 4, 2010

REDACTED

✓ STEVEN I. SHERMAN, D.O. (Chairperson)  
JILL RABIN, M.D.  
JOSEPH MADONIA, LCSW-R

TO:

Dennis Radoshkevich, M.D.  
REDACTED

William Wood, Esq.  
Wood & Scher.  
222 Bloomingdale Rd., Suite 311  
White Plains, NY 10583

Courtney Berry, Esq.  
Associate Counsel  
NYS Department of Health  
Bureau of Professional Medical Conduct  
90 Church Street- 4<sup>th</sup> Floor  
New York, NY 10007

# APPENDIX 1

NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER  
OF  
Dennis Radoshkevich, M.D.

NOTICE  
OF  
HEARING

TO: Dennis Radoshkevich  
REDACTED

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on July 20, 2010, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4<sup>th</sup> Floor, N.Y., N.Y. 10007, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

**YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE  
PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.**

Department attorney: Initial here \_\_\_\_\_



the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York  
June // ,2010

REDACTED

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Roy Nemerson  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be directed to: Courtney Berry  
Associate Counsel  
Bureau of Professional Medical Conduct  
90 Church Street  
4<sup>th</sup> Floor  
New York, N.Y. 10007  
(212) 417-4450

NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER  
OF  
Dennis Radoshkevich, M.D.

STATEMENT  
OF  
CHARGES

Dennis Radoshkevich, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 3, 2009, by the issuance of license number 253332 by the New York State Education Department. At all times relevant to these charges, Respondent was a resident at Lutheran Medical Center, Brooklyn, N.Y., and therefore a "licensee" within the meaning of §230(7) of the Public Health Law.

**FACTUAL ALLEGATIONS**

- A. On or about June 28, 2006, Respondent inappropriately ordered staples to be removed from Patient A, who had undergone a vertical Cesarean section. Respondent's order was carried out by a junior ~~resident~~ physician.
1. Respondent documented an assessment note, discharge note and the order to remove staples without having in fact seen, or having appropriately assessed Patient A.
  2. Respondent reapplied staples to Patient A's wound, without anesthesia, and without notifying an attending or senior resident physician that the staples were inappropriately removed.
    - a. Respondent did so with the intent to mislead.
  3. Respondent altered the chart for Patient A by crossing out the original order to remove Patient A's staples and writing "Remove staples in 1 wk in clinic".
    - a. Respondent did so with the intent to mislead.



4. Respondent failed to document that the original, inappropriate order to remove the staples had been carried out and that Respondent reapplied staples to Patient A.
  - a. Respondent did so with the intent to mislead.

### **SPECIFICATION OF CHARGES**

#### **FIRST SPECIFICATION**

#### **FRAUDULENT PRACTICE**

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

1. Paragraph A, A1, A2, A2a, A3, A3a, A4, and/or A4a.

#### **SECOND SPECIFICATION**

#### **FAILURE TO MAINTAIN RECORDS**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

2. Paragraph A, A1, A3, and/or A4.

DATE: June //, 2010  
New York, New York

REDACTED

\_\_\_\_\_  
Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct