

DOH 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

Public

November 16, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Bhagwan J. Sadarangani, M.D.
REDACTED

Robert Bogan, Esq.
NYS Department of Health
ESP – Corning Tower – Room 2512
Troy, New York 12237-0032

Michael S. Kelton, Esq.
Abrams, Fensterman, Fensterman,
Eisman, Greenberg, Formato &
Einiger, LLP
630 3rd Avenue – 5th Floor
New York, New York 10017

RE: In the Matter of Bhagwan J. Sadarangani, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 10-148) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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

Bhagwan J. Sadarangani, 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. 10-148

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): Robert Bogan, Esq.
For the Respondent: Michael Kelton, Rsq.

In this proceeding pursuant to New York Public Health Law (PHL) § 230-c
(4)(a)(McKinney 2010), the ARB considers whether to impose a sanction against the
Respondent's license to practice medicine in New York State (License) following the
Respondent's criminal conviction for committing sexual abuse while examining a patient. After
a hearing below, a BPMC Committee voted to restrict the Respondent's practice for three years.
The Petitioner then sought review and requested that the ARB overturn the Committee and
revoke the Respondent's License. After reviewing the hearing record and the parties' review
submissions, the ARB votes 3-2 to suspend the Respondent's License for two years and to place
the Respondent on probation for three years following the suspension.

Committee Determination on the Charges

The Committee held a hearing into charges that the Respondent committed professional
misconduct under New York Education Law (EL) §§ 6530(9)(i) (McKinney 2010) by engaging
in conduct that resulted in a criminal conviction under New York law. The Committee conducted

the hearing under the expedited hearing procedures (Direct Referral Hearing) at PHL §230(10)(p). At a 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 Hearing, the Committee rendered the Determination now on review.

The evidence at hearing indicated that the Respondent entered a guilty plea in the Criminal Court of the City of New York for New York County to Sexual Abuse in the Third Degree, a Class B Misdemeanor pursuant to New York Penal Law § 130.55 (McKinney 2010). The record at the Direct Referral Hearing showed that the Respondent retired from his own practice and worked at the practice of Balvinder Sadarangani, M.D., the Respondent's wife. That practice deals primarily with gynecology and the Respondent assisted by performing administrative and clerical work, billing, drawing blood and performing tasks that nurses, secretaries or medical assistants would perform otherwise. Dr. Balvinder Sadarangani testified that she operates a small, part-time practice and that she would be unable to afford to pay others to perform the tasks that her husband performs. The criminal conduct occurred while the Respondent performed an electrocardiogram on a patient, when the Respondent was alone and his wife was away from the office. Following the electrocardiogram (EKG), the Respondent suggested and the patient consented to a breast examination. During that examination, the Respondent kissed the patient's breast. The patient filed a criminal complaint subsequently. The Court sentenced the Respondent to a conditional discharge and required the Respondent to undergo treatment by a psychiatrist.

The Committee found that the Respondent's criminal conviction made him liable for disciplinary action against his License under EL § 6530(9)(i). The Committee voted to restrict the Respondent's License for three years under terms that appear at Appendix I to the Committee Determination and Order. The terms included the requirement that Respondent may practice only with a full-time monitor present. The Committee rejected revocation as a penalty because that penalty would bar the Respondent from assisting in his wife's practice. The Committee indicated that the presence of the full-time monitor would eliminate the danger of a reoccurrence of the

Respondent's behavior. The Committee also found that the Respondent's criminal conduct amounted to an isolated incident in a long and apparently blameless career. The Committee noted that the Respondent's treating psychiatrist, Mannuccio Mannucci, M.D., testified at the hearing that the Respondent's treatment is progressing.

Review History and Issues

The Committee rendered their Determination on August 13, 2010. This proceeding commenced on August 30, 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 October 13, 2010.

The Petitioner asked the ARB to revoke the Respondent's License. The Petitioner argued that the Respondent acted with premeditation by setting an appointment with the patient at a time when the Respondent would be alone in the office with the patient. The Petitioner argued further that the Respondent proposed to add a breast examination to the appointment only at the time of the appointment. The victim was seeing the Respondent concerning severe headaches and the Respondent was to perform an EKG, blood tests and a check-up. The Petitioner requested that, if the ARB rejects revocation as a penalty, that the ARB at least restrict the Respondent from providing treatment to and having contact with female patients.

The Respondent argues that the Committee imposed an appropriate penalty. The Respondent contends that he no longer practices actively, that he acted impulsively rather than by premeditation and that, upon his arrest, he admitted his misconduct immediately and apologized to the patient. The Respondent's brief notes that Dr. Balvinder Sadarangani testified that her husband no longer conducts patient examinations. The Respondent's brief noted further

that Dr. Mannucci testified to his conclusion that the Respondent's conduct amounted to a momentary impulse and a totally isolated incident.

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 that the Respondent's criminal conviction made the Respondent liable for disciplinary action against his License pursuant to EL § 6530(9)(i). Neither party challenged the Committee's Determination on the charges. The ARB votes unanimously to overturn the three years practice with a monitor penalty that the Committee imposed. We vote 3-2 to suspend the Respondent's License and to place the Respondent on probation for three years following the suspension, under probation terms that appear as the Appendix to this Determination.

All ARB members agree that the penalty from the Committee's Determination fails to provide proper protection for the public. The Committee placed a monitor on the Respondent's practice constantly for three years and referred to the arrangement as a practice restriction. The ARB finds the constant monitor inappropriate because the Committee fails to explain who will pay for the arrangement. The Committee also placed the monitor on a licensee who claims to have left practice, except to the extent necessary to aid in his wife's small practice. All ARB members agree further that an appropriate penalty in this case must remove the Respondent from

practice. The members disagree on whether the removal from practice should be temporary or permanent.

A three-member majority votes to suspend the Respondent from practice for two years and to place the Respondent on probation for three years following the probation. The majority found the Respondent's conduct warrants a severe sanction. The majority chose against revocation due to the Respondent's long career, without any prior misconduct. During the suspension, the Respondent may continue to assist in his wife's practice in functions such as billing and office management, which require no health care licensure. Following the suspension, the Respondent shall practice on probation for three years under the terms in Appendix I. The other two ARB members would revoke the Respondent's License for an act that those members considered premeditated.

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 restrict the Respondent's practice for three years.
3. The ARB votes 3-2 to suspend the Respondent's License for two years and to place the Respondent on probation for three years following the suspension.

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 Bhagwan J. Sadarangani, M.D.

Linda Prescott Wilson, an ARB Member, affirms that she participated in the consideration of this case and that the above Determination and Order comprises the decision of the ARB majority in the Matter of Dr. Sadarangani.

Dated: 9 November, 2010

REDACTED

Linda Prescott Wilson

In the Matter of Bhagwan J. Sadarangani, M.D.

Peter S. Koenig, Sr., an ARB Member, affirms that he participated in the consideration of this case and that the above Determination and Order comprises the decision of the ARB majority in the Matter of Dr. Sadarangani.

Dated: 11/09, 2010

~~REDACTED~~

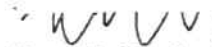
Peter S. Koenig, Sr. /

In the Matter of Bhagwan J. Sadarangani, M.D.

Datta G. Wagle, M.D., an ARB Member, affirms that he participated in the consideration of this case and that the above Determination and Order comprises the decision of the ARB majority in the Matter of Dr. Sadarangani..

Dated: Nov. 15, 2010

REDACTED


Datta G. Wagle, M.D.

In the Matter of Bhagwan J. Sadarangani, M.D.

Richard D. Milone, an ARB Member, affirms that he participated in the consideration of this case and that the above Determination and Order comprises the decision of the ARB majority in the Matter of Dr. Sadarangani..

Date November 9, 2010

REDACTED

Richard D. Milone, M.D.

In the Matter of Bhagwan J. Sadarangani. M.D.

John A. D'Anna, M.D., an ARB Member, affirms that he participated in the consideration of this case and that the above Determination and Order comprises the decision of the ARB majority in the Matter of Dr. Sadarangani.

Dated: Nov 10, 2010

REDACTED

John A. D'Anna, M.D.

Appendix

Terms of Probation

1. The Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.
2. The Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. The Respondent shall submit written notification to the Board, addressed to the Director of OPMC, 433 River Street, Suite 303, Troy, New York 12180-2299 regarding any change in employment, practice, address, (residence or professional) telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.
4. The Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.
5. The period of probation shall be tolled during periods in which the Respondent is not engaged in the active practice of medicine in New York State. The Respondent shall notify the Director of OPMC in writing, if the Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. The Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon the Respondent's return to practice in New York State.
6. The Respondent shall maintain legible and complete hospital and office medical

records, which accurately reflect evaluation and treatment of patients. All hospital and office medical records shall contain a comprehensive history, physical examination findings, chief complaint, present illness, diagnosis and treatment. In cases of prescribing, dispensing, or administering of controlled substances, the medical record shall contain all information required by state rules and regulations regarding controlled substances.

7. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of the Respondent's compliance with the terms of this Order. The Respondent shall meet with a person designated by the Director of OPMC as requested by the Director.

8. The Director of OPMC may review the Respondent's professional performance. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with the Respondent, his staff at locations or OPMC offices.

9. The Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the Order of the Board. A violation of any of these terms of probation shall be considered professional misconduct. On receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against the Respondent pursuant to New York Public Health Law §230(19) or any other applicable laws.