

NEW YORK
state department of
HEALTH

Public

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

June 3, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Gerard A. Cabrera, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

Michael J. Galluzzi, Esq.
Cascione, Purcigliotti & Galluzzi, P.C.
20 Vesey Street – Suite 1100
New York, New York 10007

RE: In the Matter of Pragnesh Patel, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-159) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

-----X
IN THE MATTER : DETERMINATION
: :
OF : AND
: :
PRAGNESH PATEL, R.P.A. : ORDER
-----X
BPMC #13-159

A Notice of Hearing and Statement of Charges, both dated August 10, 2012, were served upon PRAGNESH PATEL, R.P.A., Respondent. JERRY WAISMAN, M.D., Chairperson, DIANE M. SIXSMITH, M.D., and JOSEPH R. MADONIA, LCSW-R, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. WILLIAM J. LYNCH, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health ("the Department") appeared by JAMES E. DERING, ESQ., General Counsel, GERARD A. CABRERA, ESQ., of Counsel. The Respondent appeared by CASCIONE, PURCIGLIOTTI, & GALLUZZI, P.C., MICHAEL J. GALLUZZI, ESQ., of Counsel. Evidence was received, witnesses sworn and heard, and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Date of Service: August 12, 2012

Answer Filed: August 24, 2012

Pre-Hearing Conference: September 13, 2012

Hearing Date: September 28, 2012
January 17, 2013
January 31, 2013

Witnesses for Petitioner: Patient A
Patient B

Witnesses for Respondent: Pragnesh Patel, R.P.A.
Rajesh Verma, M.D.
Christine Cassidy, M.D.
Jojo Barbano, R.N.

Submissions Received: March 11, 2013

Deliberations Held: April 18, 2013

STATEMENT OF CASE

The State Board for Professional Misconduct is a duly authorized professional disciplinary agency of the State of New York (§230 et seq. of the Public Health Law of the State of New York [hereinafter "P.H.L."]).

This case was brought by the New York State Department of Health, Office of Professional Medical Conduct (hereinafter "Petitioner" or "Department") pursuant to §230 of the P.H.L. Pragnesh Patel, R.P.A. ("Respondent") is charged with four

specifications of professional misconduct, as defined in §6530 of the Education Law of the State of New York ("Education Law"). Specifically, Respondent is charged with two specifications of willfully harassing, abusing, or intimidating a patient either physically or verbally, and two specifications of moral unfitness. A copy of the Notice of Hearing and Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Unless otherwise noted, all findings and conclusions set forth below are the unanimous determinations of the Hearing Committee. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. Numbers below in parentheses refer to exhibits (denoted by the prefix "Ex.") or transcript page numbers ("T."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Having heard testimony and considered documentary evidence presented by the Petitioner and Respondent, the Hearing Committee hereby makes the following findings of fact:

1. Pragnesh Patel, R.P.A., Respondent, was authorized to perform medical services as a physician assistant in New York State on January 11, 2001 by the issuance of license number 007980 (Ex. 2).

2. Respondent began employment with New York Medical Alliance ("NYMA") as a physician assistant in the Emergency Room Department ("ER") of North Central Bronx Hospital in approximately April 2001 (Ex. L; T. 137).

3. The ER at North Central Bronx Hospital is divided into separate areas. One large room of the ER contains a work station and twelve beds sectioned by curtains. Six beds in that room are designated as the medical/critical area and the six others are designated as the surgical/critical area. Critical cases which are mostly of a surgical nature are evaluated and treated in the surgical/critical area which is referred to as "surg crit" (T. 139, 243-244, 283).

4. The ER at North Central Bronx Hospital also has six private examination rooms which are used for medical and gynecological care that are located in a separate area of the ER and are staffed by a different attending physician and physician assistant than those assigned to the surgical/critical area. The ER also has a semiprivate room used for fast track patients during the day until 8:00 p.m. (T. 140, 287-290, 309-310).

5. A triage nurse at North Central Bronx Hospital determines the section of the ER which will treat a specific patient depending on the type and acuity of the patient's complaint (T. 157).

6. On March 10, 2008, Patient A, a twenty-two year old

female, went to the ER at North Central Bronx Hospital with a complaint of hemorrhoids (Ex. 3, p. 4; T. 92, 162).

7. Patient A was brought to the surgical/critical area of the ER where she was examined by Respondent (Ex. 3, p. 6, 9; T. 163, 319).

8. Respondent determined Patient A had an external hemorrhoid, but there was no thrombosis and no current bleeding. Patient A was given medication prescriptions, instructions and a follow up appointment with the surgical clinic (Ex. 3, p. 6; T. 171-173).

9. On approximately March 12, 2008, Patient A filed a complaint at North Central Bronx Hospital alleging that Respondent had made inappropriate sexual comments to her (Ex. J; T. 103).

10. By letter dated March 17, 2008, Respondent was advised that the Risk Management Department having completed its investigation of Patient A's complaint had determined that the complaint was unsubstantiated (Ex. J).

11. Approximately one year later on March 16, 2009, Patient B, a thirty-one year old female, went to the ER at North Central Bronx Hospital with a complaint of right knee pain following a slip and fall accident (Ex. 4).

12. Patient B was brought to the surgical/critical area of the ER where she was examined by Respondent (Ex. 4, p. T. 189, 328).

13. Respondent sent Patient B for an x-ray which showed no visible fracture or dislocation. Patient B was discharged home with pain medication and care instructions (Ex. 4, p. 7, 13; T. 204).

14. Approximately a day later, Patient B made a complaint at North Central Bronx Hospital alleging that Respondent had made inappropriate sexual comments to her (T. 25, 209-210).

15. Before the investigation of Patient B's allegation was complete, Health and Hospitals Corporation revoked Respondent's hospital privileges, preventing NYMA from employing Respondent at North Central Bronx Hospital (T. 213-215).

16. The investigation of the complaint was left open for Patient B to produce phone records of a call which she alleged Respondent had made following her treatment (T. 214).

17. Patient B never obtained a record of the telephone call allegedly made to her by Respondent (T. 73-75).

18. Respondent resigned from his position at North Central Bronx Hospital on May 1, 2009 (T. 219).

CONCLUSIONS OF LAW

Respondent is charged with four specifications alleging professional misconduct within the meaning of Education Law §6530. The Hearing Committee made the following conclusions of law pursuant

to the factual findings listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

Patient A testified that she was brought to a private examination room which had a bed with stirrups. She alleged that Respondent told her three times that she had nice lips which she understood as meaning that he wanted her to perform oral sex for him. Patient A further testified that Respondent told her that he could turn out the lights and they could touch each other sexually.

Patient B testified that her landlord who was a police officer brought her to a private examination where she was seen by Respondent. She alleged that Respondent asked whether she had been with an Indian man, whether she had a boyfriend, and her means of birth control. Patient B also alleged that Respondent showed her that his penis beneath his scrubs was erect and that he wanted her to touch it. Patient B further testified that Respondent asked whether she would go out with him, and that subsequently he had called her on one occasion.

Respondent denied making any sexually inappropriate comments to either Patient A or Patient B, and asserted that he treated them in the surgical/critical area of the ER at North Central Bronx Hospital in close proximity to his colleagues. He stated that he sees approximately 3000 patients each year and that no other patient complaints were made against him during his eight years of

employment at North Central Bronx Hospital or have been made during the past four years at his current place of employment.

The Director of the ER at North Central Bronx Hospital, Dr. Rajesh Verma, testified that Respondent was assigned to the surgical/critical area which had no private rooms, and that the private rooms in other parts of the ER were staffed by a different attending physician and physician assistant. Dr. Verma stated that he never had any reason to believe that Respondent's conduct with the patients was anything other than professional and that he highly recommended Respondent for a position at another hospital.

Dr. Christine Cassidy was the Attending Physician assigned to the surgical/critical area of the ER at North Central Bronx Hospital on the night that Patient A was seen by the Respondent. Dr. Cassidy testified that Respondent treated Patient A in the surgical/critical area of the ER less than five feet from the computer station where they discussed the patient's care. She further stated that only a curtain separated the treatment area from the rest of the room and that none of the beds in surgical/critical area had stirrups. Dr. Cassidy asserted that Respondent was intelligent, hardworking and professional, and she had no doubt that he was innocent of the allegations made against him.

Jojo Berbano, R.N., worked in the surgical/critical and medical/critical areas of the ER at North Central Bronx Hospital on

the night that Patient B was seen by Respondent. Mr. Berbano testified that he was with a patient in an adjacent treatment area while Respondent treated Patient B and that he was separated from them only by a curtain. He testified that he heard Patient B loudly complaining about having waited so long to receive treatment, and that he never heard Respondent make any inappropriate statements which he would have easily overheard due to their proximity on either side of a curtain. Mr. Berbano further testified that he later brought Patient B some medication. He stated that Respondent was one of the best physician assistants employed at the hospital.

The consistent testimony of Dr. Verma, Dr. Cassidy, Mr. Berbano and Respondent regarding the operation of the ER at North Central Bronx Hospital persuaded the Hearing Committee that neither patient was seen by Respondent in a private room as had been alleged. On both occasions, Respondent was assigned as the physician assistant to a team working in the surgical/critical area of a busy emergency room in the Bronx which had numerous beds occupied by patients and separated only by curtains. The testimony on this issue is supported by the patients' medical records. The private examination rooms at North Central Bronx Hospital which are used for medical and gynecological care are located in a separate area of the ER and are staffed by a different attending physician and physician assistant than the surgical/critical area. A semiprivate room used for fast

track patients in the ER until 8:00 p.m. would not have been used for Patient A or Patient B who were seen later in the evening.

Having determined that Respondent examined the patients in the surgical/critical area of the ER, the Hearing Committee found that other allegations made by the patients were not credible. Patient A's allegation that she was examined in a bed with stirrups and that Respondent had suggested turning out the light was inconsistent with the persuasive evidence regarding the surgical/critical area. In addition, the closely spaced beds in the surgical/critical area which were separated only by curtains permitted a minimal amount of privacy and provided an unlikely location to suggest illicit sexual activity.

Further, no corroborating evidence was offered to support the testimony of the patients. Patient B alleged that Respondent had called her on her cell phone after the incident, but failed to produce a copy of a cell phone bill documenting the call. She alleged that she was unable to obtain the documentation because the cell phone was on a friend's cell phone plan, but the Hearing Committee did not find this explanation credible. Patient B also alleged that a friend who was a police officer had wheeled her to a private examination room yet that potential witness was not called to testify.

Based on the above, the Hearing Committee determined that

TO: Gerard A. Cabrera, Esq.
Associate Counsel
Bureau of Professional Medical Conduct
90 Church Street - 4th Floor
New York, New York 10007

Michael J. Galluzzi, Esq.
Cascione, Purcigliotti & Galluzzi, P.C.
20 Vesey Street, Suite 1100
New York, New York 10007

APPENDIX I

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

IN THE MATTER
OF
PRAGNESH PATEL, R.P.A.

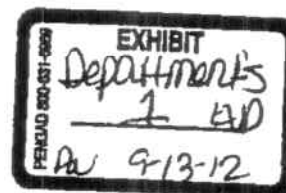
NOTICE
OF
HEARING

TO: Pragnesh Patel, R.P.A.
c/o Michael J. Galluzzi, Esq.
Cascione, Purcigliotti & Galluzzi, P.C.
20 Vesey Street, Suite 1100
New York, N.Y. 10007

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 September 28, 2012, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, Fourth Floor, New York, 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



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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 hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the

deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of 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 PERFORM MEDICAL SERVICES 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.

DATE 5/10/12

New York, NY

REDACTED

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be directed to:
Gerard A. Cabrera, Associate Counsel
Bureau of Professional Medical Conduct

IN THE MATTER
OF
PRAGNESH PATEL, R.P.A.

STATEMENT
OF
CHARGES

Pragnesh Patel, the Respondent, was authorized to perform medical services as a physician assistant in New York State on or about January 11, 2001, by the issuance of license number 007980 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about March 10, 2008, Respondent treated Patient A at North Central Bronx Hospital Emergency Department in the Bronx, New York.
1. Respondent engaged in sexually inappropriate physical and verbal behavior in the course of performing a physical examination of Patient A, including but not limited to gestures or comments about his penis, comments about Patient A's body, and questions regarding whether Patient A had a boyfriend, all for other than a good faith medical purpose.
- B. On or about March 16, 2009, Respondent treated Patient B at North Central Bronx Hospital Emergency Department in the Bronx, New York.
1. Respondent engaged in sexually inappropriate physical and verbal behavior in the course of performing a physical examination of Patient B, including but not limited to inappropriate touching of Patient B's buttocks, gestures or comments

about his penis, comments about Patient B's body, and questions regarding whether Patient B had a boyfriend, all for other than a good faith medical purpose.

SPECIFICATION OF CHARGES

FIRST AND SECOND SPECIFICATIONS

Willfully Harassing, Abusing, or Intimidating Either Physically or Verbally

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(31) by willfully harassing, abusing, or intimidating a patient either physically or verbally, as alleged in the facts of:

1. Paragraph A and A (1).
2. Paragraph B and B (1).

THIRD AND FOURTH SPECIFICATIONS

Moral Unfitness

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20), by evidencing moral unfitness to practice medicine as alleged in the facts of:

3. Paragraph A and A (1).
4. Paragraph B and B (1).

DATE:

August 10, 2012
New York, New York

REDACTED

ROY NEMERSON

Deputy Counsel

Bureau of Professional Medical Conduct