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of Health

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HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

July 23, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

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

Glenn Reginald Jeffery, M.D.
c/o Wood & Scher
222 Bloomingdale Road – Suite 311
White Plains, New York 10605

RE: In the Matter of Glenn Reginald Jeffery, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-187) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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
Riverview Center
150 Broadway – Suite 355
Albany, New York 12204

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,

A black rectangular redaction box covering the signature of James F. Horan.

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:nm
Enclosure

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

COPY

In the Matter of

Glenn Reginald Jeffery, M.D. (Respondent)

Administrative Review Board (ARB)

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

Determination and Order No. 15-187

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

For the Department of Health (Petitioner): Gerard A. Cabrera, Esq.

For the Respondent:

Anthony Z. Scher, Esq.

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by revealing personally identifiable patient information, without the patient's consent. The Committee voted to censure and reprimand the Respondent, pursuant to New York Public Health Law (PHL) § 230-a(1)(McKinney 2015). In this proceeding pursuant to PHL § 230-c, the Respondent asks the ARB to overturn the Committee and dismiss the charge on the merits or dismiss the charge in the interests of justice. After reviewing the hearing record and the parties' review submissions, the ARB votes 5-0 to affirm the Committee's Determination in full.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(23) (McKinney Supp. 2015) by committing professional misconduct under the following specification: revealing personally identifiable information about a patient without the patient's consent. The Respondent's answer denied that the Respondent's conduct constituted misconduct on the grounds that the Federal HIPAA

regulations at Title 45 CFR § 164.512(j) pre-empt EL § 6530(23) and authorize disclosure when necessary to prevent or lessen a serious threat to the health or safety of a person or the public. Following a hearing on the charge, the Committee rendered the Determination now under review.

The evidence before the Committee showed that the Respondent, a psychiatrist, treated Patient A at Lincoln Hospital in Bronx County (Lincoln) in December 2011. Patient A reported to Lincoln that she was raped by her father and a man in the community the Patient described as the "chicken place guy". The Patient also reported being sexually molested by an uncle. Lincoln reported the allegations to the Bronx County District Attorney (DA) and the New York Police Department (NYPD). Lincoln was unable to perform a "rape kit" examination because such examination must occur within 96 hours from an alleged rape and the Patient's allegations involved acts that occurred more than 96 hours prior to the Patient reporting to Lincoln.

The Committee found that the Respondent reported his concerns to his Department Chair, Risk Management and Lincoln's legal counsel at the New York City Health and Hospitals Corporation (HHC) that there was a failure to follow proper procedures for reporting rapes. Lincoln terminated the Respondent in December 2011. In January 2012 the Respondent underwent a psychiatric examination at Bellevue Hospital and underwent hospitalization for one week at Long Island Jewish Hospital for psychiatric issues. The Committee found that the Respondent sent e-mails and letters containing personally identifiable information concerning Patient A to approximately 40 people, including the Department Chair, Risk Management, the Lincoln Chief Executive Officer, HHC legal counsel, the DA, the New York Times, a New York Times reporter, a clergyman, elected officials, personal contacts and others, without obtaining prior consent from Patient A. In addition, the Committee found that the Respondent knew that revealing personally identifiable information about a patient, without the patient's consent, is against the law. Further, the Committee found that the Respondent revealed the information as a matter of conscience, for vindication, out of self-righteousness and outrage, and while experiencing a hypomanic episode of illness. Finally, the Committee found that although Title 45 CFR § 164.512(j) authorizes disclosing patient information when necessary to prevent or lessen a

serious or imminent threat to the health or safety of a person or the public, there was no imminent threat to Patient A, her child or the public in January 2012.

The Committee sustained the charge that the Respondent's conduct violated EL § 6530(23) and the Committee concluded that 45 CFR §164.512(j) provided no disclosure authorization in this case. The Committee felt that the Respondent's actions resulted from a concern for Patient A and from the mental issues that the Respondent has acknowledged and is addressing. The Committee found a Censure and Reprimand provided the appropriate penalty.

Review History and Issues

The Committee rendered their Determination on March 4, 2015. This proceeding commenced on March 10, 2015, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's reply brief. The record closed when the ARB received the reply brief on April 21, 2015.

The Respondent argued that Patient A remained at risk from her father, uncle and the "chicken place guy" in January 2012, so the Committee erred in finding that there was no imminent threat. The Respondent argued that the Office of Professional Medical Conduct should have handled this case by issuing an administrative warning pursuant to PHL § 230(m)(ii). The Respondent requested that the ARB either dismiss the charge on the merits or in the interest of justice.

The Petitioner argued that the Respondent interpreted Title 45 CFR § 164.512(j) incorrectly. The Petitioner contended that the regulation is meant to protect a person or the public from a serious and imminent threat from a patient. The Petitioner questioned how releasing

personal health information to the Respondent's acquaintances could possibly protect anyone. The Petitioner argued further that the Respondent harmed Patient A by releasing her personal information and asked the ARB to sustain the Committee's Determination in full.

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 violated EL § 6530(23) by releasing personally identifying health information about Patient A without her consent. We agree further with the Committee that the regulations at Title 45 CFR § 164.512(j) provided no defense for the Respondent's conduct. We agree with the Petitioner that the Respondent was protecting no one by releasing information about Patient A to the Respondent's acquaintances. The ARB also affirms the Committee's Determination to Censure and Reprimand the Respondent. The Respondent should consider himself fortunate that the Committee limited the penalty to a Censure and Reprimand. The Committee felt that the Respondent's conduct resulted from the Respondent's mental condition and the Committee found that the Respondent is addressing his condition. The ARB will defer to the Committee's judgment.

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 Censure and Reprimand the Respondent.

Peter S. Koenig, Sr.
Steven Grabiec, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Glenn Reginald Jeffery, M.D.

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

Dated: 2 July, 2015

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Linda Prescott Wilson

In the Matter of Glenn Reginald Jeffery, M.D.

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

Dated: July 18, 2015



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Peter S. Koenig, Sr.

In the Matter of Glenn Reginald Jeffery, M.D.

Steven Grabiéc, M.D., an ARB Member, concurs in the Determination and Order in the
Matter of Dr. Jeffery.

Dated: 7/20/ 2015


A black rectangular redaction box covers the signature of Steven Grabiéc, M.D.

Steven Grabiéc, M.D.

In the Matter of Glenn Reginald Jeffery, M.D.

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

Dated: July 20, 2015



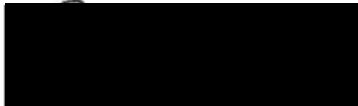
Richard D. Milone, M.D.

In the Matter of Glenn Reginald Jeffery, M.D.

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

Matter of Dr. Jeffery.

Dated: July 22, 2015



John A. D'Anna, M.D.