



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

PUBLIC

December 17, 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jill M. Zuccardy, Esq.
Women's Prison Association Law Project
175 Remsen Street, 9th Floor
Brooklyn, New York 11201

Robert Bogan, Esq.
NYS Department of Health
433 River Street - Suite 303
Troy, New York 12180

RE: In the Matter of Benzena Dosunmu, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-50) 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.

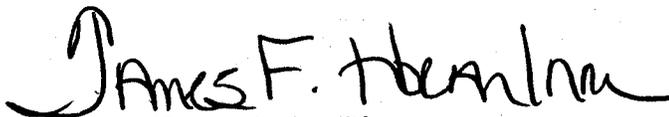
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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,

A handwritten signature in black ink that reads "James F. Horan". The signature is written in a cursive style with a large initial "J" and "H".

James F. Horan, Acting Director
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

Benzena Dosunmu, R.P.A. (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. 07-50

Before ARB Members Grossman, Lynch, Pellman, Wagle and Wilson

Administrative Law Judge James F. Horan drafted the Determination

For the Petitioner:

Thomas G. Conway
General Counsel
New York State Department of Health
433 River Street, Suite 303
Troy, NY 12180-2299
BY: Robert Bogan, Esq.

For the Respondent:

Women's Prison Association Law Project
175 Remsen Street, 9th Floor
Brooklyn, NY 11201
BY: Jill M. Zuccardy, Esq.

In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2007), the ARB reviews a decision by a BPMC Hearing Committee that revoked the Respondent's license as a registered physician assistant (License), following the Respondent's Federal felony convictions. After considering the hearing record and the review submissions by the parties, the ARB affirms the Committee's Determination.

Committee Determination on the Charges

The Committee conducted a hearing in this matter under the expedited hearing procedures (Direct Referral Hearing) in PHL § 230(10)(p). In the hearing, the Petitioner alleged that the Respondent violated New York Education Law (EL) § 6530(9)(a)(ii)(McKinney Supp. 2007) by engaging in conduct that resulted in a criminal conviction under Federal Law. In a Direct Referral Proceeding, the statute limits the Committee to considering whether a criminal conviction occurred, and if the Committee determines a conviction occurred, the Committee then determines the nature and the extent of the penalty to impose against the licensee, Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). The Direct Referral Proceeding began under a July 5, 2006 Commissioner's Order, pursuant to PHL §230(12)(b), which suspended the Respondent's License summarily, due to a felony conviction.

The Committee found that the Respondent received a license as a Physician Assistant in New York in 1987. On February 6, 2006, the Respondent entered a guilty plea to two felony charges, in the United States District Court for the Eastern District of New York for 1.) mail fraud and 2.) theft or embezzlement from an employee benefit plan. The Respondent admitted during her guilty plea that she had provided false information to an insurance company to obtain a life insurance policy on another person without that other person's knowledge and that the Respondent provided false information to a pension plan to continue receiving annuity payments for a person for several years after that person died [Hearing Exhibit 5, pages 22-29]. The Court sentenced the Respondent to serve twelve months and one day incarceration and three years supervised release, to pay a \$200.00 assessment and to pay \$34,327.30 in restitution.

The Committee voted to revoke the Respondent's license. The Committee noted that the Respondent was unable to attend the hearing, but submitted one document relating to the Respondent's participation in a program to aid people in transitioning from prison. The Committee found that the document provided a poor substitute for testimony from the Respondent regarding mitigating circumstances, rehabilitation and remorse for her crimes. The Committee found the Respondent's criminal conduct serious, the Committee referred to the conduct as complicated schemes that required time and planning and the Committee found no reliable basis in the record to conclude that the Respondent could be trusted to practice as a physician assistant despite her criminal behavior.

Review History and Issues

The Committee rendered their Determination on March 5, 2007. The Respondent submitted a Notice of Review on April 16, 2007. On June 26 2007, the Women's Prison Association entered an appearance in writing on the Respondent's behalf and requested additional time to submit a review brief. Without objection from the Petitioner, the ARB granted the extension. The record in the Review closed when the ARB received the Petitioner's reply to the Respondent's brief on September 24, 2007.

The Respondent argues that the Committee based the revocation order on the Committee's conclusions about the nature of the criminal conduct and on the Respondent's absence from the hearing. In response to the Committee's statements about the nature of the criminal conduct, the Respondent challenges the Committee's statement that the Respondent's conduct involved a complicated scheme that required time and planning. The Respondent describes the conduct as a crime of opportunity rather than planning. The Respondent argues that she admitted to making a terrible mistake in judgment for which she took full responsibility. The

Respondent contends that she has no history of prior misconduct and that no evidence in the record indicates that her crimes affected her professional performance or patient care. The Respondent notes that she worked in a city hospital to provide medical care for the needy and that the Committee imposed a harsh penalty for a woman who devoted her life to her profession and who knows no other employment. In response to the Committee's comments about the Respondent's failure to testify and discuss mitigating circumstances, rehabilitation and remorse, the Respondent asks the ARB to remand to the Committee to allow the Respondent to testify. The Respondent argues that she was unable to testify at the initial hearing because she was unable to get a furlough from her criminal sentence long enough to attend the hearing. The Respondent contends that the Committee revoked her License for her default, in an instance in which the Respondent's absence was excusable. The Respondent notes that she attended to the matter previously by requesting adjournments and by submitting evidence on her behalf for the hearing.

In reply, the Petitioner disputes the Respondent's contention that her criminal conduct did not involve complicated schemes requiring time and planning. In regard to the first criminal offense, the Petitioner argues that the Respondent made application for insurance on another person's life, without that other person's knowledge, that the Respondent used the wrong address, had the insurance agent mail the Respondent the application and made the application with information the Respondent knew was inaccurate, with the intent to obtain money from the life insurance company. In regard to the second criminal offense, the Petitioner argues that the Respondent's criminal conduct took place over the course of 7 ½ years. During that time, the Respondent delivered forms to a pension plan that the respondent signed and had notarized. The forms stated that the person who had earned the pension was still alive, when the Respondent

knew such person was deceased. The Respondent then received funds to which she was not entitled in checks on which the Respondent signed the deceased's name and then cashed. The Petitioner argues that the Respondent's criminal conduct required time, planning and numerous independent actions over a period in excess of seven years. In regard to the hearing, the Petitioner argues that the Respondent had experience in obtaining adjournments for previous hearing dates and that she chose against requesting an adjournment for the date the hearing occurred. The Petitioner also notes that the Committee considered the evidence that the Respondent submitted in advance of the hearing.

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 Spertalis 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 parties' review submissions. We affirm the Committee's Determination that the Respondent's criminal conduct amounted to professional misconduct. Neither party challenged the Committee's Determination on that ground. We affirm the Committee's Determination to revoke the Respondent's License.

The ARB agrees with the Committee that the Respondent engaged in serious criminal conduct and we disagree with the Respondent's characterization that her conduct amounted to crimes of opportunity rather than planning. The application for the life insurance clearly involved planning and falsification. As to the pension benefits, the Respondent made continued false statements over a number of years and signed another person's name to checks over that period

of time. The Respondent's brief, at page 4, asserted that the record shows no indication that the Respondent ever received a pecuniary gain from her crimes. The ARB disagrees. The record shows that the Respondent received money to which she was not entitled for 7 ½ years.

The ARB denies the Respondent's request that we remand the case to offer the Respondent a chance to testify before the Committee. The ARB finds that the Respondent's criminal conduct provides the grounds for revoking her License and the ARB finds no validity to the Respondent's assertion that the Committee revoked the Respondent's License because she defaulted in appearing at the hearing. Although the Respondent's brief does provide some factors in mitigation, the ARB finds many aggravating factors in the record as well. As we noted above, the ARB finds no validity in the Respondent's assertion denying that her crimes involved planning. The Respondent did provide care to the needy in a city hospital, but at the same times the Respondent was also participating in criminal schemes against an insurance company and a pension plan. The Respondent's conduct in no way involved patient care but her continuing fraudulent conduct does reflect on the Respondent's fitness to practice her profession.

A physician assistant must possess integrity and deal honestly with patients, with supervising physicians and health facilities, with insurance companies and with licensing bodies and government regulators. The Respondent engaged in multiple, fraudulent acts over an extended period of time. The criminal conduct occurred after the Respondent had obtained her License. The ARB concludes that the Respondent's criminal conduct demonstrated that she lacks the integrity necessary to practice her profession.

ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

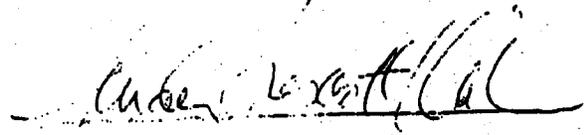
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's license.

Linda Prescott Wilson
Thea Graves Pellman
Datta G. Wagle, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

In the Matter of Benzena Dosunmu, R.P.A.

Linda Prescott Wilson an ARB Member concurs in the Determination and Order in the
Matter of Ms. Dosunmu.

Dated: 4 December, 2007

A handwritten signature in cursive script, appearing to read "Linda Prescott Wilson", written over a horizontal line.

Linda Prescott Wilson

In the Matter of Benzena Dosunmu, R.P.A.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the
Matter of Ms. Dosunmu.

Dated: 12-12, 2007



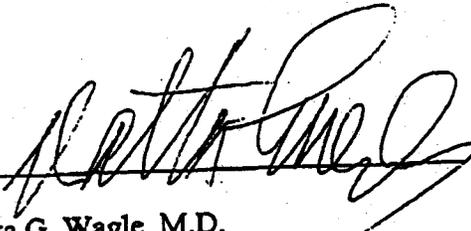
Thea Graves Pellman

In the Matter of Benzena Dosunmu, R.P.A.

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

Matter of Ms. Dosunmu.

Dated: 12/12, 2007



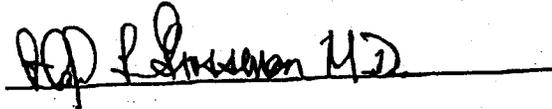
Datta G. Wagle, M.D.

In the Matter of Benzena Dosunmu, R.P.A.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the

Matter of Ms. Dosunmu.

Dated: December 14, 2007

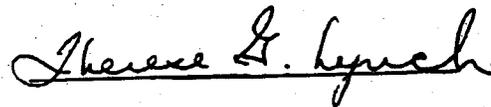
A handwritten signature in black ink, appearing to read "Stanley L. Grossman M.D.", is written over a horizontal line.

Stanley L Grossman, M.D.

In the Matter of Benzena Dosumu, R.P.A.

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Ms. Dosumu.

Dated: Dec. 12, 2007



Therese G. Lynch, M.D.