



New York State Board for Professional Medical Conduct

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Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

January 12, 2000

Mr. Robert Bentley, Director
Division of Professional Licensing Services
New York State Education Department
Cultural Education Center
Empire State Plaza
Albany, New York 12230

RE: Order #BPMC 98-239
License No. 126192

Dear Mr. Bentley:

The Appellate Division, Third Department, has confirmed the revocation of Peter J. Corines's license to practice medicine. A copy of the court decision is attached.

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Daniel Kelleher

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Physician Monitoring
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Medical Conduct

**Supreme Court - Appellate Division
Third Department**

Decided and Entered: December 23, 1999

83348

In the Matter of PETER J.
CORINES et al.,
Petitioners,

v

MEMORANDUM AND JUDGMENT

STATE BOARD FOR PROFESSIONAL
MEDICAL CONDUCT,
Respondent.

Calendar Date: November 17, 1999

Before: Mikoll, J.P., Mercure, Crew III, Yesawich Jr. and
Mugglin, JJ.

Wood & Scher (Anthony Z. Scher of counsel), Scarsdale, for
petitioners.

Eliot Spitzer, Attorney-General (Raymond J. Foley of
counsel), New York City, for respondent.

Mugglin, J.

Proceeding pursuant to CPLR article 78 (initiated in this
court pursuant to Public Health Law § 230-c [5]) to review a
determination of the Hearing Committee of respondent which, inter
alia, revoked petitioner Peter J. Corines' license to practice
medicine in New York.

Petitioners Surgical Consultants P.C. and Ambulatory
Anesthesia & Medical Services P.C., both professional
corporations authorized to practice the profession of medicine,

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and petitioner Peter J. Corines, being the sole shareholder and director of each corporation, were charged by the Bureau of Professional Medical Conduct (hereinafter BPMC) with 52¹ specifications of professional misconduct based on Corines' treatment of 17 patients, billing and recordkeeping improprieties, and misleading applications for hospital privileges. In particular, petitioners were charged with 11 counts of professional misconduct by reason of practicing the profession with gross negligence; 11 counts of professional misconduct by reason of practicing the profession with gross incompetence; professional misconduct by reason of practicing the profession with negligence on more than one occasion; professional misconduct by reason of practicing the profession with incompetence on more than one occasion; 10 counts of professional misconduct by reason of practicing the profession of medicine fraudulently; 17 counts of professional misconduct by reason of failing to maintain a record for each patient which accurately reflected the evaluation and treatment of the patient; and one count of professional misconduct by reason of ordering excessive tests not warranted by the condition of the patient.

Following a hearing spanning 15 separate days during which the Hearing Committee of respondent heard testimony from various lay and expert witnesses, petitioners were found guilty of negligence on 13 separate occasions in the course of treating eight different patients; professional misconduct by reason of practicing the profession with incompetence on four occasions; professional misconduct by reason of practicing the profession of medicine fraudulently by seven separate acts of fraud stemming from billing practices related to seven different patients; professional misconduct by reason of practicing the profession of medicine fraudulently on two separate occasions resulting from material omissions in Corines' appointment applications to two separate facilities; and 16 counts of professional misconduct by reason of failing to maintain accurate and complete patient records relating to 16 different patients. As a result of these

¹ This was reduced to 51 specifications because one count of fraudulent practice was withdrawn by BPMC during the hearing.

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findings, the Hearing Committee revoked Corines' license to practice medicine, revoked the certificates of incorporation of both professional corporations and assessed a fine of \$90,000 against Corines. Petitioners commenced this CPLR article 78 proceeding to seek judicial review of the determination of the Hearing Committee.²

Petitioners initially contend that the Hearing Committee's finding that petitioners practiced negligently on more than one occasion must be reversed since the Hearing Committee misapplied the definition of "negligence on more than one occasion". They argue that as a result of the misunderstanding of the term "occasion", the Hearing Committee improperly aggregated separate and discrete acts to conclude that petitioners failed to exercise the due care that would be exercised by a reasonably prudent physician and, in doing so, the Hearing Committee sustained the charge of practicing the profession with negligence "on a particular occasion". In Matter of Rho v Ambach (74 NY2d 318), the Court of Appeals observed:

Moreover, section 6509 (2) distinguishes between professional misconduct resulting from practicing with gross negligence on a "particular occasion" and practicing with ordinary negligence "on more than one occasion". The inference is compelling that by its use of the phrase "particular occasion" in describing gross negligence, the Legislature was referring to an event

² Petitioners do not address the 16 findings of inadequate recordkeeping in their brief and, thus, these findings are not before the court for review.

Since petitioners do not contest the incompetency findings in their brief, these findings are also not before the court for review (see, Gibeault v Home Ins. Co., 221 AD2d 826, 827 n 2; Matter of Adler v Bureau of Professional Med. Conduct, State of N.Y., Dept. of Health, 211 AD2d 990).

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of some duration occurring at a particular time or place, during which either a single act of negligence of egregious proportions or multiple acts of negligence that cumulatively amount to egregious conduct could constitute gross negligence. Use of the phrase "on more than one occasion" suggests, with equal force, that the Legislature was referring to distinct events of some duration during which an act or acts amounting to ordinary negligence occur (*id.*, at 322).

Here, the Hearing Committee took isolated, separate events with respect to a particular patient and concluded that the combination of those events constituted negligence. After reviewing the entirety of the determination, we are convinced that petitioners' argument in this regard is without merit. It is clear that the Hearing Committee determined that petitioners' care with respect to a particular patient was negligence and that the negligence consisted of several misdeeds. It is also clear that the Hearing Committee considered the course of treatment of a particular patient to be the "event" and concluded that petitioners were negligent on that occasion. In sustaining specification 12, the Hearing Committee merely found that petitioners had committed acts of negligence on more than one occasion and with respect to distinctive events.

Next, petitioners contend that the negligence findings are not supported by substantial evidence. This argument is premised upon the lack of expert testimony in support of the findings of fact made by the Hearing Committee. "Where there is a relationship between inadequate record-keeping and patient treatment, the failure to keep accurate records may constitute negligence" (Matter of Bogdan v New York State Bd. of Professional Med. Conduct, 195 AD2d 86, 89, appeal dismissed, lv denied 83 NY2d 901). Here, petitioners argue that no expert testimony was offered to establish the required nexus between the alleged recordkeeping deficiencies and patient care. We disagree.

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There is evidence in the record offered by expert witnesses that petitioners' deficiencies in recordkeeping did affect patient care. Although there may have been conflicting expert testimony on this issue, it is the exclusive province of the Hearing Committee to determine issues of credibility (see, Matter of Tames v De Buono, 257 AD2d 784, 786; Matter of Morrison v De Buono, 255 AD2d 710, 711). The Hearing Committee determined to credit BPMC's expert witnesses over those of petitioners and, in this regard, such findings are given deference. Accordingly, we determine that substantial evidence supports the determination that the failure of petitioners to perform and/or document required medical histories and physical examinations resulted in poor, inadequate and dangerous patient care. Further, there is substantial evidence in the record to sustain those findings of petitioners' negligence apart from the deficient recordkeeping. The testimony which the Hearing Committee chose to credit adequately supports the findings that petitioners' care was less than that exercised by a reasonably prudent physician under the circumstances.

Also unavailing is petitioners' argument that they suffered prejudice as a result of the delay in bringing these charges. There is no Statute of Limitations governing the initiation of this type of disciplinary proceeding (see, Matter of Galin v De Buono, 259 AD2d 788, 789-790, lv denied 93 NY2d 812). Absent proof of actual prejudice, mere delay will not be accepted as the basis for annulling a hearing determination (see, Matter of Lawrence v De Buono, 251 AD2d 700, 701; Matter of Matala v Board of Regents of Univ. of State of N.Y., 183 AD2d 953, 956). In this regard, petitioners claim actual prejudice as a result of the death of the chief of surgery at Flushing Hospital, who petitioners claim was made aware of Corines' prior suspension at Catholic Medical Center. Even if the testimony of this witness would confirm petitioners' allegations in this regard, it does not excuse Corines' less than truthful responses to the questions on the application for hospital credentials. With respect to the balance of petitioners' claims of prejudice, we find them to be without merit. Petitioners have simply not established any actual prejudice stemming directly from the delay in the institution of these proceedings.

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Petitioners next contend that the fraud findings are not supported by substantial evidence. Seven of the fraud findings are related to false time periods listed on anesthesia bills submitted to insurance companies. Petitioners attempted to excuse these inaccuracies by blaming inadequacies in their computer software program and their billing staff. The Hearing Committee rejected this explanation as being "completely ridiculous and absurd", noting that petitioners are ultimately responsible for the actions of their staff. Under these circumstances, where the explanation for fraudulent misrepresentations is found to be incredible, an inference of an intent to deceive may properly be drawn (see, Matter of Post v State of N.Y. Dept. of Health, 245 AD2d 985, 987; Matter of Radnay v Sobol, 175 AD2d 432, 433). The remaining fraud findings were based upon misleading applications for hospital privileges. Corines failed to answer, answered falsely or failed to provide required explanations to questions regarding other hospital affiliations on four applications. These acts permit an inference of intent to mislead, which is a factual determination for the Hearing Committee to make (see, Matter of Sung Ho Kim v Board of Regents of Univ. of State of N.Y., 172 AD2d 880, 881-882, lv denied 78 NY2d 856; see also, Matter of Abdelmessih v Board of Regents of Univ. of State of N.Y., 205 AD2d 988, 986). Clearly, these fraud findings are supported by substantial evidence and petitioners' complaints in this regard are without merit.

Lastly, petitioners contend that the penalty of Corines' license revocation and the maximum allowable fine was too severe. Based upon our review of the record as a whole, we cannot say that the penalty imposed is so disproportionate to the violation sustained as to shock one's sense of fairness (see, Matter of Capote v De Buono, 241 AD2d 570, 571). Where the physician abuses the privilege afforded by his medical license for personal gain and in opposition to the best interests of the people of this State, the penalty of revocation of that license is appropriate (see, Matter of Adler v Bureau of Professional Med. Conduct, State of N.Y., Dept. of Health, 211 AD2d 990, 993). Although the failings of petitioners as documented in this record did not result in injury to any patient, there is no legal

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requirement that injury be established before disciplinary sanctions can be imposed (see, Matter of Abdelmessih v Board of Regents of Univ. of State of N.Y., 205 AD2d 983, 985, *supra*; Matter of Morfesis v Sobol, 172 AD2d 897, 898, *lv denied* 78 NY2d 856). Given the totality of the offenses sustained against petitioners, the penalty imposed is neither unduly harsh nor excessive.

We have considered the balance of the contentions made by petitioners and find them to be without merit. Accordingly, we find that the underlying determination is supported by substantial evidence and must be confirmed.

Mikoll, J.P., Mercure, Crew III and Yesawich Jr., JJ.,
concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

ENTER:

/s/ Michael J. Novack

Michael J. Novack
Clerk of the Court

**SUPREME COURT STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT**

In the Matter of
The Application
of

**PETER J. CORINE, M.D., SURGICAL CONSULTANTS,
P.C., and AMBULATORY ANESTHESIA & MEDICAL
SERVICES, P.C.**

**ORDER TO
SHOW CAUSE**

Petitioner,

against

**THE STATE BOARD FOR PROFESSIONAL MEDICAL
CONDUCT, a board under the auspices of the New York State
Department of Health,**

Respondent.

for a judgment pursuant to CPLR Article 78.

Upon the verified petition of **PETER J. CORINE, M.D., SURGICAL CONSULTANTS,
P.C., and AMBULATORY ANESTHESIA & MEDICAL SERVICES, P.C.**, verified on the 20th day
of October, 1998, the verified affirmation of **ANTHONY Z. SCHEE, ESQ.**, affirmed on the 19th
day of October, 1998, Determination and Order No. EPMC 98-239 dated October 5, 1998, and upon
all of the papers and proceedings previously had herein,

Let respondent or his attorneys show cause before the Supreme Court, Appellate
Division, Third Department, Justice Building, Albany, New York, on the ^{2nd} day of ~~October~~, 1998
1998 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard why
a Judgment and Order should not be entered pursuant to Article 78 of the CPLR and Section
230-e(5) of the Public Health Law;

~~(a) staying the Determination and Order of the Hearing Committee of the State Board for Professional Medical Conduct, No. EP/MC 98-239 pending the hearing and determination of this motion for a preliminary injunction and staying the said Order pending the hearing and resolution of this Article 78 proceeding;~~

~~(b) staying respondent and its officers, agents, employees and representatives from enforcing Determination and Order No. EP/MC 98-239 pending the hearing and determination of this proceeding;~~

~~(c) annulling the said Determination and Order No. EP/MC 98-239 issued by respondent, The Hearing Committee for the State Board for Professional Medical Conduct;~~

~~(d) granting such other and further relief which the Court deems just and proper, together with the costs and disbursements of this proceeding on the ground that the petitioner's motion is prima facie substantiated and that the petitioner's right to due process is being denied and that the petitioner's motion is supported by substantial evidence.~~

and it is further *enforcement of*

ORDERED, that ~~Determination and Order No. EP/MC 98-239 of The Hearing Committee of the State Board for Professional Medical Conduct is hereby stayed pending the determination of the within motion ^{brought on by this order to show cause} ~~and the determination of this Article 78 proceeding~~ and it is further:~~

~~ORDERED, that respondent and its officers, agents, employees and representatives are hereby stayed from enforcing Determination and Order EP/MC No. 98-239 pending the within motion for a preliminary injunction pending hearing and determination of this proceeding, and it is further:~~

* on the condition that the petitioner obtain a second opinion from a Board Certified surgeon prior to performing any cancer surgery;

ORDERED, that the motion brought on by this Order to Show Cause shall not be orally argued unless counsel are notified to the contrary by the Clerk of the Court.

Sufficient cause appearing therefore, service by personal service or by overnight mail on ~~the~~ *on or before October 23, 1998* upon the respondent by serving the Division of Legal Affairs, Department of Health, Corning Tower,

Seneca
Albany, and upon Dennis Vacco, Attorney General of the State of New York, 120 Broadway, New York, NY, of this Order and the papers annexed hereto *is hereby acknowledged*

~~1998 shall be deemed sufficient.~~

Dated: October 21, 1998

@ Troy, N.Y.

Anthony J. Carpinello
Hon. ANTHONY J. CARPINELLO
Justice of the Supreme Court
Appellate Division
Third Department