



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

February 14, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Amin H. Gerges, M.D.
1643 West 10th Street
Brooklyn, New York 11223-1146

Amin H. Gerges, M.D.
P.O. Box 4418
New York, New York 10163-4418

Francis Ruddy, Esq.
NYS Department of Health
90 Church Street 4th Floor
New York, New York 10007-2919

RE: In the Matter of Amin H. Gerges, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-236) 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.

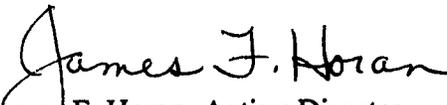
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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


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

Amin H. Gerges, 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. 07-236

COPY

Before ARB Members Grossman, Lynch, Pellman, Wagle and Wilson
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Francis J. Ruddy, Esq.
For the Respondent: Pro Se

After a hearing below, a BPMC Committee (Hearing Committee) determined that the Respondent committed professional misconduct and the Hearing Committee voted to revoke the Respondent's License to practice medicine in New York State (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2007), the Respondent's challenges the Hearing Committee's Determination on several grounds. After reviewing the hearing record and the review briefs from the parties, the ARB affirms the Committee's Determination that the Respondent committed professional misconduct and the Committee's Determination to revoke the Respondent's License.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(15) (McKinney Supp. 2007) by failing to comply with an order issued pursuant to PHL § 230(7). Under § 230(7), a BPMC Committee (Evaluation Committee) holds the authority to direct a licensee to submit to a medical or psychiatric examination, when

the Evaluation Committee has reason to believe that the licensee may be impaired by mental disability. The Respondent failed to appear at the Hearing on the charges, refused to provide exhibits for the consideration at the Hearing and failed to file an answer to the Statement of Charges. The Hearing Committee's Administrative Officer found that the Respondent received appropriate notice for the Hearing and found the Respondent in default.

The evidence at the Hearing indicated that the Respondent made repeated, harassing communications to the New York State Academy of Family Medicine and to the New York State Department of Health [Hearing Exhibit 6]. The Office for Professional Medical Conduct (OPMC) provided information about those communications to Stephen Price, M.D. for evaluation concerning the Respondent's mental status. Following such evaluation, Dr. Price wrote to OPMC that the Respondent appears pre-occupied by perceived injustices emanating from events in California in the 1980s. Dr. Price wrote further that the Respondent's thinking process appeared delusional and that the Respondent was unable to stop his calling pattern. Dr. Price found sufficient cause to warrant concern that the Respondent might be suffering from a delusional disorder and recommended a direct examination [Hearing Exhibit 11]. On March 5, 2007, OPMC provided the Respondent notice that an Evaluation Committee would meet on March 27, 2008 to review information to determine whether the Respondent might suffer from a mental disability and whether to direct the Respondent to submit to a medical and/or psychiatric examination [Hearing Exhibit 7]. The notice to the Respondent indicated that the Respondent could attend on March 27th, with an attorney, and that the Respondent could choose to submit to an evaluation voluntarily and avoid the need for the March 27th proceeding. The Respondent failed to appear on March 27th and the Evaluation Committee ordered the Respondent to submit to a medical/psychiatric examination by a physician the Committee designated (Evaluation Order), within 30 days from the date of the Evaluation Order [Hearing Exhibit 8]. The Respondent returned the Evaluation Order and failed to submit to the examination [Hearing Exhibit 12]. The Petitioner then charged the Respondent with professional misconduct.

The Hearing on the professional misconduct charges took place on October 16, 2007. Prior to the Hearing, the Respondent wrote to the Hearing Committee's Administrative Officer

and objected to the Hearing. The Respondent also wrote that he was not authorizing the Petitioner's attorney to submit any information or exhibits on the Respondent's behalf to the Hearing Committee [Hearing Exhibit ALJ I]. The Hearing proceeded in the Respondent's absence.

In the Determination now on review, the Hearing Committee determined that the Respondent's failure to comply with the Evaluation Order constituted professional misconduct under EL § 6530(15). The Hearing Committee concluded that the Respondent's conduct justified the Evaluation Order. The Committee concluded further that the failure to submit to the evaluation and the failure to appear at the Hearing made revocation the only appropriate penalty.

Review History and Issues

The Committee rendered their Determination on November 1, 2007. This proceeding commenced on November 7, 2007, 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 December 12, 2007. The Respondent also attempted to present additional documents to the ARB from outside the hearing record and the Respondent failed to provide copies of those additional documents to the Petitioner.

The Respondent's brief mentioned a prior disciplinary case against the Respondent, after which the Respondent regained his License. The Respondent argued to the effect that BPMC lacks authority to bring a further action against the Respondent, because the Respondent regained his License from the prior disciplinary action. The Respondent argued further that he received insufficient notice concerning the objectives of the Evaluation Committee Proceeding and Hearing. The Respondent also alleged misconduct by members of the Hearing Committee and misconduct and criminal activity by various other persons.

In response, the Petitioner argues that BPMC holds jurisdiction over the Respondent, that the Respondent received appropriate notice about the Evaluation Proceeding and the Hearing and that the proof at the hearing established the charges by preponderance of the evidence. The Petitioner argued further that the Respondent made baseless allegations in his brief. The Petitioner also challenged the Respondent's attempts to submit material to the ARB from outside the hearing record and to submit material to the ARB without providing copies to the Petitioner.

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 in full.

The ARB rejects the Respondent's contention that BPMC holds no jurisdiction over the Respondent. When the Respondent regained his License following the prior disciplinary action against him, the Respondent regained the License subject to the provisions on misconduct in EL § 6530, subject to the jurisdiction of BPMC and subject to any order from BPMC.

The ARB finds that the Respondent received adequate notice about the Evaluation Proceeding and the Hearing. The Respondent's own submissions to OPMC and to the Committee's Administrative Officer demonstrated that the Respondent knew about the Evaluation Proceeding and the Hearing, knew that the Evaluation Proceeding and Hearing

concerned his mental status and a possible evaluation, knew that he could appear with an attorney and knew that he could submit exhibits in evidence.

The ARB refuses to consider the material that the Respondent presented from outside the hearing record and that the Respondent presented without providing copies to the Petitioner. The provisions on administrative reviews under PHL § 230-c(4)(a) limit the reviews to only the record below and the briefs, 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). Under PHL § 230-c(4)(b), the ARB may remand a case to a committee for further proceedings. The ARB sees no reason to remand this case for the Committee to consider the Respondent's additional submissions. The Respondent received the opportunity to appear at the Hearing and to submit evidence at that time. The ARB also sees no evidence in the record to support the Respondent's allegations that Hearing Committee members engaged in misconduct.

The ARB affirms the Committee's Determination that the Respondent engaged in professional misconduct under EL § 6530(15), by refusing to submit to an examination under the Evaluation Committee's Order. The Respondent's communications provided a clear reason for concern by OPMC about the Respondent's health. Following Dr. Price's review and assessment of the communications, adequate grounds existed for an Evaluation Committee to order an examination pursuant to PHL § 230(7). The opportunity existed under § 230(7) for the Respondent to appear before the Evaluation Committee, with counsel, to submit to an examination voluntarily and to offer the results from voluntary examination to the Committee. The Respondent failed to comply with the Evaluation Order and that failure constituted misconduct. At the Hearing, the Respondent failed to appear and to offer evidence. The exhibits

that the Petitioner offered into evidence included several letters from the Respondent. The Respondent's own letters assisted in proving the charges.

The ARB affirms the Committee's Determination to revoke the Respondent's License. We agree with the Committee that the Respondent's conduct raises great concern for the health and safety of any patient to whom the Respondent would provide treatment. The ARB concludes that we can not allow the Respondent to continue in medical practice without the Respondent submitting to a medical/psychiatric examination and complying with any further directions from BPMC. No misconduct penalty available at PHL § 230-a permits the ARB to suspend the Respondent's License until he submits to an examination, Ostad v. New York State Department of Health, 309 A.D.2d 989, 766 N.Y.S.2d 441 (3rd Dept. 2003). Under § 230-a, the ARB may suspend a licensee for a specific period of time, but the ARB sees no point to such a suspension. Nothing in the record leads the ARB to conclude that time away from practice alone will alter the Respondent's conduct. The ARB also sees no point in placing the Respondent on probation and ordering the Respondent to submit to an examination as a probation term. The Respondent already served on probation under his prior disciplinary penalty and that prior probation failed to impress upon the Respondent the need to comply with orders from OPMC. The ARB concludes that revoking the Respondent's License amounts to the only sanction to assure patient protection and safety in this case.

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.

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

In the Matter of Amin H. Gerges, M.D.

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

Dated:  2008



Linda Prescott Wilson

In the Matter of Amin H. Gerges, M.D.

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

Dated: FEB 10, 2008



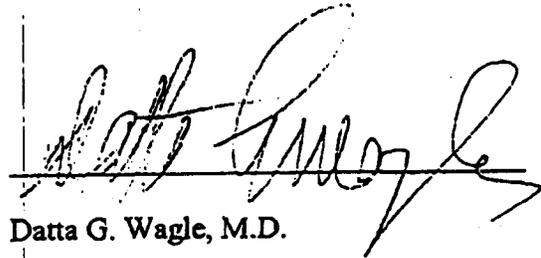
Thea Graves Pellman

In the Matter of Amin H. Gerges, M.D.

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

Matter of Dr. Gerges.

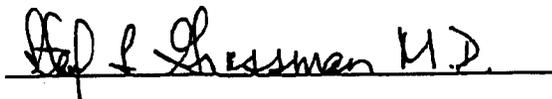
Dated: 2/14/ 2008


Datta G. Wagle, M.D.

In the Matter of Amin H. Gerges, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the Matter of Dr. Gerges.

Dated: February 7, 2008

A handwritten signature in black ink that reads "Stanley L. Grossman M.D." written over a horizontal line.

Stanley L Grossman, M.D.

In the Matter of Amin H. Gerges, M.D.

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

Matter of Dr. Gerges.

Dated: February 7, 2008

Therese G. Lynch M.D.

Therese G. Lynch, M.D.