

September 16, 2014

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ann Landsman, R.P.A.  
REDACTED

Joyce B. David, Esq., P.C.  
664 Flatbush Avenue  
Brooklyn, New York 11225

Anna Lewis, Associate Counsel  
NYS Department of Health  
90 Church Street – 4<sup>th</sup> Floor  
New York, New York 10007

**RE: In the Matter of Ann Landsman, R.P.A.**

Dear Parties:

Enclosed please find the Determination and Order (No. 14-227) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,

REDACTED

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah

Enclosure

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

In the Matter of

Ann Landsman, R.P.A. (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. 14-227

COPY

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): Anna R. Lewis, Esq.  
For the Respondent: Joyce B. David, Esq.

After a hearing below, a BPMC Committee sustained charges that the Respondent violated probation and made intentional misrepresentations in applications or submissions. The Committee voted to revoke the Respondent's registration as a physician assistant in New York State (Registration). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c(4)(a)(McKinney 2014), the Respondent asks the ARB to nullify or modify the Committee's Determination. After considering the record below and the parties' submissions, the ARB votes 5-0 to affirm the Committee's Determination that the Respondent committed misconduct and to affirm the Determination to revoke the Respondent's Registration.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(2), 6530(14), 6530(20-21) & 6530(29) (McKinney Supp. 2014) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,

- violating the provisions in PHL § 2805-k on providing information prior to obtaining or renewing hospital privileges or association,
- engaging in conduct that evidences moral unfitness,
- willfully filing a false report or failing to file a report required by law, and,
- violating a term of probation or condition or limitation on a license.

The charges involved the Respondent's obligations under BPMC Consent Order 08-20 (Consent Order) and the Respondent's answers on applications or submissions to Brookdale University Hospital and Medical Center (Brookdale), the New York State Department of Health Physician Monitoring Program (PMP), the Maine Board of Licensure (Maine Board) and the United States Drug Enforcement Agency (DEA). In her answer, the Respondent denied the charges and denied committing professional misconduct.

The Committee dismissed the charges relating to reporting under PHL § 2805-k, concerning investigations prior to granting privileges or association at hospitals for physicians, dentists or podiatrists. The Committee determined that § 2805-k makes no mention concerning physician assistants. The Committee sustained the charges that alleged practicing fraudulently, willfully filing a false report, engaging in conduct that evidences moral unfitness and violating probation.

The Respondent signed the Consent Order in January 2008 to end an action in which the Petitioner charged that the Respondent committed misconduct by making false statements on 2002, 2003, 2005 and 2006 applications or submissions to hospitals, government agencies or employers and by engaging in conduct that resulted in the Respondent's 2007 New York State felony conviction for scheming to defraud in the first degree [Hearing Exhibit 1, pages 11-18]. Evidence at the hearing showed that the Respondent's felony conviction arose from the Respondent working simultaneous shifts, over a four-year period, at two different hospitals. In the Consent Order, the Respondent indicated that she made no contest to the charges in the action and she accepted a sanction that included a three year suspension from practice, with one year active and two years stayed, and with two years on probation.

The Probation Terms under the Consent Order at Paragraph 1 required that the Respondent conform to all moral and professional standards of conduct and governing law. Paragraph 3 required that the Respondent provide to the Director at the Office for Professional Medical Conduct (OPMC) with:

- a full description of the Respondent's employment and practice;
- all professional and residential addresses and phone numbers, both within and without New York State; and,
- all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility.

Paragraph 3 also required the Respondent to keep such information current and provide any additions or changes to the required information within thirty days.

The Committee found that the Respondent violated the Probation Terms under the Consent Order by failing to notify OPMC concerning:

- the return to work at Brookdale;
- the termination from Brookdale in a timely manner;
- employment by Michael Ackerman, M.D. and a change in employment with Dr. Ackerman from medical assistant during the suspension to physician assistant following the suspension;
- report work as a contract or per-diem worker at Practice Management Solutions and Genesis Medical Health, P.C.; and,
- employment at Sick Day Medical House Calls in a timely manner.

The Committee also found that the Respondent failed to provide OPMC with copies of applications that the Respondent submitted to:

- Practice Management Solutions, Inc.,
- Sick Day Medical House Calls,
- Medical Associates of Wall Street, and,
- the Maine Board of Licensure.

The Committee found further that the Respondent submitted a March 3, 2009 application to Brookdale that answered "NO" to a question about whether the Respondent was ever terminated from a state or federal health insurance program. The Respondent was terminated from the Medicaid Program in March 2008. The Respondent submitted a *curriculum vitae* to the OPMC Physician Monitoring Unit in February 2009, which listed the Respondent with a certification from the National Commission on Certification of Physician Assistants. The Committee found that the Respondent lost that certification in March 2008 and only regained the Certification in October 2009. The Respondent submitted an application to the Maine Board of Licensure in July 2013, in which the Respondent answered "NO" to a question on whether the Respondent ever received a sanction from Medicare or any state Medicaid program. The Committee found that the Respondent was terminated from the New York Medicaid Program in March 2008. The Respondent applied for certification from DEA in June 2010 and, in that application, the Respondent answered "NO" to a question as to whether the Respondent ever had a state license suspended or put on probation. The Committee found that the Respondent knew at the time she filled out the DEA application, that the Respondent had been suspended and put on probation by BPMC. Finally, the Committee found that the Respondent acted knowingly and with intent to deceive in making the false answers and in failing to provide information or timely information.

In making their findings, the Committee found the testimony by two OPMC employees, John Sitterly and April Solten, credible and careful. The Committee stated that they were unable to credit any testimony from the Respondent due to the Respondent's pattern of lying and deceit that stretched back long before the charges now at issue. The Committee also found the Respondent's hearing testimony non-credible and the Committee described some testimony by the Respondent as "simply preposterous". The Respondent called as a witness her former attorney, Jason Shanbaum. The Committee found Mr. Shanbaum unpersuasive, particularly when he tried to distinguish between contract employment and other forms of employment.

The Committee voted to revoke the Respondent's Registration. The Committee concluded that the Respondent received already a chance to rehabilitate herself while on probation, but failed dismally to do so. The Respondent's failure to cooperate with the Consent

Order resulted in the Committee's statement that it would be futile to engage in that exercise again.

#### Review History and Issues

The Committee rendered their Determination on April 2, 2014. This proceeding commenced on April 25, 2014, 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 July 23, 2014.

The Respondent argued that the Committee failed to consider mitigating factors, made inadequate findings on the Respondent's intent, relied on impermissible and inaccurate speculation from outside the record and imposed a penalty utterly disproportionate to the Respondent's conduct. The Respondent requested that the ARB reverse or modify the Committee's Determination.

In reply, the Petitioner argued that the Respondent intentionally and knowingly deceived OPMC, PMP, DEA and the Maine Board of Licensure. The Committee found the Respondent non-credible at hearing and the Committee had no reason to believe that the Respondent would comply with any other penalty the Committee could have imposed. The Petitioner contended that revocation provided the only appropriate penalty in this case.

#### 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 (3<sup>rd</sup> 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 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> 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 (3<sup>rd</sup> 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. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct and we affirm the Determination to revoke the Respondent's Registration.

The Respondent's Brief argued initially that the Committee failed to consider mitigating factors "as they were required to do". The Brief failed to cite to the statute or regulation that requires a Committee to consider mitigating factors, but instead made reference to a New York Court of Appeals decision in a criminal case which held that aggravating and mitigating circumstances are certainly relevant to determining the sentence to be imposed [Respondent's Brief page 2]. In determining the appropriate penalty in a case, a Committee or 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, (supra). The Committee found that aggravating factors in this case far outweighed the illnesses and deaths.

The Respondent argued that the Committee barely paid lip service to two tragedies, the illnesses and death of the Respondent's daughter and husband between 2006 and 2011. The Respondent contended that a woman enduring these horrors might fall behind in her paperwork. The ARB notes that the Respondent's conduct in this case amounted to much more than falling behind in paperwork. The Respondent submitted paperwork that contained lies and that conduct

fit into a pattern that began with the Respondent's criminal conviction and prior professional misconduct, which occurred before the family illnesses.

The Respondent argued next that the Board made inadequate findings as to intent. The ARB rejects that argument.

In order to sustain a charge that a licensee practiced medicine fraudulently, a hearing committee must find that (1) a licensee made a false representation, whether by words, conduct or by concealing that which the licensee should have disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation, Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (Third Dept. 1966), aff'd, 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). A committee may infer the licensee's knowledge and intent properly from facts that such committee finds, but the committee must state specifically the inferences it draws regarding knowledge and intent, Choudhry v. Sobol, 170 A.D.2d 893, 566 N.Y.S.2d 723 (Third Dept. 1991). To prove willfully filing a false report, a committee must establish that a licensee made or filed a false statement willfully, which requires a knowing or deliberate act, Matter of Brestin v. Comm. of Educ., 116 A.D.2d 357, 501 N.Y.S.2d 923 (Third Dept. 1986). Merely making or filing a false report, without intent or knowledge about the falsity fails to constitute professional misconduct, Matter of Brestin v. Comm. of Educ., (supra). A committee may reject a licensee's explanation for erroneous reports (such as resulting from inadvertence or carelessness) and draw the inference that the licensee intended or was aware of the misrepresentation, with other evidence as the basis, Matter of Brestin v. Comm. of Educ., (supra).

In this case, the Committee inferred the Respondent's intent to make misrepresentations on the applications and submissions from the pattern of misconduct under the current misconduct

findings, coupled with the prior misconduct and the non-credible answers that the Respondent gave in testimony to the Committee. In addition, the Committee's Determination repeatedly stated the reasons why they found that the Respondent made false statements knowingly and deliberately. For example, the Respondent signed the Consent Order accepting suspension and probation in 2008, yet she denied the suspension and probation on the DEA application in 2010 [Committee Finding of Fact 17]. Further, the Respondent's pattern of misinformation on applications, after learning of the magnitude of those errors and failing to correct them, demonstrated a lack of integrity and supported a charge of moral unfitness, Ross v. State Board for Professional Medical Conduct, 45 A.D.2d 927, 845 N.Y.S.2d 162 (3<sup>rd</sup> Dept. 2007). The Respondent also contended that she was unable to understand the obligations under the Consent Order, which resulted in the non-compliance. The Committee rejected that contention by the Respondent. The ARB notes that the Respondent signed the Consent Order and accepted those same probation conditions.

In addition, the Respondent argued that the Committee relied on impermissible and inaccurate speculation outside the record in revoking the Respondent's Registration. The Respondent argued throughout this proceeding that she had caused no patient harm. The Committee decision at page 17 noted that the Respondent's criminal conviction involved working at two jobs and the Committee stated that a patient could have been harmed. The ARB concludes that this speculation played no part in the Committee's Determination to revoke the Registration. The ARB finds that the Committee revoked the Respondent's Registration due to a pattern of fraudulent activity and the failure to correct that pattern following job loss, a criminal conviction and severe disciplinary penalty that included an actual suspension from practice.

No patient harm occurred in this case, but BPMC may act against a licensee before harm occurs, to prevent such harm. The Respondent's criminal conduct could clearly have resulted in patient harm and OPMC crafted appropriate probation terms in the Consent Order to assure that OPMC knew every job at which the Respondent worked and every job for which the Respondent applied. The Respondent violated those appropriate probation terms. Hospitals and regulators also must attempt to prevent patient harm by taking care in hiring and licensing those who will provide care to patients and who will prescribe controlled substances. The licensing and hospital credentialing systems rely on licensees to report truthfully on applications and submissions to licensing authorities and employers. The Respondent knowingly provided false information on submissions and applications.

Finally, the Respondent argued that the Committee imposed an utterly disproportionate penalty. The ARB rejects that contention. The Respondent was convicted for a scheme to defraud, for working two jobs simultaneously. The Committee's Determination noted that prior to the conviction, the Respondent lost a job for the same conduct. The Respondent accepted an actual suspension of her Registration and spent a year away from practice as a penalty for the criminal conviction and for making false answers on applications or submissions to employers, government agencies and hospitals. In this case, the Committee found that the Respondent has continued to make false submissions and applications and she has failed to comply with the probation terms to monitor the Respondent's employment. A criminal conviction, job loss, actual suspension and probation have failed to deter the Respondent from further misconduct. The Committee has also found the Respondent untrustworthy in her hearing testimony. The Respondent had a chance at rehabilitation and she experienced life away from practice. The ARB sees no reason to believe that any penalty less severe than revocation will correct the

Respondent's deficiencies. A licensee must deal truthfully with patients, other providers, insurers and credentialing and licensing authorities. The Respondent has proved that she lacks the integrity necessary to practice as a physician assistant. The ARB votes unanimously to affirm the Committee's Determination to revoke the Respondent's License.

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 Registration.

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 Ann Landsman, R.P.A.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the  
Matter of Ann Landsman, R.P.A.

Dated: 15 September, 2014

REDACTED

Linda Prescott Wilson

In the Matter of Ann Landsman, R.P.A.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the  
Matter of Ann Landsman, R.P.A.

Dated: September 9, 2014

REDACTED

A horizontal line with a handwritten signature scribble above it, which is partially obscured by the word "REDACTED".

Peter S. Koenig, Sr.

In the Matter of Ann Landsman, R.P.A.

Steven Grabiec, M.D., an ARB Member concurs in the Determination and Order in the  
Matter of Ann Landsman, R.P.A.

Dated: 9/8/, 2014

REDACTED

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Steven Grabiec, M.D.

In the Matter of Ann Landsman, R.P.A.

Richard D. Milone, an ARB Member concurs in the Determination and Order in the  
Matter of Ann Landsman, R.P.A.

Dated: September 8, 2014

REDACTED

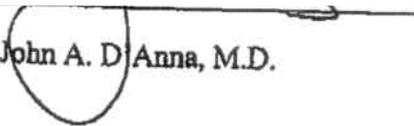
Richard D. Milone, M.D.

In the Matter of Ann Landsman, R.P.A.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the  
Matter of Ann Landsman, R.P.A.

Dated: Sept 8, 2014

REDACTED

  
John A. D'Anna, M.D.