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

November 18, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

George S. Lakner, M.D.
Fort McNair
P.O. Box 70185
Washington, D. C. 20024

Daniel J. Hurteau, Esq.
Nixon Peabody, LLP
677 Broadway
10th Floor
Albany, New York 12207

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

RE: In the Matter of George S. Lakner, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-24) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. The Determination and Order that this office served in June, 2008 contained incorrect addresses for the Respondent and his counsel. 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Redacted Signature

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

George S. Lakner, M.D. (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. 08-24

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): Richard J. Zahnleuter, Esq.
For the Respondent: Daniel J. Hurteau, Esq.

The Respondent holds a license to practice medicine in New York (License) and in several other states. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2008), the ARB considers whether to take disciplinary action against the Respondent's License after several states revoked or suspended the Respondent's medical license in those states, for making false representations. Following a hearing below, a BPMC Committee voted to revoke the Respondent's License. The Respondent now asks the ARB to remand to that Committee to consider additional evidence, or in the alternative, to take no action against the Respondent's License. After reviewing the hearing record and the parties' review submissions, the ARB affirms the Committee's Determination in full.

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). The Petitioner charged that the

Respondent violated N. Y. Education Law (EL) §§ 6530(9)(b) & 6530(9)(d)(McKinney 2008) by committing professional misconduct, because the duly authorized professional disciplinary agency from other states:

- found the Respondent guilty for improper professional conduct [6530(9)(b)], and/or,
- took disciplinary action against the Respondent's medical license in those states [6530(9)(d)],

for conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York. The Petitioner's Statement of Charges [Petitioner Hearing Exhibit 1] alleged that the Respondent's misconduct in the other states would constitute misconduct if committed in New York, under the following specifications:

- obtaining a license fraudulently, a violation under EL § 6530(1);
- practicing the profession fraudulently, a violation under EL § 6530(2);
- engaging in conduct in the practice of medicine which evidences moral unfitness, a violation under EL § 6530(20);
- and, willfully making or filing a false report required by law, a violation under EL §6530(21).

Following the Direct Referral Proceeding, the Committee rendered the Determination now on review. In the Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The evidence at hearing indicated that the Board of Medical Examiners of the State of Nevada (Nevada Board) revoked the Respondent's license in that state and ordered the Respondent to pay $3,501.06 in costs upon finding that the Respondent renewed his Nevada license by misrepresentation, or by false, misleading or inaccurate statement, with the intent to deceive. Also, the Maryland State Board of Physicians (Maryland Board) suspended the Respondent's medical license in that state for one year or until California reinstates the

Respondent medical license in that state without restrictions. The Maryland Board based its actions on findings that the Respondent willfully made false statements on license renewals in 1998 and 2000, made false statements on employment application forms and engaged in conduct that resulted in disciplinary action in other states, for reasons which would provide grounds for discipline in Maryland. Further, the New Jersey Board of Medical Examiners (New Jersey Board) suspended the Respondent's medical license in that state following the Nevada Board's revocation order and a decision by the State of California to deny the Respondent a medical license in that state. Finally, the Division of Licensing of the Medical Board of California (California Board) denied the Respondent's application for a physician's and surgeon's certificate due to the Nevada revocation, the false statement on the Nevada renewal, the Maryland suspension, the false statement on the Maryland licensure renewal application, false statements on an employment application in Maryland, a medical license suspension by the State of Virginia, the New Jersey suspension and the Respondent's submission of an altered document to the California State Prison.

The Committee determined that the Respondent's conduct in the other states, if committed in New York, would amount to obtaining a license fraudulently, practicing fraudulently, engaging in conduct that evidences moral unfitness and willfully filing false reports. The Committee concluded that the findings and actions by the other states made the Respondent liable for disciplinary action against his License under EL §§ 6530(9)(b) & 6530(9)(d).

At hearing, the Respondent argued that all the events leading to the four states' disciplinary actions resulted from actions by a few administrators at the California Board and that the events in California in no way implicate the Respondent's ability to practice medicine. In their Determination, the Committee found that the Respondent's testimony lacked credibility, that the Respondent avoided answering questions directly and that the Respondent attempted to shift blame and responsibility to others for the Respondent's actions. The Committee noted that the Respondent attempted to introduce documentary evidence and testimony to the effect that the California Board denied the Respondent's California license improperly. The Committee refused

to consider such information and the Committee stated that, even if California denied the Respondent's license improperly, the Respondent was still under an obligation to answer truthfully the questions that the Nevada and Maryland Boards posed.

The Committee voted to revoke the Respondent's License. The Committee found that the Respondent acknowledged no wrongdoing and exhibited no remorse. The Committee found that the Respondent's refusal to accept responsibility for his conduct increases the likelihood that he will repeat the misconduct in the future. The Committee also stated that the quality assurance system in New York depends on an honest review of physician credentials to prevent exposing patients to unqualified or unsafe practitioners. The Committee found that the Respondent lacks the integrity to present his credentials truthfully. The Committee concluded that the Respondent's repeated fraudulent conduct warrants revocation.

Review History and Issues

The Committee rendered their Determination on February 14, 2008. This proceeding commenced on March 3, 2008, 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 11, 2008.

The Respondent asks that the ARB remand this case to the Committee for the Committee to consider the evidence that the Respondent attempted to present concerning the California license denial, but that the Committee's Administrative Officer excluded from the record. The Respondent argued that the excluded material was relevant to penalty. In the alternative, The Respondent argues that the Committee imposed a grossly disproportionate penalty and the Committee erred in considering lack of remorse as a penalty factor, because the Respondent believes he committed no wrong. The Respondent notes that although Nevada revoked the

Respondent's medical license, New Jersey and Maryland imposed only license suspensions and Massachusetts, Connecticut, Kansas and the District of Columbia chose to take no action against the Respondent's medical license in those jurisdictions.

The Petitioner argues against any remand on grounds that the Respondent is seeking to re-litigate the California Board's decision to deny the Respondent a medical license. The Petitioner argued further that the Committee gave proper consideration to a number of aggravating factors in this case and that the Committee chose appropriately to revoke the Respondent's License.

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 reject the request for a remand. We affirm the Committee's Determination that the Respondent committed professional misconduct and we affirm the Determination to revoke the Respondent's License.

Whether the California Board acted properly or improperly in denying the Respondent a medical license, the Respondent was under an obligation from the time he learned about the denial, to report that denial truthfully to other licensing authorities and to any prospective employers. On multiple occasions after the California denial, the Respondent gave knowing false answers on applications. The ARB finds the background concerning the California denial

irrelevant to this proceeding. We deny the Respondent's request for a remand for the Committee to consider additional documents.

The Respondent did testify concerning his belief that all his problems resulted from improper conduct by others and concerning his interactions with the California and Nevada Boards. The Committee found the Respondent lacked credibility in that testimony. The ARB defers to the Committee as fact-finder in the Committee's judgment on witness credibility. The Committee acted within their authority in refusing to accept the Respondent's explanations for his misconduct. We affirm the Committee's Determination that the Respondent's multiple, knowing and deliberate misrepresentations would constitute professional misconduct in New York and make the Respondent liable for disciplinary action against his License.

The ARB holds that the Committee also acted within their authority in considering the Respondent's lack of remorse or lack of recognition that the Respondent acted fraudulently. We agree that the Respondent's pattern of misconduct and lack of remorse demonstrates that the Respondent remains a risk to repeat his fraudulent conduct. The Committee considered that no state found the Respondent deficient in patient care. The Committee based its Determination instead on another factor essential to medical practice – integrity.

Every physician must act truthfully in dealing with patients, other practitioner's, supervisors, regulators, facilities, health plans and insurers. Regulators and facilities must rely on physicians to answer truthfully on licensing and credentialing applications, to help insure that only safe and qualified practitioners provide care to patients. The Respondent has demonstrated that he lacks integrity and has thus demonstrated his unfitness to practice medicine in New York. The ARB agrees with the Committee that the Respondent's conduct warrants revocation.

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 George S. Lakner, M.D.

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

Dated: June 17, 2008

Redacted Signature

Therese G. Lynch, M.D.

In the Matter of George S. Lakner, M.D.

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

Dated: 6/17/, 2008

Redacted Signature

Datta G. Wagle, M.D.

In the Matter of George S. Lakner, M.D.

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

Dated: June 18, 2008

Redacted Signature

Thea Graves Pellman

In the Matter of George S. Lakner, M.D.

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

Dated: June 18, 2008

Redacted Signature

Stanley L Grossman, M.D.

In the Matter of George S. Lakner, M.D.

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

Dated: 11 June, 2008

Redacted Signature

Linda Prescott Wilson