



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

Public

September 24, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Donn Wiedershine, M.D.
REDACTED

Daniel J. Hurteau, Esq.
NIXON PEABODY, LLP
677 Broadway – 10th Floor
Albany, New York 12207

Nancy Strohmeyer, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

RE: In the Matter of Donn Wiedershine, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 10-97) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,

REDACTED

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

Donn Wiedershine, 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. 10-97

COPY

Before ARB Members D'Anna, Koenig, Wagle, Wilson and Milone
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Nancy Strohmeyer, Esq.
For the Respondent: Daniel J. Hurteau, Esq.

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct in treating a patient. The Committee voted to suspend the Respondent's license to practice medicine in New York State (License) for three months, to place the Respondent on probation for three years, with a practice monitor for one year, and to require that the Respondent complete a course in record-keeping. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2010), the Petitioner asked the ARB to overturn the Committee's Determination on the sanction and to revoke the Respondent's License. Upon considering the hearing record and the parties' review submissions, the ARB voted 5-0 to affirm the Committee's Determination in full.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(3-6) & 6530(32)(McKinney 2010) by committing professional misconduct under the following specifications:

- practicing medicine with negligence on more than one occasion,

- practicing medicine with gross negligence,
- practicing medicine with incompetence on more than one occasion,
- practicing medicine with gross incompetence, and,
- failing to maintain accurate patient records.

The charges related to the treatment the Respondent provided to one person (Patient A), at both the Respondent's office and the Patient's home, from February 7, 2007 to February 15, 2007. At the hearing, the Respondent indicated that he treats patients interested in alternative and holistic medicine and the Respondent described his practice as integrating traditional and alternative medicine with psychiatry. Following the hearing, the Committee rendered the Determination now on review.

The Committee determined that the Respondent administered intravenous hydration to the Patient inappropriately and that the Respondent failed to:

- obtain an adequate medical history,
- perform adequate physical examinations,
- order appropriate diagnostic tests to follow up the Patient's enlarged lymph nodes,
- assess and treat appropriately the Patient's complaint of constipation, and,
- maintain a medical record that reflects accurately the care and treatment that the Patient received.

The Committee found that the Respondent's conduct amounted to practicing with negligence on more than one occasion and with gross negligence and failing to maintain accurate records. The Committee dismissed the charges that the Respondent practiced with incompetence on more than one occasion or gross incompetence. In reaching their findings, the Committee relied on testimony from the Petitioner's expert witness, Allen L. Fein, M.D., whom the Committee found credible as a witness. The Committee also found the Respondent and his expert, Arthur N. Gertler, M.D., credible, although the Committee found the Respondent self-serving in his testimony in attempting to fill in blanks in the Patient's medical record and in accounting for lapses and deficiencies in the care to Patient A. The Committee found Dr. Gertler knowledgeable

and experienced, but noted that Dr. Gertler gave only limited and decidedly tepid support for the Respondent's care and treatment to the Patient.

The record indicated that the Patient made visits to the Respondent's Office on February 9, 12 and 13, 2007. On the first office visit, the Patient complained of a headache and feeling anxious and the Respondent's physical examination found enlarged lymph nodes in the groin and armpit. The Respondent noted that the Patient would require diagnostic testing, evaluation and follow-up for enlarged nodes within a few days after the Respondent reduced the Patient's anxiety with "stress reduction therapy". The Committee found that the Respondent did not follow-up on the enlarged lymph nodes after the initial office visit. During the second office visit, the Patient repeated the complaints about a headache and feeling anxious. The Respondent prescribed dietary changes, administered intravenous fluids (IV) due to a "high sp. gravity" in the Patient's urine and provided stress reduction therapy. The Respondent failed to indicate what constituted the stress reduction therapy and the Respondent failed to indicate what or how much IV fluid the Patient received. On the third office visit, the Patient complained again about feeling anxious and the Respondent indicated that he provided stress reduction therapy again. The Patient's record contained no information about the therapy or whether it was effective.

The testimony from Dr. Fein concerning the office visits, which the Committee found credible, indicated that the Respondent failed to obtain an adequate medical history, diagnose a condition adequately or establish a treatment plan. Dr. Fein noted a deviation from acceptable standards of care for the failure to obtain a full history and for failing to order immediate follow up and diagnostic testing for the enlarged lymph nodes. Dr. Fein stated that enlarged lymph nodes generally indicate a serious medical condition, such as cancer. Dr. Fein testified that the Respondent administered IV fluids inappropriately on the second office visit. Dr. Fein found nothing in the record to justify administering the fluids and no clinical signs or symptoms for dehydration. Dr. Fein stated that the appropriate treatment for a complaint of dehydration would have been to give the Patient a few glasses of water. Dr. Fein also faulted the Respondent for failing to document what constituted the stress reduction therapy and for failing to explore the history or underlying causes for the Patient's anxiety. The Committee noted that the

Respondent's expert left unchallenged much of Dr. Fein's testimony concerning numerous deviations from professional standards in treating Patient A.

The Respondent also provided care to Patient A at the Patient's home on February 15, 2007 after the Patient called to complain of abdominal pain and seek the Respondent's opinion about calling an ambulance. After traveling through a snowstorm to the Patient's home, the Respondent found the Patient on the floor, obtained a history, performed a physical and treated the Patient for constipation. The Respondent provided treatment by enema, citrate of magnesia, and digital/manual dis-impaction. The Respondent finally attempted dis-impaction after fashioning an instrument by attaching a baby spoon to a spatula handle with duct tape. None of the treatments relieved the Patient's discomfort. Dr. Fein testified that the abdominal pain could have indicated a more urgent and serious condition and that a reasonably prudent physician would have explored other diagnoses. Dr. Fein found the house call and lengthy interventions unacceptable and concluded that the Respondent should have supported the Patient's initial suggestion to call an ambulance. Dr. Fein called the use of the spoon/spatula instrument a significant and egregious deviation from accepted practice standards by performing a procedure without urgency, in a non-clinical setting, with a rigid, untested instrument that could have perforated the Patient's bowel.

The Committee voted to suspend the Respondent's License, required the Respondent to complete a record-keeping program before resuming practice and placed the Respondent on probation for three years, under the terms that appear at Appendix B to the Committee's Determination. The probation terms include the requirement that the Respondent practice with a monitor for the first year under probation.

Review History and Issues

The Committee rendered their Determination on June 8, 2010. This proceeding commenced on June 21, 2010, when the ARB received the Petitioner's Notice requesting a

Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and the Respondent's reply brief. The record closed when the ARB received the reply brief on July 29, 2010.

The Petitioner requested that the ARB overturn the Committee and revoke the Respondent's License. The Petitioner argued that the Respondent lacked insight into the deficiencies in the care the Respondent provided to Patient A. The Petitioner contended that the Committee provided an inappropriate continuing education component to the penalty, by limiting education to record-keeping. The Petitioner argued further that probation and practice monitoring would fail to protect the public, because that component in the penalty provided for insufficient record review and relied on the Respondent to produce accurate records. The Petitioner stated that the actual suspension would protect the public, but only for three months. The Petitioner's brief alleges that nothing in the record indicates that the Respondent's way of thinking is limited to one patient.

The Respondent replied that he accepts the sanctions against him and that the conduct at issue fails to warrant License revocation. The Respondent argued that he provided non-traditional healing modalities, demonstrated an extraordinary level of attention to the Patient and directed treatment at relieving anxiety to allow the Patient to cope better with remaining physical issues.

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 that the Respondent practiced with gross negligence, negligence on more than one occasion and failed to maintain accurate patient records. Neither party challenged the Committee's Determination on the charges. The ARB affirms the Committee's Determination to suspend the Respondent's License, to place the Respondent on probation for three years, with a practice monitor for one year, and to require the Respondent to complete a course in record keeping.

The ARB agrees with the Respondent that the facts in this case provide insufficient grounds on which to revoke the Respondent's License. Although the attempt at dis-impaction amounted to an egregious deviation from accepted care standards, this case involved the treatment to one patient, during a one-week time period, over three years ago. The facts show no pattern of ongoing misconduct. The ARB disagrees that this single case implicates the Respondent's entire twenty-four year career. We also find that the Committee has imposed strict probation terms and has provided oversight sufficient to assure that the Respondent continues to practice according to accepted standards. Further, the three-month actual suspension will provide an appropriate sanction for the Respondent's egregious misconduct and give the Respondent the opportunity to consider the consequences should the Respondent deviate from accepted medical standards in the future.

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 suspend the Respondent's License for three months, to place the Respondent on probation for three years, to require the Respondent to practice with a monitor for one year and to require the Respondent to complete successfully a course in record keeping.

Peter S. Koenig, Sr.
Datta G. Wagle, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Donn Wiedershine, M.D.

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

Dated 22 September, 2010

✓ ~~REDACTED~~

Linda Prescott Wilson

In the Matter of Donn Wiedershine, M.D.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the Matter of Dr. Wiedershine.

Dated: 09/22, 2010

REDACTED



Peter S. Koenig, Sr.

In the Matter of Donn Wiedershine, M.D.

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

Matter of Dr. Wiedershine.

Dated: 9/21/, 2010

REDACTED

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Datta G. Wagle, M.D. /

In the Matter of Donn Wiedershine, M.D.

Richard D. Milone, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Wiedershine.

Dated September 21, 2010


REDACTED

Richard D. Milone, M.D.

In the Matter of Donn Wiedershine, M.D.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Wiedershine.

Dated: Sept 29, 2010

REDACTED

J
John A. D'Anna, M.D.