



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

August 20, 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Romuald N. Sluyters, M.D.
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Mattituck, New York 11952

Romuald N. Sluyters, M.D.
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Lauren B. Bristol, Esq.
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Furey, Kerle, Walsh, Matera
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2174 Jackson Avenue
Seaford, New York 11783

Joel E. Ablove, Esq.
NYS Department of Health
Hedley Building – 4th Floor
433 River Street
Troy, New York 12180

RE: In the Matter of Romuald N. Sluyters, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-95) 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.

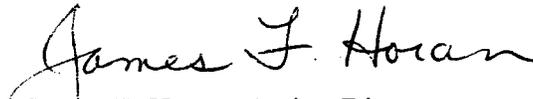
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Romauld N. Sluyters, 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. 07-95

COPY

Before ARB Members Grossman, Lynch, Pellman and Wagle¹
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner):

Joel E. Abelow, Esq.

For the Respondent:

Lauren B. Bristol, Esq.

The Respondent holds medical licenses in New York and New Hampshire. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney Supp. 2007), the ARB considers the sanction to impose against the Respondent's license to practice medicine in New York (License) following a disciplinary action that suspended the Respondent's medical license in New Hampshire. Following a hearing below, a BPMC Committee voted to revoke the Respondent's License, because the Respondent engaged in a consensual sexual relationship with a patient in New Hampshire. After reviewing the hearing record and the review submissions from the parties, the ARB votes to overturn the Committee and to suspend the Respondent's License until such time as the Respondent regains his New Hampshire license. Following the suspension and the Respondent's return to New York, the Respondent shall practice under probation for three years under the terms that appear in the Appendix to this Determination.

¹ ARB Member Linda Prescott Wilson was unable to participate in the deliberations in this matter, so the ARB considered the case with a four-member quorum.

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 commenced the proceeding by filing charges with BPMC alleging that Respondent violated N. Y. Education Law (EL) § 6530(9)(d) by committing professional misconduct because the duly authorized professional disciplinary agency from another state, New Hampshire, took disciplinary action against the Respondent's medical license in that state for conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York. The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the Respondent's misconduct in New Hampshire would constitute misconduct if committed in New York, under the following specifications:

- practicing medicine with negligence on more than one occasion, a violation under EL § 6530(3);
- exercising undue influence on a patient, a violation under EL § 6530(17);
- engaging in conduct that evidences moral unfitness, a violation under EL § 6530(20); and,
- failing to maintain accurate patient records, a violation under EL §6530(32).

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 the hearing demonstrated that the New Hampshire Board of Medicine (New Hampshire Board) entered a Settlement Agreement with the Respondent in November 2006 in which the New Hampshire Board reprimanded the Respondent, suspended his New Hampshire license for five years (with the possibility for a reduction to a three-year suspension)

and fined the Respondent \$1,500.00. The New Hampshire Board found that the Respondent engaged in a sexual relationship with a patient while treating her, wrote false information on a patient status form to have the patient excused from work and prescribed the pain medication Vicodin for the patient without keeping adequate medical records concerning the prescription.

Following the Direct Referral Hearing, the Committee determined that the Respondent's conduct in New Hampshire would constitute misconduct in New York as practicing with negligence on more than one occasion, engaging in conduct that evidences moral unfitness and failing to maintain accurate patient records. The Committee dismissed the exercising undue influence charge because the New Hampshire Agreement made no finding to support the undue influence charge. The Committee rejected an argument by the Petitioner that engaging in a sexual relationship with a patient always constitutes exercising undue influence on the patient. The Committee found that the issue requires analysis on a case-by case basis.

The Committee voted to revoke the Respondent's License. The Committee noted that the Respondent declined to testify at the hearing concerning the sexual relationship because he continues to face criminal charges in New Hampshire concerning the relationship. The Committee concluded that without the Respondent's testimony, there was no way to determine if the Respondent could be trusted to never repeat his unacceptable behavior. The Committee found that the relationship was not an isolated event, but rather a lengthy, ongoing relationship.

Review History and Issues

The Committee rendered their Determination on May 2, 2007. This proceeding commenced on May 17, 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 June 20, 2007.

The Respondent argues that the Committee erred by imposing a more severe penalty than the New Hampshire Board. The Respondent argues that the New Hampshire Board imposed a penalty to sanction the Respondent for his misconduct and to ensure that the Respondent's misconduct will not recur. The Respondent argues that the New Hampshire penalty suspends the Respondent's License and requires the Respondent to undergo counseling and complete continuing medical education on prescribing for pain. The Respondent notes that he did answer questions at the hearing concerning the effect of the New Hampshire action on his life and on why the Committee can trust him to never repeat his misconduct. The Respondent contends that he accepts full responsibility for his conduct and that he now supports his family by loading trucks for UPS and teaching a class at a local college.

The Petitioner replies that the Respondent's brief seeks to minimize the seriousness of the Respondent's misconduct and that any mitigating factors fail to outweigh the need to protect the public and to deter similar misconduct. The Petitioner asks the ARB to affirm the Committee's Determination in full.

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's misconduct in New Hampshire would constitute misconduct in New York and make the Respondent's License subject to disciplinary action

pursuant to EL § 6530(9)(d). Neither party challenged the Committee's Determination on the charges. The ARB overturns the Committee's Determination to revoke the Respondent's License. We vote to suspend the Respondent's License until such time as the Respondent regains his full medical license from New Hampshire. At such time as the suspension ends and the Respondent enters medical practice in New York, the Respondent shall practice on probation for three years under the terms that appear as the Appendix to this Determination.

The ARB agrees with the Committee that the Respondent engaged in serious misconduct, but we see no pattern of misconduct with other patients. The Respondent did respond to questions at the hearing concerning the impact upon himself and his family concerning the misconduct. We also note that the Respondent continues to face criminal charges and perhaps further sanction for his misconduct. The ARB concludes that the New Hampshire penalty provides a serious sanction against the Respondent for his misconduct, which will also deter such misconduct in others. The New Hampshire sanction will also assess the Respondent's clinical competency to return to practice. If the Respondent chooses to return to practice in New York, at some point after the suspension here ends, he will practice for three years under probation, so New York can review his practice. The ARB concludes that the New Hampshire and New York sanctions together will protect the citizens in this state.

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 overturns the Committee's Determination to revoke the Respondent's License.
3. The ARB votes to suspend the Respondent's License to practice in New York until such time as the Respondent regains his medical license in New Hampshire and to place the Respondent on probation for three years thereafter, under the terms that appear in the Appendix to this Determination.

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

Appendix

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), 433 River Street, 4th Floor, Troy, New York 12180; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records, which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

In the Matter of Romauld N. Sluyters, M.D.

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

Matter of Dr. Sluyters.

Dated: August 16 2007

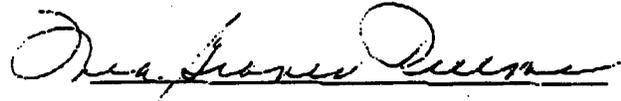


Therese G. Lynch, M.D.

In the Matter of Romauld N. Sluyters, M.D.

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

Dated: Aug 16, 2007



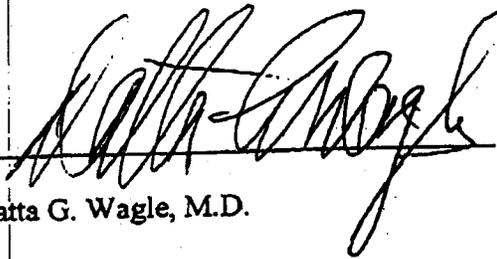
Thea Graves Pellman

In the Matter of Romauld N. Sluyters, M.D.

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

Matter of Dr. Sluyters.

Dated: 8/15, 2007


Datta G. Wagle, M.D.

In the Matter of Romauld N. Sluyters, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Romauld N. Sluyters.

Dated: August 16, 2007

 Stanley L. Grossman M.D.

Stanley L. Grossman, M.D.