



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

Public

Wendy E. Saunders
Chief of Staff

May 13, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jason Jaramillo, M.D.

Redacted Address

Jason Jaramillo, M.D.

Redacted Address

Robert Bogan, Esq.
NYS Department of Health
Hedley Building - 4th Floor
433 River Street
Troy, New York 12180

Michael S. Kelton, Esq.
Lippman, Krasnow, Kelton & Shuman, LLP
380 Lexington Avenue
New York, New York 10168

RE: In the Matter of Jason Jaramillo, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-238) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Redated 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

Jason Jaramillo, 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. 07-238

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): Robert Bogan, Esq.
For the Respondent: Michael S. Kelton, Esq.

In this proceeding pursuant to New York Public Health Law (PHL) § 230-c
(4)(a)(McKinney 2008), the ARB considers whether to impose a professional penalty against the
Respondent, following his criminal conviction for Sexual Abuse. Following a hearing below, a
BPMC Committee voted to censure and reprimand the Respondent. On review, the Petitioner
asks that the ARB ban the Respondent from ever receiving a license to practice medicine in New
York State. After reviewing the record below and the review submissions from the parties, the
ARB affirms the Committee's Determination.

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 alleged that the
Respondent committed professional misconduct under the definition in N. Y. Education Law
(EL) §§ 6530(9)(a)(i) (McKinney 2008) by engaging in conduct that resulted in a criminal
conviction under New York Law. In the Direct Referral Hearing, 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). Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence at the hearing demonstrated that the Respondent was convicted in the New York State Supreme Court for New York County upon a guilty plea to Sexual Abuse in the First Degree, a Class D Felony under New York Penal Law § 130.65. The Court sentenced the Respondent to ten years of probation, imposed an Order of Protection for eight years, required the Respondent to register as a Level One sexual offender and required the Respondent to pay \$1,330.00 in fees and surcharges. The Respondent subjected a woman to sexual contact when she was incapable of consent, due to physical helplessness. The contact occurred between the Respondent's hand and the woman's vagina.

The Respondent did not hold a New York medical license at the time of the hearing, but was authorized to practice in New York as a resident. At the time of the hearing, the Respondent was working at Long Island College Hospital as a resident. The Committee found that the Respondent's status as a resident made the Respondent a licensee subject to penalties for professional misconduct under PHL §§ 230(7) & 230-a.

The Committee voted to censure and reprimand the Respondent. The Committee rejected a request by the Petitioner to disqualify the Respondent from ever receiving a New York medical license. The Committee found that penalty too severe. The Committee noted that at such time as the Respondent applies for licensure from the State Education Department, the Education Department can make a determination on all relevant facts at the time of the application and that the Education Department will be aware of the Respondent's criminal conduct.

Review History and Issues

The Committee rendered their Determination on November 1, 2007. This proceeding commenced on November 16, 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 Petitioner's brief and reply brief and the Respondent's and reply brief. The record closed when the ARB received the Respondent's reply brief on February 12, 2008.

The Petitioner requests that the ARB overturn the Committee and ban the issuance of a New York Medical license to the Respondent. The Petitioner argues that it is inappropriate for a Level One Sex Offender to have first line contact with patients. The Petitioner argues that the ban would put the Respondent on notice about the inappropriateness of his action and would put the hospital at which the Respondent works on notice about the inappropriateness of hiring the Respondent as an intern.

The Respondent argues that the ARB lacks the authority to ban the Respondent from receiving a license in the future. The Respondent contends that a decision on licensure lies with the Education Department, with appropriate input from the Department of Health.

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. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct. Neither party contested the Committee's Determination on the charges. The ARB also affirms the Committee's Determination to censure and reprimand the Respondent.

The ARB agrees with the Committee that the Respondent engaged in serious misconduct, but we also agree that the facts in this case fail to merit placing a permanent ban on the Respondent from ever receiving a medical license. Long Island Hospital gave the Respondent a second chance, despite being aware of the Respondent's criminal conduct. The ARB agrees with the Committee that the internship at Long Island reflects well on the Respondent. The ARB also agrees with the Committee that the decision on the Respondent should lie with the Education Department. The Education Department can make that decision on all the relevant facts at such time in the future as the Respondent applies and the Department of Health will have the opportunity to provide input to the Education Department.

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 censure and reprimand the Respondent.

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 Jason Jaramillo, M.D.

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

Dated: ⁵ May . 2008

Redacted Signature

Linda Prescott Wilson

In the Matter of Jason Jaramillo, M.D.

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

Dated: May 12, 2008

) Redacted Signature

Thea Graves Pellman

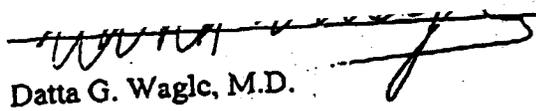
In the Matter of Jason Jaramillo, M.D.

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

Matter of Dr. Jaramillo.

Dated: 5/107, 2008

Redacted Signature


Datta G. Wagle, M.D.

In the Matter of Jason Jaramillo, M.D.

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

Dated: May 9, 2008

Redated Signature

Stanley L Grossman, M.D.

In the Matter of Jason Jaramillo, M.D.

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

Matter of Dr. Jaramillo

Date: May 13, 2008

Redacted Address

Therese G. Lynch, M.D.