

NEW YORK
state department of
HEALTH

Public

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

November 9, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anthony Joseph Sarro, M.D.
308 Graham Avenue
Brooklyn, New York 11211-4904

Frederic Lewis, Esq.
7 Dey Street
New York, New York 10007

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

RE: In the Matter of Anthony Joseph Sarro, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-268) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

REDACTED SIGNATURE

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

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

IN THE MATTER
OF
ANTHONY JOSEPH SARRO, M.D.

DETERMINATION
AND
ORDER

BPMC #11-268

COPY

A Commissioner's Order and Notice of Hearing, dated July 14, 2011, together with a Statement of Charges, were served on Anthony Joseph Sarro, M.D., Respondent. By the aforesaid Order, the Respondent had been summarily directed to cease the practice of medicine due to an imminent danger to the health of the people of this state. Hearings on these charges were held pursuant to N.Y. Public Health Law §230 and New York State Admin. Proc. Act §§ 301-307 and 401 on July 29, August 5, and October 12, 2011. All hearings were held at the Offices of the New York State Department of Health, 90 Church Street, New York, New York ("the Petitioner").

Lyon M. Greenberg, M.D., CHAIR, Elisa J. Wu, M.D., and Michael N.J. Colon, Esq., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. David A. Lenihan, Esq., Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by James E. Dering, Esq., General Counsel, by Roy Nemerson, Esq., Deputy Counsel, New York State Department of Health, of Counsel. The Respondent appeared with counsel, Fredric Lewis, Esq. of New York City. Evidence was received, witnesses were sworn or affirmed, and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

PROCEDURAL HISTORY

Date of Service of Commissioner's Order, Notice Of Hearing and Statement of Charges:	July 14, 2011
Pre-Hearing Conference:	July 20, 2011
Hearing Dates:	July 20, 2011 August 5, 2011 October 12, 2011
Witnesses for Petitioner:	Ernest Clement, R.N. Abby Gordon, R.N.
Witnesses for Respondent:	None
Deliberations Date:	October 12, 2011

STATEMENT OF THE CASE

Petitioner charged Respondent with seven (7) specifications of professional misconduct. The first specification charged Respondent with committing professional misconduct as defined in N.Y. Educ. Law §6530(47) by failing to use scientifically accepted infection control practices as established by the department of health pursuant to § 230-a of the public health law. The second specification charged Respondent with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing

the profession of medicine with incompetence on more than one occasion.

In the third specification Respondent was charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3) by practicing the profession of medicine with negligence on more than one occasion.

In the fourth specification Respondent was charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(25) by delegating professional responsibilities to a person when the person delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience, or by licensure, to perform them.

In the fifth through seventh specifications Respondent was charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(29) by violating any condition imposed on the licensee pursuant to section 230 of the public health law.

A copy of the Statement of Charges is attached to this Determination and Order as Appendix 1.

On July 14, 2011, Nirav R. Shah, M.D., M.P.H., Commissioner of Health, after an investigation and upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct determined that the continued practice of medicine in the State of New York by the Respondent constituted an imminent danger to the health of the people of this state. This Commissioner's Order, pursuant to N.Y. Pub. Health Law §230(12) (a), directed that the Respondent, shall not practice medicine in the State of New York. By its terms, this Order was to remain in effect unless modified or vacated by the Commissioner of Health pursuant to the procedural provisions set forth in N.Y. Pub. Health Law §230(12) (a) or unless modified by the

Commissioner upon the presentation to the Director of the Office of Professional Medical Conduct, by the Respondent, of credible evidence of remediation of the factors causing imminent danger.

The Hearing Committee, in its deliberations, first reviewed the terms of the Commissioner's Order, and determined that the facts in this case establish that the Respondent's continued practice of medicine presents an imminent danger to the public. The panel determined that there should be no modification to the Order and the panel has determined that the terms of the Summary Order should remain in place, for the time being, as set forth in the Order herein.

A copy of the Commissioner's Summary Order is attached to this Determination and Order as Appendix 2.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to transcript page numbers or exhibits, denoted by the prefixes "T." or "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Respondent was authorized to practice medicine in New York State on or about September 6, 1961 by the issuance of license number 086374 by the New York State Education Department. (Ex. 2)

2. Respondent reprocessed reusable surgical instruments after they were used for a procedure such as a tonsillar biopsy. (T. 65)

3. In order to perform the above reprocessing, the Respondent placed the particular instruments in the sink or in a glass dish of Biozide. (T. 66)

4. The Respondent's staff continued the reprocessing of the instruments by washing them with the germicidal hand soap in the sink and then placing them on a paper towel. (T. 66)

5. The instruments would then be put in a cabinet with a pile of other instruments for subsequent reuse and eventually, at time of reuse, be taken out of the cabinet and put into a dish of Biozide, rinsed off, wiped with Acetone, and then be ready for use. (T. 66)

6. The above instruments were critical devices because they came in contact with the bloodstream or cut through the mucus membrane. (T. 67)

7. Nurse Ernest Clement, who inspected the Respondent's office, observed ear cures on the Respondent's work area in preparation for the next patient and these cures had ear wax contamination on them in an ear suction handle. (T. 79 and photo # 4 In Ex. 3a)

8. On June 14, 2011, Nurse Inspector, MARY GEARY found the following expired items in the cabinet of the Respondent's office:

Lidocaine Ointment; expired 9/96

Achieve Autopsy System; expired 2006

Synvise Ryan GIF 20; expired 2003

Bacitracin Zinc Ointment; expired 4/2011

Xopenex (foil packet); expired 9/06

Two vials of Solu Medrol 40mg; expired 5/11 and 9/10

Papaverine Hydrochloride 3 Omg/ml; expired 10/10

1 box Primaclear Band-Aids; expired 1992

1. package ethicon Bk Braided Thread; expired 2004

Two Solu Medrol 40mg vials unopened; expired 9/10 and 5/11. (Ex. 4 C)

9. On June 14, 2011 the following expired medications were found during an inspection of the refrigerator in the office of the Respondent:

Pneumococcal Vaccine expired March 24, 2011.

Vitamin B12 vial 25m1 unopened; expired 6/10

Adrenaline 1mg/nil in 30m1; expired 2/10. (Ex. 4A)

10. On June 14, 2011, during the inspection of the Respondent's office, the following expired drugs were found in the Emergency Box:

One (1) Ampule of Sodium Bicarbonate; expired 2008

One (1) Ampule Atropine Sulfate, 1 mg; (milligram) expired 2001.

Two (2) Provental solution 200 metered inhalation; expired 2006 & 2008

50 per cent Dextrose Injectable Bristojet; expired 7/08

Clonide Hydrochloride (0.1mg tablet); expired 11/08

Activated Charcoal; expired 9/08

Lidocaine HCL Injectable 2 per cent; expired 7/08

Aminophyline 10 ml 250mg/10 ml 250 mg/ 10 ml; expired 8/03

Phenergan 1 ml amp 25mg/ml; expired 8/02

Nubain; expired 10/01

Verapamil 5mg/2ml; expired 7/03

Benadryl 50 mg/1ml.; expired 10/01.

Epinephrine 1:1000 1mg/ml; expired 11/02

Atropine solution 1mg/ml.; expired 5/02

Solu Cortef 250mg/ml.; expired 8/04

Digoxin 0.5mg/2ml; expired 7/03

Vicryl Suture material coated; expired 7/04

Procainamide 100mg/ml 10 ml vial; expired 4/01 (Ex. 4B)

11. On June 14, 2011, Nurse Inspector ABBY GORDON found the following items in a Cabinet near the sink in the examination room of the Respondent's office:

Two (2) boxes of cotton unsterile applicators; expired in 2005 & 2009.

One (1) opened bag of Q-Tips; expired in 2005.

Two (2) boxes of gloves; sterile and unsterile opened with thick layers of dust on both boxes. (Ex. 4D)

12. Also on June 14, 2011, Nurse Inspector Gordon observed a Suction machine closest to sink which contained unidentified clear liquid and also contained yellow discolored tubing. (Ex. 4 D)

13. The following expired items were discovered by Nurse Inspector Gordon on June 14, 2011:

Tincture of Benzoin; expired 9/03

Cetacine Topical Anesthetic Spray; expired 3/02

Bottle labeled Neosynephrine and H₂O; expired 9/03

Lidocaine Hydrochloride 15ml 2%; expired 9/96

#D Suf-t-Intima set; expired 2008

Hygienic cleansing pads, half-filled opened box; with an expiration date of 9/96

Four (4) Hyalgan 20mg/ml; Three (3) of which expired in 2002; One (1) expired, 11/03

One (1) disposable scalpel; expired 12/05

One (1) 1 box 2x2 gauze pads; expired 7/06

1 box of glycerin suppositories; expired 1/07 (Ex. 4D)

13. Critical items, such as surgical instruments, are objects that enter sterile tissue or the vascular system and must be sterile prior to use. (Ex. 9 C, p. 12)

14. Semi-critical items such as endoscopes have contact with mucous membranes or non-intact skin. These items require, at a minimum, high-level disinfection prior to use. (Ex. 9 C, p. 12)

15. Biozide is made of 66% Ethanol and is not intended as a terminal high level disinfectant for the instruments used by the Respondent. (T. 51 and Ex. 7 C)

16. The Respondent used Biozide as a disinfectant for his laryngoscopes, which are semi-critical devices. (T. 49)

17. Junior Espinal, a doctor from the Dominican Republic, who is not licensed in New York state, does the History and Physicals (H & P's) for the Respondent. (Ex. 4, p. 2)

CONCLUSIONS OF LAW

Pursuant to the Findings of Fact as set forth above, the Hearing Committee unanimously concludes that the Factual Allegations and Specifications as set forth in the Statement of Charges are resolved as follows:

1. The First Specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**;
2. The Second Specification of professional misconduct, as set forth in the Statement of Charges, is **NOT SUSTAINED**;
3. The Third and Fourth Specifications of professional misconduct, as set forth in the Statement of Charges, are **NOT SUSTAINED**;
4. The Fifth Specification of professional misconduct, as set forth in the Statement of Charges, is **NOT SUSTAINED**;
5. The Sixth Specification of professional misconduct, as set forth in the Statement of Charges, is **NOT SUSTAINED**;
6. The Seventh Specification of professional misconduct, as set forth in the Statement of Charges, is **NOT SUSTAINED**;

These specifications of professional misconduct are listed in New York Education Law §6530. This statute sets forth numerous forms of conduct, which constitute professional

misconduct, but does not provide definitions of the various types of misconduct. The definitions utilized herein are set forth in a memorandum prepared by the General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law," dated January 9, 1996, sets forth suggested definitions for gross negligence, negligence, gross incompetence, and incompetence.

The following definitions were utilized by the Hearing Committee during its deliberations:

Negligence is the failure to exercise the care that would be exercised by a reasonably prudent licensee under the circumstances.

Incompetence is a lack of the skill or knowledge necessary to practice the profession.

Using the above-referenced definitions as a framework for its deliberations, the Hearing Committee made the following conclusions of law pursuant to the factual findings listed above. All of the above conclusions resulted from a unanimous vote of the Hearing Committee.

In arriving at its Conclusions of Law, the Hearing Committee carefully reviewed the Exhibits admitted into evidence and the testimony of the three (3) hearing days. The panel noted that the Respondent chose not to testify or offer an explanation or defense for his actions and omissions. During the course of its deliberations on these charges, the Hearing Committee considered the following instructions from the ALJ:

1. The Committee's determination is limited to the Allegations and Charges set forth in the Statement of Charges. (Appendix I)

2. The burden of proof in this proceeding rests on the Department. The Department must establish by a preponderance of the evidence that the allegations made are true. Credible evidence means the testimony or exhibits found worthy to be believed. Preponderance of the evidence means that the allegations presented are more likely than not to have occurred (more likely true than not true). The evidence that supports the claim must appeal to the Hearing Committee as more nearly representing what took place than the evidence opposed to its claim.

3. The specifications of misconduct must be supported by the sustained or believed allegations by a preponderance of the evidence. The Hearing Committee understands that the Department must establish each and every element of the charges by a preponderance of the evidence and, as to the veracity of the witnesses; it is for the Hearing Committee to pass on the credibility of the witnesses and to base its inference on what it accepts as the truth.

4. Where a witness' credibility is at issue, the Committee may properly credit one portion of the witness' testimony and, at the same time, reject another. The Hearing Committee understands that, as the trier of fact, they may accept so much of a witness' testimony as is deemed true and disregard what they find and determine to be false. In the alternative, the Hearing Committee may determine that if the testimony of a witness on a material issue is willfully false and given with an intention to deceive, then the Hearing Committee may disregard all of the witness' testimony.

EVALUATION OF TESTIMONY

With regard to the testimony presented, the Hearing Committee evaluated all the witnesses for possible bias or motive. The witnesses were also assessed according to their training, experience, credentials, demeanor, and credibility. The Hearing Committee considered whether the testimony presented by each witness was supported or contradicted by other independent objective evidence.

The Hearing Committee employed ordinary English usage and vernacular for all other terms and allegations. The Hearing Committee was aware of its duty to keep an open mind regarding the allegations and testimony.

The Hearing Committee first considered the credibility of the various witnesses, and thus the weight to be accorded their testimony. The Department presented two witnesses and the panel found both to be credible and persuasive: Ernest Clement, R.N. and Abby Gordon, R. N. Nurse Clement was called as an expert witness by the Department to testify to the Respondent's infection control practices and Nurse Investigator Gordon was called to explain investigation of the Respondent's office and to describe the medications and materials she observed in the Respondent's office.

The Respondent chose not to testify. It is noted that the theory of negative inference applies to this proceeding, in that the Respondent chose to remain silent during this proceeding. Notwithstanding this failure of the Respondent to testify, the panel carefully reviewed all the testimony and examined all the factual allegations, point by point, to determine if they were established by a preponderance of the evidence. The panel was reminded that the Respondent has the constitutional right to refuse to testify about any or

all matters before the Committee. The panel was instructed that where a Respondent refuses to comment about a charge or element of the charges, the Committee may, but need not, draw the most negative inference the evidence will allow.

The Committee was instructed that they may, but need not; infer that if the Respondent testified truthfully, unfavorable information would have been established. In this case, with regard to the infection control practices and expired medications, the Committee did draw a negative inference, because the evidence presented by the Department was clear and persuasive. The Respondent could have testified to rebut the Department's witnesses but chose not to. The panel concluded that the Respondent chose not to testify because the credible testimony was manifestly un rebuttable.

In particular, the panel found the testimony of the Department's main witness, Nurse Clement, to be credible and highly persuasive and the panel sustained all of the factual allegations concerning infection control practices, the maintenance and reprocessing of instruments and the maintenance and administration of medications. For the remaining two allegations – the failure to comply with an Order and the delegation of medical duties to an unlicensed individual, the panel found that the Department had not established all the elements of its case by a preponderance of the evidence and so these two allegations were not sustained. In reaching its determination on the allegations, the panel reviewed the entire record and transcript of the hearings and made its determinations on the specific allegations, point by point, as follows:

VOTE OF THE HEARING COMMITTEE

FACTUAL ALLEGATIONS

Factual Allegation A: "Respondent:

1. Failed to maintain conditions compliant with scientifically accepted infection control practices;
2. Failed to appropriately maintain and reprocess instruments and equipment;
3. Failed to appropriately maintain and administer medications."

On review of all the testimony and documentation in this case, the panel found that that factual allegation A was sustained. The clear, persuasive, and unrefuted testimony and documentary record shows that the Respondent had many expired medications in and about his office. In addition, the record shows that proper scientific infection control practices were not followed by the Respondent.

In particular, on the issue of whether the Respondent's office practices were compliant with scientifically accepted infection control practices, the persuasive testimony establishes that they were not. The photos in the record (Ex. 3) show that ear wax was left on currettes so as to contaminate the next patient (T. 79) and the Respondent's practice was to use Biozide to disinfect his instrument used for tonsillar biopsies. This procedure pierces the membrane and thus a high level disinfectant is mandated by current scientifically accepted practice. The literature in the record makes it abundantly clear that Biozide is not a high level disinfectant. (Ex. 7C) With clear examples such as this the panel felt confident in its finding that Allegation A was sustained by the evidence.

Furthermore, the record and testimony goes on to show that the Respondent did not appropriately maintain and reprocess his instruments and equipment as can be seen by

the obvious ear wax left on the cures. As for the charge that the Respondent failed to appropriately maintain and administer medications, the pages of expired medications found in the Respondent's office are ample proof for this allegation.

VOTE: SUSTAINED (3-0)

Factual Allegation B: "Respondent is required, pursuant to the terms of Order # BPMC 01-218 to, among other things, fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its investigation of all matters regarding Respondent, meet with a person designated by the Director of OPMC as directed, and to respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. ... On or about and after June 22, 2011, Respondent failed to comply with these conditions by:

1. Failing to appear and be questioned, under oath, regarding several issues under investigation, as required;
2. Failing to provide documents and information regarding several issues under investigation, as required;
3. Failing to timely provide patient medical records, as required."

On review of all the testimony and documentation in this case, the panel did not find that this allegation was sustained. It appears that the Respondent, through his attorney did attempt to cooperate with OPMC in its investigation. In reaching this conclusion, the panel examined the letters from the Respondent's counsel to the Department's attorney which are set forth in Exhibit 8.

Furthermore, the testimony from the Department's investigating witnesses shows that the Respondent did, in fact, cooperate with the investigators and showed them whatever they wanted to see in his office. (T. 344) This cooperation was substantial and thus the panel was of the opinion that this allegation was not sustained by the evidence.

VOTE: NOT SUSTAINED (3-0)

Factual Allegation C. On dates and occasions unknown to Petitioner, but known to Respondent, he caused and permitted Junior Espinal, an individual whom Respondent knew to be not a licensed health care professional, to perform physical examinations of Respondent's patients.

On review of all the testimony and documentation in this case, the panel did not find that this allegation was sustained by the record. While there was some evidence in the record to support the Department's contentions, the panel did not sustain the charge as there was no direct evidence to support it.

VOTE: NOT SUSTAINED (3-0)

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

INFECTION CONTROL PRACTICES

"Respondent violated N.Y. Education Law § 6530(47) by failing to use scientifically accepted infection control practices as established by the department of health pursuant to section two hundred thirty-a of the Public Health Law health law..."

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

"Respondent violated N.Y. Education Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion..."

VOTE: NOT SUSTAINED (3-0)

THIRD SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

"Respondent violated N.Y. Education Law 6530(3) by practicing the profession of medicine with negligence on more than one occasion..."

VOTE: NOT SUSTAINED (3-0)

FOURTH SPECIFICATION

DELEGATION

"Respondent violated N.Y. Education Law § 6530(25) by delegating professional responsibilities to a person when the person delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience, or by licensure to perform them..." ,

VOTE: NOT SUSTAINED (3-0)

FIFTH THROUGH SEVENTH SPECIFICATIONS

VIOLATING A CONDITION

"Respondent violated N.Y. Education Law 6530(29) by violating any condition imposed on the licensee pursuant to section two hundred thirty of the public health law..."

VOTE: NOT SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, after due deliberation, unanimously determined that the first specification raised against Respondent -- the charge concerning infection control practices -- was sustained. While it is true that the record does not contain evidence of harm done to patients, the panel deemed this violation of infection control practices so serious that a suspension was found to be warranted until the practices are corrected.

The panel also found that the remaining specifications were not established by a clear preponderance of the evidence and thus did not sustain them. The Committee has a responsibility to protect the public. The issue before this Committee is to choose a penalty that offers the best protection to the people of the State. The Committee finds that the Respondent has committed sufficiently egregious misconduct that places the public at risk unless and until there is evidence of remediation.

The panel determined that these practices need to be corrected before the Respondent be allowed to resume practice. It is noted that these requirements are the same requirements that were set forth to the Respondent by the Director of Surveillance of the New York City Department of Health and Mental Hygiene, Bureau of Communicable Diseases, in a letter dated July 5, 2011. This letter is attached to and incorporated into this Order and is set forth in Appendix 3 herein. The panel determined that all 19 requirements in Doctor Weiss's July 5 letter and all 10 Remediation requirements in Appendix 3 need to be complied with before the suspension herein may be lifted.

In reaching this conclusion, the Committee considered the full range of penalties available in a case such as this. The Committee determined that the only way to ensure the safety of the public is to Suspend the Respondent's medical license until the dangerous practices described herein are corrected.

Any other penalty would risk a recurrence of this behavior. The public should not bear that risk.

ORDER

IT IS HEREBY ORDERED THAT:

1. The First Specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**;
2. The Second through Seventh Specifications of professional misconduct, as set forth in the Statement of Charges, are **NOT SUSTAINED**;
3. The Respondent's license to practice medicine is hereby **Suspended Indefinitely** until such time as he satisfies the conditions and remediation requirements set forth in Appendix 3 attached hereto.
4. This Determination and Order shall be effective upon service on the Respondent. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York

November, 7th 2011

REDACTED SIGNATURE

Lyon M. Greenberg, M.D., CHAIR

Elisa J. Wu, M.D.

Michael N.J. Colon, Esq.

TO:

Anthony Joseph Sarro, M.D.
308 Graham Ave.
Brooklyn, N.Y. 11211-4904

Fredric Lewis, Esq.
Attorney for Dr. Sarro
7 Dey Street
New York, NY 10007

Roy Nemerson, Esq.
Deputy Counsel
New York State Department of Health
90 Church Street, 4th Floor
New York, N.Y. 10007

APPENDIX 1

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
ANTHONY JOSEPH SARRO, M.D.

STATEMENT
OF
CHARGES

ANTHONY JOSEPH SARRO, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 6, 1961, by the issuance of license number 086374 by the New York State Education Department. Since September 25, 2001, Respondent has been subject to Order # BPMC 01-218, which is attached to this Statement of Charges, marked as Schedule III, and incorporated.

FACTUAL ALLEGATIONS

- A. On multiple occasions at times during and preceding approximately June 20, 2011, when an Order (Schedule II, attached) issued by the Commissioner of Health and Mental Hygiene of the City of New York was served upon Respondent, requiring him to Cease & Desist operating his medical facility located at 308 Graham Ave, Brooklyn, NY, on June 20, 2011, and practicing surgical or other procedures or seeing patients, Respondent:
1. Failed to maintain conditions compliant with scientifically accepted infection control practices;
 2. Failed to appropriately maintain and reprocess instruments and equipment;
 3. Failed to appropriately maintain and administer medications.

- B. Respondent is required, pursuant to the terms of Order # BPMC 01-218 (Schedule III, attached) to, among other things, fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its investigation of all matters regarding Respondent, meet with a person designated by the Director of OPMC as directed, and to respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. On or about and after June 22, 2011, Respondent failed to comply with these conditions by:
1. Failing to appear and be questioned, under oath, regarding several issues under investigation, as required;
 2. Failed to provide documents and information regarding several issues under investigation, as required;
 3. Failed to timely provide patient medical records, as required.
- C. On dates and occasions unknown to Petitioner, but known to Respondent, he caused and permitted Junior Espinal, an individual whom Respondent knew to be not a licensed health care professional, to perform physical examinations of Respondent's patients.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

INFECTION CONTROL PRACTICES

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(47) by failing to use scientifically accepted infection control practices as established by the department of health pursuant to section two hundred thirty-a of the public health law, as alleged in the facts of:

1. Paragraph A and its subparagraphs.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

2. Paragraph A and its subparagraphs.

THIRD SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

3. Paragraph A and its subparagraphs, and Paragraph C.

FOURTH SPECIFICATION

DELEGATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(25) by delegating professional responsibilities to a person when the person delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience, or by licensure, to perform them, as alleged in the facts of:

4. Paragraph C.

FIFTH THROUGH SEVENTH SPECIFICATIONS

VIOLATING A CONDITION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(29) by violating any condition imposed on the licensee pursuant to section two hundred thirty of the public health law, as alleged in the facts of:

5. Paragraph B and B1.
6. Paragraph B and B2.
7. Paragraph B and B3.

DATE: July 13, 2011
New York, New York

REDACTED SIGNATURE

ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX 2

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
ANTHONY JOSEPH SARRO, M.D.

COMMISSIONER'S
ORDER AND
NOTICE OF
HEARING

TO: ANTHONY JOSEPH SARRO, M.D.
308 Graham Ave
Brooklyn, NY 11211-4904

The undersigned, Nirav R. Shah, M.D., M.P.H., Commissioner of Health, after an investigation, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined that the continued practice of medicine in the State of New York by ANTHONY JOSEPH SARRO, M.D. the Respondent, constitutes an imminent danger to the health of the people of this state.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law §230(12)(a), that effective immediately ANTHONY JOSEPH SARRO, M.D., Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to the procedural provisions set forth in N.Y. Pub. Health Law §230(12)(a) or unless modified by the Commissioner upon the presentation to the Director of the Office of Professional Medical Conduct, by the Respondent, of credible evidence of remediation of factors causing imminent danger as set forth in Schedules I and II appended to and incorporated by this order.

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on July 20, 2011, at 10:00 a.m., at the

offices of the New York State Health Department, 90 Church Street, 4th floor, Hearing Room 1, and at such other adjourned dates, times and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

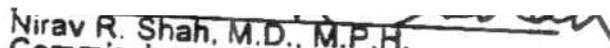
At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of

the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
July 14, 2011

REDACTED SIGNATURE


Nirav R. Shah, M.D., M.P.H.
Commissioner of Health
New York State Health Department

Inquiries should be directed to:

Roy Nemerson
Deputy Counsel / BPMC
N.Y.S. Department of Health
Division of Legal Affairs
90 Church Street, 4th Floor
New York, NY 10007
212-417-4450

APPENDIX 3

Schedule I

If and when Respondent believes he has addressed and complied with

- A. Each of the remediation requirements set forth by the Director of Surveillance of the New York City Department of Health and Mental Hygiene, Bureau of Communicable Disease in his letter of July 5, 2011, in follow-up of the of the Cease & Desist Order issued by the Commissioner of Health and Mental Hygiene of the City of New York and served on June 20, 2011. [Letter and Order are incorporated and attached, marked as Schedule II]; and
- B. Each of the requirements enumerated below, relating to the remediation of professional performance and competence, and physical, procedural, and knowledge deficits,

Respondent may submit to the Director preliminary documentary evidence of that compliance. Such evidence shall include

- Completed Infection Prevention Checklist For Outpatient Settings: Minimum Expectations for Safe Care (Centers for Disease Control)
- Invoices of equipment and supply purchases and services commissioned; photographs;
- Written and certified reports of satisfactory inspection by suitably credentialed infection control consultants;
- Comprehensive written office maintenance, preparation, and practice procedures and protocols, with evidence of training and competence of Respondent and staff regarding those procedures and protocols;
- Written staff training protocols;
- Certification of successful completion, by Respondent and all staff with related responsibilities, of infection control training and testing at a proctored program.

Upon receipt of the preliminary documentary evidence, if the Director, in the reasonable exercise of his discretion, finds such evidence to be sufficient, he shall have Respondent's professional office(s) reinspected, with the Respondent's full cooperation required, by staff members of the New York State Health Department or other designees. The results of that reinspection will be reported to the Commissioner, who will determine what if any modifications shall be made to the Summary Order.

Remediation:

1. Respondent and each staff member other than persons with exclusively clerical responsibilities shall enroll in, complete, and successfully pass a proctored training and testing program in the area of infection control. This program is subject to the Director of OPMC's prior written approval.

2. Respondent shall review and adhere to Occupational Safety & Health Administration (OSHA) Bloodborne Pathogens Standards. [These standards are set forth at 29 CFR 1910.1030.]
3. Respondent shall, in accordance with the OSHA Bloodborne Pathogens Standards, establish an exposure control plan to be updated annually to reflect any generally accepted changes that will help eliminate or reduce exposure to blood-borne pathogens and shall have a written sharps injury protocol readily available for reference.
4. Respondent shall use engineering controls that include approved sharps disposal containers and safer medical devices such as sharps with engineered sharps-injury protection and, if appropriate, needleless systems. Respondent shall ensure that approved sharps containers are placed in close proximity to the procedure table or next to the surgical cart to facilitate proper sharps disposal.
5. Respondent shall ensure that all hand-washing sinks are maintained and equipped with soap and paper towels.
6. Respondent shall avoid manually recapping contaminated needles when feasible. When recapping cannot reasonably be avoided, Respondent shall use an approved mechanical device or a one handed "scoop" technique for recapping.
7. Respondent shall draw up medications as close as possible to the time of administration. If medications will not be used immediately after removal from the vial, the syringes shall be labeled with the appropriate information including the contents, the date, and the time the medication was drawn up.
8. Respondent shall, upon opening a multi-dose vial of medication, label the vial according to the institution's policy. At a minimum, Respondent shall discard medication vials if the contents are outdated (manufacturer's expiration date has been reached) or grossly contaminated or if the vial has been entered without proper aseptic technique.
9. Respondent shall ensure that medications labeled as "single-patient use" are prepared as such, using aseptic technique, and that any unused portions are discarded in accordance with the established rules/regulations governing the disposal of medications. Respondent shall maintain a record of all multi-dose vials purchased, when used, and how and when disposed.
10. Respondent shall maintain aseptic technique and shall not reuse syringes and/or needles to draw up medications from multiple-dose vials. Immediately after using a syringe and/or needle on a patient, the Respondent shall promptly dispose the syringe and/or needle in an appropriate puncture resistant sharps container.

SCHEDULE II



Health

Anthony Sarro, MD
308 Graham Ave.
Brooklyn, NY 11211

July 5, 2011

Dear Dr. Sarro,

During our site visits to your office located at 308 Graham Ave. Brooklyn, NY on June 13 and 20, 2011, we noted several violations of standard infection control practices that must be remedied before the Order of the Commissioner issued on June 20, 2011 can be lifted and medical services can resume. Corrective steps of primary importance are reprocessing of patient care equipment, hand hygiene, personal protective equipment and ensuring the safe use of multi-dose medication vials.

The requirements for lifting the Order are as follow:

1. Observe Standard Precautions for all patients. No distinction should be made between a patient with known bloodborne pathogens and any other patient.
2. Used surgical instruments need to be scrubbed with an enzymatic detergent before being reprocessed for reuse.
3. Surgical instruments and fiber optic laryngoscopes should be reprocessed in accordance with manufacturer's instructions. Once reprocessed they should be stored in a manner that prevents contamination.
4. Heat-tolerant critical devices, i.e. surgical instruments that may come in contact with blood or non-intact mucosal membranes, should be cleaned, packaged and sterilized before reuse. Hinged instruments must be sterilized in the open position.
5. Sterilized instruments should remain sealed in their packages until accessed for patient use and should be handled in a manner that prevents contamination prior to use.
6. The autoclave should be operated per manufacturer's instructions. These instructions should be readily available for all operators. Ensure that operators have adequate training prior to using the autoclave. A service contract must be in place and a maintenance log that includes manufacturer recommended performance indicators (e.g. spore strip testing) must be maintained.
7. Equipment that comes in contact with blood, mucosal membranes, non-intact skin or body fluids, such as the insufflation/suction pump, that cannot be appropriately and effectively cleaned and disinfected between patients must be replaced with modern equipment. Follow manufacturer's reprocessing instructions.
8. Perform hand hygiene after removing gloves and before and after contact with patients. Alcohol-based sanitizers may be used unless hands are visibly soiled. If hands are visibly soiled, wash with soap and water.
9. Use only FDA approved chemicals for high-level disinfection of heat-sensitive semi-critical devices (instruments that come in contact with mucous membranes or non-intact skin).
10. Sterile gloves must be worn for invasive procedures.
11. Discontinue use of personal auto lancet for testing patient blood sugar. Ensure that glucometers are cleaned and disinfected between uses according to manufacturer's recommendations. If the manufacturer does not have written instructions for reprocessing between patients do not share the device for multiple patients.
12. It is advised that all medications be single patient use only. Approved multi-dose vials should be labeled with the date of first use and stored per the manufacturer's recommendation. Multi-dose vials should not be stored or accessed in patient care area, and if they do enter the patient care areas they should be dedicated to that patient or discarded.
13. Personal protective equipment (gloves, mask, face shield, and gown) should be worn whenever performing procedures that may encounter blood or other potentially infectious materials.

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Health

14. Office surfaces that may come in contact with patients must be routinely cleansed with an EPA-approved hospital-grade disinfectant or dilute chlorine bleach product (1:10 solution of bleach and water reconstituted as per manufacturer's instructions). Immediate surface cleaning and disinfection must be carried out for surfaces that are exposed to blood or potentially infectious materials.
15. Keep a refrigerator temperature log.
16. Dispose of expired medications.
17. Remove all chemicals not used for patient care or environmental disinfection from patient treatment areas.
18. Unlabeled bottles should be discarded.
19. Insulin syringes (labeled only in units) should not be used for administration of medications other than insulin. They should not be used for tuberculin skin tests.

Please prepare and submit to my office a written plan delineating how you will address each item in the above list. After review we will arrange a time to perform a repeat inspection and ask that you demonstrate the changes implemented to ensure that proper infection control practices are in place. If the conditions have been satisfied upon re-inspection, we will lift the prior Order.

If you have any questions regarding this letter, please do not hesitate to discuss them with me. A list of relevant links to guidelines is provided below for your review and reference.

Sincerely,

REDACTED SIGNATURE

Don Weiss, MD, MPH
Director of Surveillance, Bureau of Communicable Disease
New York City Department of Health and Mental Hygiene

Recommended Guidelines

CDC Cleaning and Sterilization: http://www.cdc.gov/hicpac/Disinfection_Sterilization/2_approach.html

CDC Environmental Cleaning: http://www.cdc.gov/hicpac/pdf/guidelines/eic_in_HCF_03.pdf

CDC Hand Hygiene: <http://www.cdc.gov/handhygiene/>

CDC BG Monitoring: <http://www.cdc.gov/injectionsafety/blood-glucose-monitoring.html>

CDC Safe Injections main page: <http://www.cdc.gov/injectionsafety/>

CDC Safe Injections FAQs: http://www.cdc.gov/injectionsafety/providers/provider_faqs.html

FDA list of approved chemicals to disinfect instruments:

<http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/ReprocessingofSingle-UseDevices/UCM133514>

EPA list of approved surface disinfectants: http://www.epa.gov/oppad001/list_e_mycobact_hiv_hepatitis.pdf

cc: NYC DOHMH- M. Layton, MD, P. Kellner, RN, MPH, M. Antwi, MPH
NYS DOH- E. Clement, RN, MSN, CIC, E. Luterloh, MD, MPH

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