

Public

NEW YORK
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HEALTH

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

Sue Kelly
Executive Deputy Commissioner

July 16, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sandra Reines, M.D.

REDACTED

John Thomas Vita, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

RE: In the Matter of Sandra Reines, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-60) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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
Riverview Center
150 Broadway – Suite 355
Albany, New York 12204

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. Horah
Chief Administrative Law Judge
Bureau of Adjudication

JFH:nm

Enclosure

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

ORIGINAL

In the Matter of

Sandra Reines, M.D. (Respondent)

Administrative Review Board (ARB)

**A proceeding to review a Determination by a
Committee (Committee) from the Board for
Professional Medical Conduct (BPMC)**

Determination and Order No. 12-60

**Before ARB Members D'Anna, Koenig, Milone, Prescott Wilson and Wagle
Administrative Law Judge Christine C. Traskos drafted the Determination**

**For the Department of Health (Petitioner):
For the Respondent:**

**John Thomas Viti, Esq.
Pro Se**

After a hearing below pursuant to New York Public Health Law (PHL) § 230(10)(e) (McKinney Supp. 2006), a BPMC Committee (Hearing Committee) determined that the Respondent committed professional misconduct. The Committee voted (2-1) to suspend the Respondent's License to practice medicine in New York State (License). The license suspension will terminate upon Respondent's compliance with the terms of the Evaluation Order. In this proceeding pursuant to PHL § 230-c (4)(a), both parties ask the ARB to nullify or modify the Hearing Committee's Determination. After reviewing the hearing record and the parties' review submissions, the ARB votes to affirm the Committee's Determination that the Respondent committed professional misconduct. The ARB overturns the Committee's Determination on penalty and the ARB votes 5-0 to revoke the Respondent's License.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) § 6530(15) by committing professional misconduct under the following specification:

- failing to comply with an Order issued pursuant to PHL § 230(7).

The charges relate to an order by a prior BPMC Committee (Impairment Committee) ordering that the Respondent undergo a psychiatric evaluation. The Respondent did not comply with the Order and a hearing followed.

The evidence at hearing showed that the Office for Professional Medical Conduct (OPMC) advised the Respondent on June 16, 2009 that OPMC had information indicating that the Respondent might be impaired by alcohol, drugs, physical disability or mental disability and that an Evaluation Committee would hold a hearing into that information on July 15, 2009, to determine whether to order the Respondent to submit to a medical or psychiatric evaluation pursuant to PHL § 230(7). Respondent failed to appear on July 15, 2009 and the Evaluation Committee of the Board determined that there was reason to believe that Respondent was impaired, and ordered that the Respondent submit to a psychiatric examination by Zev Labins, M.D., no later than August 15, 2009. The Respondent never contacted Dr. Labins for an appointment and she never presented herself for an evaluation. A disciplinary proceeding on this issue was held on February 6, 2012. The Respondent failed to file an Answer and failed to appear at the pre-hearing and the hearing. The Respondent did however submit documentation that was admitted into the record and reviewed by the Hearing Committee. The hearing proceeded in the Respondent's absence and Petitioner's motion to have the charges deemed admitted for failure to file an Answer was granted by the Administrative Law Judge pursuant to PHL § 230(10)(c). The hearing was limited to the issue of sanction.

The Hearing Committee determined that the failure to comply with the Impairment Committee's Order under PHL § 230(7) amounted to professional misconduct.

The Hearing Committee found further that an evaluation submitted by the Respondent was over twenty years old. There also was no evidence to indicate that the Respondent had undergone the examination that the Evaluation Committee had ordered.

The Hearing Committee voted 2-1 to suspend the Respondent's License under PHL § 230-a(2)(e) until such time as the Respondent complies with the Evaluation Order. The majority of the Hearing Committee concluded that the suspension will protect the public by assuring that the Respondent will be unable to practice without complying with the Evaluation Order.

Review History and Issues

The Hearing Committee rendered their Determination on March 29, 2012. This proceeding commenced on April 18, 2012, when the ARB received the Petitioner's Notice requesting a Review. The Respondent filed a request for review also. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and reply brief and the Respondent's brief and reply brief. The record closed when the ARB received both reply briefs on June 5, 2012.

The Respondent contends that OPMC has violated Respondent's rights to privacy and confidentiality. She further argues that the order issued by the OPMC Hearing Panel is arbitrary, capricious, lacked a rational basis and warrants vacatur. The Respondent also states that she provided the Hearing Committee with an evaluation that gives her a clean bill of mental health. The Respondent asks that the ARB nullify the process and dismiss the charges.

The Petitioner asks that the ARB overturn the Hearing Committee's penalty determination and revoke the Respondent's License.

ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Hearing 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 Hearing 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 Hearing 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 Hearing Committee's Determination that the Respondent committed professional misconduct by failing to comply with the Impairment Committee's Order. We overturn the Hearing Committee's penalty determination and revoke the Respondent's License.

The evidence before the Committee made clear that the Impairment Committee ordered the Respondent to undergo a psychiatric evaluation almost three years ago and that the Respondent has failed to undergo that evaluation. We affirm the Hearing Committee's Determination that they could not rely upon a twenty year old evaluation provided by the Respondent and that a present day evaluation is needed.

We find that revocation constitutes the appropriate penalty in this case. The Respondent has failed to undergo an evaluation and the ARB sees nothing in this record to indicate that the Respondent ever intends to undergo an evaluation. The Respondent has given no assurance that she will comply with the evaluation and she asks the ARB now for dismissal of the charges. The ARB is troubled by the documents that Respondent submitted as part of her appeal. They find that her writings are rambling in nature and express delusional thoughts. The Respondent appears to not understand the charge against her and lacks insight into how to correct the problem. The ARB sees no value from imposing a suspension with an indefinite term such as the Hearing Committee ordered.

The Respondent alone, bears the responsibility for her failure to comply. Without the evaluation, the ARB is unable to assure that the Respondent can practice safely, so patients remain at risk from the Respondent's continued practice. The ARB sees no alternative but to revoke the Respondent's License.

ORDER

NOW, with this Determination as our basis, the ARB renders the following **ORDER**:

1. The ARB affirms the Hearing Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the Hearing Committee's Determination to suspend the Respondent's License until such time as the Respondent complies with the conditions in the Evaluation Order.
3. The ARB revokes the Respondent's License.

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

In the Matter of SANDRA REINES, M.D.

JOHN A. D'ANNA, M.D., an ARB Member, concurs in the Determination and Order in the Matter of Dr. Reines.

DATED: July 6, 2012

REDACTED

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

In the Matter of SANDRA REINES, M.D.

PETER S. KOENIG, SR., an ARB Member, concurs in the Determination and Order
in the Matter of Dr. Reines.

DATED: July 6, 2012

REDACTED

~~_____
Peter S. Koenig, Sr.~~

In the Matter of SANDRA REINES, M.D.

RICHARD D. MILONE, M.D., an ARB Member, concurs in the Determination and Order in the Matter of Dr. Reines.

DATED: July 6, 2012

REDACTED

Richard D. Milone, M.D.

In the Matter of SANDRA REINES, M.D.

LINDA PRESCOTT WILSON, an ARB Member, concurs in the Determination and Order in the Matter of Dr. Reines.

DATED: 5 July, 2012

REDACTED

~~Linda Prescott Wilson~~

In the Matter of SANDRA REINES, M.D.

DATTA G. WAGLE, M.D., an ARB Member, concurs in the Determination and Order
in the Matter of Dr. Reines.

DATED: July 5th, 2012

REDACTED
~~Datta G. Wagle, M.D.~~ // 