

Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

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Chief of Staff

October 27, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Stephen M. Shapiro, M.D.

Redacted Address

James D. Lantier, Esq.

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250 South Clinton Street – Suite 600

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Michael A. Hiser, Esq.

NYS Department of Health

Division of Legal Affairs

Corning Tower, Room 2512

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Albany, New York 12237

RE: In the Matter of Stephen M. Shapiro, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-43) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt **or** seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street-Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

Redacted Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:djh

Enclosure

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

In the Matter of

Stephen M. Shapiro, 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. 08-43

COPY

Before ARB Members Grossman, Pellman, Wagle and Wilson¹
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner):

Michael A. Hiser, Esq.

For the Respondent:

Christopher J. Kalil, Esq.

After a hearing below, a BPMC Committee determined that the Respondent, a psychiatrist, committed professional misconduct by engaging in a sexual relationship with a patient at the same time that the Respondent treated that patient and her husband. The Committee voted to revoke the Respondent's License to practice medicine in New York State (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2008), the Respondent asks the ARB to nullify the findings by the Committee, or in the alternative, to reduce the sanction against the Respondent to a suspension. After considering the hearing record and the review submissions from the parties, the ARB affirms the Committee's Determination on the charges and we affirm the Committee's Determination to revoke the Respondent's License.

¹ ARB Member Therese Lynch recused herself from participating in this case, so the ARB reviewed the case with a four-member quorum.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(3-6), 6530(20), 6530(32) & 6530(44) (McKinney 2008) by committing professional misconduct under the following specifications:

- practicing the profession with negligence on more than one occasion,
- practicing the profession with gross negligence,
- practicing the profession with incompetence on more than one occasion,
- practicing the profession with gross incompetence,
- engaging in conduct that evidences moral unfitness in the practice of medicine,
- failing to maintain accurate patient records, and,
- engaging in physical contact of a sexual nature between licensee and patient in the practice of psychiatry.

The charges related to the Respondent's interactions with two persons (Patients A and B). The record refers to the Patients by initials to protect patient privacy. Following a six-day hearing on the charges, the Committee rendered the Determination now on review.

The Respondent conceded that he failed to maintain accurate patient records. The Committee dismissed the charges that the Respondent practiced with incompetence on more than one occasion and with gross incompetence. Neither party requested a review over the records or incompetence charges.

The Committee sustained the charges that the Respondent practiced with negligence on more than one occasion, practiced with gross negligence, engaged in conduct that evidenced moral unfitness in the practice of medicine and engaged in physical contact of a sexual nature with a patient in the practice of psychiatry. The Committee found that the Respondent treated Patients A and B, a married couple. The Committee found it inadvisable to treat a married couple, due to potential conflicts of interest, and the Committee found that if a psychiatrist proceeds with such treatment, the psychiatrist should obtain and document informed consent from the patients. The Respondent failed to do so. The Committee found further that Patient A developed emotional feelings for the Respondent (transference), a recognized concept in

psychiatry. The Committee found that the Respondent failed to manage the transference appropriately. The Committee found that the Respondent embarked on a lengthy emotional and sexual relationship with Patient A. The Committee found that Patient A attempted on several occasions to break off the relationship, but that the Respondent used his knowledge of the Patient's vulnerabilities to manipulate her into returning.

In making these findings, the Committee found Patients A and B credible in their testimony. Although the Committee noted that both Patients suffer from psychiatric disorders, the Committee found the Patients' testimony clear, coherent and unshakeable. The Committee also cited corroborating information in the record. Patient A told friends about the relationship as the relationship unfolded, the Patient also knew details about the layout of the Respondent's bedroom and anatomical characteristics on the Respondent's body. The Respondent conceded that testimony was accurate. The Committee also found corroboration in testimony from two physicians who treated the Respondent. The Committee indicated that the Respondent presented his treating physicians to support the claim that the Respondent's back pain made him unable to perform sexually. The Committee found on the contrary, that the testimony by the treating physicians established that the Respondent's back pain was well controlled during the time that Patient A testified was the period of greatest sexual activity. The Committee also found corroboration in the tape of a voice mail message the Respondent left on the answering machine of Patient A. The Committee found the message intimate, familiar and totally unprofessional. The Committee rejected testimony by the Respondent and by the Respondent's expert, Michael Lynch, M.D. The Committee found Dr. Lynch well-qualified, but unconvincing, because Dr. Lynch rendered an opinion about Patient A fantasizing, without Dr. Lynch examining the Patient and without evidence in the Patient's treatment records to support Dr. Lynch's opinion. The Committee also found that Dr. Lynch's opinion failed to account for corroborating information, such as the contemporaneous comments by Patient A to friends, the Patient's knowledge about the Respondent's home and anatomy and the Respondent's voice mail message.

The Committee voted to revoke the Respondent's License. The Committee stated that the Respondent was aware that Patient A was an extremely troubled and vulnerable woman and that

the Respondent took advantage of the Patient for the Respondent's own gratification. The Committee noted that the Respondent engaged in a long-standing pattern of manipulation, while Patient A attempted to end the relationship. The Committee found that the Respondent left the voice mail message in evidence in an attempt to draw Patient A back into a relationship. The Committee also found the Respondent's actions placed at risk the well being of both Patient A and her husband, Patient B. The Committee found that while the Respondent treated both Patients, the Respondent exploited difficulties in the Patients' marriage for the Respondent's own benefit. The Committee concluded the Respondent violated the public trust and demonstrated his unfitness to care for society's most troubled and vulnerable members.

Review History and Issues

The Committee rendered their Determination on March 25, 2008. This proceeding commenced on April 4, 2008, when the ARB received the Respondent's Notice requesting a Review. Upon a change in counsel for the Respondent, the parties agreed to an extension in the time for filing briefs in the case until July 18, 2008. 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 July 28, 2008.

The Respondent argues that the Petitioner submitted insufficient proof, with a lack of details and corroborating proof. The Respondent asks the ARB to overturn the Committee's determinations on credibility and substitute the ARB's judgment. In the alternative, if the ARB affirms the charges, the Respondent asks that the ARB reduce the sanction against the Respondent to a suspension.

The Petitioner argues that the Respondent failed to raise any appropriate ground under PHL § 230-c for overturning the Committee's Determination.

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 different 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 in full.

The ARB finds no error by the Committee in their determinations on witness credibility. The Committee considered that both Patients A and B suffered from psychiatric disorders, but found their testimony reliable. The Committee also found extensive evidence in the record to corroborate the testimony by Patient A, including the Respondent's own message on the voice mail tape. The Committee also found the Respondent lacked credibility in his denial about having a relationship with Patient A. The Committee cited extensive reasons for rejecting the Respondent's denials and found the Respondent lied to the Committee in his testimony concerning another physician prescribing Viagra for the Respondent. The Committee also rejected the testimony by Dr. Lynch to the effect that the relationship between Patient A and the Respondent was the Patient's fantasy. The Committee noted that Dr. Lynch never examined Patient A, that no support for Dr. Lynch's opinion appeared in the records for Patient A and that Dr. Lynch had no credible explanation for the corroborating information in the record that supported the testimony by Patient A.

The ARB defers to the Committee in the Committee's judgment on the evidence. The evidence that the Committee found credible proved that the Respondent engaged in a lengthy emotional and sexual relationship with Patient A. The ARB affirms the Committee's

Determination that the Respondent practiced with negligence on more than one occasion and gross negligence, that the Respondent engaged in physical contact of a sexual nature with a patient and that the Respondent engaged in conduct in the practice of medicine that evidenced moral unfitness.

The ARB affirms the Committee's Determination to revoke the Respondent's License. The Committee found that the Respondent engaged in misconduct over a long period, with a troubled and vulnerable woman. The Respondent also treated that troubled woman's husband at the same time and exploited difficulties in the relationship between Patient A and Patient B for the Respondent's own gratification. The ARB holds that the Respondent has demonstrated his unfitness to practice medicine in New York 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 affirms the Committee's Determination to revoke the Respondent's License.

Thea Graves Pellman
Datta G. Wagle, M.D.
Stanley L. Grossman, M.D.
Linda Prescott Wilson

In the Matter of Stephen M. Shapiro, M.D.

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

Dated: 30 September, 2008

Redacted Signature

Linda Prescott Wilson

In the Matter of Stephen M. Shapiro, M.D.

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

Dated: 10-1, 2008

Redacted Signature

Thea Graves Pellman

In the Matter of Stephen M. Shapiro, M.D.

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

Matter of Dr. Shapiro.

Dated: 10/11, 2008

Redacted Signature



Datta G. Wagle, M.D.

In the Matter of Stephen M. Shapiro, M.D.

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

Dated: October 23, 2008

Redacted Signature

↓
Stanley L Grossman, M.D.