

RE: Allegheny General Hospital
The Appeal of Evelyn S. Berwick, M.D. from the Recommendation of the
Executive Committee of the Medical Staff

REPORT AND RECOMMENDATION OF THE HEARING PANEL
Dated: December 29, 2003

REPORT

Pursuant to the Appeal of Evelyn S. Berwick, M.D. from the action of the Executive Committee of the Medical Staff of Allegheny General Hospital ("ECMS") in accepting the recommendation of the Ad Hoc Committee recommending termination of Dr. Berwick's medical staff membership and clinical privileges at Allegheny General Hospital, a Hearing Panel was appointed under Article VIII 2. F of the Medical Staff By-laws. The Hearing Panel consists of Michael Forbes, M.D., Peter Kaplan, M.D. and Denise Leonard, M.D. and W. Theodore Brooks, Esquire as Presiding Officer. The Hearing Panel met and conducted hearings on Dr. Berwick's Appeal on November 17, 2003, November 18, 2003 and December 9, 2003. This Report and Recommendation is rendered in accordance with Article VIII 2. I of the Medical Staff By-laws.

The Hospital was represented by Timothy B. Finnerty, Esquire and Judith Jo Hlafcsak, Esquire in support of the recommendation of the ECMS. Dr. Berwick was not represented by counsel but was assisted by Peter B. Hussey, Dr. Berwick's General Business Manager and husband. Dr. Berwick was apprised both in correspondence from the Hospital prior to the Hearing and by Presiding Officer Brooks during the Hearing of her right to be represented by counsel. Dr. Berwick acknowledged that she was aware of her right to counsel but that she was choosing to proceed on her own with assistance from Mr. Hussey.

The Hospital called as witnesses in support of the recommendation of the ECMS the following persons:

1. Richard Shannon, Chairman of the Department of Medicine, Allegheny General Hospital
2. Sharon C. Kiely, M.D., Vice Chairman, Department of Medicine, Allegheny General Hospital
3. Angela Costa, Nurse Manager, Unit 11C, Allegheny General Hospital
4. Betsy Blazek-O'Neill, M.D., Member of the Ad Hoc Committee
5. Van Nickell, M.D., Member of the Ad Hoc Committee
6. Donald Warde, M.D., President of the Executive Committee of the Medical Staff
7. Richard Protsko, M.D.

In addition, the Hospital introduced 15 procedural and 21 substantive exhibits including selected patient records and a copy of Dr. Berwick's credentials file.

Dr. Berwick called as witnesses the following persons:

1. Edward Klym, Esquire
2. Virginia Goupil, Allegheny General Hospital
3. Pamela Hartzell, Allegheny General Hospital

Mr. Hussey provided a statement on behalf of Dr. Berwick and was permitted to conduct cross-examination of various Hospital witnesses. In addition, Dr. Berwick participated actively in the hearing, commented on testimony, conducted cross-examination of various hospital witnesses and submitted a 20 page signed statement which was admitted into evidence together with her curriculum vitae. Both the Hospital and Dr. Berwick were provided ample opportunity to call and examine witnesses, to introduce exhibits, to conduct cross-examination and to introduce rebuttal testimony and evidence.

Under Article VIII 2H the burden was on the Hospital to "come forward with evidence in support of its recommendation". Thereafter, the burden shifted to Dr. Berwick to present evidence in support of her request for the Hearing. The function of the Hearing Panel is to review the testimony and evidence presented at the Hearing and to determine whether the recommendation which was appealed from was unreasonable, not sustained by the evidence or otherwise unfounded.

RECOMMENDATION

It is the unanimous recommendation of the Hearing Panel that the action of the ECMS of June 16, 2003, in recommending termination of Dr. Berwick's medical staff membership and clinical privileges and summary suspension of clinical privileges pursuant to Article VII,3.D.ii of the Medical Staff By-laws be accepted. The panel finds that Dr. Berwick failed to show that the recommendation of ECMS was unreasonable, not sustained by the evidence or otherwise unfounded.

The report of the Ad Hoc Committee on which the ECMS recommendation was based listed four general areas of concern including Lack of Veracity, Violations of Rules and Regulations, Quality of Care and Failure to Comprehend Seriousness of Her Actions. (Report and Recommendation of Ad Hoc Committee dated June 9, 2003). The Hospital's witnesses provided extensive testimony under each of the listed categories and for the most part, that testimony and the supporting documentation introduced as evidence was not contradicted by Dr. Berwick. Rather much of Dr. Berwick's "explanation" as to the specific allegations of misconduct only served to corroborate the hospital witnesses' version of the events. On many points, Dr. Berwick's responses consisted of rambling statements which did not address the concerns. Much of Dr. Berwick's testimony revealed a lack of understanding, acknowledgment or appreciation for the concern of the other physicians and staff who were dealing with the problems created by her conduct.

Dr. Berwick contended that most of the problems with the care of her patients arose during a period in August of 2002 when she was hospitalized for approximately a week with a serious medical problem. While one of the allegations forming the basis for the ECMS' recommendation, Dr. Berwick's failure to arrange for coverage during her absence, was a

significant element in the case, a pattern of failing to properly attend to patients not only existed during Dr. Berwick's hospitalization but on numerous other times over a number of years. Other specific examples involving Dr. Berwick's patients were produced by the hospital as evidence of Dr. Berwick's failure to meet acceptable standards of care. Dr. Berwick's responses to the examples cited by the hospital simply lacked credibility or demonstrated an unwillingness to take responsibility for some very fundamental elements of patient care. Each of the physician witnesses expressed their opinion that Dr. Berwick was failing to meet acceptable standards for the care of patients she had admitted to Allegheny General Hospital.

The Hearing Panel also finds as significant the following matters:

1. Dr. Berwick's failure to report her twenty-eight (28) day suspension of clinical privileges from Mercy Providence Hospital during the credentialing process.
2. The history of three Level 3 citations in Dr. Berwick's Peer Reviews.
3. Dr. Berwick's failure to consistently leave clear, legible and complete orders.
4. Staff's reported difficulties in reaching Dr. Berwick concerning the needs of her patients.
5. The history of malpractice claims which resulted in payments in excess of \$1,275,000 by Dr. Berwick's insurers.

While Dr. Berwick, both in her written statement and in statements made during the hearing, attempted to rebut the Hospital's evidence, her responses fell far short of casting doubt on the action of the ECMS in recommending revocation of clinical privileges. The testimony offered by Dr. Berwick's witnesses did not provide the Panel with any information that would support her appeal. Furthermore, on numerous occasions both before the Ad Hoc Committee and the Hearing Panel, Dr. Berwick admitted to not being diligent in attending to patients or fulfilling her responsibilities under hospital procedures, rules and regulations.

CONCLUSION

The Panel finds that Dr. Berwick has failed to meet her burden of proving that the recommendation of the ECMS was unreasonable, not sustained by the evidence or otherwise unfounded. Accordingly, the Hearing Panel recommends that Dr. Berwick's appeal be denied, thereby sustaining the recommendation of the ECMS.

The entire process from the initiation of the review in March of 2002 through the adoption of the recommendation of the Ad Hoc Committee by the ECMS was conducted with thoroughness, fairly and without any hint of bias or prejudice against Dr. Berwick. The records of

the Hospital demonstrated that prior to the initiation of these proceedings (back to 1988) Dr. Berwick was apprised of the concerns of her colleagues and the staff yet she either was incapable of correcting her behavior or chose not to. In either case, Dr. Berwick should not be permitted to retain clinical privileges at Allegheny General Hospital.

The Hearing Panel

By: 
W. Theodore Brooks, Esquire
Presiding Officer