



Department  
of Health

Public

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Governor

HOWARD A. ZUCKER, M.D., J.D.  
Acting Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

April 21, 2015

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Raymond Gruenther, M.D.  
619 Pincay Place  
Columbus, Ohio 43203

Raymond Gruenther, M.D.  
112 Park Road  
West Point, New York 10996

James E. Hacker, Esq.  
Hacker, Murphy, LLP  
7 Airport Park Boulevard  
Latham, New York 12110

Jude Mulvey, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2509  
Albany, New York 12237

**RE: In the Matter of Raymond Gruenther, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 15-095) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,

A handwritten signature in black ink that reads "James F. Horan". The signature is written in a cursive style with a large initial "J".

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah

Enclosure

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

In the Matter of

Raymond Gruenther, 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. 15- 095

COPY

Before ARB Members D'Anna, Koenig, Grabiec, Wilson and Milone  
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Jude Mulvey, Esq.  
For the Respondent: James E. Hacker, Esq.

The Respondent holds a license to practice medicine in the State of Ohio, in addition to the Respondent's license to practice medicine in New York (License). Following a hearing below, a BPMC Committee found that Ohio took disciplinary action against the Respondent for misconduct in Ohio, but the Committee voted to dismiss charges against the Respondent in the interest of justice. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2015), the Petitioner asks the ARB to modify that Determination, sustain misconduct charges against the Respondent, censure and reprimand the Respondent, impose a fine and place the Respondent on probation. After considering the record below and the parties' review submissions, the ARB votes 5-0 to sustain the Committee's Determination in full.

Committee Determination on the Charges

Pursuant to PHL § 230 *et seq*, BPMC and its Committees function as a duly authorized professional disciplinary agency of the State of New York. The BPMC Committee in this case conducted a hearing under the expedited hearing procedures (Direct Referral Hearing) in PHL

§230(10)(p). The Petitioner charged that the Respondent violated New York Education Law (EL) §§ 6530(9)(d) by committing professional misconduct, because the duly authorized professional disciplinary agency from another state, Ohio, took disciplinary action against the Respondent's medical license in that state for conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York. The Petitioner's Statement of Charges [Direct Referral Hearing Exhibit 1] alleged that the Respondent's misconduct in Ohio would constitute misconduct if committed in New York, under the following specifications:

- practicing the profession with negligence on more than one occasion, a violation under EL § 6530(3); and,
- failing to maintain accurate patient records, a violation under EL § 6530(32).

Following the Direct Referral Proceeding, the Committee rendered the Determination now on review. In the Proceeding, 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).

The Committee determined that the Respondent entered into a consent agreement with the State Medical Board of Ohio (Ohio Board) in August 2013 in which the Respondent accepted a one year license suspension and three years on probation following the suspension. The penalty included a requirement that the Respondent complete continuing medical education (CME) in prescribing controlled substances and medical record keeping. The Consent Agreement followed charges by the Ohio Board that alleged that the Respondent failed to maintain minimal standards applicable to the selection or administration of drugs. The Committee found that the Ohio Board reinstated the Respondent's Ohio medical license in August 2014. The Respondent is currently practicing under the three year probation, with a

practice monitor. The Committee stated the Respondent is in full compliance with the Ohio Consent Agreement.

The Committee voted to dismiss the charges in the interest of justice. The Committee noted that the Respondent testified at hearing and acknowledged that he had learned from the mandated CME training. The Respondent also indicated that he had remained in Ohio throughout the suspension, despite the significant emotional and financial impact. The Respondent indicated his intention to remain in Ohio, rather than to return to New York. The Respondent expressed concern that, if the Committee sustained charges, it could place the Respondent at risk of losing board certification or Medicaid and Medicare authorizations. The Committee found the Ohio Consent Agreement terms quite stringent and found the Respondent remorseful. The Petitioner had requested that the Committee impose a Censure and Reprimand as a minimal penalty for the purpose of formally acknowledging the Respondent's misconduct. The Committee answered that the Respondent had already acknowledged the misconduct. The Committee also noted that the Ohio Board could take further action against the Respondent if the Respondent fails to comply with any of the ongoing probations terms.

#### Review History and Issues

The Committee rendered their Determination on January 12, 2015. This proceeding commenced on January 26, 2015, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and the Respondent's reply brief. The record closed when the ARB received the reply brief on March 16, 2015.

The Petitioner requested that the ARB affirm the charges against the Respondent and impose a penalty. The Petitioner noted that the charges included improperly escalating doses of oxycodone and methadone, failing to respond or recognize medication abuse or diversion, failing to consider appropriate treatment modalities for five patients, failing to refer four patients to an

appropriate specialist and failing to respond or document abnormalities in two patients. The Petitioner requested that the ARB censure and reprimand the Respondent and that the ARB impose a fine. The Petitioner also requested that the ARB place the Respondent on probation, if he returns to practice in New York.

In reply, the Respondent argued that the penalty the Petitioner requested would provide no further protection to the people of New York. The Respondent requested that the ARB affirm 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 (3<sup>rd</sup> 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 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health. 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> 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 (3<sup>rd</sup> 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 to dismiss the charges in the interest of justice.

The Petitioner requested that the ARB sustain the charges and impose a fine as part of the penalty against the Respondent. The ARB sees no reason to impose a fine in this case. We have reserved fines in the past for instances in which a licensee's misconduct has resulted in unjust enrichment. There were no charges or evidence in this case that involved unjust enrichment. In addition, the Petitioner requested a Censure and Reprimand. The ARB also sees no reason to impose a censure and reprimand. The Respondent has expressed remorse and acknowledged that he has benefited from the Ohio mandated CME.

The Petitioner also requested that the ARB impose probation terms on the Respondent should the Respondent choose to return to practice in New York. The ARB considered the possible result if New York failed to impose a sanction as severe as the Respondent still faces in Ohio and whether a less severe sanction here might encourage the Respondent to abandon the remaining probation in Ohio and return to New York. We note that there was no New York sanction against the Respondent during the most stringent portion of the Ohio penalty, the actual license suspension. The Respondent still remained in Ohio, despite what the Committee called the significant emotional and financial impact on the Respondent and his family. The ARB concludes that, by remaining in Ohio during the suspension, the Respondent proved that he is rooted deeply in that state and committed to satisfying the sanction the Respondent accepted in the Consent Agreement. The ARB agrees with the Committee that, if the Respondent does violate any provisions in the remaining penalty, then the Ohio Board can take further action against the Respondent and BPMC could then take further action as well.

The ARB sees no need to impose any further sanction. The Ohio Consent Agreement contains a severe penalty and the Respondent has complied with the Consent Agreement. We agree with the Committee that the proper action in this case is to dismiss the charges in the interest of justice.



ORDER

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

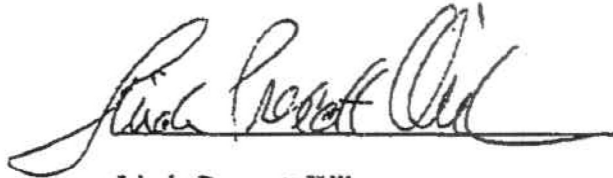
The ARB affirms the Committee's Determination to dismiss the charges in the interest of justice.

Peter S. Koenig, Sr.  
Steven Grabiec, M.D.  
Linda Prescott Wilson  
John A. D'Anna, M.D.  
Richard D. Milone, M.D.

In the Matter of Raymond Gruenther, M.D.

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

Dated: 2 April, 2015

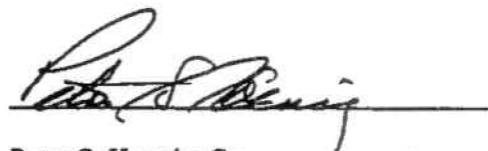
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Linda Prescott Wilson

In the Matter of Raymond Gruenther, M.D.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the Matter of Dr. Gruenther.

Dated: April 15, 2015

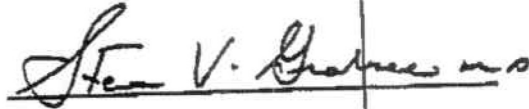
A handwritten signature in cursive script, appearing to read "Peter S. Koenig", is written over a horizontal line.

Peter S. Koenig, Sr.

In the Matter of Raymond Gruenther, M.D.

Steven Grabiec, M.D., an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Gruenther.

Dated: 4/16/ 2015



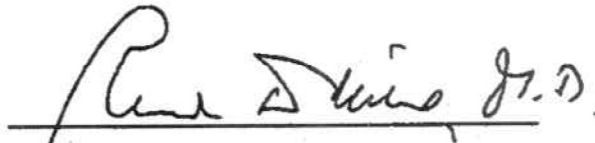
Steven Grabiec, M.D.

In the Matter of Raymond Gruenther, M.D.

Richard D. Milone, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Gruenther.

Dated April 16, 2015

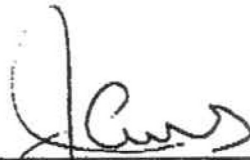
A handwritten signature in cursive script, reading "Richard D. Milone, M.D.", written over a horizontal line.

Richard D. Milone, M.D.

In the Matter of Raymond Gruenther, M.D.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Gruenther.

Dated: April 17, 2015



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John A. D'Anna, M.D.