

Public

**NEW YORK**  
state department of  
**HEALTH**

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

Sue Kelly  
Executive Deputy Commissioner

December 28, 2011

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Vladimir G. Andries, M.D.  
7256 Route 209  
Wawarsing, New York 12489

Vladimir G. Andries, M.D.  
REDACTED ADDRESS

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ESP-Corning Tower-Room 1717  
Albany, New York 12237

**RE: In the Matter of Vladimir G. Andries, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 11-232) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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  
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

Vladimir G. Andries, 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. 11-232

OPY

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

For the Department of Health (Petitioner): Joel Abelove, Esq.  
For the Respondent: Stewart A. Rosenwasser, Esq.

In this proceeding pursuant to New York Public Health Law (PHL) § 230-c  
(4)(a)(McKinney 2011), the ARB considers whether to impose a sanction against the  
Respondent's license to practice medicine in New York State (License) in response to the  
Respondent's 2008 Federal criminal conviction for misbranding medication shipped in interstate  
commerce in 2002. Following a hearing below, a BPMC Committee determined that the conduct  
that resulted in the Respondent's conviction amounted to professional misconduct in New York  
and the Committee voted to suspend the Respondent's License, stay the suspension, place the  
Respondent on probation and fine the Respondent \$10,000.00. The Respondent then requested  
that the ARB vacate the Committee's Determination, on the grounds that BPMC already  
disciplined the Respondent for his misconduct through a 2005 administrative warning. Upon  
reviewing the record below and the parties' review submissions, the ARB votes 5-0 to overturn  
the Committee and to vacate the penalty that the Committee imposed.

### 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's Statement of Charges [Hearing Exhibit 1] alleged that the Respondent committed professional misconduct under the definition in N. Y. Education Law (EL) §6530(9)(a)(ii) (McKinney 2011) by engaging in conduct that resulted in a conviction under Federal Law. In the Direct Referral Hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence before the Committee indicated that the Respondent entered a guilty plea in March 2008 in the United States District for the Northern District of Georgia to a criminal information (Information) that charged the Respondent with distribution of misbranded prescription drugs. The Information referred to two instances in November 2002 when persons in California received the medication Adipex-P (Phentermine) through a company in Atlanta Georgia. In his plea agreement, the Respondent admitted to writing prescriptions for a Georgia company that distributed controlled substances nationally over the internet. The Respondent held a medical license in New York State only. The District Court sentenced the Respondent to three years on probation, 100 hours community service, home confinement for 365 days and a special assessment of \$25.00.

The Respondent conceded, at the Referral Hearing, that he engaged in the conduct at issue in the Federal case, but argued that BPMC cited the Respondent for that conduct previously. In addition to the 2008 Federal prosecution, the State of Missouri's Board of Registration in the Healing Arts (Missouri Board) investigated an internet prescription for Phentermine that the Respondent prescribed for a person in Missouri in 2002 [Hearing Exhibit A]. The Missouri Board concluded in August 2003 that the Respondent was practicing medicine

across state lines without a Missouri medical license and the Missouri Board ordered the Respondent to cease and desist in the conduct [Hearing Exhibit B]. New York learned of the Missouri action and BPMC began an investigation concerning the Respondent's conduct leading to the Missouri cease and desist order [Hearing Exhibit D]. A 2004 Report of Interview, between the Respondent and BPMC Investigators, indicated that the Investigators discussed the Missouri Phentermine prescriptions with the Respondent [Hearing Exhibit G]. The BPMC Executive Secretary advised the Respondent in April 2005 that, in response to the concerns BPMC had raised, the Respondent was receiving an administrative warning pursuant to PHL §230(10)(m)(ii) [Hearing Exhibit G]. Under PHL § 230(10)(m)(ii), BPMC may impose an administrative warning if there is substantial evidence of misconduct of a minor or technical nature. The statute provides further that, in the event of allegations of similar misconduct by a licensee, the matter may be reopened for further proceedings.

The Committee rejected the Respondent's contentions concerning the prior administrative warning. The Committee indicated that even though the Federal conviction and the Missouri cease and desist order involved related facts, the different jurisdictions treated the matters quite differently. The Committee found that the Federal proceeding constituted a new investigation, with more serious consequences and that there was new professional misconduct that transpired after the administrative warning "in 2004". The Committee sustained the specification that the Respondent engaged in conduct that resulted in a Federal criminal conviction. The Committee voted to fine the Respondent \$10,000.00, to suspend the Respondent's License for 5 years, to stay the suspension in full and to place the Respondent on probation for five years, under the terms that appear as Appendix I to the Committee's Determination.

#### Review History and Issues

The Committee rendered their Determination on September 21, 2011. This proceeding began on October 5, 2011, when the ARB received the Respondent's Notice requesting a

Review. 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 November 15, 2011.

The Respondent requests that the ARB dismiss the specification of misconduct against the Respondent because the Federal prosecution involved the same 2002 internet prescribing that BPMC investigated following the Missouri cease and desist order. The Respondent contends that the BPMC 2005 administrative warning letter indicated that the matter could be re-opened in the event of a further allegation of similar misconduct. The Respondents argues that no further misconduct took place following the administrative warning and that no grounds exist for disciplinary action against the Respondent. In the alternative, the Respondent argues that the Committee imposed an excessive penalty against the Respondent. The Respondent requests that the ARB reduce the amount of the fine and that the ARB remove the probation and instead issue a censure and reprimand.

The Petitioner responds that the Federal prosecution constituted new misconduct that provided the basis for the current proceeding. As to the penalty, the Petitioner argued that the Respondent admitted that he earned almost \$47,000.00 for his internet prescribing, so that the \$10,000.00 fine hardly seems unduly harsh. The Petitioner argues further that probation is necessary to assure that the Respondent will not continue to prescribe over the internet.

#### 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 Federal conviction provided grounds for sustaining the misconduct specification under EL § 6530(9)(a)(ii). The ARB votes 5-0, however, to vacate the penalty that the Committee imposed because the conviction involved the same internet prescribing for which BPMC imposed the 2005 administrative warning. The ARB finds the penalty the Committee imposed inappropriate and inconsistent with the Committee's findings.

Both the Federal and the Missouri actions resulted from the Respondent prescribing phentermine over the internet in 2002. Neither action referenced any misconduct subsequent to the 2005 BPMC administrative warning. The Committee erred in finding that new professional misconduct transpired after the administrative warning. The Committee also erred in stating that BPMC issued the administrative warning in 2004, rather than in 2005. The ARB concludes that BPMC has cited the Respondent already for the internet prescribing in 2002. No evidence indicates that the Respondent engaged in subsequent misconduct, the Committee found the Respondent remorseful for the internet prescribing and the Federal Court imposed a sentence against the Respondent that included home confinement, probation and community service. The ARB finds any additional sanction by BPMC unnecessary.



ORDER

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

The ARB overturns the Committee's Determination and vacates the penalty against the Respondent.

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

The ARB overturns the Committee's Determination and vacates the penalty against the Respondent.

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

In the Matter of Vladimir G. Andries, M.D.

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

Dated: Linda Prescott Wilson, 2011

REDACTED SIGNATURE

Linda Prescott Wilson

In the Matter of Vladimir G. Andries, M.D.

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

Dated: \_\_\_\_\_, 2011

\_\_\_\_\_  
Peter S. Koenig, Sr.

In the Matter of Vladimir G. Andries, M.D.

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

Dated: 12/22, 2011

REDACTED SIGNATURE

Peter S. Koenig, Sr.



In the Matter of Vladimir G. Andries, M.D.

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

Matter of Dr. Andries.

Dated: December 21, 2011

REDACTED SIGNATURE

Richard D. Milone, M.D.