

August 13, 2013

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Jude B. Mulvey, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512

Mubashar Choudry, M.D.  
11119 Rockville Pike  
Rockville, Maryland 20852

Mubashar Choudry, M.D.

**REDACTED**

**RE: In the Matter of Mubashar Choudry, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 13-242) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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. 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

Mubashar Choudry, 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. 13- 242

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 B. Mulvey, Esq.  
For the Respondent: Pro Se

The Respondent holds a license to practice medicine in Maryland, in addition to 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 2013), the ARB considers whether to impose a sanction against the Respondent's License following disciplinary action against the Respondent in Maryland, for practicing while impaired by alcohol. After a hearing below, a BPMC Committee voted to take no action at this time, but did order the Respondent to provide notice and take certain action if he ever intends to return to practice in New York. The Petitioner then requested that the ARB review the Committee's Determination, overturn the penalty and suspend the Respondent's License for two years, with probation to follow. After reviewing the record below and the parties' review briefs, the ARB overturns the penalty the Committee imposed and we vote to place the Respondent on probation for two years, under the terms that appear as Appendix I to this Determination.

### 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)(b) & 6530(9)(d) by committing professional misconduct, because the duly authorized professional disciplinary agency from another state, Maryland,

- found the Respondent guilty for improper professional conduct [6530(9)(b)], and/or,
- took disciplinary action against the Respondent's medical license in that state [6530(9)(d)],

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 Virginia would constitute misconduct if committed in New York as practicing the profession while impaired by alcohol, a violation under EL § 6530(7). 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 evidence before the Committee demonstrated that the Maryland State Board of Physicians (Maryland Board) found that the Respondent practiced medicine and provided professional services while under the influence of alcohol. In October 2011, the Maryland Board suspended the Respondent's License for six months, stayed the suspension and placed the Respondent on probation for a minimum of five years. The probation terms required the

Respondent to abstain from using alcohol and to enroll in and cooperate with the Maryland Professional Rehabilitation Program.

The Committee found that the Respondent's Maryland conduct would constitute professional misconduct in New York as practicing the profession while impaired by alcohol. The Committee voted to take no action against the Respondent's License at this time, but the Committee required that the Respondent provide BPMC with notice ninety days before any planned return to practice in New York. The Committee required that the Respondent then meet with the Director of the Office of Professional Medical Conduct (OPMC) and comply with any conditions the OPMC Director imposes on the Respondent resuming practice in New York. The Committee found that the Respondent's documented instance of practice while impaired appeared to be an aberration arising from marital difficulties. The Committee found further that the Respondent entered the Maryland Physician Health Program well before any requirements by the Maryland Board and that the Respondent presented ample evidence of continued sobriety in the form of extensive, random drug and alcohol screens. The Committee concluded that the Respondent presents no risk of danger to the public.

#### Review History and Issues

The Committee rendered their Determination on May 21, 2013. This proceeding commenced on June 6, 2013, when the ARB received the Respondent'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 or about July 18, 2013.

The Petitioner argues that the Committee relied upon inappropriate information in finding mitigation in this case. The Petitioner argues further that the ARB should modify the ninety day order the Committee imposed because that sanction appears nowhere on the list of permissible misconduct penalties under PHL § 230-a. The Petitioner requests that the ARB suspend the Respondent's License for two years and then place the Respondent on probation for two more years.

The Respondent asked that the ARB take no further punitive action against his License. The Respondent argued that further punitive action will lead to insurance companies cancelling the Respondent's participation. The Respondent also indicated that further punitive action may impair the Respondent's well-being. The Respondent noted that he has now practiced for several years with no incident.

#### 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. We affirm the Committee's Determination that the Respondent's conduct in Maryland constituted professional misconduct in New York. We overturn the ninety day order that the Committee imposed. We place the Respondent on probation for two years under the terms that appear at Appendix I to this Determination.

The ARB agrees with the Petitioner that the Committee imposed an inappropriate penalty. No provision in PHL sec 230-a provides that a Committee may order a licensee to appear before the OPMC Director so that the OPMC Director may impose conditions on a physician's return to practice. The provisions at PHL § 230-a empower BPMC Committees and the ARB to impose penalties for misconduct and to place conditions and probation on a licensee's practice.

The ARB rejects the Petitioner's request that the ARB suspend the Respondent's License. The record indicates that the Respondent has complied with the conditions that Maryland imposed on the Petitioner's practice and that numerous alcohol and drug screens on the Respondent have proved negative.

The ARB votes to place the Respondent on probation for two years, if the Respondent chooses to return to practice in New York. Although the Respondent has complied with the Maryland probation to this point, the Maryland penalty will extend into 2016. The ARB finds it inappropriate to take no action against the Respondent, as the Committee intended. To impose no sanction against a licensee still facing a disciplinary penalty elsewhere might encourage that licensee to come to New York to avoid the remaining time or conditions in the other state's disciplinary penalty. The ARB believes that the Respondent should continue to abide by the Maryland Board's Order and to remain in the programs in which the Respondent has made progress over the last few years.



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 overturns the penalty the Committee imposed.
3. The ARB places the Respondent on probation for two years, under the provisions that appear as Appendix I to this Determination.

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

**Appendix I**  
**Terms of Probation**

1. Respondent shall conduct himself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Menands, New York 12204; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Respondent shall practice only when monitored by qualified health care professionals ("sobriety monitor", "practice supervisor" and "therapist") proposed by Respondent and approved, in writing, by the Director of OPMC. Monitors shall not be family members or

personal friends, or be in professional relationships which would pose a conflict with monitoring responsibilities.

8. Respondent shall ensure that the monitors are familiar with Respondent's drug/alcohol dependency and with the terms of this Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.
9. Respondent shall submit, at the request of a monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis. Respondent shall report for a drug screen within four (4) hours of being contacted by the monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by Respondent or a test is positive for any unauthorized substance.
10. Respondent shall meet with a sobriety monitor on a regular basis who will submit quarterly reports to OPMC certifying Respondent's sobriety. These reports are to include a) forensically valid results of all drug/alcohol monitoring tests to be performed at a frequency of no less than six (6) per month for the first 12 months of the period of probation, then at a frequency to be proposed by the sobriety monitor and approved by OPMC and b) an assessment of self-help group attendance (e.g., AA/NA/Caduceus, etc.), 12 step progress, etc.
11. Respondent shall avoid all substances which may cause positive urines such as herbal tea, poppy seeds, mouthwash, cough medication. Any positive result will be considered a violation of this Order.
12. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

In the Matter of Mubashar Choudry, M.D.

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

Dated: 5 August, 2013

REDACTED

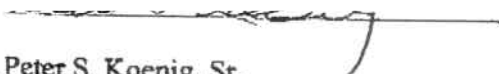
~~\_\_\_\_\_~~  
Linda Prescott Wilson

In the Matter of Mubashar Choudry, M.D.

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

Dated: August 7, 2013

REDACTED

  
Peter S. Koenig, Sr.

In the Matter of Mubashar Choudry, M.D.

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

Dated: 8/6/, 2013

REDACTED

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Steven Grabiec, M.D.

In the Matter of Mubashar Choudry, M.D.

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

Matter of Dr. Choudry.

Date: August 5, 2013

REDACTED

Richard D. Milone, M.D.

In the Matter of Mubashar Choudry, M.D.

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

Dated: Aug 8, 2013

REDACTED

John A. D'Anna, M.D.