



Department of Health

ANDREW M. CUOMO
Governor

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

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

May 15, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hannah E.C. Moore, Assistant Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

Amy T. Kulb, Esq.
Jacobson Goldberg & Kulb, LLP
585 Stewart Avenue, Suite 720
Garden City, New York 11530

Kakarla Chalam, M.D.
Loma Linda University College of Medicine
Department of Ophthalmology
11370 Anderson Street, Suite 2025
Loma Linda, California 92354

RE: In the Matter of Kakarla Chalam, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 20-126) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine if **said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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 black rectangular redaction box covering the signature of James F. Horan.

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:nm
Enclosure

STATE OF NEW YORK : DEPARTMENT OF LAWRENCE WOMACK, MHEALTH
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

In the Matter of

Kakarla Chalam, 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. 20-126

Before ARB Members Grabiec, Wilson and Rabin
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Hannah E.C. Moore, Esq.
For the Respondent: Amy T. Kulb, Esq.

The Respondent holds a medical license in Florida, in addition to his license to practice medicine in the State of New York License. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2020), the ARB considers whether to take disciplinary action against the Respondent's License after a disciplinary action against the Respondent in Florida. After a hearing below, a BPMC Committee dismissed charges against the Respondent in the interests of justice. The Petitioner then requested review. After considering the hearing record and the parties' review submissions, the ARB affirms the Committee's 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's Statement of Charges [Hearing Exhibit 1] alleged that the

Respondent committed professional misconduct under the definition in New York Education Law (EL) §6530(9)(d) (McKinney Supp. 2020) by engaging in conduct that resulted in disciplinary action in another state that would constitute misconduct if committed in New York. 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).

The evidence before the Committee demonstrated that the Respondent entered into a February 21, 2018 Settlement Agreement with the Florida Department of Health following charges by the Florida Board of Medicine (Florida Board), which alleged that the Respondent failed to appropriately and adequately diagnose and maintain records for two patients. The Respondent agreed to a Stipulation in which the Respondent neither admitted nor denied the allegations, which if proven would have warranted disciplinary action. The Settlement Agreement included a letter of concern and a \$20,000 fine. The Agreement also mandated a records course and a continuing medical education course (CME). The Florida Board approved and adopted the Settlement Agreement on August 9, 2018.

The Petitioner charged that the Respondent's Florida conduct, if committed in New York would constitute professional misconduct under EL §§ 6530(3) and 6530(32) as practicing medicine with negligence on more than one occasion and failing to maintain accurate records. The Committee voted to dismiss the charges in the interests of justice, pursuant to their authority under EL § 6530. The Committee noted that the Florida Board action is the only blemish in the Respondent's 30+ years of practice and that the Respondent's testimony and 94-page *curriculum vitae* demonstrated an outstanding career. The Committee found that the Respondent:

- has served or does serve as a Department Chair or Vice-Chair at the University of South Caroline School of Medicine, the Ophthalmology Department at the University of Florida School of Medicine and the Loma Linda University Department of Ophthalmology;
- started a technology fellowship program at Jacksonville, advanced the science, established a basic science lab that designed instruments and established the department of faculty residency program;
- serves currently as Program/Director at the nationally acclaimed Fellowship Program at Loma Linda;
- expanded both the surgeries and scope of surgeries at Loma Linda;
- introduced gene therapy treatment at Loma Linda,
- produced 191 peer review publication;
- performed 37,000 retina surgeries;
- mentored surgeries with lenses, called Chalam surgery lenses, used throughout the world to advance and speed-up surgery, which used to take three hours and now takes 40 minutes;
- trained scores of residents and fellows,
- continues to research, perform, train and supervise specialized ophthalmological care and treatment.

The Committee found that the Florida Board's Order provided ample protection for the public and wrote that they saw no evidence that further discipline would enhance the public's protection.

Review History and Issues

The Committee rendered their Determination on December 17, 2019. This proceeding commenced on January 2, 2020, 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 February 6, 2020.

The Petitioner argues that the Respondent's conduct constituted misconduct and thus warrants a penalty. The Petitioner requests that the ARB sustain the misconduct charge, censure and reprimand the Respondent, fine the Respondent \$3000.00 and require the Respondent to complete the terms of the Florida Board Order.

The Respondent replied that the Respondent completed the requirements under the Florida Board Order and that the hearing record contains a June 13, 2019 letter from the Florida Board indicating that the Respondent's Florida license is clear and active [Hearing Exhibit C]. The American Board of Ophthalmology reviewed the matter and found no cause for further action and the Texas Medical Board closed the matter. The Respondent contends that the record and the best interests of the public support the dismissal in the interests of justice.

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 PHIL §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 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 [PHIL § 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 PHIL §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 to impose no penalty and to dismiss this matter in the interests of justice. We agree with the Committee that the Florida Board took all the disciplinary action necessary in this case. The Petitioner asked that the ARB require the Respondent to satisfy the Florida's Board penalty, but evidence at the hearing demonstrated that the Respondent already satisfied the penalty, so that request is moot. The Petitioner also asked for a fine. The ARB usually imposes fines only in cases in which licensees have used their licenses to enrich themselves improperly. There is no evidence of such conduct in this case and the Petitioner failed to explain the reason for requesting a fine. Finally, the Petitioner requested that we Censure and Reprimand the Respondent. The ARB fails to see what would be accomplished with a Censure and Reprimand. The Committee held the authority under EL § 6530 to dismiss a case in the interests of justice. The facts in this case support the Committee's decision for dismissal.

ORDER

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

1. The ARB affirms the Committee's Determination to impose no penalty in this case.
2. The ARB affirms the Committee's Determination to dismiss this matter in the interests of justice.

Steven Grabiec, M.D.
Linda Prescott Wilson
Jill Rabin, M.D.

In the Matter of Kakarla Chalam, M.D.

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

Dated: 27 April, 2020


A black rectangular redaction box covers the signature of Linda Prescott Wilson. There are some faint handwritten marks above the box.

Linda Prescott Wilson

RECEIVED
Physician Monitoring
APR 30 2020
Office of Professional
Medical Conduct

In the Matter of Kakarla Chalam, M.D.

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

Dated: 4/23/20, 2020


Steven Grabiec, M.D.

In the Matter of Kakarla Chalam, M.D.

Jill Rabin, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Chalam.

Dated: 1/11/2019



Jill Rabin, M.D.