



ANDREW M. CUOMO  
Governor

Department  
of Health


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

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

January 4, 2016

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Nathaniel C. White, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

Roy M. Blackburn, III, M.D.  


**RE: In the Matter of Roy M. Blackburn, III M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 15-321) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,



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

COPY

In the Matter of

Roy M. Blackburn, III, 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. 15-321

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): Nathaniel C. White, Esq.

For the Respondent:

Pro Se

The Respondent holds a medical license in Oregon, 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 2015), the ARB considers whether to take disciplinary action against the Respondent's License after the Respondent entered into a Stipulated Order in Oregon and accepted a disciplinary penalty for prescribing controlled substances improperly. After a hearing below, a BPMC Committee voted to censure and reprimand the Respondent, place him on probation for five years and limit the Respondent's License to ban the Respondent from prescribing controlled substances. Following administrative review over the Committee's Determination, the hearing record (including the Respondent's testimony) and the parties' review submissions, the ARB affirms the Committee 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 Proceeding) 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, Oregon, 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 [Hearing Exhibit 1] alleged that the Respondent's misconduct in Oregon 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);
- practicing the profession with gross negligence, a violation under EL § 6530(4) 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 Direct Referral 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 Stipulated Order with the Oregon Medical Board (Oregon Board) effective July 11, 2014. In the Stipulated Order, the Respondent admitted that conduct in which he engaged (as detailed in the Order's Paragraph 3) violated Oregon Statutes that proscribed:

- unprofessional or dishonorable conduct;
- gross or repeated acts or negligence; and,

- prescribing controlled substances without a legitimate medical purpose, or prescribing controlled substances without following accepted procedures for examination of patients, or prescribing controlled substances without following accepted procedures for record keeping [Hearing Exhibit 5, page 10].

The Oregon Board's action involved the Respondent's practice in prescribing controlled substances to five people (Patients A-E) between March 2009 and September 2013, without performing medical examinations and in the absence of properly documenting their medical records. The Stipulated Order stated further that the Respondent failed to provide rationales for prescribing increasing prescriptions for controlled substances such as opioids and benzodiazepines and exposed his patients to harm by authorizing re-fills when the patients missed scheduled appointments or exhibited abnormal behavior. Further, the Stipulated Order found that the Respondent engaged in unprofessional or dishonorable conduct because the Respondent sent the Oregon Board of Pharmacy a video of a man in a foreign location, being lashed by authorities with a whip (Video). The Oregon Board reprimanded the Respondent, fined him \$5000.00, placed his Oregon license on probation for five years, banned him from prescribing Schedule II or III controlled substances and placed further restrictions on his prescribing and practice.

The Committee determined that the Respondent's conduct in Oregon would constitute misconduct if committed in New York as practicing with negligence on more than one occasion, practicing with gross negligence and failing to maintain accurate records. The Committee found further the Oregon misconduct made the Respondent liable for action against his License pursuant to EL § 6530(9)(d).

In assessing a penalty for the Respondent's misconduct, the Committee noted that the Respondent never conceded that his improper prescription practices could have contributed to addiction and physical harm to patients and that the Respondent expressed no remorse or sadness that Patients A and B died while under treatment by the Respondent. The Committee found that the Respondent failed in his pain management practice to care for his chronic pain patients responsibly and effectively and the Committee felt that the Respondent could repeat those practices in New York. The Committee voted to censure and reprimand the Respondent, to place the Respondent on probation for five years, under the terms that appear at Appendix 2 to the Committee's Determination, and to limit the Respondent's License permanently to prohibit him from prescribing controlled substances.

#### Review History and Issues

The Committee rendered their Determination on October 14, 2015. This proceeding commenced on October 27, 2015, when the ARB received the Respondent's Notice requesting 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 December 8, 2015.

The Respondent's brief attached material from outside the hearing record, including a 10/27/15 letter from Terry Lewis, a 10/28/15 letter from James Morris, a Curriculum Vitae for Stuart Rosenblum, a 10/28/15 letter from Stuart Rosenblum, a 3/13/14 letter from Warren Foote and abridged and unabridged statements from the Respondent. The Respondent argued that his License expired in 2007, that he only admitted to one professional misconduct act in Oregon and that the Committee made findings inconsistent with the Stipulated Order. The Respondent

argued further that he signed the Stipulated Order under duress and the Respondent disputed the findings in the Stipulated Order.

The Petitioner requested that the ARB dismiss the Respondent's Brief because the Respondent disregarded directions and submitted material from outside the hearing record. In reply to the Respondent's statement about the expired License, the Petitioner contended that the New York State Education Department document in evidence as Hearing Exhibit 4, lists the Respondent as licensed, but not-registered in New York, so the Respondent remains liable for disciplinary action pursuant to PHL § 230(10)(p). The Petitioner argued that the Respondent admitted to multiple acts of misconduct, that the Committee made findings consistent with the Stipulated Order and that the Committee imposed an appropriate penalty to protect New York's citizens.

#### 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 in full.

The ARB rejects the Respondent's attempt to submit material from outside the hearing record. As we noted above, PHL § 230-c(4)(a) limits the review to only the record below and the briefs, 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). The Respondent presented



material with his brief that did not even exist at the time of the hearing in this matter in August 2015. Under PHL § 230-c(4)(a), the ARB may remand a case to a committee for further proceedings, but the ARB sees no reason to remand this case for the Committee to consider the October 2015 material that the Respondent attached to his brief. The Respondent's attachments seek improperly to re-open the Stipulated Order.

In a Direct Referral 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 Respondent attempted improperly to re-open the Stipulated Order that he signed in Oregon both before the Committee and the ARB. The Committee acted appropriately in refusing to allow the Respondent to do so. If the Respondent had any issues with the Stipulated Order, he should have litigated the matter in Oregon. The Stipulated Order bound the Respondent before the Committee and binds the Respondent in this proceeding.

The Respondent challenges the ARB's and the Committee's jurisdiction in this case by asserting that his License expired in 2007. The ARB finds that the evidence before the Committee indicated otherwise. Petitioner's Exhibit 4 showed that the New York State Education Department considers the Respondent to still hold his License, although he is not currently registered to practice. The License provides jurisdiction for BPMC to consider whether to take disciplinary action due to the findings under the Stipulated Order.

The Respondent alleged that he pled to only one category of misconduct in Oregon related to the Video. The ARB finds that the Stipulated Order provides otherwise. At paragraph 4, page 10 in the Order [Hearing Exhibit 5], the Respondent admitted that conduct in which he engaged (as detailed in paragraph 3) violated Oregon Statutes that proscribed:

- unprofessional or dishonorable conduct;

- gross or repeated acts or negligence; and,
- prescribing controlled substances without a legitimate medical purpose, or prescribing controlled substances without following accepted procedures for examination of patients, or prescribing controlled substances without following accepted procedures for record keeping.

In the Stipulated Order's paragraph 3, which runs from the Order's page 1 to page 10, the Oregon Board made findings that the Respondent prescribed controlled substances without performing medical examinations on patients and in the absence of properly documenting their medical records, failed to provide rationales for prescribing increasing prescriptions for controlled substances such as opioids and benzodiazepines and exposed his patients to harm by authorizing re-fills when the patients missed scheduled appointments or exhibited abnormal behavior.

The Respondent contended that the Committee made findings inconsistent with the Stipulated Order. The ARB finds no merit to that contention. The Committee's Determination cited extensively from the findings in the Stipulated Order. The Stipulated Order provided the basis for the Committee to find that the Respondent's conduct in Oregon would constitute misconduct, if committed in New York, as practicing with negligence on more than one occasion, practicing with gross negligence and failing to maintain accurate patient records. The ARB affirms the Committee Determination that the Respondent's conduct in Oregon made the Respondent liable for disciplinary action against his License pursuant to EL § 6530(9)(d).

The ARB also affirms the Committee's Determination to Censure and Reprimand the Respondent, to place the Respondent on probation for five years, under the terms that appear as Appendix 2 to the Committee's Determination, and to limit the Respondent's License

permanently to ban the Respondent from prescribing controlled substances. The Committee found that the Respondent failed in his pain management practice to care for his chronic pain patients responsibly and effectively. The ARB agrees with the Committee that the Respondent remains at risk to continue his sub-standard prescribing practices. The Respondent failed at hearing to: concede that his improper practices could have contributed to addiction and physical harm, express remorse and admit that he practiced below the care standard. The Respondent accepted the Stipulated Order, which censured the Respondent, placed him on probation for five years and restricted the Respondent from prescribing Schedule II and III controlled substances. The Committee imposed a similar penalty, but imposed a more severe prescribing ban that applies to all controlled substances. The ARB notes that the Oregon Board never heard the testimony from the Respondent which the Committee did. The ARB finds the Committee's more severe prescribing ban appropriate, after reading the Respondent's testimony.

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 affirms the Committee's Determination to censure and reprimand the Respondent, to place him on probation for five years and to limit the Respondent's License permanently to ban the Respondent from prescribing controlled substances.

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 Roy M. Blackburn, III, M.D.

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

Dated: 28 January, 2015

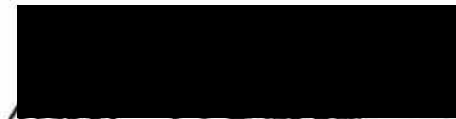


Linda Prescott Wilson

In the Matter of Roy M. Blackburn, III, M.D.

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

Dated: December 26, 2015

A large black rectangular redaction box covering the signature of Peter S. Koenig, Sr.

Peter S. Koenig, Sr.

In the Matter of Roy M. Blackburn, III, M.D.

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

Dated: 12/28, 2015




Steven Grabiec, M.D.

In the Matter of Roy M. Blackburn, III, M.D.

Richard D. Milone, M.D., an ARB Member concurs in the Determination and Order in  
the Matter of Dr. Blackburn.

Dated December 26, 2015



Richard D. Milone, M.D.



In the Matter of Roy M. Blackburn, III, M.D.

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

Dated: 12-27-15, 2015



John A. D'Anna, M.D.