

NEW YORK
state department of
HEALTH

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

Sue Kelly
Executive Deputy Commissioner

October 19, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

D. Amarasinghe, M.D.
6204 North Military Highway
Norfolk, Virginia 23518

D. Amarasinghe, M.D.
REDACTED

Jude B. Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of D. Amarasinghe, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-147) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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

D. Amarasinghe, M.D.
a/k/a Disamodha Amarasinghe, M.D.
(Respondent)

Administrative Review Board (ARB)
Determination and Order No. 12-147

A proceeding to review a Determination by a Committee
(Committee) from the Board for Professional Medical
Conduct (BPMC)

COPY

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): Jude Mulvey, Esq.
For the Respondent: Pro Se

The Respondent holds a medical license in Virginia 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 Supp. 2012), the ARB considers whether to impose a sanction against the Respondent's License following a Disciplinary Order and Consent Order against the Respondent's license in Virginia. After a hearing below, a BPMC Committee found that the Respondent engaged in conduct in Virginia that made the Respondent liable for disciplinary action in New York and the Committee voted to revoke the Respondent's License. The Respondent now asks that the ARB overturn the Committee. After considering the record below and the parties review submissions, the ARB votes to affirm 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 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, Virginia,

- 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, under the following specifications:

- practicing the profession fraudulently, a violation under EL § 6530(2);
- practicing the profession with negligence on more than one occasion, a violation under EL § 6530(3);
- engaging in conduct in the practice of medicine that evidences moral unfitness, a violation under EL § 6530(20);
- willfully filing a false report, a violation under EL § 6530(21);
- violating any term of probation, condition or limitation on a license, a violation under EL § 6530(29); 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 evidence at hearing indicated that the Respondent entered into a Consent Agreement (Consent) with the Virginia Board of Medicine (Virginia Board) in February 2011. The Consent placed the Respondent's Virginia license on indefinite probation, prohibited the Respondent from prescribing Schedule II-V controlled substances, directed the Respondent to dispose of controlled substances properly and provide verification of such disposal to the Virginia Board within 30 days from the date of the Consent and ordered the Respondent to undergo a clinical competency evaluation within 120 days from the Consent. In the Consent, the Respondent admitted to:

- re-dispensing controlled substances such as oxycodone and hydrocodone (which patients had returned to the Respondent),
- failing to maintain adequate records for administering, dispensing or disposing of Schedule II-V controlled substances,
- failing to manage properly the care of four patients, and,
- failing to maintain accurate patient records.

The Virginia Board suspended the Respondent's Virginia license indefinitely on July 6, 2011 following a hearing (Order), for violations of the February 2011 Consent. The Virginia Board found that the Respondent violated the Consent by:

- prescribing Vicodin, a Schedule II drug, and Xanax, a Schedule IV drug, after the entry of the Consent;
- participating in a scheme to circumscribe the Consent prescribing limitations by administering, or authorizing his assistants to administer Demerol, a Schedule II drug;

- documenting fraudulently that another physician administered the Demerol or causing such to be documented fraudulently;
- failing to dispose properly of Schedule II-V drugs, despite advising the Virginia Board that the disposal occurred; and,
- failing to undergo a clinical competency assessment within 120 days from the Consent.

The Virginia Board concluded that the Respondent entered into the Consent in bad faith. The Virginia Board ordered that the Respondent surrender his Drug Enforcement Administration (DEA) certificate and order forms and dispose properly of all Schedule II-V controlled substances. In addition, the Order prohibited the Respondent from petitioning for reinstatement of his Virginia license for at least 24 months. The Order [Hearing Exhibit 5] also noted that the Virginia Board placed the Respondent's Virginia license on an indefinite probation in 1996 (which lasted until 2000) for prescribing Schedule II-IV controlled substances, with high abuse potential, routinely and contrary to sound medical judgment, for 15 different patients the Respondent knew or should have known to be substance abusers.

The Committee determined that the Respondent's conduct in Virginia would have represented misconduct if the Respondent engaged in such conduct in New York. The Committee found no mitigating evidence in the record and found no evidence of remorse on the Respondent's part. The Respondent found further that the Respondent was aware of the hearing and that the Respondent failed to appear at the hearing in person or by counsel. The Committee noted that the Respondent appealed the Virginia Board's Order to the Circuit Court of Virginia and that the Circuit Court upheld the Order. The Committee voted to revoke the Respondent's License.

Review History and Issues

The Committee rendered their Determination on July 5, 2012. This proceeding commenced on August 9, 2012, 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 notice and brief and the Petitioner's reply brief. The record closed when the ARB received the reply brief on August 29, 2012.

The Respondent argued that Direct Referral Hearing should not have proceeded in the Respondent's absence and should have been adjourned until the Respondent had exhausted his appeals in Virginia. The Respondent argued further that the Virginia Board acted against him due to prejudice and in retaliation for complaints the Respondent made against other physicians.

The Petitioner replied that Respondent received an adjournment from the original date for his Direct Referral Hearing in April 2012 until June 2012, that the Respondent was aware of the adjourned date and that the Respondent failed to appear for hearing. The Petitioner argued that there was no error in proceeding with the hearing in the Respondent's absence. The Petitioner argued further that the Direct Referral is not the forum in which the Respondent can re-litigate the Virginia Board's Order.

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 (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 [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 (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 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 Virginia made the Respondent liable for disciplinary action against his License under EL §§ 6530(b) & 6530(d). The ARB also affirms the Committee's Determination to revoke the Respondent's License.

The ARB finds no error by the Committee on conducting the hearing in the Respondent's absence. The Respondent had notice of the hearing day and had the opportunity to appear himself or by an attorney. The Respondent also received an adjournment in a prior hearing day to await the result of his appeal in the Virginia courts. Nothing entitled the Respondent to an indefinite adjournment in this proceeding to exhaust all possible appeals in Virginia. Further, neither the ARB process nor the Direct Referral Hearing provide the forum to appeal the Virginia Board's Order. That Order binds the Respondent before the Committee and the ARB.

The Virginia Board's Order and Consent demonstrate that the Respondent engaged in a pattern of misconduct involving prescribing and dispensing controlled substances. In the Consent, the Virginia Board offered the Respondent the opportunity to remain in practice, with practice restrictions, corrective action and a clinical assessment. The Respondent then engaged in a scheme to ignore the restrictions, corrective action and assessment and the Respondent continued in the misconduct that had resulted in the Consent. The ARB concludes that the Respondent's conduct proves the Respondent's unfitness to practice medicine in New York. The ARB affirms the Committee's Determination to revoke the Respondent's License.

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 revoke the Respondent's License.

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 D. Amarasinghe, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Amarasinghe.

Dated: 10 October, 2012

REDACTED

Linda Prescott Wilson

In the Matter of D. Amarasinghe, M.D.

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

Dated: October 12 2012

REDACTED

Peter S. Koenig, Sr.


In the Matter of D. Amarasinghe, M.D.

Datta G. Wagle, M.D., an ARB Member concurs in the Determination and Order in the

Matter of Dr. Amarasinghe.

Dated: 10/17/12, 2012

REDACTED

Datta G. Wagle, M.D. 

In the Matter of D. Amarasinghe, M.D.

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

Matter of Dr. Amarasinghe.

Date October 18, 2012

REDACTED

Richard D. Milone, M.D.

In the Matter of D. Amarasinghe, M.D.

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

Dated: Oct 10, 2012

REDACTED

John A. D'Anna, M.D.