



ANDREW M. CUOMO
Governor

Department
of Health

Public

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

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

June 4, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Luqman Dabiri, M.D.



Luqman Dabiri, M.D.
1220 East New York Avenue
Brooklyn, New York 11212

Bruce F. Gilpatrick, Esq.
Heidell, Pittoni, Murphy & Bach, LLP
81 Main Street
White Plains, New York 10601

Jude Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237

RE: In the Matter of Luqman Dabiri, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-141) 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.

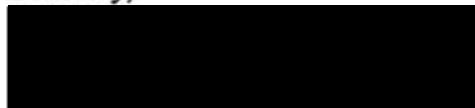
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified 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

In the Matter of

Luqman Dabiri, M.D. (Respondent)

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

Administrative Review Board (ARB)

Determination and Order No. 15-141

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 Mulvey, Esq.
For the Respondent: Bruce Gilpatrick, Esq.

The Respondent holds a license to practice medicine in Florida in addition to the Respondent's license to practice medicine in 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 following a determination suspending the Respondent from practice in Florida. After a hearing below, a BPMC Committee found that the conduct that resulted in the Florida suspension would constitute misconduct if committed in New York and the Committee voted to suspend the Respondent's License until he regains his Florida license. The Respondent now asks the ARB to overturn that penalty and the Petitioner asks the ARB to modify the suspension. After reviewing the hearing record and the parties' review submissions, the ARB modifies the suspension and places the Respondent on probation for five years following the suspension, under terms that appear in the Appendix 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)(d) by committing professional misconduct, because the duly authorized professional disciplinary agency from another state, Florida, 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 [Direct Referral Hearing Exhibit 1] alleged that the Respondent's misconduct in Florida would constitute misconduct if committed in New York, under the following specification: failing to comply with a Board Order, a violation under EL § 6530(15). Following the Direct Referral Proceeding, the Committee rendered the Determination now under 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 Committee determined that the Respondent entered into an August 12, 2013 Consent Agreement (2013 Agreement) with the State of Florida Board of Medicine (Florida Board) to settle charges concerning conditions on a license the Respondent received under a February 26, 2009 Florida Board Order (2009 Order). The 2009 Order allowed the Respondent to practice medicine in Florida under certain conditions, including the condition that the Respondent practice medicine for one year under the direct supervision of a physician approved by the Florida Board. In both June 2009 and June 2011, the Respondent requested that the Florida

Board reconsider the supervision condition, but the Florida Board denied both requests. The Florida Department of Health issued disciplinary charges against the Respondent in August 2013, which alleged that the Respondent practiced medicine without a supervising physician from November 1, 2011 until February 10, 2012. The 2013 Consent suspended the Respondent's license to practice medicine in Florida pending an evaluation/report from either the Florida Cares Program, Center for Personalized Education for Physicians (CPEP) or the Federation for State Medical Boards and National Board of Medical Examiners Post Licensure Assessment System Institute for Physical Evaluation. The suspension would remain in place pending the Florida Board's consideration of the evaluation/report and approval for reinstatement. The Consent Order also reprimanded the Respondent, fined the Respondent \$3000.00 and ordered the Respondent to pay \$2,225.84 in costs. The Respondent testified at hearing that he practices currently in New York, with an unrestricted license, in his own medical office and without hospital privileges [Hearing Transcript pages 22, 25].

The Committee determined that the Respondent's practice in Florida, without a supervising physician, would have constituted professional misconduct if committed in New York. The Committee voted to suspend the Respondent's License until the Florida Board reinstates the Respondent's license in that state.

Review History and Issues

The Committee rendered their Determination on January 12, 2015. This proceeding commenced on January 20, 2015, 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 brief and reply brief. The record closed when the ARB received the reply brief on February 27, 2015.

The Petitioner asked that the ARB modify the penalty the Committee imposed on the grounds that the Committee ceded to the Florida Board the determination on the Respondent's competency to practice in New York State. The Petitioner argued that the Florida Board restricted the Respondent's Florida license under the 2009 Order due to disciplinary actions against the Respondent in England. Due to the actions in England, the Respondent was away from practice for a period of years.

The Petitioner's Brief noted that a 1999 restriction, on the Respondent's medical license in England, required that the Respondent practice only in National Health Service posts under supervision from a fully registered medical professional. The English medical authorities suspended the Respondent's license in that country summarily in November 2000 and converted the summary suspension into a twelve month suspension in December 2000. The Respondent left England in 2001 and participated in residencies in New York in general surgery and obstetrics/gynecology OB/GYN at Harlem Hospital, Brookdale Hospital and SUNY Downstate Medical Center from 2001-2006. The Petitioner argued that the Respondent first practiced as a licensed medical professional in the United States upon receiving the conditional Florida license in 2009.

Upon returning to Florida, the Respondent was unable to find a supervising physician board certified in OB/GYN, so the Respondent asked the Florida Board to remove the supervision requirement within two months from the 2009 Order. After the Florida Boards denied that request in 2009 and a further request in 2011, the Respondent left for New York, but returned to Florida in 2011. The charges that resulted in the 2013 Consent alleged that the

Respondent practiced without an approved supervisor from August 2011 to February 2012. The 2013 Consent required among other things, that the Respondent complete the evaluation and appear with his evaluators before the Florida Board Probation Committee, to determine if the Florida Board would reinstate the Respondent and to determine whether to place any terms, conditions or restrictions on the Respondent's Florida license.

The Petitioner's Brief argued that the Committee relinquished authority to the Florida Board to determine if the Respondent could practice safely in New York. The Petitioner asked that the ARB suspend the Respondent's License for an indefinite period, but at least twelve months, and that the Respondent make a showing to a BPMC Committee that the Respondent completed an evaluation successfully and that the Respondent presented no danger. The Petitioner stated that the Committee should then decide what conditions, if any, to place on the Respondent's License. The Petitioner argued further that there is no benefit to the New York public to suspend the Respondent's License and then return the Respondent to practice without any restrictions or supervision.

The Respondent's Brief and Reply Brief argued that no basis exists for the ARB to suspend the Respondent's License indefinitely. The Respondent reported that he had already completed the CPEP Evaluation in an effort to obtain an unconditional license in Florida. The Respondent argued that New York provided the Respondent an unrestricted license in 2013 after New York had reviewed the same information that was available to the Florida Board. The Respondent argues that no evidence exists showing that the Respondent poses a danger to the public.

In a letter that the ARB received on April 27, 2015, the Respondent indicated that the Florida Board had reinstated his Florida License. The letter attached a copy of the reinstatement

order. The ARB gave no consideration to the reinstatement order, because the reinstatement order was outside the record from the hearing, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3rd Dept. 1997).

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 (supra).

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 ARB affirms the Committee's Determination that the Respondent committed professional misconduct. The ARB modifies the Committee's Determination on penalty. The ARB suspends the Respondent's License until such time as the Director of the Office of Professional Medical Conduct (OPMC Director) determines from the CPEP Evaluation that the Respondent can practice safely in New York. At the time that the OPMC Director makes that determination, the Respondent shall practice under probation for five years, under the conditions that the ARB establishes in the Appendix to this Determination. The probation terms include the requirement that the Respondent practice with a monitor.

The ARB agrees with the Petitioner that the Committee ceded to the Florida Board the decision on whether the Respondent could return to practice in New York. The ARB holds that New York should review the CPEP Evaluation to decide if that Evaluation establishes the Respondent's fitness to return to practice. The ARB sees no need, however, to require that another BPMC Committee make that decision. The OPMC Director can make the decision and,

under PHL § 230(18)(a), the Director can impose additional probation terms if the Director feels such terms appropriate upon reviewing the CPEP Evaluation. The ARB sees no reason to impose an actual one year suspension as part of this review and the Petitioner's Brief failed to explain why the 12 month suspension was necessary.

The ARB disagrees with the Respondent that no further penalty is necessary following the decision by the Florida Board. We explained above why we felt it necessary that the OPMC Director must review the CPEP Evaluation. We also conclude that the Respondent should practice on probation with monitoring for five years, despite whatever the Director determines after reviewing the CPEP Evaluation. As noted above, 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, (supra). The ARB chooses to do so in this case. 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, (supra). We find aggravating circumstances present in this case.

The Respondent practiced previously in two other jurisdictions, which both found the need to place supervision restrictions on the Respondent's practice and then to suspend the Respondent's practice, England and Florida. The Respondent left both jurisdictions to practice elsewhere. The ARB finds such conduct presents a pattern and we find that pattern troubling. Further, the Respondent testified that he currently practices in his own office in New York, with no hospital privileges. The Respondent can practice with no supervision or oversight in such a setting, unlike practice in a licensed medical facility subject to State and Federal inspections and regulations requiring lines of supervision. We find such lack of oversight troubling as well. We

conclude that review of the CPEP Evaluation and five years on probation with a practice monitor will assure that the Respondent will be able to practice safely in New York State.

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 modifies the Committee's Determination to suspend the Respondent's License until the Respondent regains his Florida medical license.
3. The ARB suspends the Respondent's License until such time as the OPMC Director determines that the CPEP Evaluation demonstrates the Respondent's fitness to practice medicine safely in New York State.
4. The Respondent shall provide the Director with the CPEP Evaluation and any supporting documentation or the Respondent shall execute the necessary consents so that the Director can obtain the CPEP Evaluation and any supporting documentation.
5. Following the suspension, the Respondent shall practice on probation for five years, under the terms that appear as the Appendix 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

- A. The Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
- B. The Respondent shall submit written notification to the New York State Department of Health, addressed to the OPMC Director, Riverview Center, 150 Broadway, Menands, New York 12204. Such 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.
- C. The Respondent shall cooperate fully 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 OPMC Director as requested by the Director.
- D. 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 OPMC Director 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.
- E. The Respondent's professional performance may be reviewed by the OPMC Director. 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 staff at practice locations or OPMC offices.
- F. 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.
- G. Within thirty (30) days of the effective date of the Order, the Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the OPMC Director.
 - 1. The Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice

monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

2. The Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 3. The Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 4. The 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.
 5. The Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the OPMC Director prior to the Respondent's practice after the effective date of this Order.
- H. The 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 Luqman Dabiri, M.D.

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

Dated: 28 May, 2015

A large black rectangular redaction box covers the signature area of Linda Prescott Wilson.

Linda Prescott Wilson

In the Matter of Luqman Dabiri, M.D.

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

Dated: May 27, 2015

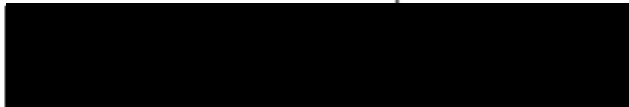
A large black rectangular redaction box covering the signature of Peter S. Koenig, Sr.

Peter S. Koenig, Sr.

In the Matter of Luqman Dabiri, M.D.

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

Dated: 5/27, 2015



Steven Grabiec, M.D.

In the Matter of Luqman Dabiri, M.D.

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

Matter of Dr. Dabiri.

Dated May 27, 2015

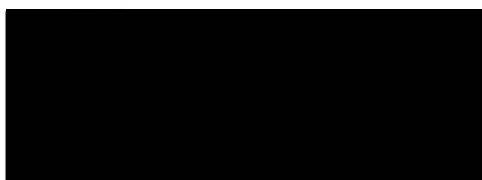


Richard D. Milone, M.D.

In the Matter of Luqman Dabiri, M.D.

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

Dated: MAY 27, 2015



John A. D'Anna, M.D.