



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

June 29, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Christiana Lietzke, M.D.


Marc S. Nash, Esq.
NYS Department of Health
Coming Tower Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Christiana Lietzke, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.17-186) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.** Delivery shall be by either certified mail or in person to: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: 
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT

In the Matter of

Christiana Lietzke, 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. 17-186

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): Marc S. Nash, Esq.
For the Respondent: No Submission

The Respondent holds medical licenses in other states in addition to her license to practice medicine in New York State. A BPMC Committee below conducted a hearing into whether to impose disciplinary action against the Respondent's License following her criminal conviction in Tennessee and the indefinite suspension of her North Carolina medical license. The Committee found that the Respondent's conduct in the other states amounted to professional misconduct in New York and voted to suspend the Respondent's License until such time as she completes an evaluation into her fitness to practice. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney Supp. 2017), the Petitioner asks the ARB to modify the Committee's Determination. After considering the record on review, the ARB overturns the Committee's Determination as to penalty and we vote to revoke the Respondent's License.

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) at 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)(a)(iii) (McKinney Supp. 2017) by engaging in conduct that resulted in a criminal conviction in another jurisdiction, which would constitute criminal conduct under New York Law.

The Petitioner charged further that the Respondent violated EL § 6530(9)(d) by committing professional misconduct, because the duly authorized professional disciplinary agency from another state (North Carolina) took disciplinary action against the Respondent's license in that state for conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York. The Statement of Charges alleged that the Respondent's misconduct in North Carolina would constitute misconduct, if committed in New York, as practicing the profession while impaired by a psychiatric condition, a violation under EL § 6530(8).

The Respondent appeared and testified at the Direct Referral Hearing. In the Hearing, 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). Following the Hearing, the Committee rendered the Determination now on review.

The evidence before the Committee demonstrated that Respondent entered a guilty plea in the General Sessions Court of Jefferson County Tennessee to Evading Arrest, a misdemeanor.

The General Sessions Court sentenced the Respondent to revocation of her driver's license for one year, to 11 months 21 days incarceration, suspended, and to pay a \$1,500.00 fine. Following the Tennessee guilty plea, the Respondent applied for medical licensure in South Dakota and the South Dakota Board of Medical and Osteopathic Examiners (South Dakota Board) requested more information concerning the Respondent's conviction in Tennessee. During that application process, the South Dakota Board found that the Respondent provided responses and messages that were non-responsive and the South Dakota Board requested that she undergo a fitness evaluation. The Respondent never obtained the fitness evaluation. The public documentation from the South Dakota investigation then resulted in the North Carolina Board of Medicine (North Carolina Board) opening an investigation into the Respondent's medical licensure in that state. That investigation resulted in an Order by the North Carolina Board that appears as Exhibit 6 in the Direct Referral Hearing Record.

The North Carolina Board ordered the Respondent to undergo an evaluation by the North Carolina Physician's Health Program (NCPHP). The NCPHP found that the Respondent interacted with NCPHP staff in an unusual manner and provided NCPHP with records suggesting that the Respondent had an active [REDACTED] health issue and a "thought form" that was illogical at times. The NCPHP assessed the Respondent as suffering [REDACTED] and noted that the Respondent believed she suffered from [REDACTED] but did not wish to take medications. The NCPHP found that the Respondent did not appear safe to practice at the time due to active symptoms of [REDACTED] illness and the NCPHP recommended that the Respondent obtain a comprehensive assessment. The Respondent presented to the Vanderbilt Comprehensive Assessment Program (VCAP) in November 2015. The VCAP performed an assessment, but the Respondent failed to complete some testing and walked out on her last appointment with the

VCAP Medical Director. The VCAP Team found the Respondent unfit to practice medicine at that time based on the Respondent's presentation and conduct during the extended evaluation process. The VCAP Team observed that the Respondent presented with symptoms consistent with [REDACTED]; the Team noted that the Respondent refuses treatment with medications; and the Team found the Respondent an unlikely candidate to engage in or benefit from psychotherapy. The North Carolina Board suspended the Respondent's license in that state summarily on December 8, 2015 and suspended that license indefinitely on April 28, 2016.

The Committee found that the Respondent's criminal conduct in Tennessee would constitute criminal conduct in New York State and the Committee found the Respondent liable for disciplinary action against her License pursuant to EL §6530(9)(a)(iii). The Committee found further that the North Carolina Board disciplined the Respondent for suffering from a [REDACTED] condition that impairs the practice of medicine, which constitutes professional misconduct in New York under EL § 6530(8). The Committee found that this made the Respondent liable for disciplinary action against her License pursuant to § 6530(9)(d).

The Committee voted to suspend the Respondent's License pursuant to PHL § 230-a(2)(c) and (e) until such time as the Respondent:

- submits to and cooperates with a psychiatric evaluation by a physician, physicians or facility proposed by the Respondent but subject to the prior written approval by the Director of the Office of Professional Medical Conduct (Director); and
- causes the evaluator to report in writing to the Director regarding the Respondent's fitness to practice medicine.

The Committee found that the evidence indicated the Respondent's unstable judgment and erratic behavior resulted from a [REDACTED] disorder that the Respondent refuses to treat. The

Committee considered the importance of sound judgment and rational decision making in the practice of medicine and determined that the Respondent's untreated [REDACTED] condition prevented her from providing safe and reasonable skilled medical care to patients.

Review History and Issues

The Committee rendered their Determination on March 16, 2017. This proceeding commenced on March 24, 2017, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and the Petitioner's brief. The Respondent made no submission. The record closed when the ARB received the brief on April 26, 2017.

The Petitioner requests that the ARB overrule the Committee and revoke the Respondent's License. In the alternative, the Petitioner requests that the ARB modify the suspension the Committee imposed on statutory and practical grounds. The Petitioner argues that the Committee sanction would allow the Respondent to return to practice if an evaluator issues a report on the Respondent's fitness to practice, whether or not the evaluator's report finds the Respondent fit. The Petitioner urges the ARB to amend the suspension to allow the Respondent to return to practice only if the evaluator finds the Respondent is fit to practice.

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 committed professional misconduct. Neither party challenged the Committee's Determination on the charges. The ARB overrules the Committee's Determination to suspend the Respondent's License. The ARB votes 5-0 to revoke the Respondent's License.

The NCPHP and the VCAP assessments found that the Respondent suffered from a [REDACTED] condition that impairs her ability to practice safely. The North Carolina Board imposed an indefinite suspension against the Respondent's license to practice in that state, but there is no legal authority for an indefinite suspension in New York, Ostad v. New York State Department of Health, 309 A.D.2d 989, 766 N.Y.S.2d 441 (3rd Dept. 2003). Under PHL § 230-a(2), authority lies to suspend a license for a fixed time or until the Respondent satisfies a condition, such as successfully completing a course of treatment of therapy [PHL § 230-a(2)(c)] or until the Respondent complies with the terms or conditions of a BPMC order [PHL § 230-a(2)(e)]. The Committee suspended the Respondent's License until the Respondent underwent an evaluation and the evaluator reported in writing to the Director.

The ARB agrees a that a problem exists with the Committee Suspension Order because the Order would have allowed the Respondent to return to practice following the evaluator's report, without regard to whether the report found the Respondent fit to return to practice. The ARB will make no modification in the Suspension Order, however, because we see no purpose in ordering a further evaluation. The Respondent refused to undergo an evaluation in South Dakota and she walked out before the conclusion of the VCAP evaluation. There is no evidence

that there has been an improvement in the Respondent's condition since the North Carolina Board ordered evaluations and the Respondent testified at hearing that she continues to refuse to take medications to treat her condition [Hearing Transcript pages 31 and 37]. The ARB agrees with the North Carolina Board and with the Committee that the Respondent's untreated [REDACTED] condition prevents the Respondent from providing safe and skilled medical treatment to patients. The ARB finds the Respondent unfit to practice under these conditions and we conclude that revocation constitutes the appropriate penalty, which is consistent with the Committee's findings. If at some point in the future, the Respondent begins to take the medication which would treat the condition, the Respondent may petition the New York Board of Regents to reinstate 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 overturns the Committee's Determination to suspend the Respondent's License until such time as she completes a psychiatric evaluation regarding the Respondent's fitness to practice.
3. The ARB revokes the Respondent's License.

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 Christian Lietzke, M.D.

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

Dated 23 June, 2017

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Linda Prescott Wilson

In the Matter of Christian Lietzke, M.D.

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

Dated: June 22, 2017

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

Peter S. Koenig, Sr.

In the Matter of Christian Lietzke, M.D.

Steven Grabiec, M.D., an ARB Member concurs in the Determination and Order in the

Matter of Dr. Lietzke.

Dated: 6/26/ 2017



Steven Grabiec, M.D.

In the Matter of Christian Lietzke, M.D.

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

Dated: , 2017



Richard D. Milone, M.D.

In the Matter of Christian Lietzke, M.D.

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

Dated: JUNE 22, 2017



John A. D'Anna, M.D.