



## Department of Health

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Commissioner

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

October 29, 2019

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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Clarisse Clemons, M.D.  
[REDACTED]

Clarisse Clemons, M.D.  
3250 Westchester Avenue  
Suite 101  
Bronx, New York 10461

**RE: In the Matter of Clarisse Clemons, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 19-269) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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: cmg  
Enclosure

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

In the Matter of

Clarisse Clemons, 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. 19-269

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

For the Department of Health (Petitioner): Christine Radman, Esq.  
For the Respondent: David Vozza, Esq.

Following a hearing below, a BPMC committee found that the Respondent committed professional misconduct in providing medical treatment to six patients. The Committee voted to revoke the Respondent's license to practice medicine in New York State. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2019), the Respondent asks the ARB to remand the case for a new hearing because the Respondent failed to receive due process in the hearing. After reviewing the hearing record and the parties' review briefs, the ARB rejects the request for the remand. We vote 3-0 to affirm the Committee's Determination to sustain the misconduct charges and to revoke the Respondent's License.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(3), 6530(5), 6530(32) & 6530(35) (McKinney Supp. 2019) by committing professional misconduct under the following specifications:

- practicing medicine with negligence on more than one occasion,

- practicing medicine with incompetence on more than one occasion,
- failing to maintain accurate patient records, and
- ordering excessive tests, treatment or use of facilities unwarranted by the patient's condition.

The Petitioner's charges involved the care the Respondent provided to six persons (Patients A-F) who were injured in motor vehicle accidents. The Respondent billed the New York No-Fault Insurance Program (No-Fault) for the Patients' care.

The Committee found that the Respondent failed to file an answer to the Petitioner's Statement of Charges at least ten days prior to the first day of hearing as required under PHL § 230(10)(c)(2). Due to the Respondent's failure to file the mandated answer, the Committee deemed the charges admitted. The Committee found from the admitted allegations that the Respondent:

- failed to perform and document adequate histories and physical examinations for all the Patients;
- performed diagnostic testing that was inconsistent with the documented history and physical and/or was medically unnecessary for all six patients;
- provided and billed for excessive treatment and/or supplies unwarranted by the six Patients' conditions;
- failed to follow-up adequately on the Patients' conditions and/or treatment plans; and
- failed to maintain a record that reflected the Patients' condition accurately.

The Committee then considered the testimony of the Respondent and of the Petitioner's expert witness, David Prince, M.D., in determining the penalty to impose.

The Committee found that Dr. Prince provided credible testimony about the admitted allegations. The Committee wrote that the Respondent's repeated outbursts during the hearing gave great cause for concern. The Committee also noted that the Respondent failed to respond to questions with clarity. The Respondent repeated throughout the hearing that she did what she did because No-Fault required it, that is how No-Fault is and she has ceased taking No-Fault cases.

The Committee voted to revoke the Respondent's License upon finding that the Respondent failed to understand the impact her treatment and actions had on her patients. The Committee questioned seriously the Respondent's ability to treat patients due to her lack of insight, the incoherent nature of her answers and her "cookie cutter" approach to treating the six Patients. The Respondent stated repeatedly that she ordered tests because No-Fault required them. The Committee found those statements constituted an outright admission of the charges and the Committee concluded that the Respondent:

- did not order tests to impact care or treatment because many tests were not indicated;
- did not utilize the tests to diagnose or treat the patients;
- did not follow up on tests when results dictated follow-up; and
- failed to re-evaluate patients after abnormal findings to determine the need for referral to specialists or modification to treatment.

The Committee also found the Respondent engaged in a dangerous pattern of providing sub-standard care and treatment which provided no benefit to Patients A-F. The Committee concluded that any penalty short of revocation would fail to address the Respondent's substandard care, her lack of insight into the seriousness of her misconduct, her failure to explain the rationale to treating Patient A-F and her lack of remorse.

#### Review History and Issues

The Committee rendered their Determination on April 18, 2019. This proceeding commenced on April 29, 2019, 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 brief and the Petitioner's reply brief. The record closed when the ARB received the response brief on June 28, 2019.

The Respondent requests that the ARB remand this case for a new hearing. The Respondent argued that she failed to appreciate the gravity of the charges against her because she

was not represented by counsel and believed the hearing related to the No-Fault Program. The Respondent alleged that the Committee failed to advise the Respondent about the true nature of the proceedings and argued that due process considerations required that the hearing be postponed to provide the Respondent an opportunity to obtain counsel. The Respondent also alleged that the Committee's Administrative Officer acted in an arbitrary, capricious and legally incorrect matter by deeming the charges admitted due to the Respondent's failure to file an answer.

The Petitioner replied that the Respondent's allegations lacked a basis in fact or law. The Petitioner argued that the Committee's Administrative Officer explained the nature of the hearing to the Respondent and advised the Respondent to read the Notice of Hearing and be sure to comply with anything the Notice required. The Notice of Hearing warns that the failure to file an answer to the charges at least ten days prior to the hearing or the charges will be deemed admitted. The Petitioner also noted that a Committee Member attempted during the hearing to get the Respondent to address the charges, but the Respondent evaded the questions. The Petitioner argued further that the Committee granted the Respondent numerous opportunities to obtain counsel. Finally, the Petitioner contended that PHL § 230(10)(c) provided a clear statutory mandate for the Administrative Officer's ruling deeming the charges admitted Corsello v. N.Y.S. Dept. of Health, 300 A.D.2d 849, 752 N.Y.S.2d 156 (3<sup>rd</sup> Dept. 2002).

#### 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 to sustain the charges against the Respondent. The Respondent failed to file an answer ten days before the hearing, so PHL § 230(10)(c) required that the charges shall be deemed admitted Corsello v. N.Y.S. Dept. of Health, (supra). The ARB rejects the request to remand the hearing and we affirm the Committee's Determination to revoke the Respondent's License.

The Respondent received an adjournment to obtain counsel and the Committee's Chair and Administrative Officer advised the Respondent to focus on the charges in the case rather than focusing on No-Fault. When he began questioning the Respondent, the Committee's Chair noted that the Committee appreciated that the Respondent no longer did No-Fault, but "we are here to address some charges" [Hearing Transcript pages 189-190]. The Chair then asked if the Respondent had any mental problems or was taking any medications that might interfere with her testimony [Transcript page 193]. The Respondent answered that she was diagnosed with Lyme Disease and was taking doxycycline and went on to state that "... I am certifiably sane by the State of Connecticut" [Transcript pages 192-193]. The Chair then asked why the Respondent did not have an attorney with her at the hearing and the Respondent eventually answered that she didn't have the money [Transcript page 193]. The ARB denies the request for a remand because the record demonstrates that the Committee and the Administrative Officer conducted a fair hearing and gave the Respondent additional opportunities to obtain counsel and provided the Respondent the opportunity to address the charges.

The ARB agrees with the Committee that the Respondent engaged in a dangerous pattern of providing sub-standard care and treatment which provided no benefit to Patients A-F. Further,



we agree that any penalty short of revocation would fail to address the Respondent's substandard care, lack of insight into the seriousness of her misconduct, her failure to explain the rationale for treating Patients A-F and her lack of remorse. We vote 3-0 to affirm the Committee's Determination on revocation.

The ARB found troubling the Respondent's inability or refusal to focus on the charges in the case and to explain her rationale for the treatment to Patients A-F. We also found troubling the Respondent's statement that she is certifiably sane by the State of Connecticut. We questioned whether the statement meant that there was some enquiry into the Respondent's cognition by the State of Connecticut. The ARB realizes that the Respondent may request, at some point in the future, that the New York Board of Regents reinstate the Respondent's License. If the Respondent does request reinstatement, the ARB urges the Board of Regents to investigate what the Respondent meant when she referred to herself as certifiably sane.

#### 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.

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

In the Matter of Clarisse Clemons, M.D.

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


Dated: 21 October, 2019

  
Linda Prescott Wilson

In the Matter of Clarisse Clemons, M.D.

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

Dated: \_\_\_\_\_, 2019

  
Steven Grabiec, M.D.

In the Matter of Clarisse Clemons, M.D.

In the Matter of Clarisse Clemons, M.D.

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

of Dr. Clemons.

Dated: 10/11/19, 2019



Jill Rabin, M.D.