



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

March 22, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marc S. Nash, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

Amy T. Kulb, Esq.
Jacobson Goldberg & Kulb, LLP
585 Stewart Avenue, Suite 500
Garden City, New York 11530

RE: In the Matter of Paul Biddle, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 22-054) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

Jean T. Carney, Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board.

Six copies of all papers must also be sent to the attention of Judge Carney at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



Dawn MacKillop-Soller
Acting Chief Administrative Law Judge
Bureau of Adjudication

DXM: cmg
Enclosure

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

COPY

IN THE MATTER
OF
PAUL BIDDLE, M.D.

DETERMINATION
AND
ORDER

BPMC-22-054

A hearing was held on February 16, 2022, by videoconference. Pursuant to Public Health Law (PHL) § 230(10)(e), William Tedesco, M.D., Chairperson, Anthony Marinello, M.D., and Eileen Pasquini, B.S., A.A.S., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Tina M. Champion, Administrative Law Judge (ALJ), served as the Administrative Officer.

The Department appeared by Marc S. Nash, Associate Counsel. A Notice of Referral Proceeding and Statement of Charges, both dated January 12, 2022, were duly served upon Paul Biddle, M.D. (Respondent), who appeared at the hearing with his attorney, Amy T. Kulb, Esq., and testified in his own behalf.

The Hearing Committee received and examined documents from the Department (Dept. Exs. 1-7) and the Respondent (Resp. Exs. A-E). A stenographic reporter prepared a transcript of the proceeding.

BACKGROUND

The Department brought charges against the Respondent under PHL § 230(10)(p) for having committed professional misconduct pursuant to Educ. Law § 6530(9)(a)(ii) [having been convicted of committing an act constituting a crime under federal law], and under PHL § 230 for having committed professional misconduct pursuant to Educ. Law §§ 6530(3) [practicing the

profession of medicine with negligence on more than one occasion] and 6530(32) [failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient]. Pursuant to PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence. The Respondent did not file an answer to the charges and allegations and, as such, they are deemed admitted pursuant to PHL § 230(10)(c)&(p). Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 "shall be subject to penalties as prescribed in [PHL § 230-a] except that the charges may be dismissed in the interest of justice."

FINDINGS OF FACT

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. The Respondent was licensed to practice medicine in New York State on February 26, 2003 by issuance of license number 227659. (Dept. Ex. 3.)
2. On May 15, 2019, in the U.S. District Court of New York, Western District of New York, the Respondent was convicted, after a guilty plea, of two counts of Identity Theft (18 U.S.C. §§ 1028(a)(7) and 1028(b)(2)(B)) and one count of Possession of Hydromorphone (21 U.S.C. § 844(a)). (Dept. Ex. 4.)
3. The Respondent was sentenced to two years of probation and \$1225 civil monetary penalty comprised of an assessment and a fine. (Dept. Ex. 4.)
4. No proof exists that patients were harmed by the actions of the Respondent which led to his conviction. (Dept. Ex. 6 at p. 7.)
5. At various times between December 5, 2008 and December 10, 2014, the Respondent provided pain management medical care to two patients, which care deviated from accepted standards of care. Specifically, the Respondent chronically prescribed high levels of methadone without proper cardiac monitoring, the Respondent failed to refer the patients to a psychologist,

and/or the Respondent failed to document that he performed adequate medical examinations. (Dept. Ex. 1.)

6. In March 2019, the Respondent entered into a Stipulation and Application for an Interim Order of Conditions with the Department wherein he agreed to the Department's issuance of an Interim Order precluding him from practicing medicine in New York State until certain conditions were met. (Dept. Ex. 7.)

VOTE OF THE HEARING COMMITTEE

The Hearing Committee, by a vote of 3-0, sustains the charges that the Respondent committed professional misconduct as defined in Educ. Law §§ 6530(9)(a)(ii), 6530(3) and 6530(32).

HEARING COMMITTEE DETERMINATIONS

The Respondent does not dispute the charges against him, and the Hearing Committee finds that the Respondent was convicted of committing an act constituting a crime under federal law [Educ. Law § 6530(9)(a)(ii)], practiced the profession of medicine with negligence on more than one occasion [Educ. Law § 6530(3)], and failed to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient [Educ. Law § 6530(32)], all constituting professional misconduct under the laws of the State of New York.

The Respondent testified as to his education, employment history, and pain management practice in Western New York. He candidly discussed undergoing chart reviews by the Department from the years of 2012 to 2017 and acknowledged shortcomings in his medical documentation. The Respondent readily admitted that documentation had always been challenging for him and that he spent too little time on documentation. He testified that he incorporated changes into his practice based on what he learned during the chart reviews.

The Respondent also testified as to his history of physical injuries and surgeries. Specifically, the Respondent testified that he was involved in a bicycle/vehicle accident in 2014 wherein he

sustained injuries and was treated with opiates that led to an addiction in late 2014 or early 2015. The Respondent testified that he lost control over his use of opiates and did not know how to ask for help. He testified that he was arrested in 2017, at which time he was given permission to attend a 28-day inpatient treatment program in Pennsylvania. Upon his completion of that program, the Respondent felt he needed more treatment and entered a 90-day residential program in Texas, followed by an outpatient treatment program and ongoing individual and group therapy. (See Resp. Exs. B, D.) The Respondent testified that he remains active in his addiction recovery and, in addition to therapy, he treats with a psychiatrist, attends 12-step meetings and activities, and acts as a sponsor for other recovering addicts. The Respondent was monitored by the U.S. District Court for the Western District of Texas Probation Office until his release on May 21, 2021. (Resp. Ex. C.) The Respondent testified that during his probation he was subjected to random toxicology screens and that all of his results were negative.

The Respondent also testified as to his family structure, community support system, and his desire to retain his license to practice medicine in the State of New York. He testified that he has been living in Texas with his wife and four children, and that his wife's family lives in Texas as well as a large sober community. The Respondent testified that he wants to practice again in the area of pain management. He candidly stated that Texas is unlikely to license him to practice medicine unless and until his matters with this New York State Board are resolved and he has no restrictions on his license in New York. He also testified that he has an employment opportunity as an interventionist with a neurological group in New York. The Respondent acknowledged that a return to the practice of medicine, particularly in the area of pain management, will come with triggers but he stated that he feels ready to return to practice because, among other things, he now knows how to ask for help, has the tools to recognize what is occurring internally, and will rely on his support system.

The Hearing Committee commends the Respondent for the hard work he has put into his recovery. It finds the Respondent to be genuine, introspective, and realistic as to the challenges he

will face with his addiction going forward, particularly if he begins to practice medicine again. In considering the full spectrum of penalties available under PHL § 230-a, the Hearing Committee concludes that a censure and reprimand and three years of probation, to commence if and when the Respondent begins practicing medicine again in the State of New York, is appropriate. The terms of probation are annexed hereto and include a sobriety monitor and a practice monitor. The Hearing Committee also finds it appropriate that the Respondent complete continuing medical education courses in prescribing practices and record keeping prior to beginning practicing medicine again in the State of New York. In addition, the Respondent shall be permanently limited to practicing medicine in a group setting only, which setting shall have at least two other licensed physicians.

The Department has requested, among other things, that the Respondent be prohibited from prescribing controlled substances as his immediate access to such could cause a relapse. The Respondent voluntarily surrendered his DEA registration in 2017. The Hearing Committee finds it unnecessary to layer a prohibition from prescribing controlled substances on the Respondent in addition to the penalties already imposed. Even if the Respondent successfully obtains a DEA registration when he is eligible to reapply, he will have the oversight of a sobriety monitor and a practice monitor for a period of three years if he again practices medicine in New York State. The requirement that he practice only in a group setting will also give intrinsic oversight to the Respondent's actions and practice of medicine, and will provide additional protection to the public of the State of New York.

ORDER

Now, after reviewing the evidence from the hearing, it is hereby ordered that:

1. The charges of professional misconduct, as set forth in the Statement of Charges, are sustained;
2. The Respondent is subject to censure and reprimand pursuant to PHL § 230-a(1);


3. The Respondent is subject to probation pursuant to PHL § 230-a(9) for a period of three years in accordance with the Terms of Probation annexed hereto, commencing if and when the Respondent begins practicing in New York;

4. The Respondent is required to complete a combined 50 hours of medical education courses on the topics of prescribing practices and recordkeeping prior to commencing practice in the State of New York again pursuant to PHL § 230-a(8). The courses must be in addition to any existing licensing requirements and must be pre-approved by the Director of the Office of Professional Medical Conduct. The Respondent must submit proof of completion of the same to the Director of the Office of Professional Medical Conduct within thirty (30) days of completing the courses;

5. The Respondent is permanently limited to practicing medicine in a group setting only in the State of New York pursuant to PHL § 230-a(3), which setting shall have at least two other licensed physicians; and

6. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

Dated: Albany, New York
March 19, 2022


William Tedesco, M.D., Chairperson
Anthony Marinello, M.D.
Eileen Pasquini, B.S., A.A.S.

Marc S. Nash
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, NY 12237
[REDACTED]

Amy T. Kulb, Esq.
Jacobson Goldberg & Kulb, LLP
585 Stewart Avenue, Suite 500
Garden City, NY 11530
[REDACTED]

APPENDIX I

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

PAUL BIDDLE, M.D.

STATEMENT
OF
CHARGES

PAUL BIDDLE, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 26, 2003, by the issuance of license number 227659 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 15, 2019, in the U.S. District Court of New York, Western District of New York, Respondent was convicted of two counts of Identity Theft (18 U.S.C. §§ 1028(a)(7) and 1028(b)(2)(B)) and one count of Possession of Hydromorphone HCl (21 U.S.C. § 844(a)). Respondent was sentenced to two-years' probation and assessed fines and costs totaling \$1,225.00.

B. Respondent provided medical care to two patients for pain management at various times between December 5, 2008 and December 10, 2014. During this period, Respondent's medical care deviated from accepted standards of care in that:

1. Respondent chronically prescribed high levels of methadone without proper cardiac monitoring.
2. Respondent failed to refer the patients to a psychologist, and/or

3. Respondent failed to document he performed adequate physical examinations.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. The facts in Paragraph A.

SECOND SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of:

2. Paragraphs B and B.1, B and B.2, and/or B and B.3.

THIRD SPECIFICATION
FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, as alleged in the facts of:

3. Paragraphs B and B.3.

DATE: January 12, 2022
Albany, New York


JEFFREY J. CONKLIN
Acting Deputy Counsel
Bureau of Professional Medical Conduct

TERMS OF PROBATION

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of his employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Respondent shall provide to the Director of OPMC copies of all applications relating to the practice of medicine, including but not limited to, privileges, insurance, and licensure, in any jurisdiction, concurrent with submission of the applications.
5. Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of his compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
6. Respondent shall abstain from the possession and use of controlled substances, other than those validly prescribed by a licensed physician with whom the Respondent is actively treating, during the probationary period and shall be monitored by a qualified health care professional proposed by Respondent and approved in writing by the Director of OPMC (sobriety monitor).
 - a. The sobriety monitor shall oversee Respondent's compliance with the terms and conditions imposed herein and shall cause to be performed forensically valid toxicology screenings, which tests may be random and unannounced, for the presence of controlled substances. The sobriety monitor shall notify the Director of OPMC immediately if Respondent refuses such a test or if a test result is not negative.
 - b. Every three months, the sobriety monitor shall submit a report to OPMC certifying compliance with these terms or describing any failure to comply.
7. Respondent shall practice medicine in New York State only when monitored by a licensed physician, board certified in an appropriate specialty (practice monitor), who is proposed by Respondent and subject to the written approval of the Director of the OPMC.

- a. 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 the Respondent's medical practice at each and every location, on a random, unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by the Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with 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 the OPMC.
 - b. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of the OPMC.
 - c. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - d. 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 § 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent commencing practice within the State of New York.
8. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if he is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30-day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in the Determination and Order or as are necessary to protect the public health.
9. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
10. Respondent shall comply with these probationary terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.