



Department of Health

ANDREW M. CUOMO
Governor

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

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

January 15, 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rex Mathew, M.D.


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

RE: In the Matter of Rex Mathew, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 19-011) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,

A solid black rectangular box redacting the signature of James F. Horan.

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

Rex Mathew, M.D. (Respondent)

Administrative Review Board (ARB)

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

Determination and Order No. 19-011

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 Appearance

The Respondent holds a medical license in New Jersey in addition to his license to practice medicine in the State of New York (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2018), the ARB considers whether to impose a sanction upon the Respondent's License following disciplinary action against the Respondent in New Jersey. After a hearing below, a BPMC Committee found that the Respondent's conduct in New Jersey would constitute misconduct in New York and voted to suspend the Respondent's License and place him on probation for five years following the probation. The Petitioner then filed a Notice of Review and requested that the ARB overturn the Committee and revoke the Respondent's License. After reviewing the record in this matter, the ARB votes 5-0 to overturn the Committee and revoke the Respondent's License.

Committee Determination on the Charges

Pursuant to PHL § 230 *et seq*, the 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). In the Direct Referral Hearing, the Petitioner charged that the Respondent engaged in misconduct as defined in New York Education Law (EL) §§ 6530(9)(d)(McKinney Supp. 2018) because the duly authorized professional disciplinary agency from another state (New Jersey) revoked, suspended or took other disciplinary action against the Respondent for conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York. In the Direct Referral Hearing, the statute limits the Committee to determining the nature and severity of the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The Petitioner's Statement of Charges [Direct Referral Hearing Exhibit 1] alleged that the Respondent's misconduct in New Jersey would constitute misconduct if committed in New York, under EL § 6530(8) for being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens or other drugs having similar effects. The evidence before the Committee demonstrated that the Respondent acknowledged and consented to a Final Order of Consent with the New Jersey State Board of Medical Examiners (New Jersey Board) on April 4, 2018 (New Jersey Order). The New Jersey Order suspended the Respondent's New Jersey license to practice medicine and surgery pending a demonstration of fitness and until further order of the New Jersey Board. The New Jersey Board's actions followed the Respondent testing positive for amphetamines in February 2016 and for opiates and morphine in June 2016. The Committee found that the Respondent worked initially with the Professional Assistance Program of New Jersey (PAP-NJ), but failed to appear for both an assessment and an appointment in July 2016 and failed to respond to a July 2016 PAP-NJ letter requesting an explanation for the positive drug screen in June 2016.

The Committee found that the Respondent's New Jersey misconduct would constitute misconduct if committed in New York under EL §6530(8). The Committee declined to grant the Petitioner's request for License revocation as the sanction for the Respondent's misconduct. The Committee voted to suspend the Respondent's License for six months pursuant to PHL § 230-a(2)(a) and to place the Respondent on probation for five years following the suspension. The Committee also recommended that the Director of the Office for Professional Medical Conduct (Director) convene a Committee, pursuant to PHL § 230(7)(a), to determine if cause exists to order the Respondent to submit to an examination concerning impairment due to drugs.

Review History and Issues

The Committee rendered their Determination on September 28, 2018. This proceeding commenced on October 12, 2018, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and the Petitioner's brief.

The Petitioner requested that the ARB overturn the Committee and revoke the Respondent's License. The Petitioner argued that the penalty the Committee imposed would provide the Respondent, without explanation, an avenue to return to medical practice in New York within six months, despite the Respondent's failure to appear at the hearing below and New Jersey's decision to suspend the Respondent from practice in that state, until such time as the Respondent can demonstrate his fitness to return to practice. In the alternative, the Petitioner requested that, if the ARB decides to impose a sanction less severe than revocation, the ARB at least impose a penalty that mirrors the sanction by the New Jersey Board. The Petitioner argued that such a sanction must include a suspension until the Respondent: 1) submits to and

cooperates with a medical competency evaluation by physicians or a facility proposed by the Respondent and subject to prior written approval by the Director, and 2) causes the evaluator to confirm in writing to the Director that the Respondent is fit to practice medicine.

The Respondent made no submission to the ARB. The Respondent's parents, on notice to the Petitioner, wrote to the ARB to explain that the Respondent's mail goes to the parents' house and that they have been unable to contact the Respondent recently about important mail the parents have received for the Respondent. The Respondent's parents stated that the Respondent has hit the bottom of the pit and requested that the ARB provide the Respondent enough time to get back to normal.

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' submissions. We affirm the Committee's Determination that the Respondent's misconduct in New Jersey would constitute misconduct if committed in New York and would make the Respondent liable for disciplinary action against his License pursuant to EL § 6530(9)(d). Neither party challenged the Committee's Determination on the charges. The ARB votes 5-0 to overturn the Committee's Determination to suspend the Respondent's License for six months and to place the Respondent on probation for five years following the suspension. The ARB revokes the Respondent's License.

The ARB can see no basis on this record to find the Respondent capable of rehabilitation and recovery at this point in the Respondent's life. The ARB sees no reason to believe that the Respondent can return to practice safely after a six-month suspension, even under probation terms from the sanction the Committee imposed. The Respondent received the opportunity for rehabilitation and recovery under the New Jersey Order, with more restrictive terms than the Committee imposed, but the Respondent failed to comply with the terms under the New Jersey Order.

The Respondent failed PAP-NJ drug screens in February and June 2016, then failed to appear for both an assessment and an appointment in July 2016 and failed to respond to a July 2016 PAP-NJ letter requesting an explanation for the positive drug screen in June 2016. The Respondent also failed to appear at the BPMC hearing to explain his situation to the Committee and has made no submission for this Review. Based upon these facts, the ARB finds revocation provides the only appropriate sanction in this case. If at some point the Respondent can straighten out his life, he may apply then for reinstatement of his 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 for six months and to place the Respondent on probation for five years following the suspension.
3. The ARB votes 5-0 to revoke 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 Rex Mathew, M.D.

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

Dated: 11 January, 2019


Linda Prescott Wilson

In the Matter of Rex Mathew, M.D.

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

Dated: Jan. 3, 2019


Steven Grabiec, M.D.

In the Matter of Rex Mathew, M.D.

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

Date: January 3, 2019



Richard D. Milone, M.D.

In the Matter of Rex Mathew, M.D.

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

Dated: January 3, 2019

A black rectangular redaction box covers the signature of Peter S. Koenig, Sr. A small handwritten mark is visible above the box.

Peter S. Koenig, Sr.

In the Matter of Rex Mathew, M.D.

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

Dated: 1-7, 2019



John A. D'Anna, M.D.