



## Department of Health

KATHY HOCHUL  
Governor

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

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

September 17, 2021

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

David Quist, Esq.  
NYS Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower Building, Room 2512  
Empire State Plaza  
Albany, New York 12237

Lesly Pompy, M.D.  


**RE: In the Matter of Lesly Pompy, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 21-195) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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

Lesly Pompy, 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. 21-195

COPY

Before ARB Members Torrelli, Rabin, Wilson and Milone  
Administrative Law Judge Jean T. Carney drafted the Determination

For the Department of Health (Petitioner):

David W. Quist, Esq.

For the Respondent:

Lesly Pompy, M.D., *Pro se*

Following the Respondent's disciplinary action by the Michigan Board of medicine, a BPMC Hearing Committee determined that the Respondent's conduct amounted to professional misconduct and voted to revoke his license to practice medicine in New York State (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c(4)(a), the Respondent asked the ARB to review that Determination. After reviewing the hearing record and the parties' review submissions, the ARB affirms the hearing committee's determination 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) in PHL § 230(10)(p). The Petitioner's Statement of Charges

alleged that the Respondent committed professional misconduct under New York Education Law (Educ. Law) § 6530(9)(d) by having disciplinary action taken against his license by a duly authorized professional disciplinary agency of another state where the conduct resulting in the disciplinary action would constitute professional misconduct under Educ. Law § 6530(3), negligence, and/or Educ. Law § 6530(5), incompetence, if committed in New York State. (Hearing Exhibit 1). In the Direct Referral Hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence before the Committee demonstrated that on August 3, 2017, the Respondent's license to practice medicine in Michigan was summarily suspended pending disciplinary action. On June 2, 2020, the Michigan Board of Medicine (MI Board) issued an Order finding that the Respondent had violated Michigan Compiled Laws 333.16221(a), (b)(i), (b)(vi), and (i). (Hearing Exhibit 4). The MI Board suspended the Respondent's license for six months and one day, requiring the Respondent to apply for reinstatement rather than allowing automatic reinstatement; and automatically voiding the Respondent's controlled substance license. (Id). The Order arose from an investigation into the Respondent's controlled substance and patient treatment practices that found the Respondent incompetent in his storage of narcotics, failure to run MAPS (State of Michigan automated prescription system) reports, and his inability/unwillingness to confront patients showing evidence of abuse and diversion. (Hearing Exhibit 5).

In addition, the Respondent was found negligent in treating drug addiction patients by prescribing Suboxone without a current drug treatment program prescriber license, possessing controlled substances without required licenses or records, providing ongoing prescriptions for controlled substances to an undercover

investigator despite multiple positive drug screens for barbiturates, and failing to enforce patients' pain contracts. (Hearing Exhibit 5).

The Committee determined that the Respondent's conduct made him liable for action against his License pursuant to Educ. Law §§ 6530(9)(d), based on the Respondent's negligence and incompetence in violation of Educ. Law §§ 6530(3) and (5). On the issue of penalty, the Petitioner requested that the Committee revoke the Respondent's License. The Respondent argued that revocation would be a disproportionate penalty to the charges. The Committee determined to revoke the Respondent's License, citing that the Respondent showed little awareness or concern for the gravity of the charges.

#### **Review History and Issues**

The Hearing Committee rendered their Determination on September 23, 2020. This proceeding commenced on October 13, 2020, 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 reply brief on November 13, 2020.

#### **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 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 agree with the Committee that the Respondent's conduct resulting in disciplinary action in Michigan would constitute professional misconduct if committed in New York State. We affirm the Committee's Determination to revoke the Respondent's License, agree that the Respondent showed little or no insight into how serious his misconduct was, and the impact it had on his patients.

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.

Linda Prescott Wilson

Jill Rabin, M.D.

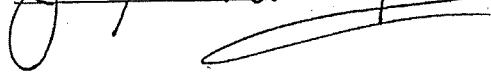
Richard D. Milone, M.D.

Carmela Torrelli

In the Matter of Lesly Pompy, M.D.

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

Dated: September 1<sup>st</sup>, 2021

Jill M. Rabin, M.D.



In the Matter of Lesly Pompy, M.D.

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

Dated September 7, 2021

  
Richard D. Milone, M.D.

In the Matter of Lesly Pompy, M.D.

Carmela Torrelli, an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Pompy.

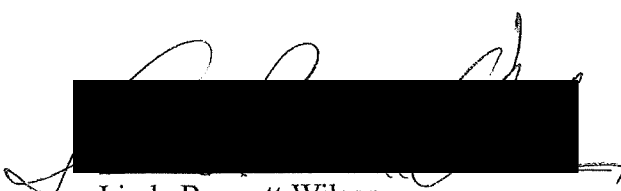
Dated: Sept. 8, 2021

  
Carmela Torrelli

In the Matter of Lesly Pompy, M.D.

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

Dated: 8 September, 2021



Linda Prescott Wilson