



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

May 6, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Clarence White, M.D.


RE: In the Matter of Clarence White, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 20-116) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

Clarence White, 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. 20- 116

COPY

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

For the Department of Health (Petitioner): Marc S. Nash, Esq.
For the Respondent: *Pro Se*

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by engaging in a sexual relationship with a psychiatric patient. 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 2020), the Respondent asks the ARB to review and nullify that Determination, alleging bias by the Committee. After considering the hearing record and the parties' review briefs, the ARB affirms the Committee's Determination in full.

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 hearing procedures at PHL §230(10)(e). The Petitioner's Statement of Charges [Hearing Exhibit 1] alleged that the Respondent committed professional

misconduct under the definitions in New York Education Law (EL) §6530(3-4), 6530 (20) and 6530(44)(a) (McKinney Supp. 2019) by:

- practicing medicine with negligence on more than one occasion,
- practicing medicine with gross negligence,
- practicing medicine with moral unfitness, and
- engaging in physical conduct of a sexual nature between licensee and patient in the practice of psychiatry.

The charges involved the Respondent's relationship with one patient (Patient A).

The Respondent failed to appear at the hearing in this matter on November 14, 2019 and failed to file a written answer. Pursuant to PHL § 230(10)(c), the failure to file a written answer means that the charges are deemed admitted. The Respondent sent an email with a letter and attachments to the Committee's Administrative Officer on December 26, 2019, requesting that the Committee consider the letter and attachments. The material presented an explanation for the Respondent's absence at the hearing, commentaries on issues the Petitioner raised or may have raised at hearing, a request for the Respondent to retain his License and character letters on the Respondent's behalf. The Committee considered the material, over objection from the Petitioner, after the Committee had already conducted deliberations in this case. The Committee determined that no further deliberations were warranted.

The Committee's Determination found that the Respondent worked as a *locum tenens* psychiatrist at Cayuga Medical Center (Cayuga) in Ithaca from June 5, 2017 to November 21 2017. Patient A was admitted to Cayuga for psychiatric treatment from August 9 to August 12, 2017 and from September 19 to 22, 2017. The Committee concluded that the Respondent deviated from the standard of care in treating Patient A by:

- asking Patient A for her phone number during Patient A's September 2017 admission to Cayuga,
- engaging in a social relationship with Patient A from on or about September 22, 2017 to November 20, 2017,
- engaging in a sexual relationship with Patient A from on or about September 22, 2017 to November 20, 2017, and
- giving Patient A money and/or the Respondent's credit card information to purchase merchandise from on or about September 22, 2017 to November 20, 2017.

In addition to deeming the charges admitted, the Committee considered testimony from two witnesses for the Petitioner: Andrea M. Lefton, M.D. and Rebecca Lee, LMSW.

Dr. Lefton testified as an expert concerning the Respondent's care of Patient A. Dr. Lefton called the personal relationship with Patient A extremely inappropriate and termed a personal relationship with a psychiatric patient completely outside the acceptable standards of care. Dr. Lefton testified that the Respondent put Patient A at risk, abused his position and betrayed the Patient's trust as he pursued and encouraged a personal bond between them. Finally, Dr. Lebron testified that the Respondent violated the basic principles of patient care in psychiatry and that his deviations from the acceptable standards of care amounted to severe deviations.

Ms. Lee was familiar with Patient A from Ms. Lee's work as a social worker in the community and then more recently while working at Cayuga when Patient A had multiple admissions at that facility. Ms. Lee received information from Patient A about the personal relationship between Patient A and the Respondent, when Patient A approached Ms. Lee at a store in the community and began providing unsolicited information about the relationship.

The Committee sustained all the charges against the Respondent. The Committee voted to revoke the Respondent's License. The Committee noted that physicians must comply with the highest ethical standards, which are of the utmost importance in the field of psychiatry, where physicians are working with an inherently vulnerable population. The Committee concluded that the Respondent's actions with respect to Patient A demonstrate that the Respondent is an extreme risk to his patients.

Review History and Issues

The Committee rendered their Determination on January 9, 2020. This proceeding commenced on January 27, 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 March 5, 2020.

The provisions on administrative review at PHL § 230-c(4)(a) require that a party must serve a notice of review on the ARB and the adverse party within 14 days of service of the Committee's Determination. The Respondent filed a review notice with the ARB but, sent no copy to the Petitioner.

The Respondent's brief admits to making a mistake and accepts that he must face some punishment, but he argues that revocation constitutes too severe a punishment. He writes that he has studied other cases similar to his own and saw no other cases in which physicians lost licenses for such conduct or even worse. The Respondent indicated his belief that the punishment was due largely to his failure to appear at the hearing and to the Committee tying Patient A's death to the relationship, which ended fourteen months prior to the Patient's death.

In reply, the Petitioner asks that the ARB refuse to consider the review request because the Respondent failed to serve his review notice on the Petitioner. The Petitioner argues that the ARB must sustain the charges due to the Respondent's failure to file an answer. The Petitioner contends that the Respondent's arguments to modify the Committee's Determination are neither compelling nor persuasive. Finally, the Petitioner contends that the record supports the Committee's Determination to revoke the Respondent's License.

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. The Respondent's brief admits to the sexual relationship with Patient A, although the Respondent refers to the relationship as with a former patient. The Respondent's failure to file an answer also means that all charges were deemed admitted. Further, the testimony by Dr. Kroeger and Ms. Lee establishes that the Respondent violated the basic principles of patient care in psychiatry and engaged in severe deviations from the acceptable standards of care. In addition, the evidence shows that the Respondent's conduct put Patient A at risk, abused his position and betrayed the Patient's trust as the Respondent pursued and encouraged a personal bond between them.

The ARB finds the Committee's Determination to revoke the Respondent's License appropriate and consistent with the Committee's findings. The Respondent alleged a bias by the Committee against the Respondent because the Respondent failed to appear at the hearing and because the Committee tied his relationship to Patient A's death. The Respondent alleged that such bias was the reason for the penalty the Committee imposed. The ARB finds those allegations without merit.

A party attempting to show bias by a Committee must demonstrate that the outcome from a hearing flowed from bias and nothing else, Coderre v DeBuono, 247 AD2d 793, 669 N.Y.S.2d 440 (3rd Dept. 1998). In their discussion on the penalty in this case, Committee made no mention of the Respondent's failure to appear at the hearing and or the Patient's death. The Committee cited instead to the Respondent's egregious misconduct, his violation of the Patient's trust and his risk to patients. Although the Respondent argued that there were no such severe penalties in similar cases, the Respondent failed to name any such cases. The ARB finds that it is well established that revocation constitutes the appropriate penalty for a licensee who engages in a sexual relationship with a patient, St. Lucia v. Novello, 284 A.D.2d 591, 726 N.Y.S.2d 488 (3rd Dept. 2001).

The Respondent abused the trust of a vulnerable patient. His denial of the egregious nature of his misconduct demonstrates a lack of insight into his offense and shows that he remains at risk to repeat such conduct if he were to retain a position of trust and care over other vulnerable persons. We vote 3-0 to affirm the revocation of 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 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 Clarence White, M.D.

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

Dated: 28 April, 2020

A large black rectangular redaction box covers the signature of Linda Prescott Wilson.

Linda Prescott Wilson

In the Matter of Clarence White, M.D.

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

Dated: 4/30/ 2020

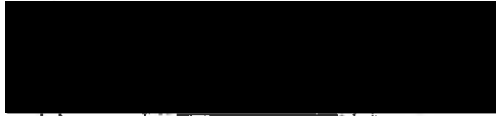


Steven Grabico, M.D.

In the Matter of Clarence White, M.D.

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

Dated: April 28, 2020



Jill Rabin, M.D.