



## 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 15, 2020

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Robert Hallett, M.D.  


**RE: In the Matter of Robert Hallett, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 20-125) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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 black rectangular redaction box covering the signature of James F. Horan.

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:nm  
Enclosure

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

In the Matter of

Robert Hallett, M.D. (Respondent)

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

COPY  
Administrative Review Board (ARB)

Determination and Order No. 20-125

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*

The Respondent holds a license to practice medicine in the state of Texas, in addition to the Respondent's license to practice medicine in the State of New York (License). After a hearing below, a BPMC Committee found that the Respondent engaged in conduct in Texas which would constitute professional misconduct if committed in New York. The Committee voted to limit the Respondent's License permanently, to suspend the License until the Respondent meets certain conditions and to place the Respondent on probation for five years, under terms that include monitoring. Both parties then requested that the ARB review and modify the Committee's Determination pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2020). The Respondent asks that the ARB dismiss the charges, or in the alternative, remove restrictions on the Respondent's practice. The Petitioner asks that the ARB revoke the Respondent's License, or in the alternative, that the ARB add further monitoring provisions to the probation. After considering the record and the parties' briefs, the ARB affirms the Committee's Determination.

### 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 [Hearing Exhibit 1] alleged that the Respondent committed professional misconduct under the definition in New York Education Law (EL) §6530(9)(d) (McKinney Supp. 2020) by engaging in conduct that resulted in disciplinary action in another state that would constitute misconduct if committed in New York. 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).

The evidence before the Committee demonstrated that the Respondent entered into an August 16, 2019 Agreed Order with the Texas Medical Board (Texas Board). The Texas Board found that the Respondent suffers from impairment due to illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other substances, or as a result of any mental or physical condition that affects his ability to practice medicine. The Respondent signed the Agreed Order, indicating that he signed voluntarily and that he understood, that by signing, he waived certain rights. The Agreed Order prohibited the Respondent from engaging in the practice of Interventional Cardiology and limited the Respondent's medical practice to a group or institutional setting. The Agreed Order directed the Respondent to abstain from consuming alcohol and prohibited controlled substances except as prescribed by another physician for legitimate and documented therapeutic purposes. The Agreed Order also required the

Respondent to participate in the Texas Board's drug testing program and undergo psychiatric and psychological treatment and neurological evaluation, care and treatment.

At the BPMC hearing, the Petitioner argued the conduct the Respondent conceded in the Agreed Order would have constituted professional misconduct in New York under EL § 6530(8). The Respondent argued that the Agreed Order did not prove the New York charges because the Agreed Order failed to specify which condition the Respondent suffered or whether the condition was habitual.

The Committee found that the Respondent agreed to the findings and conclusions under the Agreed Order which would prove a violation under EL § 6530(8) if the Respondent's conduct was committed in New York. The Committee rejected the Respondent's request to dismiss the charges and the Petitioner's request that the Committee revoke the Respondent's License. The Committee found that the Texas Board suspended the Respondent from practice temporarily in January 2019 and restricted the Respondent from practice February 2019, upon finding both times that the Respondent's continued practice posed a threat to the public health. The Committee noted, however, that the Respondent's documentary evidence and testimony concerning forensic studies conducted in February and May 2019, prior to the Agreed Order, indicated that the Respondent's Texas license could be reinstated with conditions. Laboratory results from September and October 2019 were also negative for alcohol or drugs.

The Committee voted to limit the Respondent's License permanently to bar the Respondent from practicing Interventional Cardiology and to require that the Respondent practice medicine only in a group or institutional setting. The Committee voted further to suspend the Respondent's License until the Respondent can demonstrate his fitness to practice medicine. Demonstrating fitness would require the Respondent to provide documentation to the

Director of the Office of Professional Medical Conduct (Director) demonstrating sobriety status and compliance with or termination of the Agreed Order. Due to the Respondent's absence from practice since January 2019, the Committee required further that the Respondent complete successfully a physician re-entry program approved by the Director. Following the suspension, the Committee placed the Respondent on probation for five years, with terms that include both a sobriety and a practice monitor. The provisions on the sobriety monitor include requirements for forensically valid, random, supervised, unannounced blood, breathalyzer and/or urine tests for the presence of alcohol and controlled substances. The Committee also recommended that the Respondent undergo psychiatric and psychological care and treatment and neurological evaluation, care and treatment.

#### Review History and Issues

The Committee rendered their Determination on December 17, 2019. This proceeding commenced on January 2, 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 Petitioner's brief and reply brief and the Respondent's brief and reply brief. The record closed when the ARB received the Respondent's brief on January 26, 2020.

The Petitioner asked the ARB to add a therapy monitor to the probation terms. The Committee's Determination included the Committee's recommendation that the Respondent undergo psychiatric, psychological and neurological examinations or that the Director order them, because the Committee lacks the authority to order such examinations. The Agreed Order did direct the Respondent to seek psychiatric, psychological and neurological treatment in Texas. The Respondent replied there had been no determination by the Committee concerning the

impairment the Respondent suffered and that the Petitioner's request failed to specify what kind of therapist would monitor the Respondent.

The Respondent's Brief repeated the request he made before the Committee for dismissal of the charges or the removal of the restrictions on his License. The Respondent argued that he signed the Agreed Order solely to have his Texas License reinstated and that there is no evidence that the Respondent violated EL § 6530(9)(d). The Petitioner replied that the Respondent's Brief attached several documents from outside the hearing record, which the ARB should disregard.

#### 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 considered no evidence from outside the hearing record. As we noted above, PHL § 230-c(4)(a) limits the review to only the record below and the briefs, with no evidence from outside the hearing record, Matter of Ramos v. DeBuono, (supra). We affirm the Committee's Determination to sustain the charges that the Respondent's conduct in Texas made the Respondent liable for disciplinary action against his License. The Respondent's signature on the Agreed Order provides the evidence to support the charges, because the Committee and the ARB may infer from the Respondent's acceptance of a severe penalty that the allegations in the charge were meritorious, Haberman v. Novello, 280 A.D.2d 814, 720 N.Y.S.2d 626 (3<sup>rd</sup> Dept. 2001). Respondent attempted to repudiate the Agreed Order before the Committee and the ARB. The Agreed Order indicates that the



Respondent signed the Order voluntarily, so the Order binds the Respondent in these proceedings.

We also affirm the Committee's Determination to limit the Respondent's License permanently, to suspend the Respondent's License with conditions and to place the Respondent's on probation, with monitoring, for five years following conclusion of the suspension.

We reject the Respondent's request that we remove the restrictions on his License. Although there were some positive forensic studies on the Respondent in Texas before the Agreed Order, the Texas Board allowed the Respondent to return to practice only under heavy restrictions. We agree with the Committee that such restrictions are necessary to protect the public health in New York.

We reject the Petitioner's request that we add a therapy monitor to the probation. The Committee's Probation Terms at Appendix 2 to the Committee's Determination now provide for a Sobriety Monitor under Probation Term paragraph 5 and a Practice Monitor under Probation Term paragraph 6. The Sobriety Monitor holds the authority under paragraph 5.a to cause random, supervised, unannounced blood, breathalyzer and/or urine tests for the presence of alcohol and controlled substances. There is no determination yet on whether therapy may be necessary. If the Director does order therapy as part of the process to return the Respondent to practice, the Director can determine what kind of therapy monitor would be necessary during probation, pursuant to the Director's authority to monitor probation under PHL § 230(18)(a)(iii).

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 limit the Respondent's License, to suspend the License until the Respondent satisfies certain conditions and to place the Respondent on probation for five years following the suspension.

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

In the Matter of Robert Hallet, M.D.

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

Dated: 27 April, 2020



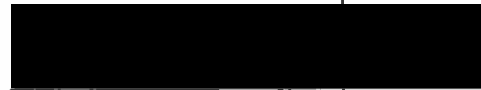
Linda Prescott Wilson

RECEIVED
Physician Monitoring
APR 30 2020
Office of Professional Medical Conduct

In the Matter of Robert Hallet Robert Hallet, M.D.

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

Dated: 4/22, 2020

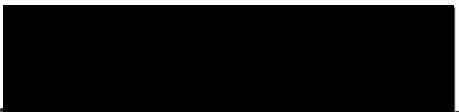


Steven Grabiec, M.D.

In the Matter of Robert Hallet, M.D.

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

Dated. April 21, 2020

  
Jill Rabin, M.D.