



**Department
of Health**

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Commissioner

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

January 21, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kolawole Odulaja, M.D.
[REDACTED]

Wale Mosaku, Esq.
Law Office of Wale Mosaku, P.C.
26 Bond Street, Third Floor
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Ian H. Silverman, Esq.
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Kolawole Odulaja, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 20-012) 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.

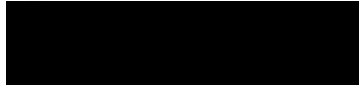
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been **revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified 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

Kolawole Odulaja, 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- 012

COPY

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

For the Department of Health (Petitioner): Ian H. Silverman, Esq.
For the Respondent: Wale Mosaku, Esq.

The Respondent holds a medical license in Texas in addition to the Respondent's license to practice medicine in the State of New York (License). Following a hearing, a BPMC Committee found the Respondent guilty of professional misconduct for conduct in Texas, which resulted in disciplinary action against the Respondent's license in that state. The Committee voted to censure and reprimand the Respondent and to limit the Respondent's license permanently to prohibit the Respondent from prescribing controlled substances. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2019), the Respondent requests that the ARB overrule the Committee and rescind the limitation. After reviewing the hearing record and the parties' submissions, we vote 3-0 to affirm the Committee 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 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. 2019) by engaging in conduct that resulted in revocation, suspension or other action by the duly authorized disciplinary body of another state, where the conduct resulting in the action would, if committed in New York, constitute professional misconduct. 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 received a license to practice medicine in Texas in April 2009, practiced primarily in Internal Medicine and holds Board Certification through the American Board of Internal Medicine [Hearing Exhibit B]. The Respondent entered into Agreed Orders with the Texas Medical Board (Texas Board) in 2016 and 2018 and a Consent Order with BPMC (Consent Order) in 2017 [Hearing Exhibits B, 6 and 7].

The 2016 Agreed Order involved charges that the Respondent failed to meet the standard of care in treating a single patient for lower back pain and a cough, failed to adhere to Board Rules regarding the treatment of pain and prescribed controlled substances for non-therapeutic purposes. With the Respondent's consent, the Texas Board made findings that the Respondent prescribed controlled substances for non-therapeutic purposes and rendered treatment to the patient grossly below the standard of care. The Texas Board found that the Respondent:

- treated the patient with hydrocodone and alprazolam for more than six months without a treatment plan;

- failed to perform an adequate physical examination including objective measures to determine the source and extent of the patient's reported pain;
- failed to obtain medical records from an earlier treating physician, failed to require urinary drug screening to monitor for abuse or misuse;
- prescribed alprazolam for anxiety without an adequate diagnosis of anxiety disorder and without a referral for psychotherapy; and
- prescribed improperly a potentially addictive medicine for cough although there were multiple non-addictive alternatives.

The Texas Board found aggravating factors because the Respondent's treatment of the patient was a gross deviation from the standard of care and the Respondent's practices presented an increased risk of harm to the public. The Texas Board reprimanded the Respondent, required him to pay a \$5000 administrative penalty and required him to comply with certain terms and conditions that included practicing with a monitor, passing a medical jurisprudence exam and completing continuing medical education (CME) about medical record keeping, identifying drug seeking behavior and prescribing controlled substances for chronic pain.

The Respondent entered a June 2, 2017 Consent Order with BPMC that resulted from the 2016 Agreed Order. The Respondent accepted a Censure and Reprimand and agreed to pay a \$2,500 fine. The Consent placed the Respondent on probation for two years under terms that included practicing with a monitor and completing a CME Program subject to the approval by the Director of the Office of Professional Medical Conduct. The Consent provided that the probation period would be tolled while the Respondent was not involved in active practice in the New York State for any period longer than 30 days [Hearing Exhibit 7].

The 2018 Agreed Order involved charges that the Respondent failed to treat 15 chronic pain patients adequately, failed to maintain adequate medical records for those patients and failed to supervise adequately the mid-level providers working in the Respondent's clinic. In this Order, with the Respondent's consent, the Texas Board found that the Respondent:

- violated the standard of care and Texas Board Rules that govern the treatment of pain for the 15 patients;
- failed to maintain adequate medical records for the patients;
- failed to maintain any records for two patients, although pharmacy records show the Respondent prescribed medications to the two patients; and
- surrendered his Drug Enforcement Administration (DEA) registration in November 2016 after the DEA inspected the Respondent's clinic.

The 2018 Order noted that the Respondent held no current DEA Registration.

The 2018 Order found mitigating factors in the timing of the cases. The patients were generally seen in 2015 and 2016, with two instances going back to 2013 or 2014, the same time period covered by the 2016 Order. The Texas Board wrote further that the Respondent had already completed eight hours CME in prescribing controlled substances, was not currently supervising any "mid-levels", was currently referring out patients who require pain treatment and had cooperated in the investigation of the allegations. The Texas Board ordered that, if the Respondent hadn't already done so, he should surrender his DEA Registration and his controlled substances Registration with the Texas Department of Public Safety (DPS). The Texas Board ordered further that the Respondent should not re-register or otherwise obtain controlled substances until the Respondent receives written authorization from the Board. In addition, the Texas Board wrote that the Respondent should not be permitted to supervise or to delegate

prescriptive authority to a physician assistant or advance practice nurse or to supervise a surgical assistant.

The Texas Board granted termination of the 2016 and 2018 Agreed Orders in June 2019 [Hearing Exhibit 7].

At the hearing before the Committee, the Respondent argued that, because the Texas Board terminated the 2016 and 2018 Orders, the action before the Committee was moot. The Committee rejected that argument because the Texas Board did not vacate either the 2016 or 2018 Orders and because Texas took additional disciplinary action against the Respondent through the 2018 Order. The Committee determined that the Respondent's misconduct in Texas made the Respondent liable for action against his License pursuant to EL § 6530(9)(d). The Respondent's conduct in Texas, if committed in New York would have amounted to practicing with negligence on more than one occasion and failing to maintain accurate records. The Committee voted to censure and reprimand the Respondent and to place a permanent restriction on his License to ban him from prescribing controlled substances.

Review History and Issues

The Committee rendered their Determination on September 13, 2019. This proceeding commenced on October 1, 2019, when the ARB received the Respondent's Notice requesting a Review. The record on review included 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 8, 2019.

The Respondent's Brief and its Attachments set out the history of this case before both the Texas Board and BPMC. The Respondent argued that:

- the Texas Board has terminated both Agreed Orders, so that the Respondent now has unfettered ability to practice in the State of Texas;
- the Petitioner failed to articulate a basis for either the ban or its timeframe;
- the Consent Agreement placing the Respondent on probation remains in place in New York; and
- a permanent limitation does not fall within the range of penalties available under PHL § 230-a.

The Respondent asked that the ARB overturn the Committee's Determination and rescind the controlled substances limitation.

The Petitioner replied that the terminations by the Texas Board merely remove restrictions on the Respondent's practice and do not amount to vacating or overturning the Agreed Orders. The basis for the Committee's disciplinary sanction still exists. The Respondent contended further that PHL § 230-a(3) allows a Committee to limit a practice.

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 to censure and reprimand the Respondent. Neither party challenged the Committee's Determination on the Censure and Reprimand. We affirm the Committee's Determination that the conduct that resulted in the 2018 Agreed Order would constitute

professional misconduct if committed in New York as negligence on more than one occasion and failure to maintain accurate records. We agree with the Committee that the Texas Board's decision to terminate the Agreed Orders does not constitute vacating or overturning the Orders. The 2018 Agreed Order and the underlying misconduct make the Respondent liable for action against his License pursuant to EL § 6530(9)(d).

The ARB affirms the Committee's Determination to limit the Respondent's License permanently to prohibit the Respondent from prescribing controlled substances. We agree that the Consent remains in place that placed the Respondent on probation for two years with a monitor. The basis for the Consent, however, came from the 2016 Agreed Order that involved care to one patient. The 2018 Agreed Order revealed further misconduct involving the treatment of 15 additional patients with controlled substances. The Respondent's misconduct was no longer an aberration limited to a single person but was part of a pattern of misconduct. This pattern of misconduct formed the basis for the Committee's Determination to increase the sanction beyond probation with a monitor.

The 2018 Agreed Order also revealed that the Respondent surrendered his DEA registration after the DEA inspected the Respondent's clinic and that the Respondent held no DEA registration as of March 2, 2018, the date of the 2018 Agreed Order. Neither the Respondent's brief nor the Petitioner's reply presented any information concerning whether the Respondent has regained his DEA registration. The Respondent's brief argued that he now practiced unfettered in Texas after the Texas Board terminated the Agreed Orders. The ARB notes that, if the Respondent still lacks a DEA registration, he is not practicing unfettered in Texas.

The Respondent also argued that a permanent prohibition on prescribing controlled substances does not fall within the list of sanctions permitted under PIIL § 230-a. The ARB finds no validity to that argument. Under PHL §230-2(3), a BPMC Committee or the ARB may limit a license to a specific area or type of practice. That statute contains no limitation on how long a limitation may last and no ban on imposing a limitation permanently. Under PHL § 230-c (5) any action to challenge a determination by a BPMC Committee or the ARB shall be returnable before the Appellant Division of the State Supreme Court, Third Department. In Novendstern v. Administrative Review Board, 15 A.D.3d 701, 788 N.Y.S.2d 729 (3rd Dept. 2005), the Third Department upheld an ARB Determination that limited a physician's license permanently to practice in a general hospital. The ARB concludes that the Committee acted pursuant to their authority under PHL § 230-c (5) in limiting the Respondent's License permanently to ban the Respondent from prescribing controlled substances.

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 permanently.

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

In the Matter of Kolawole Odulaja, M.D.

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

Dated: 12/19, 2019



Steven Grabiec, M.D.

In the Matter of Kolawole Odulaja, M.D.

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

Dated: 8 February, 2019 20


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

Linda Prescott Wilson

In the Matter of Kolawole Odulaja, M.D.

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

Dated: 12/17, 2019



Jill Rabin, M.D.