



Department of Health

ANDREW M. CUOMO
Governor

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

LISA PINO, M.A., J.D.
Executive Deputy Commissioner

August 16, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Frank Campione, Jr., P.A.


Alton Kenney, Esq.
Starkey, Kelley, Kenneally,
Cunningham & Turnbach
Two Hooper Avenue
Toms River, New Jersey 08753

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

RE: In the Matter of Frank Campione, Jr., P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 21-173) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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:nm
Enclosure

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

COPY

In the Matter of

Frank Campione, Jr., P.A. (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. 21-173

Before ARB Members Rabin, Torrelli, 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: Alton D. Kenney, Esq.

The Respondent holds licensure as a Physician Assistant in New York State (License) as well as in New Jersey. Following the Respondent's temporary license surrender in New Jersey, a BPMC Committee determined that the Respondent's conduct, which resulted in the temporary suspension in New Jersey, amounted to professional misconduct in New York. The Committee voted to suspend the Respondent's License until the Respondent can demonstrate that he has completed a course on documentation successfully, to stay the suspension until the Respondent returns to practice in New York State and to place a permanent limitation on the Respondent's License. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2019), the Petitioner asked the ARB to modify that Determination and revoke the Respondent's License. After reviewing the hearing record and the parties' review submissions, the ARB overturns the Committee's Determination to suspend and then limit the Respondent's License. We vote 4-0 to place the Respondent on probation for three years, should the Respondent return to practice in New York State.

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), which provides for a hearing when a licensee faces charges solely under New York Education Law (EL) §6530(9) for conduct resulting in criminal convictions or disciplinary action by another jurisdiction. The Specification of Charges alleged that the Respondent committed misconduct under the definition at EL § 6530(9)(d), by engaging in conduct that resulted in disciplinary action by the duly designated disciplinary body of another state for conduct that would also constitute misconduct if committed in New York. The Specification charged further that the Respondent's conduct in New Jersey would constitute misconduct in New York State under EL §§ 6530(3) and 6530(32) for practicing with negligence on more than one occasion and failing to maintain accurate records. 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 the Respondent entered into a Consent Order with the New Jersey Board of Medical Examiners (New Jersey Board) on September 11, 2019 in which the New Jersey Board found that the Respondent committed professional misconduct by engaging in repeated acts of negligence, indiscriminate prescribing of Controlled Dangerous Substances (CDS) and failure to maintain medical records. The New

Jersey Board suspended the Respondent's New Jersey license retroactively for three years, effective March 31, 2016. The Respondent had entered into an Interim Consent Order on that date in 2016 that suspended the Respondent's New Jersey license temporarily. The Consent Order required the Respondent to complete Board approved courses in ethics, HIPAA, recordkeeping/documentation and CDS prescribing. The Consent Order prohibited the Respondent from prescribing CDS until he completes successfully the CDS prescribing course. The New Jersey Board also limited the Respondent's New Jersey License to treating patients in a traditional medical setting such as a hospital, clinic, physician office or urgent care center and required the Respondent to be supervised by a physician the New Jersey Board must approve. The Consent Order provided that the limitation/supervision could be lifted upon the Respondent's Application after one year.

The Committee determined that the Respondent's misconduct in New Jersey made the Respondent liable for action against his License pursuant to EL §§ 6530(9)(d), 6530(3) and 6530(32). The Committee noted that the Respondent complied with the terms and conditions under the 2019 Consent Order and under an interim March 2016 Consent Order. The Committee voted to suspend the Respondent's License until such time as he provides proof to the satisfaction of the BPMC that he has completed a course in medical documentation. The Committee stayed the suspension unless and until the Respondent returns to practice in New York State. In the event the Respondent returns to practice in New York State, the Committee placed a permanent restriction on the Respondent's License requiring that he practice under the supervision of a physician in a traditional medical setting, such as a hospital, clinic, doctor's office or urgent care center.

Review History and Issues

The Committee rendered their Determination on July 10, 2020. This proceeding commenced on July 28, 2020, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and the Respondent's reply brief. The record closed when the ARB received the reply brief on August 27, 2020.

The Petitioner argued that the Committee imposed an overly lenient sanction against the Respondent and asked that the ARB overturn the Committee and revoke the Respondent's License. The Petitioner alleged that the Respondent met with his supervising physician in public places to discuss patient records, raising concerns about the Respondent's judgment, and treated patients in public locations, including the Respondent's vehicle in public lots. The Petitioner claimed that the Respondent's records often failed to describe physical examinations relating to treating chronic pain, failed to list the medications a patient was taking on treatment day, lacked support for prescribed medication regimens and lacked regularly administered drug urine screens. The Petitioner asked that if the ARB decided against revoking the Respondent's License, in the alternative, the ARB add to the sanction the Committee imposed by placing the Respondent on probation for three years under terms that would require that a physician assistant monitor the Respondent's practice. The physician assistant monitor would serve in addition to the physician who must supervise the Respondent's practice pursuant to physician assistant licensing provisions at EL § 6542(1).

The Respondent replied that the Petitioner mischaracterized the Consent Order and that revocation would constitute an inappropriate penalty. The Reply argued that the Consent Order was not an adjudication on the facts and that the Respondent never admitted any violations. The Respondent stated that he had already completed all the required courses under the Consent Order and that he was permitted to return to practice in New Jersey effective on the day of the Consent Order. The Reply states that the United States Drug Enforcement Agency has reinstated the Respondent's CDS privileges and that Medicare has reinstated the Respondent's billing privileges. The Respondent indicated that he had requested that the New Jersey Board rescind the license limitations and that the limitation to the "bricks and mortar setting" no longer constitutes the norm for practitioners in the times of the COVID-19 pandemic. The Respondent's peers can practice virtually while the Respondent must practice in a traditional setting.

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 conduct at issue in the Respondent's Consent Order would have constituted professional misconduct under EL §§ 6530(3) and 6530(32) as practicing with negligence on more than one occasion and failing to maintain accurate records. The Reply argued that the Consent Order was not an adjudication on the facts and that the Respondent never admitted any violations. To prove misconduct under EL §

6530(9)(d), however, does not require proof of guilt on the out-of-state charges, Matter of D'Ambrosio v. Dept. of Health of the State of NY, 4 N.Y.3d 133 (2005). The proof must only show that a licensee entered into an agreement to settle a disciplinary action and that the conduct at issue in the action would constitute misconduct in New York. When a licensee has waived an adjudication on the merits of an out-of-state complaint by entering a stipulation of settlement, an inference is raised that the allegations against the licensee have merit, Matter of Hatfield v. Dept. of Health of the State of NY, 245 A.D.2d 703, 665 N.Y.S.2d 755 (3rd Dept. 1997); Matter of Sternberg v. Admin. Rev. Bd. For Prof. Med. Conduct, 235 A.D.2d 945, 652 N.Y.S.2d 855 (3rd Dept. 1997), lv. denied 90 N.Y.2d 809 (1997).

The Respondent accepted terms under the 2016 Interim Order that removed the Respondent from practice for three years. The Consent Order stated that the New Jersey Board had learned that the Respondent met publicly with his supervising physician to discuss patient records and that the Respondent treated patients in public location including his personal vehicle in public parking lots. In the Consent Order, the Respondent accepted a limitation on his New Jersey license for at least one year to a traditional medical or "bricks and mortar" setting. The ARB infers from the Consent Order that there was merit to the charges against the Respondent. The ARB finds that the Consent Order makes the Respondent liable for disciplinary action against his License pursuant to EL § 6530(9)(d).

We reject the Petitioner's request that we overturn the Committee and revoke the Respondent's License. We see no need to revoke the Respondent's License after the New Jersey Board has allowed the Respondent to return to practice. We do overturn the Committee's Determination to suspend and limit the Respondent's License. We see no reason for to suspend the Respondent's License pending his successful completion of a continuing medical education

(CME) course should the Respondent return to practice in New York State. We agree that the Respondent should complete CLE that the Director of the Office of Professional Medical Conduct (OPMC) must approve upon any return to New York. We conclude that the Respondent can complete the CME under probation. Although the Respondent agreed to a license limitation under the Consent Order for at least one year, in a traditional or “bricks and mortar” setting, we agree with the Respondent’s Reply that such a limitation would restrict the Respondent needlessly from assisting at a more modern setting such as a temporary mass vaccination site or a mobile medical clinic in an underserved area of the State.

The ARB votes 4-0 to place the Respondent on probation for three years, if the Respondent chooses to return to practice in New York State. At the time the Respondent chooses to return, he must provide at least 30 days-notice to the OPMC Director. In the first year under the probation, the Respondent must complete successfully and the OPMC must approve CME courses in: record keeping, ethics and prescribing controlled substances. During all three years under the probation, the Respondent may practice only under monitoring by another physician assistant, in addition to practicing under physician supervision. The physician assistant monitor must be approved by the OPMC Director, must have access to perform record review at each and every setting at which the Respondent practices and shall not be a friend or family member of the Respondent or staff member/employee at the same practice in which the Respondent works.

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 and limit the Respondent's License.
3. Pursuant to PHL § 230-a (9), the ARB places the Respondent on probation for three years under the terms that appear as the Appendix to this Determination and Order.

Carmela Torrelli
Linda Prescott Wilson
Richard D. Milone, M.D.
Jill Rabin, M.D.

In the Matter of Frank Campione, P.A.

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

Dated: 6 August, 2021



Linda Prescott Wilson

In the Matter of Frank Campione, P.A.

Carmela Torrelli, an ARB Member concurs in the Determination and Order in the Matter
of Mr. Campione.

Dated: August 10, 2021

A solid black rectangular box redacting the signature of Carmela Torrelli.

Carmela Torrelli

In the Matter of Frank Campione, P.A.

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

Dated August 6, 2021




Richard D. Milone, M.D.

In the Matter of Frank Campione, P.A.

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

Dated: 8/6, 2021


Jill Rabin, M.D.

Appendix

Terms of Probation

1. The Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to PHL § 230(19).
2. The Respondent shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of his employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. The Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of his compliance with these terms. Upon the Director of OPMC's request, the Respondent shall meet in person with the Director's designee.
5. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if he is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30-day period. Respondent shall then notify the Director again at least 30 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in the Determination and Order or as are necessary to protect the public health.
6. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
7. Respondent shall practice medicine in New York State only when monitored by a licensed physician assistant (practice monitor) who is proposed by Respondent and subject to the written approval of the Director of the OPMC.

- a. The Respondent shall make available to the monitor any and all records requested by the monitor at each and every practice setting. The practice monitor shall on a quarterly basis examine a selection (no fewer than 20) of records maintained by the Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to the OPMC.
 - b. The Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of the OPMC.
 - c. The Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - d. The Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with § 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent commencing practice within the State of New York.
 - e. The practice monitor shall not be a friend or relative of the Respondent and may not work as an employee or staff at the practice in which the Respondent works.
8. The terms set forth in the paragraphs above are the minimum probation terms to be imposed on the Respondent, and other terms may be added by the Director of the OPMC. All compliance costs, including expenses and fees associated with the practice monitor, shall be the Respondent's responsibility.
 9. Respondent shall comply with these probationary terms and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.