



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

March 12, 2020

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Kolawole Ademuyiwa Odulaja, M.D.


Re: License No. 219745

Dear Dr. Odulaja:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Modification Order No. 20-060. This order and any penalty provided therein goes into effect March 19, 2020.

Please direct any questions to: Board for Professional Medical Conduct, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204, telephone # 518-402-0846.

Sincerely,



Michael S. Jakubowski, M.D.
Interim Executive Secretary
Board for Professional Medical Conduct

Enclosure

IN THE MATTER
OF
KOLAWOLE ODULAJA, M.D.

BPMC No. 20-060
DIRECTOR'S FIRST
MODIFICATION
ORDER

Respondent, KOLAWOLE ODULAJA, M.D., is currently subject to BPMC Determination and Order # 17-157, made effective on June 12, 2017, (Attachment I) (henceforth "Original Order") and Administrative Review Board Determination and Order No. 20-012, which was made effective January 28, 2020, which affirms entirely BPMC Determination and Order No. 19-236, which was made effective on or about September 20, 2019 (Attachment II) (henceforth "Subsequent Orders"). The Original Order imposed multiple penalties, terms and conditions, including but not limited to the following:

- That Respondent shall be subject to a Censure and Reprimand;
- That Respondent shall be placed on probation for twenty-four months, with a practice monitor, subject to the Terms of Probation, including the tolling provisions, enumerated in "Exhibit B" of BPMC Determination and Order No. 17-157;
- That Respondent shall be subject to a fine in the amount of two thousand five hundred dollars, payable within thirty days of the date of the Order;
- That Respondent shall comply fully with the June 10, 2016 Agreed Order of the Texas Medical Board and any extension or modification thereof;
- That should Respondent decide to resume practice in New York State, Respondent shall, before beginning such practice, provide 90 days advance written notice to the Director of OPMC;

- That Respondent may not begin practicing medicine in New York until after Respondent receives the Director's written acknowledgement that this condition has been satisfied; and
- That Respondent shall be subject to any further Conditions the Director may impose on Respondent's New York practice based on matters underlying the Consent Agreement, and/or any circumstances or information known to the Director at the time of Respondent's proposed return to New York practice.

The Subsequent Orders were predicated on the March 2, 2018 Agreed Order of the Texas Medical Board, involving the treatment of fifteen patients with controlled substances, specifically: failure to adequately treat fifteen chronic pain patients, failure to maintain adequate medical records for these patients, and failure to adequately supervise mid-level providers working in his clinic. The penalty imposed by the Subsequent Orders was a permanent limitation on Respondent's license, prohibiting Respondent from prescribing controlled substances in New York. As the Respondent has provided written notice of his intent to resume practicing medicine in New York, based upon all relevant facts and circumstances known to the Director: the following Modification is hereby ordered:

- From the effective date of this Director's First Modification Order, in addition to the preclusion from prescribing controlled substances, imposed by the Original Order, Respondent shall be permanently precluded from administering, ordering and dispensing controlled substances; and
- From the effective date of this Director's First Modification Order, Respondent's license shall be limited to preclude Respondent from supervising and/or executing any collaborative agreements with mid-level providers.

All remaining Terms and Conditions will continue as written in the Original Order and Subsequent Orders.

The Director reserves the authority, in her sole discretion, to subsequently stay, add, impose, re-impose, extend, or otherwise modify the conditions imposed upon Respondent's practice pursuant to BPMC Order Nos. 20-012, 19-236, 17-157 and this First Director's Modification Order, as the Director may determine appropriate, based upon all relevant facts and circumstances then known to her, including, but not limited to, those related to the underlying OPMC investigation of Respondent, the evaluation results and recommendations, and Respondent's practice in the future, as are necessary to protect the public health.

THE ABOVE IS HEREBY ORDERED; and

it is further

ORDERED, that this Order shall be effective upon issuance and mailing by first class mail to Respondent at the address in the attached Attachment I, Attachment II or at any other address known to the Office of Professional Medical Conduct.

DATE: 3/11/2020


PAULA M. BREEN
Director
Office of Professional Medical Conduct

ATTACHMENT I



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

June 5, 2017

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Kolawole Ademuyiwa Odulaja, M.D.


RE: License No. 219745

Dear Dr. Odulaja:


Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 17-157. This Order and any penalty provided therein goes into effect June 12, 2017.

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 2784
Empire State Plaza
Albany, New York 12237

Please direct any questions to: Board for Professional Medical Conduct, Riverview Center, 150 Broadway, Suite 355, Albany, New York, 12204, telephone # 518-402-0846.

Sincerely,


Robert A. Catalano, M.D.
Executive Secretary
Board for Professional Medical Conduct

cc: Wale Mosaku, Esq.
Wale Mosaku, P.C.
Law Offices
25 Bond St., 3rd Floor
Brooklyn, New York 11201

Enclosure

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

BPMC No. 17-157

IN THE MATTER
OF
KOLAWOLE ADEMUYIWA ODULAJA, M.D.

CONSENT
ORDER

Upon the application of (Respondent) KOLAWOLE ADEMUYIWA ODULAJA, M.D.
in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and

it is further

ORDERED, that this Consent Order shall be effective upon issuance by the Board,

either

by mailing of a copy of this Consent Order, either by first class mail to Respondent at
the address in the attached Consent Agreement or by certified mail to Respondent's
attorney, OR

upon facsimile transmission to Respondent or Respondent's attorney,

whichever is first

SO ORDERED.

DATE: 6/02/2017

[REDACTED]

ARTHUR S. HENGERER, M.D.
Chair
State Board for Professional Medical Conduct

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
KOLAWOLE ADEMUYIWA ODULAJA, M.D.

CONSENT
AGREEMENT

KOLAWOLE ADEMUYIWA ODULAJA, M.D., represents that all of the following statements are true:

That on or about November 14, 2000, I was licensed to practice as a physician in the State of New York, and issued License No. 219745 by the New York State Education Department.

My current address is [REDACTED] and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one or more specifications of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A", attached to and part of this Consent Agreement.

I agree not to contest the allegations, in full satisfaction of the charges against me, and agree to the following penalty:

2

Pursuant to N.Y. Pub. Health Law § 230-a(1), I shall be subject to a Censure and Reprimand.

Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for a period of twenty-four (24) months, subject to the terms set forth in attached Exhibit "B."

Pursuant to N.Y. Pub. Health Law §§ 230-a(7) and (9), I shall be subject to a fine in the amount of two thousand five hundred (\$2,500) dollars, to be paid in full within 30 days of the effective date of this Order. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 2784
Empire State Plaza
Albany, New York 12237

In making such payment, Respondent shall indicate the order number of this Order both on the payment check submitted and on the cover letter accompanying payment. Additionally, Respondent shall simultaneously mail a photocopy of the check and cover letter to:

Physician Monitoring Program
Office of Professional Medical Conduct
Riverview Center
160 Broadway, Suite 355
Albany, New York 12204-2718.

I further agree that the Consent Order shall impose the following conditions:

Respondent, by making this application, asserts that Respondent does not currently practice medicine in New York State or in any setting or jurisdiction where that practice is predicated upon Respondent's New York State medical license ("New York Practice"). As a condition of this Order, should Respondent decide to resume practicing medicine in New York, Respondent shall, before beginning such practice, provide 90 days advance written notice to the Director of OPMC. Respondent may not begin practicing medicine in New York until after Respondent receives the Director's written acknowledgment that this condition has been satisfied, and shall be subject to any further conditions the Director may impose upon Respondent's New York Practice based on matters underlying this Consent Agreement and/or any circumstances or information known to the Director at the time of Respondent's proposed return to New York Practice. Respondent, by making this Application, stipulates that the Director shall be authorized in his or her sole discretion to impose whatever further conditions the Director deems appropriate upon Respondent's return to practice in New York, and Respondent further stipulates that Respondent's failure to comply with these conditions shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

COMPLIANCE WITH OUT-OF-STATE BOARD ORDER

- 1) Respondent shall comply fully with the June 10, 2016 Agreed Order of the Texas Medical Board and any extension or modification thereof.

2) Respondent shall provide a written authorization for the Texas Medical Board to provide the Director of OPMC with any/all information or documentation as requested by OPMC to enable OPMC to determine whether Respondent is in compliance with the Texas Agreed Order.

That Respondent shall comply with each and every penalty imposed by this Order pursuant to N.Y. Pub. Health Law § 230-a.

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 120 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee in New York State; and

That Respondent shall remain in continuous compliance with all requirements of N.Y. Pub. Health Law § 2996-a(4) and 10 NYCRR 1000.5, including but not limited to the requirements that a licensee shall: report to the department all information required by the Department to develop a public physician profile for the licensee; continue to notify the department of any change in profile information within 30 days of any change (or in the

case of optional information, within 365 days of such change); and, in addition to such periodic reports and notification of any changes, update his or her profile information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to his or her physician profile information either electronically using the department's secure web site or on forms prescribed by the department, and licensee shall attest to the truthfulness, completeness and correctness of any changes licensee submits to the department. This condition shall take effect 30 days after the Order's effective date and shall continue so long as Respondent remains a licensee in New York State. Respondent's failure to comply with this condition, if proven and found at a hearing pursuant to N.Y. Pub. Health Law § 230, shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(21) and N.Y. Educ. Law § 6530(20). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, including but not limited to: revocation or suspension of license, Censure and Reprimand, probation, public service and/or fines of up to \$10,000 per specification of misconduct found; and

That Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719, with the following information, in writing, and

ensure that this information is kept current: a full description of Respondent's 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. This condition shall take effect 30 days after the Order's effective date and shall continue at all times until Respondent receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Respondent has fully complied with and satisfied the requirements of the Order, regardless of tolling; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Consent Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent Order.

Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall

take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

I agree that, if I am charged with professional misconduct in future, this Consent Agreement and Order shall be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the N.Y. Pub. Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities or other confidential information, if any, redacted. As public

documents, they may be posted on the Department's website. OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE 5/30/2017

[REDACTED]

KOLAWOLE ADEMUYIWA ODULAJA, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 05/31/2017

[Redacted Signature]

WALE MOSAKU, ESQ.
Attorney for Respondent

DATE: 5/31/2017

[Redacted Signature]

DAVID W. QUIST, ESQ.
Associate Attorney
Bureau of Professional Medical Conduct

DATE: 6/1/17

[Redacted Signature]

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "A"

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
KOLAWOLE ADEMUYIWA ODULAJA, M.D.

STATEMENT
OF
CHARGES

KOLAWOLE ADEMUYIWA ODULAJA, M.D., the Respondent, was authorized to practice medicine in New York State on or about November 14, 2000, by the issuance of license number 219745 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 6, 2016, Respondent agreed to an Agreed Order ("Order") with the Texas Medical Board ("Board"), which was approved by the Board on or about June 10, 2016. The Order included Stipulations of Fact that Respondent had engaged in unprofessional conduct in the treatment of a patient grossly below the standard of care, by prescribing controlled substances for non-therapeutic purposes, by treating a patient with hydrocodone and alprazolam for more than six months without a treatment plan, by failing to perform an adequate physical examination, failing to obtain medical records from the prior treating physician, failing to require urinary drug screening for monitoring, and prescribing alprazolam for anxiety without an adequate diagnosis of anxiety disorder and without a psychotherapy referral.

B. Pursuant to the terms of that Order, Respondent was reprimanded, was required to a) undergo monitoring for sixteen "monitoring cycles," each consisting of a cycle of patient record review selection, review, and reporting by the appointed monitor, b) successful completion of a Medical Jurisprudence Examination and continuing medical education coursework, c) development of a patient pain management contract, d) payment of an administrative penalty in the amount of \$5,000, and e) various other conditions.

C. The conduct resulting in the Board's Order would constitute misconduct under the laws of New York State pursuant to New York Education Law section 8530(4) (gross negligence).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 8530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or

suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law § 6530(4)) as alleged in the facts of the following:

1. The facts in Paragraphs A, B, and C.

DATE: May 31, 2017
Albany, New York

[REDACTED]

MICHAEL A. HISER, ESQ.
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

Terms of Probation

- 1) 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 N.Y. Educ. Law §§ 6530 or 6631 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
- 2) Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
- 3) Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses (Tax Law § 171(27); State Finance Law § 18; CPLR § 6001; Executive Law § 32).
- 4) 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 Respondent 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 14 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 Exhibit "A" 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.
- 6) Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.

- 7) Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
- 8) Within thirty days of the Consent Order's effective date, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.
 - a) Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the 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 OPMC.
 - b) Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c) Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d) 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 Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
- 9) Respondent shall enroll in and successfully complete a continuing education program. This continuing education program is subject to the Director of OPMC's prior written approval.
- 10) Respondent shall comply with this Consent Order and all its 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.

ATTACHMENT II

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

In the Matter of

Koluwole 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)(n)(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)(l), 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 PHL § 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 Grubiec, M.D.
Linda Prescott Wilson
Jill Rabin, M.D.

In the Matter of Kolawole Odulaja, M.D.

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

Dated: 12/19, 2019


Steven Grubiec, M.D.

In the Matter of Kolawole Odunig, M.D.

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

Dated: P. [Signature], 2019 20


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: 12/11, 2019


Jill Rabin, M.D.



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

September 13, 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kolawole Odulaja, M.D.


Law Office of Wale Mosaku, P.C.
26 Bond Street, Third Floor
Brooklyn, New York 11201

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. 19-236) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i) (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board.

Six copies of all papers must also be sent to the attention of Judge Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

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
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X
: IN THE MATTER : DETERMINATION
: :
: OF : AND
: :
: KOLAWOLE ODULAJA, M.D. : ORDER
: 19-236
-----X

A hearing was held on August 14, 2019, at the offices of the New York State Department of Health (Department), 150 Broadway, Menands, New York. Pursuant to §230(10)(e) of the Public Health Law (PHL), RICHARD F. KASULKE M.D., Chairperson, MICHAEL C. IANNUZZI, M.D., and ELENA M. COTTONE, PA-C, duly designated members of the State Board for Professional Medical Conduct (BPMC), served as the Hearing Committee in this matter. JEAN T. CARNEY, ADMINISTRATIVE LAW JUDGE (ALJ), served as the Administrative Officer.

The Department appeared by Associate Counsel Ian H. Silverman. The Respondent appeared in person and through his attorney, Wale Mosaku, Esq. Jurisdiction over the Respondent was obtained by service of the Notice of Referral Proceeding and Statement of Charges. The Hearing Committee received and examined documents from the Department (Exhibits 1-8), from the Respondent (Exhibits A, B, and C); and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charges that the

Respondent committed professional misconduct in violation of Education Law §6530(9)(d), and that pursuant to PHL §230-a, the penalty of Reprimand and a permanent restriction on his license prohibiting the Respondent from prescribing controlled substances is appropriate.

BACKGROUND

The Department brought the case pursuant to PHL §230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Education Law §6530(9).

The Respondent is charged with professional misconduct pursuant to Educ. Law §6530(9)(d), having had his license to practice medicine revoked, or suspended, or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in such action would, if committed in New York State, constitute professional misconduct under the laws of New York State.

Under PHL §230(10), the Department had the burden of proving its case by a preponderance of the evidence. Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 "shall be subject to penalties as prescribed in [PHL § 230-a] except that the charges may be dismissed in the interest of justice."

FINDINGS OF FACT

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. The Respondent was authorized to practice medicine in New York State on November 14, 2000, by the issuance of license number 219745. (Exhibit 5).

2. On June 2, 2017, the BPMC issued a Consent Order, based on a Consent Agreement, placing the Respondent on probation for two years with the provision that "[t]he probation period shall toll when the Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more". (Exhibit 7).

3. On March 2, 2018, the Texas Medical Board (TMB) issued an Agreed Order finding that the Respondent had violated the standard of care and Board Rules governing the treatment of pain for 15 patients; and failed to maintain adequate medical records. The TMB ordered the Respondent to surrender his Drug Enforcement Agency (DEA) Controlled Substances Registration Certificate, and his Texas Department of Public Safety (DPS) Controlled Substances Registration Certificate. (Exhibit 6).

4. Previously, the TMB had issued a consent Order on June 10, 2016, publicly reprimanding the Respondent and requiring him to comply with certain terms and conditions including: practice monitoring; passing the Medical Jurisprudence Exam; and continuing medical education regarding medical recordkeeping, identifying drug seeking behavior, and prescribing controlled substances for chronic pain. (Exhibit B).

5. On June 14, 2019, the TMB issued an Order Granting Termination of the Agreed Orders from 2016 and 2018. (Exhibit 7).

VOTE OF THE HEARING COMMITTEE

The Hearing Committee concludes that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law §6530(9)(d).

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATIONS

The Department met its burden of proving by a preponderance of the evidence that the Respondent committed professional misconduct as alleged in the Statement of Charges. The evidence shows that the Respondent had disciplinary action taken by the TMB wherein he was ordered to surrender his controlled substance certificates. The TMB had previously publicly reprimanded the Respondent, placing certain conditions on his license to practice, which resulted in action being taken by the BPMC. The Respondent argues that because the TMB terminated their orders against him, the current charges brought by the BPMC should be dismissed as moot. However, the TMB Orders were not vacated, and the fact remains that disciplinary action was taken against the Respondent. The consequences of the Respondent's actions constitute professional misconduct under the laws of New York State as defined in Educ. Law §6530(9)(d).

In considering the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of


monetary penalties; the Hearing Committee noted that the BPMC Consent Order dated June 2, 2017 remains in full force and effect, and while it is admirable that the Respondent complied with the terms and conditions imposed on him by the TMB, his actions prompted disciplinary action. Therefore, the Hearing Committee determines that censure and reprimand, and placing a permanent restriction on the Respondent's medical license in New York State preventing him from prescribing controlled substances are appropriate penalties.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct as set forth in the Statement of Charges is sustained;
2. The Respondent is censured and reprimanded; and
3. The Respondent's license to practice medicine is permanently restricted to prohibit him from prescribing controlled substances; and
4. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL §230(10)(h).

DATED: Albany, New York
Sept. 09, 2019


Richard F. Knsulke, M.D., Chairperson
Michael C. Iannuzzi, M.D.
Elena M. Cottone, PA-C

To: Kolawole Odulaja, M.D.



Law Office of Wale Mosaku, P.C.
26 Bond Street, Third Floor
Brooklyn, New York 11201

Ian H. Silverman, Esq.
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower Building - Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

IN THE MATTER

OF

KOLAWOLE ODULAJA, M.D.

STATEMENT
OF
CHARGES

KOLAWOLE ODULAJA, M.D., the Respondent, was authorized to practice medicine in New York State on or about November 14, 2000 by the issuance of license number 219745 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 2, 2018, the Texas Medical Board issued an Agreed Order whereby the Respondent was ordered to (1) surrender his Drug Enforcement Administration Controlled Substances Registration Certificate and Texas Department of Public Safety Controlled Substances Registration Certificate; (2) not register or otherwise obtain Controlled Substances Registrations until Respondent has received written authorization from the Board; (3) not supervise or delegate prescriptive authority to a physician assistant or advanced practice nurse or supervise a surgical assistant. The Texas Board's action was based upon a finding that the Respondent violated the standard of care in regards to the treatment of pain for 15 patients. Specifically, the Respondent failed to maintain adequate medical records and committed negligence in performing medical services.

B. Respondent's conduct as described above, upon which the disciplinary action in Texas was based would, if committed in New York State, constitute professional misconduct under the laws of the State of New York as follows:

1. New York Education Law §6530 (2) (practicing the profession with negligence on more than one occasion) and/or
2. New York Education Law §6530 (32) (failing to maintain a record).

SPECIFICATION OF CHARGES


FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law § 6530(2) and/or (32)) as alleged in the facts of the following:

1. The facts in Paragraph A and B.

DATE: May 20, 2019
Albany New York


Timothy J. Mahar, Esq.
Deputy Counsel
Bureau of Professional Medical Conduct