



Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

November 2, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Richard A. Finkel, Esq.
Richard A. Finkel, Esq. & Assoc., PLLC
136-B Cedarhurst Avenue, Suite 15
Cedarhurst, New York 11516

Timothy Hsu, MD
[REDACTED]

RE: In the Matter of Timothy Hsu, MD

Dear Parties:

Enclosed please find the Determination and Order (No. 21-224) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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

COPY

In the Matter of

Timothy Hsu, M.D. (Respondent)

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

Administrative Review Board (ARB)

Corrected Determination and Order
No. 21- 224

Before ARB Members Torrelli, Rabin, Wilson and Milone
Administrative Law Judge Jean T. Carney drafted the Determination

For the Department of Health (Petitioner): Nathaniel White, Esq.
For the Respondent: Richard A. Finkel, Esq.

Following the Respondent's disciplinary action in the Commonwealth of Virginia, a BPMC Committee determined that the Respondent's conduct amounted to professional misconduct; but voted to dismiss the charges in the interest of justice. The Committee declined to take any disciplinary action, or impose any penalty against the Respondent's New York State license to practice medicine (license). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a), the Petitioner asked the ARB to modify that Determination. After reviewing the hearing record and the parties' review submissions, the ARB overturns the Committee's Determination to dismiss the charges in the interest of justice. The ARB imposes the penalty of censure and reprimand. Additionally, if the Respondent returns to practice in New York State, a permanent limitation will be placed on the Respondent's license, limiting his practice to working in a facility licensed pursuant to Article 28 of the PHL, such as a hospital or nursing home; and requiring that the Respondent to continue annual boundary training.

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 alleged that the Respondent committed professional misconduct under New York Education Law (Educ. Law) § 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state, where the conduct upon which the finding is based, would constitute professional misconduct under Educ. Law § 6530(44) if committed in New York State. (Hearing Exhibit 1). The Respondent was also charged with committing professional misconduct under Educ. Law § 6530(9)(d), by having disciplinary action taken against his license by a duly authorized professional disciplinary agency of another state where the conduct resulting in the disciplinary action would constitute professional misconduct under Educ. Law § 6530(44) if committed in New York State. (Hearing Exhibit 1). 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 on September 25, 2019, the Virginia Board of Medicine (VA Board) issued an Order finding that the Respondent had violated Virginia Code §§ 54.1-2915(A)(12), (18), and (19); and 18 VAC 85-20-100(A)(1) and (2) of the Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, or Chiropractic. The VA Board reprimanded the Respondent, and required him to ensure that quarterly reports regarding his treatment

status be submitted to the VA Board for one year. The Order arose from a boundary violation where the Respondent hugged a patient, and kissed her face, neck, and lips.

The Committee determined that the Respondent's conduct made him liable for action against his License pursuant to Educ. Law §§ 6530(9)(b) and (d), based on the Respondent engaging in physical contact of a sexual nature with a patient in violation of Educ. Law § 6530(44). On the issue of penalty, the Petitioner requested that the Committee revoke the Respondent's License. The Respondent presented several witnesses and extensive documentation to support his position that further restrictions on his license may result in collateral consequences, and that he would like to continue practicing psychiatry. The Committee determined to dismiss the charges against the Respondent in the interests of justice, citing how the Respondent did not criticize or attempt to shift responsibility for his actions onto the patient.

Review History and Issues

The Committee rendered their Determination on September 22, 2020. This proceeding commenced on October 8, 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 December 11, 2020.

The Petitioner argued that the Committee's decision to dismiss the charges was inconsistent with its determination that the VA Board's Order established that the Respondent violated Educ. Law §§ 6530(9)(b) and (d) as charged. The Petitioner noted that the Committee's determination was based on the Respondent's accepting responsibility for his actions, and that it appeared to be an isolated incident. The Petitioner argued that while these may be considered mitigating factors, they do not merit a dismissal of the charges. The Petitioner requested that the ARB overturn the Committee, sustain the charges against the Respondent, and impose an appropriate penalty. The Petitioner requested that the ARB impose a permanent limitation from

treating female patients on the Respondent's license, a period of probation with a requirement to have a therapy monitor, and complete an intensive educational course in professional boundaries.

The Respondent replied that the Committee's determination was not an abuse of discretion and should be affirmed. The Respondent argued that the evidence from the hearing supported the Committee's determination to dismiss the charges, and that any restrictions placed on the Respondent's license would result in catastrophic consequences.

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). Further, 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 agree with the Committee that the Respondent's conduct resulting in disciplinary action in Virginia would constitute professional misconduct if committed in New York State. We overturn the Committee's Determination to dismiss the charges against the Respondent in the interest of justice. In weighing the mitigating circumstances, and the duty to protect vulnerable patients, we conclude that a penalty is warranted.

The ARB imposes the penalties of censure and reprimand; a permanent limitation on the Respondent's New York license to practice only in a supervised setting of an Article 28 facility, such as a hospital or nursing home; and require the Respondent to continue annual boundary training.

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 dismiss the charges.
3. Pursuant to PHL § 230-a(1), the ARB censures and reprimands the Respondent.
4. Pursuant to PHL § 230-a(3), the ARB imposes a permanent limitation on the Respondent's license to practice medicine in New York to practice in a

supervised setting of an Article 28 facility, such as a hospital or nursing home; such limitation to be stayed unless and until the Respondent returns to practice medicine in New York.

5. Pursuant to PHL 230-a(8), the ARB requires the Respondent to complete annual boundary training.

Linda Prescott Wilson

Jill Rabin, M.D.

Richard D. Milone, M.D.

Carmela Torrelli

In the Matter of Timothy Hsu, M.D.

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

Dated: 10 October, 2021



Linda Prescott Wilson

In the Matter of Timothy Hsu, M.D.

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

Dated: October 1st

2021


Jill Rabin

In the Matter of Timothy Hsu, M.D.

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

Dated: October 7, 2021


Richard D. Milone, M.D.

In the Matter of Timothy Hsu, M.D.

Carmela Torrelli, an ARB Member concurs in the Determination and Order in the Matter of Dr. Hsu.

Dated: October 11, 2021


Carmela Torrelli