



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

February 17, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John Thomas Viti, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007

Jesse B. Baldwin, Esq.
Addelman Cross & Baldwin, PC
5680 Main Street
Buffalo, New York 14221

Joseph Thomas, M.D.
2374 Village Common Drive, Suite 100
Erie, PA 16506

RE: In the Matter of Joseph Thomas, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 22-035) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,



Dawn MacKillop-Soller
Acting Chief Administrative Law Judge
Bureau of Adjudication

DXM:nm
Enclosure

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

COPY

In the Matter of

Joseph Thomas, M.D. (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 22- 035

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

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

For the Department of Health (Petitioner): John Thomas Viti, Esq.
For the Respondent: Jesse B. Baldwin, Esq.

Following the Respondent's disciplinary action by the State Board of Medicine for the Commonwealth of Pennsylvania (PA Board), a BPMC Hearing Committee determined that the Respondent's conduct amounted to professional misconduct and voted to revoke his license to practice medicine in New York State (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c(4)(a), the Respondent asked the ARB to review that Determination. After reviewing the hearing record and the parties' review submissions, the ARB affirms the hearing committee's determination to revoke the Respondent's license.

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)(d) by having his license to practice medicine revoked, suspended, or having other 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 if committed in New York State as defined in Educ. Law §§ 6530(2), (3), (16), (20), and (32) by:

- practicing the profession fraudulently or beyond its authorized scope;
- practicing the profession negligently on more than one occasion;
- willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, or regulations governing the practice of medicine;
- conduct in the practice of medicine which evidences moral unfitness to practice medicine; and
- failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.

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 August 19, 2020, pursuant to a final Consent Agreement and Order, the PA Board placed a public reprimand on the Respondent's record, imposed a civil penalty of \$5,000 and costs of \$7,242.84, and required the Respondent complete 25 hours of remedial education on the topics of infection control, medical record keeping, and narcotic storage. The Order arose from an investigation into the Respondent's practice after nine patients were diagnosed with Methicillin resistant Staphylococcus aureus (MRSA) after receiving some form of epidural treatment at the Respondent's medical practice.

The Committee found that the Respondent disregarded the health and well-being of his patients by re-using single use syringes and single use vials of Omnipaque contrary to contamination and infections control protocols. The Committee determined that the Respondent's conduct made him liable for action against his License pursuant to Educ. Law § 6530(9)(d), based on the Respondent's practicing the profession fraudulently or beyond its authorized scope; practicing the profession negligently on more than one occasion; willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, or regulations governing the practice of medicine; conduct in the practice of medicine which evidences moral unfitness to practice medicine; and failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient in violation of Educ. Law §§ 6530(2), (3), (16), (20), and (32).

On the issue of penalty, the Petitioner requested that the Committee revoke the Respondent's License. The Respondent argued that revocation would be a disproportionate penalty to the charges. The Committee determined to revoke the Respondent's License, citing the Respondent's lack of insight regarding the consequences of his failure to implement infection control practices which led to several of his patients contracting MRSA, and his failure to take responsibility for causing harm to these patients.

Review History and Issues

The Hearing Committee rendered their Determination on July 21, 2021. This proceeding commenced on August 2, 2021, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's reply brief. The record closed when the ARB received the reply brief on September 23, 2021.

The Respondent asked the ARB to modify the Committee's determination to revoke the Respondent's license, and impose a penalty of probation. The Respondent

argued that the penalty of revocation was inconsistent with the facts of this case, disproportionately harsh, and would not serve the public. The Respondent emphasized his efforts since the PA Board's Order to establish comprehensive infection controls in his practice. The Respondent also argued that he took responsibility for his actions, and fully cooperated with the investigation into the MRSA outbreak.

The Petitioner replied that the Committee evaluated the evidence properly, and the penalty of revocation was appropriate. The Petitioner argued that each charge of misconduct that was sustained by the Committee would warrant revocation based on the facts in the record. The Petitioner noted that the Committee considered the Respondent's testimony and actions since the PA Order went into effect; but concluded that revocation was an appropriate penalty.

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 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 Pennsylvania would constitute professional misconduct if committed in New York State. We affirm the Committee's Determination to revoke the Respondent's License.

The ARB rejects the Respondent's argument that revocation is disproportionately harsh based on the evidence in the record. While we acknowledge that the Respondent instituted infection controls after the investigation in Pennsylvania, we note that those controls were only put into place after nine patients were harmed and he faced disciplinary action.

We agree with the Committee that the Respondent showed little insight into the severity of his misconduct, placing cost-saving tactics above the health and wellbeing of his patients. The evidence supports the charges sustained, and based on the record, the penalty of revocation does not shock one's sense of fairness.

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 revoke the Respondent's License.

Linda Prescott Wilson

Jill Rabin, M.D.

Richard D. Milone, M.D.

Carmela Torrelli

In the Matter of Joseph Thomas, M.D.

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

Dated: February 15, 2022


Carmela Torrelli

In the Matter of Joseph Thomas, M.D.

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

Dated: 9 February, 2022


Linda Prescott Wilson

In the Matter of Joseph Thomas, M.D.

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


Dated: February 8, 2022


Richard D. Milone, M.D.

In the Matter of Joseph Thomas, M.D.

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

Dated: 2/8/2022, 2022


Jill M. Rabin, M.D.