



Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

October 5, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Paul E. Walker, Esq.
315 West 106th Street, Suite 1A
New York, New York 10025

RE: In the Matter of Arnold Weekes, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 22-207) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,

A solid black rectangular box redacting the signature of the sender.

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

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

In the Matter of

Arnold Weekes, 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)

Determination and Order No. 22- 207

COPY

Before ARB Members Reichgott, 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: Paul E. Walker, Esq.

Following disciplinary action against the Respondent's license to practice medicine by the Medical Board of California (CA Board), a BPMC Committee determined to dismiss the charges in the interest of justice. 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 sustains the charge against the Respondent and imposes the penalty of censure and reprimand.

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 Education Law (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(10) if committed in New York State.

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 January 19, 2021, the CA Board issued a Decision and Order, adopting the Proposed Decision recommended by an ALJ after a hearing, finding that the Respondent failed to maintain adequate and accurate medical records for three patients. The CA Board issued a public reprimand to the Respondent, and required him to complete a course in medical record keeping.

The Committee determined by a vote of 2-1 to dismiss the charge in the interests of justice pursuant to Educ. Law § 6530. The Committee found that the Respondent willingly acknowledged deficiencies in his recordkeeping that resulted in the disciplinary proceeding in California. The Committee found that the Respondent fully complied with the CA Board's Decision and Order, was forthright and sincere in his testimony, and has improved professionally as a result of the disciplinary action. Consequently, all members of the Committee opposed imposing a penalty, and the majority believed that a finding of misconduct would not be in the interest of justice.

Review History and Issues

The Committee issued its Determination on February 1, 2022. This proceeding commenced on February 14, 2022, 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 Respondent's reply brief on March 7, 2022.

The Petitioner argued that the Committee's decision to dismiss the charge was inconsistent with the facts and not appropriate protection for the public. The Petitioner requested that the ARB overturn the Committee, sustain the charge against the Respondent and impose a penalty of censure and reprimand, and a fine of \$10,000.

The Respondent replied that the Committee's determination was supported by the facts and circumstances of this case, and should be affirmed. The Respondent argued that the Respondent had corrected any deficiencies found by the CA Board, and justice would not be furthered by imposing additional penalties against the Respondent.

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 actions in response to the disciplinary proceeding in California was exemplary. However, that does not obviate the fact that he admitted to, and was found to have committed misconduct. The record reflects that the Respondent was disciplined by the CA Board for failing to maintain complete and accurate records for three patients, which would constitute misconduct under Educ. Law § 6530(32) if it had occurred in New York State; thus, subjecting his license in New York to disciplinary action. The Respondent's actions in response to the CA Board's determination pertain to a penalty determination, rather than whether to sustain the charge brought against him. The ARB recognizes that Educ. Law § 6530 allows for dismissing a charge in the interest of justice, but we conclude that the Respondent's misconduct warrants a consequence. The ARB considered the penalties enumerated under PHL § 230-a, as well as the mitigating circumstances of the Respondent's conduct, and we determine that censure and reprimand is appropriate given these facts and circumstances. We reject the Petitioner's request to impose a fine as being excessive under the facts and circumstances of this case. The ARB overturns the Committee's determination to

dismiss in the interest of justice. The charge of misconduct against the Respondent is sustained, and we impose the penalty of censure and reprimand.

Order

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB overturns the Committee's Determination to dismiss the charge in the interest of justice.
2. Pursuant to PHL § 230-a(1), the ARB imposes a penalty of censure and reprimand.

Linda Prescott Wilson

Jill Rabin, M.D.


Richard D. Milone, M.D.

Michael J. Reichgott, M.D., PhD.

In the Matter of Arnold Weekes, M.D.

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

Dated: 19 September, 2022



A black rectangular redaction box covers the signature of Linda Prescott Wilson. There are some faint handwritten marks above and below the box.

Linda Prescott Wilson

In the Matter of Arnold Weekes, M.D.

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

Dated: September 13, 2022



Jill Rabin

5

In the Matter of Arnold Weekes, M.D.

Michael J. Reichgott, an ARB Member concurs in the Determination and Order in the Matter of Dr. Weekes.

Dated: 09/22, 2022



Michael J. Reichgott, MD, PhD

In the Matter of Arnold Weekes, M.D.

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

Dated: September 22, 2022


Richard D. Milone, M.D.