



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Acting Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

April 18, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Fares Jeries Rabadi, M.D.


David W. Quist, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Fares Jeries Rabadi, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 23-084) 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.

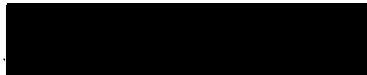
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified 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 redaction box covering 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

Fares Jeries Rabadi, 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. 23-084

COPY

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

For the Department of Health (Petitioner): David W. Quist, Esq.
For the Respondent: Pro se

Following the Respondent's disciplinary action by the Medical Board of California (CA Board), a BPMC Hearing Committee determined that the Respondent's conduct constituted professional misconduct. 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 review submission, the ARB affirms the Hearing Committee's determination and modifies the penalty imposed.

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 disciplinary action taken against his

license to practice medicine in California (CA license), where the conduct resulting in the disciplinary action would constitute professional misconduct 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 August 31, 2021, the CA Board adopted a Stipulated Settlement and Disciplinary Order (Order) resolving charges of gross negligence, repeated negligent acts, and inadequate records with respect to the Respondent's care and treatment of two patients. The Respondent waived his right to contest the charges, which were based on his prescribing controlled substances to a patient despite a diagnosis of opioid dependency; without a plan to taper the patient off controlled substances; without monitoring the patient's compliance through toxicology screening and verification of other prescriptions; and without referring to and confirming the Respondent's treatment by a pain management physician; all of which constituted an extreme departure from the standard of care. The Respondent was also charged with failure to document elements of his treatment for both patients, constituting gross negligence and inadequate recordkeeping.

The Committee determined that the Respondent's conduct constituted professional misconduct under Educ. Law §§ 6530(9)(d) in that the conduct for which the Respondent was disciplined would violate Educ. Law § 6530(3), practicing the profession with negligence on more than one occasion; Educ. Law 6530(4), practicing the profession with gross negligence on a particular occasion; and Educ. Law § 6530(32), failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient; if committed in New York State.

The Committee determined that given the concerns raised by the CA Board regarding the Respondent's demonstrated pattern of prescribing controlled substances

without adequately monitoring patient compliance, the Respondent's practice of medicine should be monitored. The Committee placed the Respondent on three years of probation with a practice monitor; and placed a permanent restriction on the Respondent's New York medical license (NY license), prohibiting him from prescribing, dispensing, administering, and ordering controlled substances.

Review History and Issues

The Committee issued their Determination on December 21, 2022. This proceeding commenced on January 4, 2023, 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 February 13, 2023.

The Respondent asked for relief from the sanctions imposed by the Committee, or alternatively, some leniency. The Respondent argued that the sanctions imposed by the CA Board were excessive, that the patients were not harmed, and that his NY license is inactive. The Respondent also noted that he has petitioned for relief from the probation term imposed by the CA Board, which will end on September 29, 2023.

The Petitioner asserted that the Committee's determination should be upheld because the Respondent's conduct constituted professional misconduct, and the penalty imposed by the Committee constituted an appropriate sanction. The Petitioner pointed out that patient harm is not required in showing professional misconduct, and the fact that the Respondent's NY license is inactive, does not negate the need to protect New York patients. The Petitioner also asked the ARB to consider expanding the permanent restriction on the Respondent's license to include precluding any designated agents from prescribing controlled substances. Finally, the Petitioner asked that language be included in the terms of probation to provide for the possibility of a practice monitor being either unable or unwilling to serve for the full probation period.

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 affirm the Committee's determination that the Respondent's conduct constitutes professional misconduct. In addition to the penalty imposed by the Committee, we amend the permanent limitation on the Respondent's license to preclude any designated agents of the Respondent from prescribing, dispensing, administering, or ordering controlled substances.

The ARB found that the Respondent raised no compelling reason to overturn the Committee's determination. The Respondent's conduct resulting in disciplinary action by the CA Board also subjected his NY license to disciplinary action. The penalty imposed by the Committee was reasonably related to the charges, and appropriate to protect patients in New York, should the Respondent activate his NY license.

The ARB notes that the Respondent's conduct with respect to prescribing controlled substances constitutes a significant deviation of the standard of care for these patients. We agree with the Committee that the Respondent's practice of medicine should be monitored, and a three-year term of probation with a practice monitor, along with a permanent restriction on the Respondent's license is appropriate; but we find that the restriction on the Respondent's license should be expanded to include anyone under his supervision from prescribing, administering, dispensing, and ordering controlled substances. This penalty is reasonably related to the charges, and will protect patients in New York.

Order

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

1. The ARB finds that the Respondent committed professional misconduct.

2. The ARB affirms the Hearing Committee's determination to place the Respondent on probation for three years pursuant to the terms attached to the Determination and Order dated December 19, 2022.
3. The ARB expands the permanent restriction on the Respondent's license to practice medicine in New York, prohibiting any agent or person under his supervision from prescribing, dispensing, administering, and ordering controlled substances.

Linda Prescott Wilson
Jill Rabin, M.D.
Richard D. Milone, M.D.
Carmela Torrelli
Michael J. Reichgott, M.D., PhD.

In the Matter of Fares Jeries Rabadi, M.D.

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

Dated: 10 April, 2023




Linda Prescott Wilson

In the Matter of Pares Jeries Rabadi, M.D.

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

Dated: 4/10/23, 2023





Jill M. Rabin, M.D.

In the Matter of Fares Jeries Rabadi, M.D.

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

Dated: April 10, 2023



Richard D. Milone, M.D.

In the Matter of James Lewis Rabault, Esq.

Carmela Torrelli, an ARD Member concurs in the Determination and Order in the

Matter of Dr. Rabault.

Dated: April 11, 2024


Carmela Torrelli

In the Matter of Fares Jeries Rabadi, M.D.

Michael J. Reichgott, M.D., PhD., an ARB Member concurs in the Determination and Order in the Matter of Dr. Rabadi.

Dated: April 12, _____, 2023

[REDACTED]

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