



Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 21, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Fares Jeries Rabadi, MD


David W. Quist, Associate Attorney
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, MD

Dear Parties:

Enclosed please find the Determination and Order (No. 22-259) 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:

Jean T. Carney, 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 Carney 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 the sender.

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

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

-----X
: **IN THE MATTER** : **DETERMINATION**
: :
: **OF** : **AND**
: :
: **FARES JERIES RABADI, M.D.** : **ORDER**
: :
-----X **BPMC-22-259**

A Notice of Referral Proceeding and Statement of Charges dated August 23, 2022 (Exhibit 1), were duly served upon Fares Jeries Rabadi, M.D. (Respondent) pursuant to Public Health Law (PHL) § 230(10)(d)(i). A hearing was held on December 15, 2022, via WebEx videoconference. Pursuant to PHL § 230(10)(e), **JOSE M. DAVID, M.D.**, Chairperson, **DAVID E. KAPLAN, M.D.**, and **THOMAS LAHUT, DHSc, PA-C**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee. **NATALIE BORDEAUX** served as the Administrative Officer.

The Department appeared by David W. Quist, Associate Attorney. The Respondent appeared and testified on his own behalf. The Hearing Committee received and examined documents from the Department (Exhibits 1-4) and a transcript of the proceeding was made. The Hearing Committee hereby determines to sustain the charge that the Respondent committed professional misconduct, in violation of Education Law § 6530(9)(d), and to impose the following penalties: (a) a three-year probation period, subject to oversight by a practice monitor; and (b) a limitation on the Respondent's medical practice in which he is permanently restricted from prescribing, dispensing, administering, and ordering controlled substances. All findings, conclusions, and determinations are unanimous.

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 Education Law § 6530(9)(d), by having disciplinary action taken against his license to practice medicine in California where the conduct resulting in the disciplinary action taken would, if committed in New York State, constitute professional misconduct under the laws of New York. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York on August 13, 1998, under license number 211705. (Exhibit 3.)
2. By decision dated August 31, 2021, the Medical Board of California (California Board) adopted a Stipulated Settlement and Disciplinary Order signed by the Respondent on April 22, 2021, to resolve charges of gross negligence, repeated negligent acts, and inadequate records with respect to his care and treatment of two patients. The California Board revoked the Respondent's license to practice medicine, stayed the revocation, and placed the Respondent on probation for two years during which he is prohibited from supervising physician assistants and advanced practice nurses. The Respondent was also required to successfully complete courses in prescribing practices and medical recordkeeping. (Exhibit 4.)

DISCUSSION

The Department's August 23, 2022 Statement of Charges alleges that the Respondent's misconduct described in the California Board's August 31, 2021 decision would, if committed in New York, constitute professional misconduct as defined in Education Law § 6530(3) (practicing the

profession with negligence on more than one occasion), § 6530(4) (practicing the profession with gross negligence on a particular occasion), and § 6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient). (Exhibit 1.)

The California Board's decision adopted a Stipulated Settlement and Order, in which the Respondent waived his right to contest charges of gross negligence, repeated negligent acts, and inadequate records, and agreed to disciplinary action taken against his California license regarding those charges. The California Board alleged, and the Respondent waived his right to contest, that Respondent's continued prescribing of controlled substances to Patient P-1 despite a diagnosis of opioid dependency, without a plan to taper the patient off of controlled substances, without monitoring the patient's compliance through toxicology screens and verification of other prescriptions, and without referring to and confirming the Respondent's treatment by a pain management physician, constituted an extreme departure from the standard of care (gross negligence), as did the Respondent's long-term prescribing of narcotics for the patient. The California Board also charged that the Respondent's failure to document elements of his treatment of Patients P-1 and P-2 constituted gross negligence and inadequate recordkeeping. Because the Respondent's departures from the standard of care occurred on multiple occasions, the California Board alleged that the Respondent had engaged in repeated negligent acts with respect to both patients.

Based upon the allegations incorporated in the Respondent's stipulated settlement and adopted in the California Board's decision, the Hearing Committee agreed that the Respondent's actions resulting in the California Board's disciplinary action would, if committed in New York, constitute misconduct pursuant to Education Law § 6530(3), § 6530(4), and § 6530(32). The Hearing Committee thus determined that the Respondent violated Education Law § 6530(9)(d).

After determining to sustain the charge, the Hearing Committee considered all possible penalties authorized by PHL § 230-a. The Department sought revocation of the Respondent's license or, at minimum, a permanent restriction on his prescribing abilities, along with a probationary period with monitoring. The Respondent contended that he has already been punished enough, and that a penalty was unreasonable because he has little to no expectation of practicing medicine in New York.

The Hearing Committee did not agree with the Respondent that penalties applicable to his practice of medicine in New York were unnecessary. The penalties imposed by the California Board only addressed the Respondent's treatment of patients in that state and would not protect patients in New York. Nevertheless, the Hearing Committee considered revocation of the Respondent's license to be an excessive penalty, given that the infractions noted in the California Board's decision were limited to the Respondent's treatment of two patients, neither of whom were harmed.

The Hearing Committee agreed that the Respondent's practice of medicine should be monitored. In addition, given the concerns raised by the California Board's decision regarding the Respondent's demonstrated pattern of prescribing of controlled substances without adequately monitoring patient compliance, the Hearing Committee determined that a three-year period of probation with a practice monitor, along with a permanent restriction on the Respondent's ability to prescribe, dispense, administer, and order controlled substances, were adequate to protect patients in the State of New York.


ORDER

IT IS HEREBY ORDERED THAT:


1. The charge of professional misconduct, as set forth in the Statement of Charges, is sustained.
2. The Respondent is permanently prohibited from prescribing, dispensing, administering, and ordering controlled substances. PHL § 230-a(3).
3. The Respondent is placed on probation for a period of three years. PHL § 230-a(9). The Respondent must comply with the terms of probation set forth in Appendix I.
4. During the period of probation, the Respondent shall practice medicine in New York only under the supervision of a Board-approved practice monitor as detailed in paragraph seven of Appendix I.
5. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

DATED: December 19, 2022

Albany, New York


Jose M. David, M.D., Chairperson
David E. Kaplan, M.D.
Thomas Lahut, DHSc, PA-C

To: Fares Jerjes Rabadi, M.D.


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

Fares Jerjes Rabadi, M.D. - Direct Referral

IN THE MATTER

OF

FARES JERIES RABADI, M.D.

STATEMENT

OF

CHARGES

FARES JERIES RABADI, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 13, 1998, by the issuance of license number 211705 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about August 31, 2021, the Medical Board of California (“Board”) issued a Decision, adopting a Stipulated Settlement and Disciplinary Order (“Order”) signed by Respondent on or about April 22, 2021. The case addressed allegations in an Accusation (case no. 800-2017-037241), dated on or about September 29, 2020.
- B. Pursuant to the Accusation, the Board alleged that Respondent failed to maintain adequate records, and engaged in inappropriate prescribing, constituting, in sum, gross negligence, repeated negligent acts, and failing to maintain adequate records.
- C. Pursuant to the Order, Respondent agreed that a factual basis for the charges could be established at hearing. Respondent was made subject to a stayed revocation of his license and was placed on probation for a period of two years, subject to conditions including coursework in prescribing practices and medical record keeping, and other conditions including, but not limited to, a prohibition on the supervision of physician assistants and advanced practice nurses.

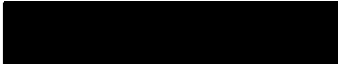
D. The conduct resulting in the Board's Decision and Order against Respondent would constitute misconduct under the laws of New York State pursuant to New York Education Law §§ 6530(3) (negligence), (4) (gross negligence) and/or (32) (failing to maintain a record).

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(3), (4), and/or (32):

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

DATE: August 23, 2022
Albany, New York



JEFFREY J. CONKLIN
Deputy Director
Bureau of Professional Medical Conduct

APPENDIX I

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 Education Law § 6530 or § 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to PHL § 230(19).
2. Respondent shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services and shall pay all registration fees.
3. Respondent shall provide the Director of the Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of his 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.
4. Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of his compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. 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 he 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 the Determination and Order 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.
7. The Respondent shall practice medicine in New York State only when monitored by a licensed physician (practice monitor), who is proposed by Respondent and subject to the written approval of the Director of the OPMC.

- a. The 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 the 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 the Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with generally accepted standards of professional medical care. Any perceived deviation from accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to the OPMC.
 - b. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of the OPMC.
 - c. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - 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 § 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent commencing practice within the State of New York.
8. The terms set forth in the paragraphs above are the minimum probation terms to be imposed on the Respondent, and other terms may be added by the Director of the OPMC. All compliance costs, including expenses and fees associated with the practice monitor, shall be the Respondent's responsibility.
 9. Respondent shall comply with these probationary 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.