



Department of Health

KATHY HOCHUL
Governor

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

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

October 5, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Deborah Beth Medows, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007

Kevin D. Porter, Esq.
Brian M. Andrews, Esq.
Vigorito, Barker, Patterson, Nichols
and Porter, LLP
115 E. Stevens Avenue, Suite 206
Valhalla, New York 10595

RE: In the Matter of Geoffrey Kamen, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 23-205) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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:nm
Enclosure

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

COPY

In the Matter of

Geoffrey Kamen, M.D. (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 23- 205

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

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

For the Department of Health (Petitioner): Deborah Beth Medows, Esq.
For the Respondent: Kevin Porter, and Brian Andrews, Esqs.

Following the Respondent's disciplinary action by the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (UT 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 Petitioner 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 Utah (UT 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 16, 2021, the UT Board issued a Stipulation and Order (Order) in which the Respondent surrendered his license to practice as a physician in the State of Utah and would not reapply for licensure for five years. The Respondent was also ordered to pay a \$10,000 fine, \$5,000 of which was stayed. The action against the Respondent's Utah license arose from allegations that while practicing telemedicine through a contract with Nationwide Health Advocates, LLC (Nationwide), genetic testing and knee braces were ordered unnecessarily for a Utah patient using the Respondent's license. The Respondent had no direct contact with the patient, and had no chart or file for this patient. The Respondent neither signed nor authorized the order for the testing and braces. When the Respondent learned that his National Provider Identifier (NPI) had been used without his authority, the Respondent terminated his relationship with the company through which he practiced telemedicine in Utah.

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(32), failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient; and Educ. Law § 6530(35), ordering of excessive tests, treatment, or use of treatment facilities not warranted by the patient's condition; if committed in New York State.

At the hearing, the Petitioner recommended imposing the penalties of a three-year stayed suspension of the Respondent's NY license, three years of probation with a practice monitor, a \$10,000 fine, and an unspecified amount of continuing medical education. The Committee concluded that the Petitioner's proposed penalties were neither reasonably related nor proportionate to the charges, and imposed a penalty of censure and reprimand. The Committee found the Respondent credible and forthright; determined that he took full responsibility for his actions and was not at risk of engaging in a similar employment arrangement in the future.

Review History and Issues

The Committee issued its Determination on March 24, 2023. This proceeding commenced on April 10, 2023, 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 May 16, 2023.

The Petitioner asked the ARB to modify the Committee's determination by imposing the penalties the Petitioner recommended at the hearing. The Petitioner argued that the penalty imposed by the Committee was not sufficient to ensure adequate safeguards guaranteeing the Respondent's appropriate practice of medicine. The Petitioner contended that the Respondent's demonstrated a lack of judgment warranted supervision by a practice monitor and a period of probation. The Petitioner also argued that imposing a stayed suspension, requiring continued medical education, and a fine would impress on the Respondent "the responsibility of practicing with vigilance and consciousness." (Petitioner's brief @ p. 7).

The Respondent asserted that the Committee's findings that the Petitioner's proposed penalties were neither proportionate nor reasonably related to the sustained charge were appropriate and supported by the facts and circumstances of this matter.

The Respondent also argued that the Petitioner failed to offer evidence refuting the Committee's determination that the Respondent had taken learned his lesson and was not likely to commit such misconduct in the future. Although the Respondent only submitted a reply brief, indicating no issue with the Committee's determination, his attorneys requested that no sanction be imposed.

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. The ARB modifies the penalty imposed by the Committee by placing a permanent restriction on the Respondent's license, prohibiting him from practicing telemedicine for patients in New York State; suspending the Respondent's NY license for three years. The suspension is stayed while the Respondent serves a three year term of probation with a practice monitor. The suspension and probation terms are tolled unless and until such time as the Respondent chooses to relocate his medical practice to New York State.

The ARB found that the Respondent's conduct resulting in disciplinary action by the UT Board also subjected his NY license to disciplinary action. While the ARB understood that the Respondent was going through an emotional personal situation during the UT Board's investigation; the issue here concerns the Respondent's lack of judgment and inattention to his patient's treatment. The Respondent allowed Nationwide to create a medical record and chart for a patient, and then order unnecessary tests for that patient, essentially ceding his responsibility as a physician to a third party.

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 suspends the Respondent's license to practice medicine in New York for three years, with said suspension stayed unless and until the Respondent returns to practice medicine in New York.
3. The ARB imposes three years of probation to be tolled unless and until the Respondent returns to practice medicine in New York, and pursuant to the terms and conditions attached hereto as Appendix I.
4. The ARB imposes a permanent restriction on the Respondent's license to practice medicine in New York, prohibiting him from practicing telemedicine for any patient in New York State.

Linda Prescott Wilson
Jill Rabin, M.D.
Richard D. Miloné, M.D.
Michael J. Reichgott, M.D., PhD.

In the Matter of Geoffrey Kamen, M.D.

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

Dated: September 29, 2023

A black rectangular redaction box covers the signature of Linda Prescott Wilson.

Linda Prescott Wilson

In the Matter of Geoffrey Kamen, M.D.

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

Dated: September 2nd, 2023



Jill M. Rabin, M.D.

In the Matter of Geoffrey Kamen, M.D.

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

Dated: September 28, 2023


Richard D. Milone, M.D.

In the Matter of Geoffrey Kamen, M.D.

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

Dated: 09/27, 2023

A black rectangular redaction box covers the signature of Michael J. Reichgott. There are some faint handwritten marks above the box, including a triangle and some illegible scribbles.

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

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 N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to any action pursuant to N.Y. Pub. Health Law § 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, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, NY 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 with the Director's designee.
5. During the probation period, Respondent shall practice medicine in New York State only when monitored by a licensed physician, board certified in an appropriate specialty (practice monitor), who is proposed by Respondent and approved in writing by the Director of OPMC.
 - a. Respondent shall make available to the monitor any and all records, or access to the practice as 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 of no fewer than 20 records maintained by Respondent, including patient records, prescribing information, and office records. The review will determine whether Respondent's medical practice is conducted in accordance with generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care, or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

b. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.

c. Respondent shall be solely responsible for all expenses associated with monitoring, including any fees 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 PHL § 230(18)(b). Proof of coverage shall be provided to OPMC's Director.

6. 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. Respondent shall fulfill any remaining probation terms and such additional requirements as the Director may reasonably impose related to the matters set forth in the Determination and Order, or are necessary to protect the public health.

7. OPMC's Director 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 periodic visits or interviews with Respondent and his staff at practice locations or OPMC offices.

8. Respondent shall comply with these probationary terms and shall bear all associated costs. Upon receiving evidence of noncompliance with, or violations of these terms, the Director of OPMC and/or Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.