



Department of Health

KATHY HOCHUL
Governor

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

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

May 1, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Frank G. Rao, M.D.
[REDACTED]

Frank G. Rao, M.D.
[REDACTED]

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

RE: In the Matter of Frank G. Rao, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 23-097) 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.

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 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
Office of Professional Medical Conduct
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.

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 licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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 Ms. 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,



Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB:nm
Enclosure

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

COPY

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IN THE MATTER :
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OF :
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FRANK G. RAO, M.D. :
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DETERMINATION
AND
ORDER

BPMC-23-097

A Notice of Referral Proceeding and Statement of Charges dated February 27, 2023, were duly served upon Frank G. Rao, M.D. (Respondent) pursuant to Public Health Law (PHL) § 230(10)(d)(i). (Exhibits 1-4.) A hearing was held on April 27, 2023, via WebEx videoconference. Pursuant to PHL § 230(10)(e), **STEVEN M. LAPIDUS, M.D.**, Chairperson, **JAMES ROMANELLI, M.D.**, and **SUSAN KSIAZEK, B.S., Pharm.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee. **NATALIE BORDEAUX**, Administrative Law Judge (ALJ), served as the administrative officer.

The Department appeared by David W. Quist, Associate Attorney. The Respondent did not appear. The Hearing Committee received and examined documents from the Department (Exhibits 1-4). A transcript of the proceeding was made. After consideration of the entire hearing record, the Hearing Committee hereby issues this Determination and Order revoking the Respondent's medical license. 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), having disciplinary action taken against his medical license in Tennessee, after the action was instituted by a duly

authorized professional agency of that state, where the conduct resulting in the disciplinary action 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 July 1, 1988, under license number 174826. (Exhibit 3.)

2. By Final Order dated November 4, 2021, the Tennessee Board of Medical Examiners (Tennessee Board) found that the Respondent had issued the following prescriptions to his wife for which he did not create medical records: (1) an April 6, 2018 prescription for 30 pills of oxycodone/acetaminophen 10-325 mg; (2) an August 8, 2018 prescription for 90 pills of Valium 10 mg, with two refills; and (3) a September 21, 2018 prescription for 180 pills of Provigil 200 mg, with two refills. In addition, the Tennessee Board found that the Respondent issued a prescription to himself on December 29, 2018, for 180 pills of Provigil 200 mg, and did not create a medical record for the prescription. The Tennessee Board determined to reprimand the Respondent's medical license; to require the Respondent to successfully complete a course regarding prescribing controlled substances; to restrict him from prescribing opioids for six months on his own or in collaboration with any advanced practice registered nurses or physician assistants; to impose a civil penalty of \$1,000 for the prescriptions written to his wife and failing to create a medical record for those prescriptions; and a civil penalty of \$500 for issuing a prescription to himself and failing to create a medical record for that prescription. (Exhibit 4.)

DISCUSSION

Although the Respondent was duly served by personal service with notice of the hearing (which explicitly states that the proceedings may result in a determination to revoke or suspend his medical license), he failed to respond or appear at the hearing to present any evidence to contest the stated charge. The ALJ determined, upon the Department having established jurisdiction and proper notice, that the hearing could proceed on the merits despite the Respondent's absence.

The Tennessee Board determined that the Respondent's issuance of three prescriptions for controlled substances to his wife, and one such prescription to himself, constituted violations of Tennessee law. Pursuant to the November 4, 2021 Final Order, the Tennessee Board held that the Respondent's failure to create and maintain a medical record for every patient for whom he performs services or provides professional consultation (namely, himself and his wife), violated Rule 0880-02-.15(4)(a) of the Tennessee Compilation of Rules and Regulations, which explicitly imposes a duty on physicians to create and maintain medical records as a component of the standard of care and of minimal competency.

The Tennessee Board determined to reprimand the Respondent; to restrict his ability to prescribe opioids for six months; to require his successful completion of a course on prescribing controlled drugs; and to impose civil penalties of \$1,000 and \$500 for issuing prescriptions to his wife and himself, respectively, and failing to create a medical record for those prescriptions.

(Exhibit 4.)

The Hearing Committee agreed that the Respondent's conduct resulting in the Tennessee Board's disciplinary action would, if committed in New York, constitute misconduct pursuant to Education Law § 6530(32), failing to maintain a record for each patient which accurately reflects the

evaluation and treatment of the patient. 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 recommended censure and reprimand, a \$1,500 fine, and a permanent restriction on the Respondent's ability to prescribe controlled substances to family members and friends.

The Hearing Committee agreed that a serious penalty was warranted in this case, and considered the serious implications of the Respondent's actions that prompted the Tennessee Board's disciplinary measures. The Respondent's failure to document the basis for his issuance of multiple controlled substances prescriptions to his wife, and one such prescription for himself, reflects a propensity to abuse the privileges afforded by his medical license. The Respondent's election not to participate in the hearing offered the Hearing Committee no information to show that the Respondent has acknowledged his errors, has taken steps to correct them, and respects the oversight authority of the Office of Professional Medical Conduct.

After considering the difficulty of enforcing the Department's recommended license restriction and the magnitude of the Respondent's omissions, the Hearing Committee determined that revocation of the Respondent's medical license was the most appropriate penalty to protect patients in the State of New York. By determining to revoke the Respondent's New York medical license, the Hearing Committee deemed the Department's recommended penalties of censure and reprimand and a fine unnecessary.

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's license to practice medicine in the state of New York is hereby revoked pursuant to PHL § 230-a(4).

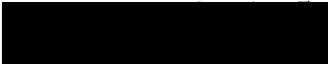

3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

DATED: Apr 28, 2023

Carmel, New York


Steven M. Lapidus, M.D., Chairperson
James Romanelli, M.D.
Susan Ksiazek, B.S., Pharm.

To: Frank G. Rao, M.D.


Frank G. Rao, M.D.


David W. Quist, Associate Attorney
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building - 25th Floor
Empire State Plaza
Albany, New York 12237

IN THE MATTER
OF
FRANK G. RAO, M.D.

STATEMENT
OF
CHARGES

FRANK G. RAO, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1988, by the issuance of license number 174826 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 3, 2021, the Tennessee Board of Medical Examiners (“Board”) issued a Final Order (“Order”), following a hearing. The Findings of Fact in that Order stated that Respondent had issued four prescriptions for controlled substances, three of which were to his wife and one of which was to himself, and had failed to create a medical record for any of those prescriptions. Pursuant to the Order, Respondent was reprimanded, required to enroll in and complete a course addressing the prescribing of controlled drugs, restricted from prescribing opioids for a period of six months, restricted from collaborating with any advanced practice registered nurses or physician assistants for prescribing opioids during that six month period, required to provide notice of the order, and required to pay civil penalties of \$1,500 in total and costs not to exceed \$10,000.

B. 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 Section 6530(32) (failure to maintain accurate 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 the Respondent's license to practice medicine revoked, suspended or having other disciplinary action taken, or having the Respondent's application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered the Respondent's 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(32)) as alleged in the facts of the following:

1. The facts in Paragraphs A and B.

DATE: February 27, 2023
Albany, New York



JEFFREY J. CONKLIN, ESQ.
Deputy Director
Bureau of Professional Medical Conduct