

April 14, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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Amir Mordechai Friedman, M.D.
REDACTED

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NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Amir Mordechai Friedman, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-90) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,

REDACTED

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:

Enclosure

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

In the Matter of

Amir Mordechai Friedman, 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. 14-90

COPY

Before ARB Members D'Anna, Koenig, Grabiec, Wilson and Milone
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Jude Mulvey, Esq.
For the Respondent: Pro Se

The Respondent holds a license to practice medicine in the states of Kansas and New Jersey, in addition to the Respondent's license to practice medicine in New York (License). Following a hearing below, a BPMC Committee determined that Kansas revoked the Respondent's license for professional misconduct in treating a number of patients and for making misrepresentations in medical records. The Committee voted to suspend the Respondent's License for three years and to place the Respondent on probation for five years under the terms that appear as an Appendix to the Committee's Determination. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2014), the Respondent argues that the Committee erred by relying on the Kansas disciplinary decision and by imposing the suspension and probation. After reviewing the record below and the parties' review briefs, the ARB affirms the Committee's Determination in full.

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 charged that the Respondent violated New York Education Law (EL) §§ 6530(9)(b) & 6530(9)(d)(McKinney Supp. 2014) by committing professional misconduct, because the duly authorized professional disciplinary agency from another state, Kansas,

- found the Respondent guilty for improper professional conduct [6530(9)(b)],
and/or,
- took disciplinary action against the Respondent's medical license in that state [6530(9)(d)],

for conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York. The Petitioner's Statement of Charges [Direct Referral Hearing Exhibit 1] alleged that the Respondent's misconduct in Kansas would constitute misconduct if committed in New York, under the following specifications:

- practicing the profession fraudulently, a violation under EL § 6530(2),
- practicing the profession with negligence on more than one occasion, a violation under EL § 6530(3);
- engaging in conduct that evidences moral unfitness, a violation under EL § 6530(20);

- neglecting a patient under and in need of immediate professional care without making reasonable accommodation for the continuation of such care, a violation under EL § 6530(30); and,
- failing to maintain accurate patient records, a violation under EL § 6530(32).

Following the Direct Referral Proceeding, the Committee rendered the Determination now on review. In the Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The Committee determined that the Kansas Board of Healing Arts (Kansas Board) revoked the Respondent's Kansas medical license for failing to follow accepted standards in treating five OB-GYN patients, preparing misleading medical records that applied to some of those patients and for resigning his privileges at a Kansas hospital while under investigation [Hearing Exhibit 5]. The Kansas Board found that the Respondent:

- attempted to manage a delivery on a cell phone;
- ordered Pitocin induction for a patient in one location in Kansas while the Respondent was in a different location;
- failed to perform a sterile speculum examination to diagnose a premature rupture of membranes;
- failed to perform pap smears or cervical cytology screening according to current guidelines and failed to perform other testing to determine the cause of persistent vaginal bleeding; and,
- failed to act on abnormal test results.

The Kansas Board noted that the Respondent failed to present expert testimony on his behalf concerning four of the five patient cases at issue in his hearing. The Respondent did offer two expert witnesses in one of the five cases, the case involving the persistent vaginal bleeding, but the Presiding Officer at the Kansas hearing rejected the expert testimony because the two experts relied on representations by the Respondent. The Presiding Officer found the Respondent less than truthful due to findings that the Respondent made misrepresentations on patient records and due to conflicts between the Respondent's testimony at the Kansas hearing and written statements from the Respondent in the hearing record. The Presiding Officer also noted that the Respondent showed no remorse for his misconduct, which resulted in the Presiding Officer's conclusion that the Respondent remained at risk to repeat his misconduct. The Kansas Supreme Court sustained the decision by the Kansas Board revoking the Respondent's License [Hearing Exhibit 6].

The Committee also found that the Respondent moved his medical practice to New Jersey after leaving Kansas. The New Jersey Board allowed the Respondent a license, but required the Respondent to practice with a monitor and attend weekly psychiatric and therapy sessions. The Respondent also retook his board examinations and obtained recertification by the American Board of Obstetrics and Gynecology (ACOG). The Respondent also gained reinstatement by Medicare and Medicaid, which he had lost following the Kansas revocation order. The Respondent remains in the New Jersey Professional Assistance Program and practices with a monitor at Virtua Health Systems in New Jersey. The Respondent's Department Chair at Virtua, Warren Brandwine, M.D., testified at the Direct Referral Hearing that he required the Respondent to undergo a Focused Professional Practice Evaluation, that

the Respondent has proved to be a very capable physician and that there are no patient complaints or other adverse reports.

The Committee concluded that the conduct that resulted in the Kansas action would have constituted professional misconduct if committed in New York and made the Respondent liable for disciplinary action against his License under EL §§ 6530(9)(b) & 6530(9)(d). The Committee voted to suspend the Respondent's License for three years and to place the Respondent on probation for five years under the terms that appear at Appendix II to the Committee's Determination. The Committee rejected the Petitioner's request for License revocation due to the efforts the Respondent made to work his way back into practice in New Jersey following the Kansas misconduct, including the reinstatements by ACOG, Medicaid and Medicare. The Committee found that despite the progress in rehabilitation, the Respondent still requires serious oversight. The probation terms require continuing medical education in ethics and medical documentation and the Committee provided that the probation will become effective only when the Respondent returns to practice in New York State.

Review History and Issues

The Committee rendered their Determination on December 30, 2013. This proceeding commenced on January 7, 2014, 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 12, 2014.

The Respondent argued that the Committee committed reversible error by relying on the factual findings and revocation by Kansas, finding that the Respondent requires serious

oversight, finding that the Respondent failed to be straightforward with the Committee about his status in New Jersey, making a conclusion regarding the Respondent's moral unfitness, finding that the Respondent lacked remorse about the misconduct and imposing a three year suspension and five years on probation.

In reply, the Petitioner argued that the Respondent may not re-litigate the Kansas action and that the findings by the Kansas Board bind the Respondent in the Direct Referral Proceeding. The Petitioner argued further that the Respondent's challenge to penalty that the Committee imposed demonstrates that the Respondent fails to recognize the seriousness of the Respondent's misconduct. The Petitioner contends that the Respondent's conduct would warrant the revocation of his License.

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 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 affirm the Committee's Determination that the Kansas findings make the Respondent liable for disciplinary action against his License under EL §§ 6530(9)(b) & 6530(9)(d). The ARB also affirms the Committee's Determination to suspend the Respondent's License for three years and to place the Respondent on probation for five years under the probation terms that appear in Appendix II to the Committee's Determination.

The Respondent's brief seeks largely to re-litigate the findings by the Kansas Board. The ARB rejects the Respondent's attempts to re-litigate. The findings and conclusions by the Kansas Board bind the Respondent and the Committee and the ARB. The Respondent already challenged those findings before the Kansas Supreme Court and that Court sustained the Kansas Board [Hearing Exhibit 6]. The findings by the Kansas Board demonstrate that Respondent failed to practice according to accepted standards in treating five patients and that the Respondent produced misleading records. The Kansas Board also found the Respondent untrustworthy and without remorse for his conduct. The Kansas Board findings provide the basis for the Committee's Determination and for the Committee's conclusion that the Respondent's conduct in Kansas would amount to misconduct in New York.

The ARB finds no error by the Committee in their Determination to suspend the Respondent for three years and to place the Respondent on probation. The Respondent engaged in serious misconduct. The Committee found that the Respondent's efforts at rehabilitation provided grounds to reject the Petitioner's request to revoke the Respondent's License. The ARB agrees with the Committee, however, that the rehabilitation efforts are insufficient to this point to relieve the Respondent from any penalty in New York. The Respondent remains in the New Jersey Professional Assistance Program and practices with a monitor at Virtua Health Systems in New Jersey. The suspension and probation will provide a sanction for the Respondent's misconduct and will provide oversight to assure that the Respondent's rehabilitation continues successfully if he returns to practice in New York State.

ORDER

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

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to suspend the Respondent's License for three years and to place the Respondent on probation for five years under the terms that the Committee imposed in Appendix II to the Committee's Determination and Order.

Peter S. Koenig, Sr.
Steven Grabiec, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

To:

Jude Mulvey, Esq.
NYS Department of Health
Rm. 2512 Corning Tower-ESP
Albany, NY 12237

Amir M. Friedman, M.D.

REDACTED

In the Matter of Amir Mordechai Friedman, M.D.

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

Dated: 26 March, 2014

REDACTED


Linda Prescott Wilson

In the Matter of Amir Mordechai Friedman, M.D.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the Matter of Dr. Friedman.

Dated: March 21, 2014

REDACTED

Peter S. Koenig, Sr.

In the Matter of Amir Mordechai Friedman, M.D.

Steven Grabiec, M.D., an ARB Member concurs in the Determination and Order in the

Matter of Dr. Friedman.

Dated: 3/21/ 2014

REDACTED

Steven Grabiec, M.D.

In the Matter of Amir Mordechai Friedman, M.D.

Richard D. Milone, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Friedman.

Date: March 21, 2014

REDACTED

Richard D. Milone, M.D.

In the Matter of Amir Mordechai Friedman, M.D.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Friedman.

Dated: APRIL 9, 2014

REDACTED

John A. D'Anna, M.D.