

March 2, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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Roger Felix, M.D.
REDACTED ADDRESS

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Joel E. Abelove, Esq.
NYS Department of Health
ESP – Corning Tower – Room 2512
Albany, New York 12237

RE: In the Matter of Roger Felix, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-276) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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
Hedley Park Place
433 River Street-Fourth Floor
Troy, New York 12180

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 SIGNATURE

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

In the Matter of

Roger Felix, M.D. (Respondent)

Administrative Review Board (ARB)

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

Determination and Order No. 11-276

COPIES

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

For the Department of Health (Petitioner): Joel E. Abelove, Esq.

For the Respondent:

Richard P. Walsh, Esq., Kenneth Joel Haber, Esq.

The Respondent holds a medical license in New Mexico in addition to the Respondent's license to practice medicine in New York State (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney Supp. 2012), the ARB considers what sanction to impose against the Respondent's License after the Respondent entered into a Stipulation in New Mexico to satisfy disciplinary charges against the Respondent's license in that state. After a hearing below, a BPMC Committee found that the Respondent engaged in conduct in New Mexico that made the Respondent liable for disciplinary action in New York. The Committee voted to restrict the Respondent's License and to censure and reprimand the Respondent. The Petitioner now asks the ARB to overturn the Committee and revoke the Respondent's License. After considering the record below and the parties review submissions, the ARB votes to affirm the Committee's Determination.

Committee Determination on the Charges

The Committee conducted a hearing in this matter 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) by committing professional misconduct, because the duly authorized professional disciplinary agency from another state, New Mexico,

- 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 New Mexico would constitute misconduct if committed in New York, under the following specifications:

- engaging in conduct in the practice of medicine that evidences moral unfitness, a violation under EL § 6530(20); 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 evidence at hearing indicated that the Respondent entered into a Stipulation with the New Mexico Medical Board (New Mexico Board) in September 2010. In the Stipulation, the Respondent agreed to undergo psychotherapy and enter into a treatment contract with the

Monitored Treatment Program; complete courses in medical record management, ethics and professional boundaries; have his medical records monitored by a physician; appear before the New Mexico Board on a quarterly basis and to submit reports to the Board quarterly attesting to his compliance with the Stipulation. The Stipulation followed a complaint that arose from the Respondent's management of medical records. The Respondent wrote in the medical record of a nine-year-old female: "Hot little chick. I'm not sure I can wait until she gets old enough". In addition to the Stipulation with the New Mexico Board, the Respondent lost his employment and professional privileges with ABQ Health Partners. The Committee found that the Respondent had satisfied the terms under the Stipulation and that the Respondent now holds an unfettered license in New Mexico.

The Committee determined that the Respondent's conduct, if committed in New York, would constitute: failing to maintain accurate patient records and engaging in conduct in the practice of medicine that evidences moral unfitness. The Committee found further that the New Mexico Board Stipulation made the Respondent liable for disciplinary action under EL §§ 6530(9)(b) & 6530(9)(d).

The Committee determined that a censure and reprimand, with a License restriction, would protect the people of New York State. The Committee restricted the Respondent's License to require a chaperone be present whenever the Respondent examines or treats a female of any age. The Respondent shall propose the chaperone, subject to the written approval of the Director of the Office for Professional Medical Conduct (OPMC) and in accordance with terms and conditions that the Director may establish. The Committee rejected a request from the Petitioner for License revocation. The Committee noted that the Respondent received extensive evaluations from specialists and councilors, including a psychologist and a forensic psychiatrist, whom the New Mexico Board and the New Mexico Monitored Treatment Program chose. These experts concluded that the Respondent presented no risk to self and others and the specialists found no evidence of paraphilia or impairment.

Review History and Issues

The Committee rendered their Determination on November 18, 2011. This proceeding commenced on December 1, 2011, 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 January 3, 2012.

The Petitioner argued that the Respondent presented no explanation or mitigation for his conduct. The Petitioner noted that the Respondent admitted that his conduct resulted from stress in his personal and professional life. The Petitioner contended that the Respondent's profession will continue to produce stress and create the possibility that the Respondent will repeat his conduct in response to any future stress. The Petitioner argued further that no chaperone could prevent the Respondent from looking at a patient in a sexual way. The Petitioner asked the ARB to revoke the Respondent's License on the grounds that the Respondent has demonstrated that he lacks the moral character to retain a New York License.

The Respondent argued that the record supported the Committee's Determination and that the Committee imposed an appropriate penalty. The Respondent also noted that the Petitioner's brief relied on material from outside the hearing record.

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 Respondent's conduct in New Mexico made the Respondent liable for disciplinary action against his License under EL §§ 6530(b) & 6530(d). Neither party challenged the Committee's Determination on the charges. The ARB also affirms the Committee's Determination to restrict the Respondent's License and to censure and reprimand the Respondent.

The Petitioner requested that the ARB revoke the Respondent's License due to the Respondent's thoughts. No evidence in the record indicated that the Respondent ever harmed or acted inappropriately toward a patient. The ARB finds the Respondent's note in the medical record troubling and we agree with the Committee that the Respondent's conduct required action to assure patient protection. The ARB agrees further with the Committee that a license restriction mandating a chaperone will provide such protection.

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 censure and reprimand the Respondent.
3. The ARB affirms the Committee's Determination to restrict the Respondent's License so that the Respondent may only examine or treat a female patient in the presence of a chaperone.

Peter S. Koenig, Sr.
Datta G. Wagle, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Roger Felix, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Felix.

Dated: 25 February, 2012

REDACTED SIGNATURE

Linda Prescott Wilson

In the Matter of Roger Felix, M.D.

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

Dated: February 23, 2012

REDACTED SIGNATURE

Peter S. Koenig, Sr.

In the Matter of Roger Felix, M.D.

Datta G. Wagle, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Felix.

Dated: Feb. 23rd, 2012

REDACTED SIGNATURE

~~_____~~

Datta G. Wagle, M.D.

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In the Matter of Roger Felix, M.D.

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

Matter of Dr. Felix.

Date January 22, 2012

REDACTED SIGNATURE

Richard D. Milone, M.D.

In the Matter of Roger Felix, M.D.

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

Dated: Feb 24, 2012

REDACTED SIGNATURE

John A. D'Anna, M.D.