



Department  
of Health

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Executive Deputy Commissioner

June 16, 2015

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Karen Andrews, R.P.A.  


Karen Andrews, R.P.A.  
1000 E. Mountain Boulevard  
Wilkes Barre, Pennsylvania 18702

Jude B. Mulvey, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

**RE: In the Matter of Karen Andrews, R.P.A.**

Dear Parties:

Enclosed please find the Determination and Order (No. 15-153) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,



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

Karen Andrews, R.P.A. (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. 15-153

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 B. Mulvey, Esq.  
For the Respondent: No Submission

The Respondent holds a license to practice as a physician assistant in Pennsylvania, in addition to the Respondent's registration to practice as a physician assistant in New York (Registration). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2015), the ARB considers whether to impose a penalty against the Respondent's Registration following Pennsylvania's decision to suspend the Respondent's license due to impairment. Following a hearing, the Committee voted to suspend the Respondent's Registration until the Respondent regains her license in Pennsylvania and to place the Respondent on probation for one year following the suspension. The Petitioner requested review from that Determination and the Petitioner asks the ARB to modify the suspension and extend the probation. After considering the record on review, the ARB votes to modify the conditions for ending the suspension and to extend the time the Respondent must practice on probation following the suspension.

### 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 [Hearing Exhibit 1] alleged that the Respondent committed professional misconduct under the definition in New York Education Law (EL) §6530(9)(d) (McKinney 2015) by engaging in conduct that resulted in disciplinary action by another state and that would have amounted to misconduct if committed in New York. The Petitioner alleged that the Respondent's conduct would have constituted a violation under EL § 6530(8) for being a habitual abuser of alcohol or being a habitual user of drugs or having a psychiatric condition that impairs medical practice. 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 showed that the Respondent entered a Consent Agreement and Order (Pennsylvania Order) with the Commonwealth of Pennsylvania, Board of Medicine (Pennsylvania Board) in December 2012, after Pennsylvania began disciplinary action against the Respondent. In the Pennsylvania Order, the Respondent admitted to suffering from a mental or physical condition or illness that renders the Respondent unable to practice as a physician assistant with reasonable skill and safety to patients by reason of addiction to drugs or alcohol. The Pennsylvania Order suspended the Respondent's Pennsylvania license indefinitely for four years.

The Committee determined that the Respondent's conduct in Pennsylvania would amount to misconduct, if committed in New York, as a violation under EL § 6530(8), for being a habitual abuser of alcohol or being a habitual user of drugs or having a psychiatric condition that impairs medical practice. The Committee found further that the Respondent's conduct made her liable to disciplinary action against her Registration under EL § 6580(9)(d). The Committee voted to suspend the Respondent's Registration until Pennsylvania lifts the suspension in that state and restores the Respondent to full practice without restriction. The Committee ordered further that, if the Respondent returns to practice in New York, the Respondent shall practice on probation for one year following the suspension, until the Respondent satisfies the Director of the Office of Professional Medical Conduct (OPMC) that the Respondent is fit to return to practice as a Physician Assistant. The Probation Terms appear as Appendix 3 to the Committee's Determination. The Terms include the requirement that the Respondent practice with a sobriety monitor during the Probation.

#### Review History and Issues

The Committee rendered their Determination on February 13, 2015. This proceeding commenced on March 2, 2015, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and the Petitioner's brief. The Respondent filed no submission. The record closed when the ARB received the Brief on March 26, 2015.

The Petitioner asks that the ARB modify the penalty the Committee imposed. The Petitioner objects to the provision in the penalty that limits probation to one year, following the lifting of the Pennsylvania suspension and the Respondent's return to New York. The Petitioner

objected that the probation would end even if the Respondent had yet to convince the OPMC Director concerning the Respondent's fitness to return to practice. The Petitioner argued that the Committee delegated to another state New York's responsibility to scrutinize and monitor the Respondent's practice in New York. The Petitioner asked that the suspension remain in effect until the Respondent satisfies the OPMC Director that the Respondent is competent to practice, as demonstrated by retraining, therapy, treatment or rehabilitation. The Petitioner requested further that the Respondent then practice under probation for a minimum of three years, to assure the Respondent's continued compliance with sobriety monitoring requirements.

#### 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 (3<sup>rd</sup> 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 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> 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 (3<sup>rd</sup> 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 Petitioner's brief. We affirm the Committee's Determination that the Respondent committed professional misconduct. Neither party challenged the Committee's Determination on the charges. We affirm the Committee's Determination to suspend the Respondent's Registration and to place the Respondent on probation following the suspension, but we modify the Determination as to the thresholds for removing the suspension and the length of the Probation.

The ARB suspends the Respondent's Registration and we place two conditions on lifting the suspension. First, the Respondent must regain a full license in Pennsylvania, without restriction. Second, the Respondent must appear for a hearing pursuant to PHL §§ 230(7)(a) &

230(7)(c), for a 230(7) Committee to determine if any need exists for the Respondent to undergo an examination to determine if the Respondent may remain impaired by drugs and/or alcohol [PHL § 230(7)(a)] and to determine if the Respondent must undergo a clinical competency examination [PHL § 230(7)(b)]. If no need exists for an examination, then the suspension ends. Following the suspension, the Respondent shall practice on probation for three years under the Terms that appear at Appendix 3 to the Committee's Determination. Those Terms at Section 5 require a sobriety monitor for the Probation's full length, under such conditions as the OPMC Director would specify. The ARB directs that the sobriety monitor shall remain as a condition in the Probation for the Probation's entire length, under such conditions that the OPMC Director will specify. If the 230(7) Committee finds the need for such an examination, then the provisions under PHL § 230(7) will control this process thereafter.

Under PHL § 230(7)(a), a 230(7) Committee can direct a licensee to undergo a medical or psychiatric examination, if the BPMC Committee has reason to believe that the licensee suffers impairment by drugs, alcohol, mental illness or physical disability. The 230(7) Committee would be able to inquire about whether the Respondent has maintained her sobriety. Under PHL § 230(7)(c), a 230(7) Committee can direct a licensee to undergo a competency examination if the 230(7) Committee has reason to believe a licensee has practiced with incompetence. The ARB became concerned with competence in this case due to the amount of time that the Respondent will have spent away from practice. The ARB feels the need for review by a 230(7) Committee on both impairment and competency because the Respondent failed to appear at hearing, so the Committee received no chance to question the Respondent.



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 Registration and to place the Respondent on probation, but we modify the Committee's penalty, as we provided in this Determination.

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

In the Matter of Karen Andrews, R.P.A.

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

Dated: 6 June, 2015

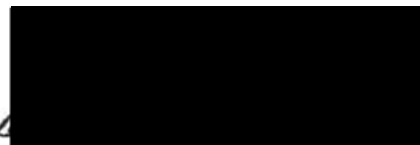


Linda Prescott Wilson

In the Matter of Karen Andrews, R.P.A.

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

Dated: June 6, 2015

A large black rectangular redaction box covers the signature of Peter S. Koenig, Sr.

Peter S. Koenig, Sr.

In the Matter of Karen Andrews, R.P.A.

Steven Grabiec, M.D., an ARB Member, concurs in the Determination and Order in the  
Matter of Ms. Andrews.

Dated: 6/15/ 2015



Steven Grabiec, M.D.

In the Matter of Karen Andrews, R.P.A.

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

the Matter of Ms. Andrews.

Dated: June 7, 2015

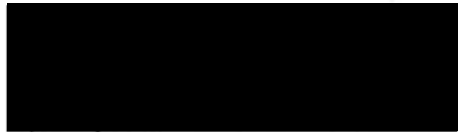


Richard D. Milone, M.D.

In the Matter of Karen Andrews, R.P.A.

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

Dated: June 8, 2015



John A. D'Anna, M.D.