



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

June 15, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Gail Ford, D.O.


Ian H. Silverman, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Gail Ford, D. O.

Dear Parties:

Enclosed please find the Determination and Order (No. 16-206) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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 James F. Horan.

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

Gail Ford, D.O. (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. 16-206

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): Ian H. Silverman, Esq.
For the Respondent: *Pro Se*

The Respondent holds medical licenses in Idaho and New Hampshire in addition to her license to practice medicine in New York State (License). In a hearing below, a BPMC Committee found that the Respondent committed professional misconduct by providing false information and withholding information on an application to renew her New Hampshire license (Application). The misconduct included failing to disclose that the Respondent had surrendered her Idaho license. The Committee voted to suspend the Respondent's License for at least one year, ordered her to undergo an evaluation to determine her fitness to practice and placed her on probation for five years following the suspension. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2016), the Petitioner asks the ARB to modify the procedures for the Respondent to receive the fitness evaluation. The Respondent argued that she provided the answers on the Application while suffering from Post-Traumatic Stress Disorder (PTSD). After reviewing the hearing record and the parties' review submissions, the ARB affirms the Committee, except we modify the procedure for the Respondent to obtain the fitness evaluation.

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.) by committing professional misconduct, because the duly authorized professional disciplinary agency from another state, New Hampshire,

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

- practicing the profession fraudulently, a violation under EL § 6530(2);
- willfully failing to comply with substantial provisions of state law governing the practice of medicine, a violation under EL § 6530(16), and/or
- willfully making or filing a false report required by law or by the Department of Health or by the State Education Department.

Following the Direct Referral Hearing, the Committee rendered the Determination now on review. In the Direct Referral Hearing, 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 before the Committee demonstrated that the Respondent entered into a stipulation with the Idaho Board of Medicine (Idaho Board) on March 1, 2013, in which the Respondent agreed to abstain from practicing medicine or surgery until a determination could be made whether physical or mental impairments affected her ability to practice medicine. The Committee found that the stipulation resulted from complaints involving the Respondent's practice at an Idaho medical facility, Lost Rivers Hospital. The Idaho Board accepted the Respondent's voluntary surrender of her medical license on March 29, 2013 to resolve the misconduct allegations pending against the Respondent. In a June 13, 2013 application to renew her New Hampshire license, the Respondent answered no to questions asking whether she had entered into any agreement with a licensing body, suffered from any emotional disturbance or mental or physical illness, had been reported to the National Practitioner's Data Bank, been subject to an investigation concerning the practice of medicine, or had hospital privileges suspended, limited or denied other than for medical records violations. The New Hampshire Board of Medicine (New Hampshire Board) suspended the Respondent's New Hampshire medical license indefinitely for providing false information on her license renewal application in the form of making false affirmative statements and/or failing to disclose material facts.

At the Direct Referral Hearing, the Respondent admitted that she provided incorrect answers on the New Hampshire application, but she testified that her conduct resulted from an acute flare-up of post-traumatic stress disorder (PTSD). The Respondent also testified about the toll that the Idaho surrender took on her medical practice and explained that her surrender was

due to physical concerns. The Respondent's analyst, Robert Stahn, testified at the Direct Referral Hearing that he began treating the Appellant for PTSD in April 2015.

The Committee concluded that the Respondent's New Hampshire conduct would amount to misconduct in New York as practicing fraudulently, willful failure to comply and willfully making or filing a false report. The Committee found further that the Respondent's conduct and the New Hampshire Board's action made the Respondent liable for disciplinary action against her License under both EL §§ 6530(9)(b) & 6530(9)(d). The Committee rejected the Respondent's contention that her answers on the New Hampshire application resulted from PTSD. The Committee noted that the Respondent began treatment for PTSD over two years after she completed the New Hampshire application and that the Respondent also provided other explanations for her answers on the New Hampshire application, such as stress, long work hours and poor sleep.

The Committee voted to suspend the Respondent's License for a minimum of twelve months, with the provision that the suspension only be lifted after the twelve months upon the Respondent satisfying a condition to appear for a hearing pursuant to PHL § 230(7), so that a BPMC Committee (Evaluation Committee) can determine if a physical or psychiatric examination of the Respondent is necessary. If the Evaluation Committee finds an examination unnecessary and the Respondent has served the 12 month minimum suspension, then the Respondent would practice on probation for five years, under the terms that appear at Appendix II to the Committee's Determination. The Probation Terms require that the Respondent provide 90 days advance written notice of her intent to return to practice in New York State.

Review History and Issues

The Committee rendered their Determination on March 10, 2016. This proceeding commenced on March 21, 2016, 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 replies. The Respondent submitted a reply by e-mail on April 20, 2016 and a revision of that reply by letter on April 22, 2016. The ARB reviewed both replies. The record closed when the ARB received the revised reply.

The Petitioner requested that the ARB modify the provision in the Committee's Determination that ordered the Respondent to appear for a hearing before an Evaluation Committee pursuant to PHL § 230(7). The Petitioner argued that ordering the Respondent to appear before an Evaluation Committee is not within the scope of penalties permitted under PHL § 230-a. The Petitioner stated further that a proceeding under PHL § 230(7) does not determine fitness, but rather whether the Evaluation Committee has reason to believe the licensee may be impaired. The Petitioner requested that the ARB modify the Committee's Determination by suspending the Respondent for a minimum of twelve months, ordering that the Respondent submit to and cooperate with a medical and psychiatric evaluation by a physician, physicians or facility proposed by the Respondent but subject to the prior written approval by the Director of the Office of Professional Medical Conduct (Director) and ordering that the Respondent cause the evaluator to report in writing to the Director regarding the Respondent's fitness to practice medicine.

The Respondent argued that the New Hampshire Board failed to give proper weight to the correlation between the PTSD and the events happening in the Respondent's community. The Respondent alleged that Lost Rivers Hospital filed a complaint against the Respondent with the

Idaho Board the week after the Respondent announced she would be opening a private practice in the same community. The Respondent's reply indicated further that, at the same time as the Idaho Board action was pending, the Respondent underwent surgery following a farm accident, which left the Respondent in a shoulder brace for three months and in a neck brace for three more. The Respondent stated that she filled out the New Hampshire application after her mistreatment by the Idaho Board, while she was experiencing strong PTSD symptoms. The Respondent also indicated that at the time she answered the New Hampshire application, the Idaho Board legal battle was unfinished and one issue yet unresolved was the terminology concerning the state of her Idaho license. One of the questions on the New Hampshire application asked about termination of hospital privileges. The Respondent stated that Lost Rivers Hospital terminated her three weeks after major hospitalizations. The Respondent consulted an attorney, who told the Respondent that the Hospital could not fire the Respondent, but just say that her services were no longer needed. The Respondent indicated that she answered the termination question on the New Hampshire application according to what the attorney said was correct.

The Respondent's replies stated that she went to a program in California to receive a complete mental health evaluation and the evaluation diagnosed the Respondent with PTSD and depression. She gave no indication when that evaluation occurred. The Respondent also discussed the toll that the Idaho surrender took on her medical practice and explained that her surrender was due to physical concerns.

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' submissions. We affirm the Committee's Determination that the Respondent committed professional misconduct by submitting false answers on the New Hampshire Application. We affirm the Committee's Determination to suspend the Respondent's License for a minimum of one year, that she should undergo an evaluation regarding her fitness to practice medicine and that she should practice on probation for five years, under the terms that appear as Appendix II to the Committee's Determination.

In order to sustain a charge that a licensee practiced medicine fraudulently, a hearing committee must find that (1) a licensee made a false representation, whether by words, conduct or by concealing that which the licensee should have disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation, Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (3rd Dept. 1966), aff'd, 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). A committee may infer the licensee's knowledge and intent properly from facts that such committee finds, but the committee must state specifically the inferences it draws regarding knowledge and intent, Choudhry v. Sobol, 170 A.D.2d 893, 566 N.Y.S.2d 723 (3rd Dept. 1991). To prove willfully filing a false report, a committee must establish that a licensee made or filed a false statement willfully, which requires a knowing or deliberate act, Matter of Brestin v. Comm. of Educ., 116 A.D.2d 357, 501

N.Y.S.2d 923 (3rd Dept. 1986). Merely making or filing a false report, without intent or knowledge about the falsity fails to constitute professional misconduct, Matter of Brestin v. Comm. of Educ., (supra). A committee may reject a licensee's explanation for erroneous reports (such as resulting from inadvertence or carelessness) and draw the inference that the licensee intended or was aware of the misrepresentation, with other evidence as the basis, Matter of Brestin v. Comm. of Educ., (supra).

The Committee rejected the Respondent's explanation that she gave false answers on the New Hampshire Application due to PTSD. The Committee's Determination noted that the Respondent cited other reasons for the incorrect answers and the Respondent's replies raised additional reasons for the false answers. The Committee found that the Respondent rationalized her untruths by attributing them to the New Hampshire Board's interpretation of her answers as "misinformation" at the time. The Committee found that such rationalizations diminished the sincerity of the Respondent's admissions. The Committee noted that in June and November 2013, the Respondent wrote to the New Hampshire Board that she answered no to Application questions, because to answer yes would have made her feel like a criminal. The ARB concludes that preponderant evidence in this record provided the Committee the grounds to reject the Respondent's explanations and to find that she knowingly answered falsely on the New Hampshire Application with the intent to mislead the New Hampshire Board. The Respondent's misconduct made her liable for disciplinary action against her License pursuant PHL §§ 6530(9)(b) & 6530(9)(d).

Under PHL §§ 230-a(2)(a), 230-a(2)(c) & 230-a(2)(e), the penalties for professional misconduct include suspension of a license: wholly, for a fixed period of time; wholly, until a licensee completes a course of therapy or treatment prescribed by BPMC and wholly, until a

licensee completes the terms and conditions of a BPMC order. The ARB agrees with the Committee that the Respondent should spend one year certain on suspension for her misconduct. The ARB agrees further with the Committee that the Respondent should undergo an evaluation to determine her fitness to practice, prior to the time that she returns to practice. Although there were no charges that the Respondent practiced while impaired, the New York Courts have upheld penalties previously which required physicians to undergo psychiatric examinations and treatment in cases in which there were no charges relating to impaired practice, Matter of Hening v. Ambach, 1332 A.D.2d 783, 517 N.Y.S.2d 331 (3rd Dept. 1987); Matter of Hodge v. NYS Dept. of Education, 172 A.D.2d 891, 568 N.Y.S.2d 188 (3rd Dept. 1991). The Respondent herself raised her mental and physical health as issues by discussing the diagnoses with PTSD and depression and the surrender in Idaho due to physical concerns. Under PHL § 230-a(9), BPMC may impose probation as a part of any disciplinary penalty. The ARB also agrees that the Respondent should practice on probation for 5 years following the suspension under the probation terms that appear at Appendix II to the Committee's Determination. Those terms include the provision that the entire penalty will be tolled while the Respondent is not practicing medicine in New York State. The ARB also affirms the Committee's Order that the Respondent must provide the OPMC Director with 90 days written notice concerning the Respondent's intent to return to practice in New York.

The ARB modifies the Committee's Order that the Respondent appear before and Evaluation Committee pursuant to PHL § 230(7). The Petitioner's brief argued that ordering the Respondent to appear before an Evaluation Committee is not within the scope of penalties permitted under PHL § 230-a and that a proceeding under PHL § 230(7) does not determine fitness, but rather whether the Evaluation Committee has reason to believe the licensee may be

impaired. The ARB votes pursuant to PHL §§ 230-a(2)(c) & 230-a(2)(e) to suspend the Respondent, in addition to the 12 months certain, until such time as the Respondent 1) submits to and cooperates with a medical and psychiatric evaluation by a physician, physicians or facility proposed by the Respondent but subject to the prior written approval by the Director and then 2) causes the evaluator to report in writing to the Director regarding the Respondent's fitness to practice medicine. If the Respondent completes the evaluation and report process during the one year certain suspension and the evaluator finds the Respondent fit to practice, then the suspension will end after one year and the Respondent can begin practice under probation. If the Respondent has failed to complete the process at the end of the one year certain suspension, then the Respondent shall remain suspended from practice until the Respondent has complied with this Determination.

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 for a minimum of one year, to order the Respondent to undergo an evaluation of her fitness to practice medicine and to place the Respondent on probation for five years following the suspension.**
- 3. The ARB modifies the Committee's Determination concerning the procedure for evaluating the Respondent's fitness.**

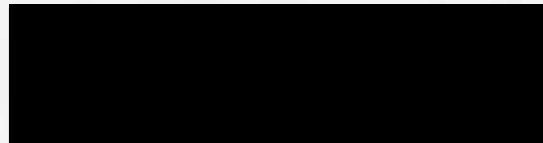
**Peter S. Koenig, Sr.
Steven Grabiec, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.**

In the Matter of Gail Ford, D.O.

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

Matter of Dr. Ford.

Dated: 8 June, 2016



Linda Prescott Wilson

In the Matter of Gail Ford, D.O.

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

Dated: June 6, 2016

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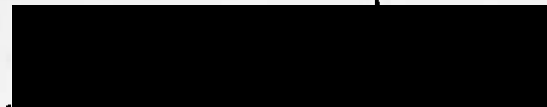
Peter S. Koenig, Sr.

In the Matter of Gail Ford, D.O.

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

Matter of Dr. Ford.

Dated: 6/6/, 2016



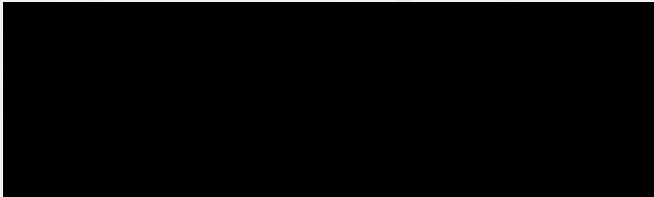
Steven Grabiec, M.D.

In the Matter of Gail Ford, D.O.

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

the Matter of Dr. Ford.

Dated: June 6, 2016

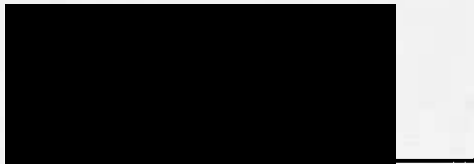


Richard D. Milone, M.D.

In the Matter of Gail Ford, D.O.

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

Dated: June 6, 2016



John A. D'Anna, M.D.