



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

January 4, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Gregory Donald Denzel, D.O.
2928 W. 10th Street
Greeley, Colorado 80634-5426

David W. Quist, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Gregory Donald Denzel, D.O.
[REDACTED]

Gregory Donald Denzel, D.O.
[REDACTED]

Gregory Donald Denzel, D.O.
[REDACTED]

RE: In the Matter of Gregory Donald Denzel, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 17-007) 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.

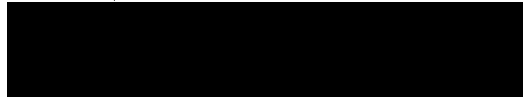
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either certified 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 large 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

Gregory Donald Denzel, D.O. (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. 17-007

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): David W. Quist, Esq.
For the Respondent: No submission**

The Appellant holds a medical license in Colorado, in addition to his 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 2016), the ARB considers whether to take disciplinary action against the Respondent's License following disciplinary action against the Respondent's Colorado license for unprofessional conduct in prescribing Suboxone. After a hearing below, a BPMC Committee suspended the Respondent's License until the full restoration of the Respondent's Colorado license. The Petitioner requests in this proceeding that the ARB overturn the Committee's Determination, impose a definite suspension and place the Respondent on probation thereafter. The Respondent made no appearance at the hearing below and made no submission in response to the Petitioner's request. After considering the hearing record and the Petitioner's review submission, the ARB votes to overturn the Committee, to suspend the Respondent's License for two years, to stay the suspension and to place the Respondent on probation for five years under the terms that appear as the Appendix to this Determination.

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. 2016) by committing professional misconduct, because the duly authorized professional disciplinary agency from another state,

- 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 Colorado would constitute misconduct if committed in New York, under the following specification: practicing the profession with negligence on more than one occasion, a violation under EL § 6530(3). 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 Stipulated and Final Order (Colorado Order) with the Colorado Medical Board. In the Colorado Order, the Respondent admitted to engaging in unprofessional conduct by failing to examine

personally a number of patients before making medical diagnoses and prescribing Suboxone to the patients. The Colorado Medical Board admonished the Respondent, placed him on probation for five years and prohibited the Respondent from solo practice. The probation terms included a ban on prescribing, maintaining a supply of, administering or dispensing Suboxone. The Order also required the Respondent to undergo an assessment to determine the need for remedial education and/or training, to comply with the outcome of such assessment and to undergo training in ethics.

The Committee found that the Respondent's conduct in Colorado would constitute misconduct in New York and then sustained all charges against the Respondent. The Committee found the strict terms under the Colorado Order warranted due to the potential for harm. The Committee voted to suspend the Respondent's License until the Respondent completes successfully the probation terms under the Colorado Order and the Respondent regains a full and unrestricted license in Colorado.

Review History and Issues

The Committee rendered their Determination on August 24, 2016. This proceeding commenced on August 29, 2016, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and Petitioner's brief. The Respondent made no submission nor reply. The record closed when the ARB received the Petitioner's brief on October 6, 2016.

The Petitioner requests that the ARB overturn the sanction that the Committee imposed.

The Petitioner argued that the sanction fell outside the list of sanctioned penalties under PHL § 230-a, that sanction cedes to the Colorado Board the determination about the Respondent's

fitness and compliance, with no assessment by New York's Office for Professional Medical Conduct, and that the sanction provides no New York probation following the suspension. The Petitioner requests that the ARB order a suspension for a fixed time, to be followed by five years on probation, with terms that would include a practice monitor, prescribing restrictions and continuing medical education.

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 Petitioner's brief. The ARB affirms the Committee's Determination to sustain the charges against the Respondent. Neither party challenged the Committee's Determination on the charges. The ARB overturns in full the Committee's determination on sanction. The ARB votes 5-0 to suspend the Respondent's License for two years, to stay the suspension and to place the Respondent on probation for five years, under the terms that appear at the Appendix to this Determination.

We agree with the Petitioner that the sanction the Committee imposed fell outside the list of permissible penalties at PHL §230-a. Under PHL §230-a(2), a Committee may suspend a license wholly for a fixed period of time or until a licensee completes retraining, treatment rehabilitation and wholly or partially until a licensee satisfies a BPMC Order. A Committee may not impose an indefinite suspension Ostad v. New York State Dept. of Health, 309 A.D.2d 989,

766 N.Y.S.2d 441 (3rd Dept. 2003) and the provisions in PHL 230-a say nothing about permanent suspensions.

The Committee placed the Respondent on suspension until the Respondent regains a full and unrestricted practice in Colorado. It is unclear from the Colorado Order as to when the Respondent could regain a full and unrestricted Colorado license. The Colorado Order required the Respondent to undergo a clinical competence assessment and to then undergo any intervention, remedial education or training program that the assessment determined to be necessary. There was no information in the record as to whether the Respondent has had the assessment or whether the Respondent must undergo any training.

It is also unclear from the Colorado Order whether the Respondent can ever regain a full and unrestricted Colorado license. The Colorado Order placed the Respondent on probation for five years [Direct Referral Exhibit 4, paragraph 11] and the Colorado Order made clear that the Colorado ban on Suboxone would last for the duration of the probation [Direct Referral Exhibit 4, paragraph 14]. The Colorado Order also banned the Respondent from solo practice, but there was no provision in that ban that restricted the ban to only the probation period [Direct Referral Exhibit 4, paragraph 13]. If the solo practice ban is permanent, then the Respondent will never be able to regain a full Colorado license, so the New York suspension under the Committee's sanction would be permanent.

The ARB agrees with the Petitioner that the sanction against the Respondent should include a suspension for a fixed time period. The ARB suspends the Respondent's License for two years and stays the suspension in full. The ARB also agrees that the Respondent should practice on probation for five years after his return to practice in New York, so that New York may assess the Respondent's fitness to practice. The attached probation terms include a

Suboxone ban for four of the five years under the probation as well as requirements that the Respondent practice with a monitor for the entire probation period, maintain a prescribing log for the entire period and undergo continuing medical education in the area of ethics.

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 overturns the Committee's Determination to suspend the Respondent's License until such time as the Respondent regains a full and unrestricted license in Colorado.**
- 3. The ARB suspends the Respondent's License for two years, stays the suspension and places the Respondent's License on probation for five years, under the terms that appear as the Appendix to this Determination.**

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

Appendix

TERMS OF PROBATION

1. The Respondent's conduct shall conform to the moral and professional standards of conduct in his profession and in governing law. Any act of professional misconduct by the Respondent as defined by New York Education Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York Public Health Law § 230 (10) or (19), or both.
2. The Respondent shall remain in continuous compliance with all requirements of New York Education Law § 6502, including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. The Respondent shall not exercise the option provided in New York Education Law § 6502(4) to avoid registration and payment of fees.
3. The Respondent shall provide to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, Suite 355, 150 Broadway, Albany, New York, 12204, at least every six months and as otherwise requested, or within thirty days of any change in the information, the following information in writing:
 - a. a full description of the Respondent's employment and practice;
 - b. all professional and residential addresses and telephone numbers within and outside of New York State;
 - c. any and all information concerning investigations, arrests, charges, convictions or disciplinary actions by any local, state, or federal agency;
 - d. any and all information concerning investigations, terminations, or disciplinary matters by any institution or facility.
4. The Respondent shall provide to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, Suite 355, 150 Broadway, Albany, New York, 12204, copies of all applications relating to the practice of medicine, including but not limited to, privileges, insurance, and licensure, in any jurisdiction, concurrent with their submission.

5. The Respondent shall cooperate fully with, and will respond within two weeks, to OPMC requests to provide written periodic verification of Respondent's compliance with these terms of probation. Upon the OPMC Director's request, the Respondent shall meet personally with a person designated by the Director.
6. The probation period shall toll when the Respondent is not engaged in active medical practice in New York State for a period of thirty consecutive days or more. The Respondent shall notify the OPMC Director, in writing, if the Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive thirty-day period. The Respondent shall then notify the Director again at least fourteen days before returning to active practice. Upon the Respondent's return to active practice in New York State, the probation period shall resume, and the Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose.
7. The OPMC Director, or his/her designee, may review the Respondent's professional performance. This review may include but shall not be limited to:
 - a. A review of office records, patient records, hospital charts, and/or electronic records; and
 - b. Interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. The Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients, and contain all information required by State rules and regulations concerning controlled substances.
9. Within thirty days of the effective date of this Determination and Order, the Respondent shall practice only when monitored by a licensed physician, board certified in an appropriate specialty, ("Practice Monitor") proposed by Respondent and subject to written approval of the OPMC Director.
 - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit the Respondent's medical practice on a random unannounced basis at least monthly and shall examine a selection (no less than 20) of records maintained by the Respondent. The review will determine whether the

Respondent's charting is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation from accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

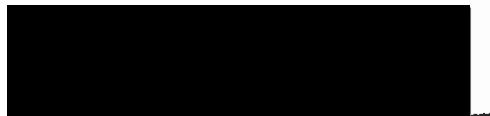
- b. The Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. The Respondent shall cause the practice monitor to report quarterly, in writing, to the OPMC Director.
 - d. The Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the OPMC Director within 30 days after the date of this Determination and Order.
10. The Respondent shall maintain a prescribing log during the period of probation. Such log shall include, at minimum, the following information with regard to the prescription: the patient name, the date of prescription, the name of the medication prescribed, as well as the quantity of such medication prescribed and prescribed dosage, and the number of days' supply prescribed. The log shall be subject to review by the Respondent's Practice Monitor. The Respondent shall cause the Monitor to examine this log, and include, as part of Practice Monitor's review of the medical records treated by the Respondent, an examination of medical records identified through examination of the log entries.
11. For the first four years of the period of probation, the Respondent shall not prescribe, maintain a supply of, administer or dispense any formulation of or combination including buprenorphine, including but not limited to Suboxone, for purposes of treatment for addiction.
12. Within three months of the effective date of this Determination and Order, the Respondent shall enroll in and successfully complete a course of Continuing Medical Education in the area of medical recordkeeping. This course is subject to the prior written approval of the OPMC Director and courses taken in the past may not be used to fulfill this requirement.

13. The Respondent shall adhere to Federal and state guidelines and professional standards of care with respect to infection control practices. The Respondent shall insure education, training and oversight of all office personnel involved in the medical care, with respect to these practices.
14. The Respondent shall comply with these Terms of Probation, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with or a violation of these terms, the OPMC Director and/or the Board for Professional Medical Conduct may initiate a violation of probation proceeding, and/or any other proceeding authorized by law, against the Respondent.

In the Matter of Gregory Donald Denzel, M.D.

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

Dated: December 2, 2016

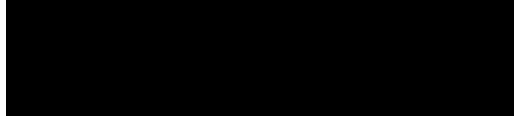
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Peter S. Koenig, Sr.

In the Matter of Gregory Donald Denzel, M.D.

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

Dated: 6 December, 2016



Linda Prescott Wilson

In the Matter of Gregory Donald Denzel, M.D.

Richard D. Milone, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Denzel.

Dated: 12/5/16 2016


Richard D. Milone, M.D.

In the Matter of Gregory Donald Denzel, M.D.

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

Dated: Dec. 7, 2016



John A. D'Anna, M.D.