



Department of Health

ANDREW M. CUOMO
Governor

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

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

May 29, 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Tsui, Esq.
NYS Department of Health
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237

James Lantier, Esq.
Smith Sovik Kendrick & Sugnet, P.C.
250 South Clinton Street, Suite 600
Syracuse, New York 13202

RE: In the Matter of Mohamed Khalaf, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 18-120) 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.

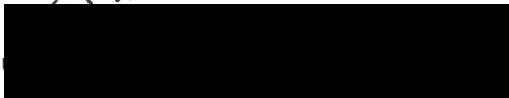
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if **said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified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

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

In the Matter of

Mohamed Khalaf, 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. 18-120

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): Paul Tsui, Esq.
For the Respondent: James Lantier, Esq.

After a hearing below, a BPMC Committee determined that the Respondent-Obstetrician committed professional misconduct in caring for two patients. As a sanction, the Committee voted to revoke 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 2018), the Respondent asks the ARB to overturn the Committee's findings concerning the care for one of the patients and to reduce the sanction the Committee imposed. After considering the record below and the parties' review submissions, the ARB votes 5-0 to affirm the Committee in full.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(2-6), 6530(25) & 6530(32) (McKinney Supp. 2017) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- practicing medicine with negligence on more than one occasion,

- practicing medicine with gross negligence,
- practicing medicine with incompetence on more than one occasion,
- practicing medicine with gross incompetence,
- delegating professional responsibilities to a person when the licensee knows the person lacks the qualifications by training, experience or licensure to perform the responsibilities, and
- failing to maintain accurate patient records.

The charges related to the care for two Patients (A and B). This Determination refers to the Patients by initials to protect patient privacy. Following a hearing on the charges, the Committee rendered the Determination now on review.

The Committee found that the Respondent provided care to Patient A, who was 16 years old and who suffered from juvenile diabetes. The Patient presented at Eastern Niagara Hospital (Eastern) in early labor at 23 weeks gestation on December 29, 2012. Following an examination, the Respondent ordered Pitocin to induce delivery of a fetus expected to be nonviable. The Respondent did not stay at the hospital to attend the delivery, but left post-partum orders at 2:00 p.m. and instructed the nursing staff to handle the delivery. The delivery occurred at 4:45 p.m. and the child was pronounced dead at 5:30 p.m. The Respondent visited Patient A on December 29, 2012 several hours after the delivery, but the Respondent neither documented the visit nor conducted any examination on the Patient. The Respondent issued a telephone order on December 30, 2012 to discharge the Patient, which occurred at 10:35 a.m. The Respondent entered a discharge note documenting that he examined the Patient on December 30, 2012. The Committee found that the Respondent neither visited nor examined Patient A on December 30, 2012.

The Respondent treated Patient B, who presented with a history of obstetrical complications, between June and November 2013. The Committee found that the Respondent failed to test, evaluate or manage Patient B adequately for high blood sugar during office visits on October 16 and November 13, 2013, failed to monitor the Patient's blood sugar from November 8 to November 27, 2013 and failed to treat and manage the Patient adequately for

gestational diabetes. The Committee found that the Respondent failed to test the Patient's blood sugar level and failed to evaluate the Patient adequately during a November 27, 2013 office visit at which the Patient complained of abdominal pain, nausea, vomiting and weight loss of fifteen pounds over the prior two weeks.

Patient B presented at Eastern at 10 a.m. on November 28, 2013 and was admitted with complaints of fever, chills, abdominal pain, nausea and vomiting. The Committee found that the Respondent failed to attend or evaluate the Patient adequately and failed to order timely and appropriate blood work to check the Patient's blood sugar. The Committee found that the Respondent left it to the hospital staff to conduct necessary evaluation and testing, without checking to make sure that the staff did so. The Respondent finally ordered blood tests at 2:05 p.m., after the Respondent had been informed of the Patient's condition at 10:05 a.m. The Committee found this untimely. At 2:37 p.m., the nursing staff advised the Respondent that the Patient was very sick and that the Respondent needed to come into Eastern. By the time the Respondent arrived, the Patient had been transferred to Eastern's intensive care unit. The Patient was then transferred to Women and Children's Hospital of Buffalo, where the Patient was found to be in diabetic ketoacidosis. The Patient was then taken to Millard Fillmore Hospital, where the Respondent delivered the Patient's child by Cesarean section on November 29, 2013. The child died about four hours later.

The Committee sustained charges that the Respondent practiced with negligence on more than one occasion and incompetence on more than one occasion in treating Patients A and B. The Committee found that the care for Patient B also amounted to practicing with gross incompetence and gross negligence. The Committee also found that the Respondent delegated responsibilities improperly to nurses at Eastern. The Respondent insisted that he did not abandon Patient A. The Committee noted that the misconduct specification was not abandonment, but rather improper delegation. The Committee found no compelling reason that would justify the Respondent failing to attend the delivery by the Respondent's Patient. The Committee found that the Respondent committed fraud in medical practice by falsifying a chart entry documenting a December 30, 2013 examination of Patient A which never occurred. The Committee found

further that the false entry for December 30, 2013 constituted failure to maintain accurate medical records. The Committee also found that the Respondent failed to maintain accurate medical records for Patient B based deficiencies in documentation. The Respondent attempted to defend missing information on Patient B's chart as being implied or inferred. The Committee found the documentation in both records poor, incomplete and misleading.

Upon making determination on the charges, the Committee considered an appropriate penalty. During that consideration, the Committee became aware that the Respondent was previously suspended from practice in New York State for five years in 2006 under charges the Committee described as remarkably similar to those at issue in this proceeding.

The Committee voted to revoke the Respondent's License. The Committee concluded that the Respondent lacked understanding of the serious deficiencies in his care for patients and was unable or unwilling to address the deficiencies. The Committee concluded that the Respondent had received a chance to improve his practice, but demonstrated an unwillingness to do so. The unwillingness resulted in the Committee's conclusion that no penalty that allowed the Respondent to continue in medical practice would protect the public adequately.

Review History and Issues

The Committee rendered their Determination on January 8, 2018. This proceeding commenced on January 30, 2018, 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 March 5, 2018.

The Respondent raised no challenge to the Committee's conclusions concerning the care for Patient A. The Respondent argued that the Committee failed to evaluate fully the relative credibility of the Respondent and did not consider all relevant facts in determining Patient B's

credibility. The Respondent argued further that the Committee imposed an excessive penalty and requested that the ARB reduce the penalty.

The Petitioner replied that the power to determine credibility lies with the administrative fact-finder who had the opportunity to view and assess witness demeanor. The Petitioner urged the ARB defer to the Committee's credibility findings. The Petitioner argued that the specifications the Committee affirmed and the Respondent's prior suspension on similar charges provide ample grounds on which to revoke the Respondent's 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 on the charges arising from the treatment of Patients A and B. The Respondent made no challenge to the findings and conclusions concerning the treatment for Patient A, including the finding that the Respondent practiced fraudulently. The ARB also affirms the Determination to revoke the Respondent's License.

The Respondent challenged the Committee's determination to credit the testimony by Patient B and to reject the testimony by the Respondent. The ARB defers to the Committee as the fact-finder as to their Determination on credibility. The Committee gave ample reasons for rejecting the Respondent as a credible witness, including the Respondent's failure to document matters in the medical chart for Patient B and his testimony that matters can be inferred or

implied from the charts. The Committee also made the unchallenged finding that the Respondent practiced with fraud by falsifying the December 30, 2012 entry in Patient A's chart. The Committee could certainly consider the Respondent's fraudulent conduct in assessing whether to trust the Respondent in his testimony. The evidence the Committee found credible demonstrated that the Respondent practiced with gross negligence and gross incompetence in failing to monitor and address Patient B's blood sugar levels and failed to maintain an accurate medical record.

The ARB affirms the Committee's Determination to revoke the Respondent's License. The evidence before the Committee demonstrated that the Respondent practiced with gross negligence, gross incompetence and fraud. The record also revealed that the Respondent was suspended from practice on similar charges in the past. Despite that suspension, the Respondent failed to correct the deficiencies in his practice. The Committee found the Respondent showed no understanding of his deficiencies and no willingness to acknowledge and address the deficiencies. The ARB sees no reason to believe that a penalty any less severe than revocation could protect the public.

The Respondent's brief argues that the Respondent no longer practices obstetrics and that there have been no findings of misconduct relating to the Respondent's practice of general medicine. The ARB finds that argument unconvincing. The Respondent failed in diagnosing Patient B's condition. Diagnosis is basic to all medicine. The Respondent also falsified a medical record. Integrity is also basic to all medical practice. The Respondent's misconduct demonstrates his unfitness to practice medicine 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 revoke the Respondent's License.

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 Mohamed Khalaf, M.D.

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

Dated: May 4, 2018

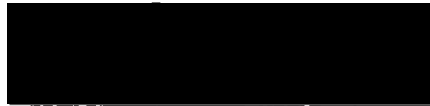
A large black rectangular redaction box covering the signature of Linda Prescott Wilson.

Linda Prescott Wilson

In the Matter of Mohamed Khalaf, M.D.

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

Dated: May 10, 2018



Peter S. Koenig, Sr.

In the Matter of Mohamed Khalaf, M.D.

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

Dated: 5/7, 2018



Steven Grabiec, M.D.

In the Matter of Mohamed Khalaf, M.D.

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

Dated May 22, 2018



Richard D. Milone, M.D.

In the Matter of Mohamed Khalaf, M.D.

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

Dated: MAY 4, 2018


John A. D'Anna, M.D.