



## Department of Health

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

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

January 31, 2017

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Neelam Taneja Uppal, M.D.  
P.O. Box 1002  
Largo, Florida 33779

Neelam Taneja Uppal, M.D.  
Fort Tryon Rehab & HC  
801 W. 190<sup>th</sup> Street  
New York, New York 10040

Neelam Taneja Uppal, M.D.  
[REDACTED]

Timothy J. Mahar, Esq.  
NYS Department of Health  
Corning Tower Room 2438  
Empire State Plaza  
Albany, New York 12237

**RE: In the Matter of Neelam Taneja Uppal, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 17-33) 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.

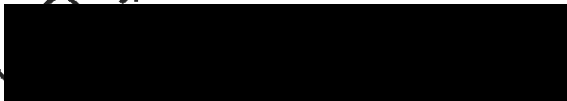
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either certified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

COPY

In the Matter of

Neelam Taneja Uppal, 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. 17- 33

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): Timothy J. Mahar, Esq.  
For the Respondent: *Pro se*

The Respondent holds a medical license in Florida, in addition to her license to practice medicine in the State of New York (License). After a hearing below, a BPMC Committee found that Florida disciplined the Respondent for misconduct in practice and that the Respondent then made misrepresentations concerning the Florida disciplinary action on the Respondent's application to renew her License. The Committee voted to censure and reprimand the Respondent and to place her on probation for two years. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2016), both parties request modifications to the Committee's Determination. After considering the record below and the parties review submissions, the ARB affirms the Committee's Determination on the charges, we overturn the sanction the Committee imposed and we revoke the Respondent's License.

### 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) and the general hearing procedures (General Hearing) at PHL §230(10)(e). In the Direct Referral Hearing, 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:

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

- practicing the profession with negligence on more than one occasion, a violation under EL § 6530(3);
- practicing the profession with gross negligence, a violation under EL § 6530(4), and/or
- failing to maintain accurate patient records, a violation under EL § 6530(32).

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). In the General Hearing, the Petitioner charged that the Respondent answer falsely on her New York License renewal application with the intent to conceal the Florida disciplinary action. The Petitioner alleged that such conduct constituted:

- practicing the profession fraudulently, a violation under EL § 6530(2); and/or,
- willfully filing a false report, a violation under EL § 6530(21).

Following the hearing, the Committee rendered the Determination now on review.

The evidence before the Committee demonstrated that the Florida Board of Medicine (Florida Board) issued a January 7, 2015 Final Order that found the Respondent guilty of professional conduct for failure adequately to maintain patients' medical records and inappropriate patient care and prescription practices. The Florida Board found that the Respondent's records pertaining to three patients failed to demonstrate treatment rationales indicating sound clinical judgments, vital signs, histories, physical assessments and communications between the patients' outside healthcare providers. The Florida Order found that the Respondent failed to perform physical examinations and testing, render proper diagnoses, monitor patients properly for effects of prescribed drugs and monitor whether such drugs were medically necessary. The Florida Board suspended the Respondent for six months, placed the Respondent on probation for two years with a monitor, imposed a \$10,000.00 fine and ordered five hours of a continuing medical education course (CME) in ethics and completion of a course in medical records through the Florida Medical Association.

The Committee found that the Respondent submitted a January 5, 2016 application to renew her License (Renewal Application) in which the Respondent answered falsely intentionally by stating "no" to a question concerning whether she had ever been revoked,

suspended, put on probation, fined, censured, reprimanded or otherwise disciplined by any licensing or disciplinary authority, since the time of her most recent renewal application.

The Committee found that the Respondent's conduct in Florida would have amounted to misconduct in New York as practicing with negligence on more than one occasion and failure to maintain accurate medical records. The Committee found further that the Florida disciplinary action made the Respondent liable for disciplinary action against her License pursuant to EL §§ 6530(9)(b) & 6530(9)(d). The Committee found further that the Respondent's intentional false answer on the License renewal application constituted practicing medicine fraudulently and filing a false report. In considering a sanction for the Respondent's conduct, the Committee indicated that they determined that the Respondent had a propensity for misrepresenting the truth. In addition to the false answer on the renewal application, the Committee found repeated contradictions in the Respondent's hearing testimony. The Committee voted to censure and reprimand the Respondent and to place her on probation for two years, with provisions which included a practice supervisor.

#### Review History and Issues

The Committee rendered their Determination on August 16, 2016. This proceeding commenced on August 29, 2016, when the ARB received both parties' Notices requesting Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and reply brief and the Respondent's brief and reply brief. The Respondent received a short extension to file the reply brief, but the ARB rejected the Respondent's request for a longer extension. The record closed when the ARB received both parties' response briefs on or about October 27, 2016.

The Petitioner requested that the ARB overturn the Committee and revoke the Respondent's License. The Petitioner argued that the Committee imposed a Censure and Reprimand and probation for both the Respondent's conduct in Florida and the false answers on the Respondent's Renewal Application. The Petitioner stated that for the Florida misconduct alone, the Florida Board imposed an actual suspension, fine, CME and probation with supervision. The Petitioner noted that the Respondent conceded that she left Florida without serving any portion of the Florida penalty. The Petitioner pointed out further, that in addition to the Respondent's false answers on the renewal application, both the Florida Board and the Committee found the Respondent unreliable in her assertions. The Petitioner's Brief concludes that the Respondent violated clinical standards to a degree that warrants actual suspension and close practice supervision, among other penalties and that she is unreliable in truthfully reporting facts.

The Respondent contended that the ARB should disregard the findings by the Florida Board. She argued that New York and Florida have different misconduct standards, so the Florida Board's findings do not prove misconduct in New York. The Respondent argued further that she answered truthfully on the renewal application because the Florida findings were not misconduct in New York, because there was an appeal in Florida, so there was no penalty in place, and because parts of the Florida sanction had been satisfied. The Respondent contended further that the definition of fraud is obtaining money fraudulently. The Respondent also alleged bias by the Committee and the Committee's Administrative Officer and accused the Petitioner's counsel of making false allegations. The Petitioner asked that the ARB strike the Committee's Order.

### 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 parties' submissions. The ARB affirms the Committee's Determination on the charges. We overturn the sanction that the Committee imposed. We vote unanimously to revoke the Respondent's License.

The Respondent's argument about disregarding the Florida Board's Order amounted to an attempt to re-litigate the Florida proceeding in the Direct Referral Hearing. As the ARB noted above, in a 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 (supra). The Florida Board's findings bind the Respondent in the Direct Referral Hearing.

The ARB rejects the Respondent's contention that the Florida findings provide no basis for disciplinary action because the Florida and New York standards differ. The Committee found that the Respondent's conduct in Florida would amount to practicing with negligence on more than one occasion and failure to maintain accurate records in New York. Florida Statute § 458.331(1)(t) defines inadequate record keeping as failure to keep legible records that identify the licensed physician and justify the course of treatment of a patient, including patient histories, examination and test results, drug records and reports of consultations and hospitalizations. The Courts in New York have sustained findings of failure to maintain accurate records in cases in which physician records failed to:

- document preoperative examination or explain extenuating circumstances Insler v. State Board for Professional Medical Conduct, 38 A.D.3d 1095, 832 N.Y.S.2d 111 (3<sup>rd</sup> Dept. 2007);
- convey objectively meaningful information about the patient to other physicians Maglione v. New York State Department of Health, 9 A.D.3d 522, 770 N.Y.S.2d 319 (3<sup>rd</sup> Dept. 2004);
- failed to note appropriate medical history, explain diagnosis and treatments provided and to indicate follow-ups to the treatment and diagnosis Anghel v. Daines, 86 A.D.2d 869, 927 N.Y.S.2d 710 (3<sup>rd</sup> Dept. 2011); and,
- misstated the patient's condition and failed to insure that hospital chart contained all relevant reports relating to condition Diaz v. State Board for Professional Medical Conduct, 68 A.D.2d 1565, 893 N.Y.S.2d 309 (3<sup>rd</sup> Dept. 2009).

Florida Statute § 456.50(2)(g) defines medical malpractice to mean the failure to practice medicine in accordance with the level of care, skill and treatment recognized in general law related to health care licensure. The New York Courts have held that negligence amounts to a failure to meet minimum or acceptable standards of care in diagnosing and treating patients Lewis v. DeBuono, 257 A.D.2d 787, 684 N.Y.S.2d 649 (3<sup>rd</sup> Dept. 1999); Sidoti v. State Bd. For Professional Medical Conduct, 55 A.D.2d 1162, 866 N.Y.S.2d 801 (3<sup>rd</sup> Dept. 2008).

The Florida Board found misconduct by the Respondent in maintaining medical records for three patients because the records failed to demonstrate treatment rationales indicating sound clinical judgements, vital signs, histories, physical assessments and communications between patients<sup>2</sup> outside health care providers. The Florida Board also found that the Respondent failed to perform physical examinations and testing, monitor patients properly for the effectiveness and

necessity for prescribed drugs and render diagnoses. In the case of one patient, the Florida Board made findings that the Respondent failed to render care properly for skin lesions, including ordering cultures or administering antibiotic therapies to treat the infection. In another case, the Florida Board made findings that the Respondent prescribed treatment and drugs inappropriately for systematic candidiasis and immune dysfunction with no confirmation of the diagnosis by testing. The Committee found that New York, like Florida, requires physicians rendering patient care and prescribing drugs to record histories and vital signs, perform physical assessments, diagnose conditions properly and prescribe appropriate treatments and testing to keep patients safe. The Florida Board made further findings that the Respondent admitted to missing medical records, including progress notes containing medical histories, physical exams and prescribed medications. The Committee stated that New York, like Florida, requires physicians to record rationales for drug choices and treatments, results of evaluations and effectiveness and necessity for drugs. The Committee held that Florida found the Respondent guilty for professional misconduct and disciplined the Respondent for conduct that would amount to practicing with negligence on more than one occasion and failing to maintain accurate medical records if the Respondent had committed that conduct in New York. The ARB affirms the Committee's findings.

The Committee found that the Respondent practiced fraudulently in New York and willfully filed a false report by answering falsely in the Renewal Application. The Respondent offered explanations as to why that answer was not a misrepresentation and argued that fraud involves obtaining money fraudulently. The ARB rejects the explanations and arguments.

To sustain a charge of fraud in practice under EL §6530(2), a committee must find that a licensee: 1) made a false representation, whether by words, conduct or concealment of what

should have been disclosed, 2) the licensee knew the representation was false, and 3) the licensee intended to mislead through the false presentation Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S. 2d 39 (3<sup>rd</sup> Dept. 1966). The committee may infer the intent from the surrounding circumstances Steckmeyer v. State Board for Professional Medical Conduct, 295 A.D.2d 815, 744 N.Y.S.2d 82 (3<sup>rd</sup> Dept. 2002), including evidence that a licensee was aware of the true state of facts at the time false responses were given Saldanha v. DeBuono, 256 A.D.2d 935, 681 N.Y.S.2d 874 (3<sup>rd</sup> Dept. 1998). A committee is free to reject, as non-credible, a 1) licensee's mitigating explanations or 2) a claim of mere mistake Dilluvio v. Board of Regents, 60 A.D.2d 699, 400 N.Y.S.2d 871 (3<sup>rd</sup> Dept. 1977). Although fraud in practice can involve obtaining money fraudulently, such as false billings Holmstrand v. Board of Regents, 71 A.D. 725, 419 N.Y.S.2d 223 (3<sup>rd</sup> Dept. 1979), false statements on an application also constitutes fraud in practice Kim v. Board of Regents, 172 A.D.2d 880, 567 N.Y.S.2d 949 (3<sup>rd</sup> Dept. 1991). Further, fraud in practice based on false answers alone provides the basis for license revocation Ross v. State Board for Professional Medical Conduct, 45 A.D.3d 927, 845 N.Y.S.2d 162 (3<sup>rd</sup> Dept. 2007). To prove willfully making a false report requires that filing or making of a false statement be willful, which in turn requires knowing, intentional or deliberate acts Brestin v. Commissioner of Education, 116 A.D.2d 357, 501 N.Y.S.2d 923 (3<sup>rd</sup> Dept. 1986).

The Respondent gave explanations for her false answer, including the assertion that the Florida misconduct was not misconduct in New York. We have rejected that assertion above. We also note that the Renewal Application did not ask about misconduct in another state, it asked about disciplinary action. The Respondent was aware of the disciplinary action in Florida because she admitted to leaving Florida to avoid the Florida Board's sanctions. The Respondent also argued that the Florida Order was non-final and that she had completed some portions in the

penalty. The Committee found the Respondent's arguments non-credible. The ARB defers to the Committee's determination on the Respondent's credibility. The Committee could infer from the Respondent's knowledge that she intended to mislead by answering falsely on the Renewal Application and that the false statement was deliberate. The ARB affirms the Committee's conclusion that the Respondent practiced fraudulently in New York and willfully filed a false report.

The Respondent also alleged bias on the parts of the Committee and the Committee's Administrative Officer. A mere allegation of bias will not suffice to show bias, but rather there must be a factual allegation and proof that the outcome in the proceeding flowed from the bias Warder v. Board of Regents of the State of New York, 53 N.Y.2d 186 (1981). The Respondent offered no factual allegation or proof to support her allegations. The Respondent also alleged that the Petitioner's counsel made misrepresentations. The ARB sees no such misrepresentations in the record. The Florida Board and the Committee found the Respondent non-credible in assertions she made in the Florida and New York proceedings. Her credibility suffered further from the deliberate false answer she made on the Renewal Application.

The Florida Board determined that the Respondent's misconduct in that state warranted an actual suspension, a fine, probation with a practice supervisor and CME. In deliberations on this case, the ARB questioned whether the Respondent presented as candidate for rehabilitation or remediation such as probation and CME. We answered that question no. Since the Florida Order, the Respondent abandoned Florida to avoid satisfying any part of the Florida Board's sanction and the Respondent made a deliberate false answer on the Renewal Application. The Florida Board attempted to assist the Respondent in practicing by acceptable standards and the Respondent rejected that assistance. The Respondent has no remorse nor recognition of her

misconduct and no intention to correct the deficiencies in her practice. The Respondent stated at the Direct Referral Hearing:

"My interest is make the patient better, not follow results,  
not follow laws..."

Further, there is no retraining for a physician who has demonstrated that she lacks integrity by making a deliberate false answer on the Renewal Application. The ARB votes unanimously to revoke the Respondent's License. ,

### 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 Censure and Reprimand the Respondent and to place her on probation for two years under terms that appear at the Appendix to the Committee's Determination.
3. The ARB votes 5-0 to revoke the Committee'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 Neelam Taneja Uppal, M.D.

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

Dated: 31 December, 2016

  
Linda Prescott Wilson

In the Matter of Neelam Taneja Uppal, M.D.

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

Dated: December 8, 2016



Peter S. Koenig, Sr.



In the Matter of Neelam Taneja Uppal, M.D.

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

Dated: 1/23/, 2019

  
Steven Grabiec, M.D.

In the Matter of Neelam Taneja Uppal, M.D.

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

the Matter of Dr. Uppal.

Date: January 23, 2017

2016

Richard D. Milone, M.D.

In the Matter of Nesiam Tancia Uppal, M.D.

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

Dated: Jan 23, 2018

[REDACTED]

John A. D'Anna, M.D.