



KATHY HOCHUL
Governor

Department of Health

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

November 3, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Deborah Beth Medows, Esq.
NYS Department of Health
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

John Merrill Severinghaus, M.D.


RE: In the Matter of John Merrill Severinghaus, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 21-228) 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.

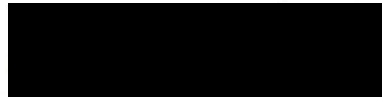
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified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

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

COPY

In the Matter of

John Merrill Severinghaus, 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. 21- 228

Before ARB Members Rabin, Torrelli, Wilson and Milone
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Deborah Beth Medows, Esq.
For the Respondent: No Submission

The Respondent holds a license to practice medicine in New York State (License) as well as a license to practice in Vermont. Following a Vermont disciplinary action against the Respondent's Vermont license, a BPMC Committee determined that the Respondent's conduct that resulted in the Vermont disciplinary action would constitute professional misconduct in New York. The Committee voted to censure and reprimand the Respondent and to place his practice on probation for three years with a monitor, should the Respondent return to practice in New York State. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2019), the Petitioner asked the ARB to modify that Determination by limiting the Respondent's License to prohibit him from prescribing, dispensing, administering and ordering Schedule II Controlled Substances. After reviewing the hearing record and the parties' review submissions, the ARB modifies the Committee's Determination and limits the Respondent's License permanently to prohibit him from prescribing, dispensing, administering and/or ordering Schedule II Controlled Substances.

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), which provide for a hearing when a licensee faces charges solely under New York Education Law (EL) §6530(9) for conduct resulting in criminal convictions or disciplinary action by another jurisdiction. The Specification of Charges alleged that the Respondent committed misconduct under the definition at EL § 6530(9)(d), by engaging in conduct that resulted in disciplinary action by the duly designated disciplinary body of another state for conduct that would also constitute misconduct if committed in New York. The Specification charged further that the Respondent's conduct in Vermont would constitute misconduct in New York State under EL §§ 6530(3) and 6530(32) for practicing with negligence on more than one occasion and failing to maintain accurate records. 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 Respondent practices general psychiatry and addiction medicine in Vermont and he holds a certification from the American Board of Addiction Medicine in the use of the Schedule III Controlled Substance Buprenorphine to treat opioid addiction [Hearing Transcript pages 23, 40, 44]. The evidence before the Committee demonstrated that the Respondent entered into a Stipulation and Consent Order (Consent Order) with the Vermont Board of Medical Practice (Vermont Board) on February 5, 2020 [Department Exhibit 4]. The Consent Order indicated that the Vermont Board's North Investigative Committee (NIC) opened the case concerning the

Respondent in response to a complaint concerning the psychiatry and prescribing practices. The NIC determined that the Respondent's records for six patients failed to conform with prevailing standards for medical documentation due to either absent or inconsistent records of:

- summaries containing the patients' presenting symptoms, past history, medical/family or social history, mental status exams, lab results and initial assessments/diagnoses;
- documentation of a formal assessment, diagnosis, relevant medical status exam findings and treatment plan for each visit;
- descriptions of the type of psychotherapy practiced and the rationale therefor;
- a masters medications list for each patient; and
- failure to include documentation of all out-of-office patient contact.

The NIC found further that the Respondent was unavailable and non-responsive to multiple inquiries from a patient the Respondent was treating actively, including for prescribing medications from January through March, 2016. The NIC found the Respondent made no arrangements for his patients for periods during which the Respondent was unavailable. The NIC also expressed concerns about the Respondent's documentation in substance abuse patient records concerning:

- rationale for controlled substances, particularly, opioids being prescribed;
- rationale for prescribing atypically high doses of buprenorphine to patients,
- how the Respondent handled non-compliance such as urine screens that were either negative for prescribed drugs or positive for non-prescribed substances,

- how the Respondent handled inappropriate alcohol consumption by patients using buprenorphine and tramadol; and
- how the Respondent handled active drug use by patients as evidenced by concerning urine drug screens and other relevant information in the patients' records.

The Respondent entered into a Temporary Voluntary Limitation of Practice Agreement with the Vermont Board on March 6, 2019, which provided that Respondent would cease and desist voluntarily and temporarily from prescribing Schedule II Controlled Substances and would prescribe no controlled substances to any patient also prescribed Buprenorphine.

The 2020 Consent Order provided that the Respondent's substandard medical record keeping and unreliable and untimely response to a patient failed to conform with the applicable standard of care for psychiatric and substance abuse treatment and constitutes professional misconduct under Vermont law. In signing the Consent Order, the Respondent agreed that the Vermont Board could enter as facts and or conclusions the concerns that the NIC raised about the Respondent's documentation, his unavailability and non-responsiveness to the patient during active treatment and the failure to make arrangements for his patients for periods during which the Respondent was unavailable. The Respondent acknowledged that he entered the Consent Order knowingly and voluntarily, with the advice of counsel, and waived any right to challenge to jurisdiction, to be presented with the specification of charges and the evidence, to cross-examine witnesses and to offer evidence of his own.

The Consent Order reprimanded the Respondent for five years and fined the Respondent \$3000.00. The Consent order required that the Respondent:

- practice with a monitor for three years,

- surrender for no less than three years the Respondent's United States Drug Enforcement Administration (DEA) registration and privileges to prescribe Schedule II Controlled Substances to all patients and
- complete a comprehensive continuing medical education course on medical record keeping.

In a BPMC Direct Referral Proceeding, when a licensee has waived an adjudication on the merits of an out-of-state complaint by entering a stipulation of settlement, an inference is raised that the allegations against the licensee have merit, Matter of Hatfield v. Dept. of Health of the State of NY, 245 A.D.2d 703, 665 N.Y.S.2d 755 (3rd Dept. 1997); Matter of Sternberg v. Admin. Rev. Bd. For Prof. Med. Conduct, 235 A.D.2d 945, 652 N.Y.S.2d 855 (3rd Dept. 1997), lv. denied 90 N.Y.2d 809 (1997).

The Committee found that the Respondent's conduct that resulted in the Consent Order would constitute misconduct under EL § 6530(9)(d) and that the conduct if committed in New York would amount to violations under EL §§ 6530(3) and § 6530(32) as practicing medicine with negligence on more than one occasion and failing to maintain accurate patient records. The Committee voted to censure and reprimand the Respondent and to place him on probation for three years, under terms that include practice with a monitor and record review, at such time as the Respondent commences to practice in New York State. The Respondent indicated at the Direct Referral Hearing his intent to return to New York to practice in the future [Hearing Transcript page 22]. The Committee wrote that they reached their conclusions on the penalty after considering the Respondent's compliance with the current Vermont restrictions with respect to prescribing controlled substances and the imposition of continuing education.

Review History and Issues

The Committee rendered their Determination on December 31, 2020. This proceeding commenced on January 11, 2021, 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 made no review submission.

The Petitioner requested that the ARB modify the Committee's Determination and limit the Respondent's License to preclude him permanently from prescribing, dispensing, administering and ordering Schedule II Controlled Substances. The Petitioner argued that BPMC has the authority to impose a more severe sanction than the Vermont Board if the circumstances warrant. The Petitioner noted that the Respondent indicated an interest to return to New York to practice in an area affected by the opioid crisis. The Petitioner contends that the population the Respondent intends to serve deserves a physician who will not prescribe Schedule II Controlled Substances improperly. The Petitioner wrote that the permanent limitation would guard against such an occurrence and provide the appropriate penalty.

The Respondent made no reply to the Petitioner's Brief.

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 Department's brief. We affirm the Committee's Determination that the conduct at issue in the Vermont Consent Order would have

constituted professional misconduct under EL §§ 6530(3) and 6530(32) as practicing with negligence on more than one occasion and failing to maintain accurate records. The Respondent attempted to re-litigate the provisions of the Consent Order at the Direct Referral Proceeding, stating that his records accurately reflected the evaluation and treatment of patients, disagreeing that he was unavailable and unresponsive to a patient and arguing that he did arrange for both practice coverage and medication supply [Hearing Transcript pages 27-28]. The ARB holds that the Direct Referral Proceeding was an improper forum to challenge the Vermont Consent Order. In signing the Consent Order, the Respondent agreed that the Vermont Board could enter as facts and or conclusions the concerns that the NIC raised about the Respondent's documentation, his unavailability and non-responsiveness to the patient during active treatment and the failure to make arrangements for his patients for periods during which the Respondent was unavailable. The Vermont Consent Order binds the Respondent before BPMC.

We also affirm the Committee's Determination to censure and reprimand the Respondent and to place on probation for three years under the terms the Committee imposed, at such time as the Respondent returns to practice in New York. The ARB votes 4-0 to modify the Committee's Determination and limit the Respondent's License permanently to prohibit the Respondent from prescribing, dispensing, administering and/or ordering Schedule II Controlled Substances.

At the Direct Referral Proceeding, the Respondent argued that no penalty was necessary in New York due to the restrictions on the Respondent's license in Vermont. Although the Committee found that the Respondent in compliance with the Vermont monitoring and prescribing restrictions, the Committee found the need for the Respondent to practice with a monitor, with record review, for three years upon returning to practice in New York. The Respondent indicated in his testimony that he does intend to return to New York and may offer

assistance in an area affected by the opioid epidemic [Hearing Transcript page 22]. The ARB agrees with the Committee that New York State must protect our citizens by assuring that the Respondent has corrected the deficiencies in his practice.

Although the Respondent appears to be in compliance with the Vermont restrictions to this point, the Respondent must still practice under those restrictions in Vermont for two more years. Those restrictions include the Schedule II prescribing ban. There is no prescribing ban in New York State at all. At the Direct Referral Proceeding, the Petitioner requested a ban on prescribing, dispensing, administering and ordering all Controlled Substances. The Committee questioned the need for the total ban because it would interfere with the Respondent's addiction medicine practice and his ability to use the Schedule III Controlled Substance Buprenorphine in treating opioid addiction [Hearing Transcript page 40]. The Committee noted that a ban addressing only Schedule II, such as the Respondent practices under in Vermont, would cover highly addictive narcotics.

In this review, the Petitioner has requested a lifetime ban, but only as to Schedule II Controlled Substances [Petitioner Brief page 5]. The ARB finds that additional sanction appropriate in this case because, in his testimony at the Direct Referral Proceeding, the Respondent was dismissive of the disciplinary action in Vermont, attempted to re-litigate the case and attempted to blame the patient in the case in which the Vermont Board found the Respondent unreliable and untimely in responding to one patient. The ARB questions whether the Respondent truly accepts the need to change his practice and correct the deficiencies for which the Vermont Board disciplined the Respondent. This ban will remove the potential for enormous abuse and, coupled with the probation, will ensure protection for vulnerable patients 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 censure and reprimand the Respondent and to place the Respondent on probation for three years under the terms the Committee appended to their Determination.
3. The ARB modifies the Committee's Determination to ban the Respondent permanently from prescribing, dispensing, administering and/or ordering Schedule II Controlled Substances.

Carmela Torrelli
Linda Prescott Wilson
Richard D. Milone, M.D.
Jill Rabin, M.D.

In the Matter of John Merrill Severinghaus, M.D.

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


Dated: 10 October, 2021


Linda Prescott Wilson

In the Matter of John Merrill Severinghaus, M.D.

Jill Rabin, M.D., an ARB Member, concurs in the Determination and Order in the Matter
of Dr. Severinghaus.

Dated: September 25th, 2021




Jill Rabin, M.D.

In the Matter of John Merrill Severinghaus, M.D.

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

Dated: September 21, 2021



Richard D. Milone, M.D.

In the Matter of John Merrill Severinghaus, M.D.

Carmela Torrelli, an ARB Member, concurs in the Determination and Order in the Matter
of Dr. Severinghaus.

Dated: Sept 27, 2021



Carmela Torrelli