



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

July 18, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Deborah Beth Medows, Senior Attorney
New York State Department of Health
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007

Richard Edward Grant, M.D.
c/o Paul E. Walker, Esq., PLLC
315 West 106th Street
Suite 1A
New York, New York 10025

RE: In the Matter of Richard Edward Grant, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 22-166) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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 box used to redact the signature of Sean D. O'Brien.

Sean D. O'Brien
Acting Chief Administrative Law Judge
Bureau of Adjudication

SDO:nm
Enclosure

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

COPY

In the Matter of

Richard Edward Grant, M.D. (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. 22- 166

Before ARB Members Torrelli, Rabin, Wilson and Milone
Administrative Law Judge Jean T. Carney drafted the Determination

For the Department of Health (Petitioner): Deborah Beth Medows, Esq.
For the Respondent: Paul E. Walker, Esq.

Following the Respondent's disciplinary action by the Alabama Board of Examiners (AL Board), a BPMC Hearing Committee determined that the Respondent's conduct constituted professional misconduct. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c(4)(a), the Petitioner asked the ARB to review that Determination. After reviewing the hearing record and the parties' submissions, the ARB affirms the hearing committee's determination and modifies the penalty imposed.

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's Statement of Charges alleged that the Respondent committed professional misconduct under New York Education Law (Educ. Law) § 6530(9)(d) by having disciplinary action taken against his

license to practice medicine in Alabama (AL license), where the conduct resulting in the disciplinary action would constitute professional misconduct if committed in New York State. 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 evidence before the Committee demonstrated that on November 18, 2020, the Respondent entered into a joint settlement agreement with the AL Board that was incorporated into a Consent Order issued on November 23, 2020. The Order found that the Respondent had excessively prescribed controlled substances to 11 patients in his pain management clinic. The AL Board permanently restricted the Respondent from providing pain management services; permanently restricted the Respondent from prescribing controlled substances with limited, specific exceptions; ordered the Respondent to complete continuing medical education (CME) in prescribing controlled substances and in medical record keeping; and ordered the Respondent to pay administrative costs of \$19,255.

The Committee determined that the Respondent's conduct constituted professional misconduct under Educ. Law § 6530(9)(d) in that the conduct for which the Respondent was disciplined would violate Educ. Law § 6530(3), practicing the profession with negligence on more than one occasion; and Educ. Law § 6530(32), failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient; if committed in New York State. The Committee imposed a permanent limitation on the Respondent's license against practicing pain management and limiting the Respondent to the practice of psychiatry; prohibiting the Respondent from ordering, distributing, possessing, dispensing, administering, or prescribing Schedule II medication; requiring the Respondent to take CMEs in medical recordkeeping and I-STOP; and suspending the Respondent's license until he

demonstrates to the Director of OPMC that these courses were satisfactorily completed. Once the suspension is lifted, the Respondent shall complete two years of probation with a practice monitor. After completing one year of probation, the Respondent was permitted to petition for removal of the practice monitor requirement.

Review History and Issues

The Hearing Committee rendered their Determination on December 15, 2021. This proceeding commenced on December 27, 2021, 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 reply brief. The record closed when the ARB received the Respondent's reply brief on February 10, 2022.

The Petitioner argues that the penalty imposed by the Committee is inappropriate because it does not adequately protect the public. The Petitioner noted that the Respondent's conduct was not an isolated incident, occurring over a period of several years; and that he planned to return to New York to practice. The Petitioner advocated for imposing a permanent limitation on the Respondent's license, prohibiting him from prescribing, dispensing, administering, distributing, possessing, and ordering all controlled substances, not just Schedule II controlled substances. The Petitioner also requested that the Respondent be placed on probation with a practice monitor for three years.

The Respondent contends that the Committee's determination was reasonable and should not be disturbed. The Respondent notes that he has practiced psychiatry for more than 30 years without any disciplinary issues, that the conduct resulting in the Consent Order was limited to his pain management practice, and that he has no intent to practice pain management again. The Respondent also argued that the AL Board found no need to monitor his psychiatric practice, and permitted him to prescribe

medications that are routinely used in the practice of psychiatry, other than Schedule II controlled substances.

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 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 that the Respondent's conduct constitutes professional misconduct. The ARB adopts the Committee's determination as to penalty, but increases the period of probation to three years, with a practice monitor throughout the entire three years.

While the record does not reflect any disciplinary proceedings arising from the Respondent's psychiatric practice, he admitted to commencing his pain management practice in Alabama without availing himself of any training. This significant lapse in judgment placed his patients at risk of harm. Another factor the ARB considered was the Respondent's testimony regarding his intent to return to practice in New York when his wife retires in a few years. Consequently, we find that, in addition to the other penalties imposed by the Committee, a term of probation for three years under the supervision of a practice monitor will adequately protect the public upon the Respondent's return to practice in New York.

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's conduct constituted professional misconduct pursuant to § 6530(9)(d).
2. The ARB affirms the Committee's determination to suspend the Respondent's license pursuant to the terms and conditions more fully described in the Committee's Determination dated December 15, 2021.

3. The ARB affirms the Committee's determination to impose a permanent limitation on the Respondent's license, limiting his practice to psychiatry, and prohibiting him from ordering, possessing, distributing, dispensing, administering, or prescribing Schedule II medications.
4. The ARB imposes three years of probation to commence after the suspension on his license has been lifted, to be tolled unless and until the respondent returns to practice medicine in New York, and pursuant to the terms and conditions attached hereto as Appendix I.

Linda Prescott Wilson

Jill Rabin, M.D.

Richard D. Milone, M.D.

Carmela Torrelli

In the Matter of Richard Edward Grant, M.D.

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

Dated: 13 July, 2022



✓ Linda Prescott Wilson

In the Matter of Richard Edward Grant, M.D.

Carmela Torrelli, an ARD Member concurs in the Determination and Order in the
Matter of Dr. Grant.

Dated: July 5, 2022



Carmela Torrelli

In the Matter of Richard Edward Grant, M.D.

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

Dated: July 1st, 2022



Jill M. Rabin, M.D.

In the Matter of Richard Edward Grant, M.D.

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

Dated: June 28, 2022



Richard D. Milone, M.D.

APPENDIX I

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to any action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, NY 12204, with the following information, in writing, and ensure that this information is kept current: a full description of his employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state, or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to, or changes in, the required information.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of his compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet with the Director's designee.
5. During the probation period, Respondent shall practice medicine in New York State only when monitored by a licensed physician, board certified in an appropriate specialty (practice monitor), who is proposed by Respondent and approved in writing by the Director of OPMC.
 - a. Respondent shall make available to the monitor any and all records, or access to the practice as requested by the monitor, including on-site observation. The practice monitor shall visit the Respondent's medical practice at each and every location, on a random, unannounced basis at least monthly; and shall examine a selection of no fewer than 20 records maintained by Respondent, including patient records, prescribing information, and office records. The review will determine whether Respondent's medical practice is conducted in accordance with generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care, or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

b. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.

c. Respondent shall be solely responsible for all expenses associated with monitoring, including any fees to the monitoring physician.

d. 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 PHL § 230(18)(b). Proof of coverage shall be provided to OPMC's Director.

6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC in writing if he is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30-day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume. Respondent shall fulfill any remaining probation terms and such additional requirements as the Director may reasonably impose related to the matters set forth in the Determination and Order, or are necessary to protect the public health.

7. OPMC's Director may review Respondent's professional performance. This review may include but shall not be limited to a review of office records, patient records, hospital charts, and/or electronic records; and periodic visits or interviews with Respondent and his staff at practice locations or OPMC offices.

8. Respondent shall comply with these probationary terms and shall bear all associated costs. Upon receiving evidence of noncompliance with, or violations of these terms, the Director of OPMC and/or Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.