



KATHY HOCHUL
Governor

Department of Health

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 16, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marc S. Nash, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

Sari Gabay, Esq.
Gabay & Bowler
48 West 21st Street
Suite 1000
New York, New York 10010

RE: In the Matter of Vadim Baram, MD

Dear Parties:

Enclosed please find the Determination and Order (No. 22-256) 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.

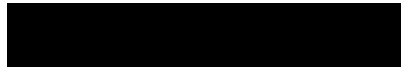
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified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

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

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

In the Matter of

Vadim Baram, 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- 256

COPY

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

For the Department of Health (Petitioner): Marc S. Nash, Esq.
For the Respondent: Sari Gabay, Esq.

Following the Respondent's disciplinary action by the Missouri State Board of Registration for the Healing Arts (MO 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 Respondent asked the ARB to review that Determination. After reviewing the hearing record and the review submission, 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)(b) by having been found guilty of improper professional practice or misconduct by a duly authorized professional disciplinary agency of another state, which would constitute professional misconduct under New York State law, if the conduct had occurred in New York. The Respondent was also charged with violating Educ. Law § 6530(9)(d), by having disciplinary action taken against his license to practice medicine in Missouri (MO 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 May 13, 2021, the MO Board issued Findings of Fact, Conclusions of Law and Disciplinary Order (Order) publicly reprimanding the Respondent's physician and surgical license. The Order was issued after a disciplinary hearing which found that the Respondent, a psychiatrist, failed to attempt to reduce the frequency of electroconvulsive therapy (ECT); failed to perform assessments within 24 hours of performing ECT; failed to document sufficient information justifying continued ECT; and failed to properly document assessments, or side effects, or cognitive function after treatment regarding the treatment of three patients.

The Committee determined that the Respondent's conduct constituted professional misconduct under Educ. Law §§ 6530(9)(b) and (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, if committed in New York State; and Educ. Law § 6530(32), failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. The Committee noted that the Respondent accepted responsibility for his actions and had corrected the

deficiencies in his practice. The Committee also noted that the Respondent has opened a telemedicine psychiatric practice in New York. The Committee suspended the Respondent's license to practice medicine in New York (NY license) for one year, stayed the suspension, and placed the Respondent on probation for one year under the supervision of an approved practice monitor.

Review History and Issues

The Committee issued their Determination on April 21, 2022. This proceeding commenced on May 5, 2022, 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 June 21, 2022.

The Respondent argued that the charges should be dismissed in the interest of justice because the Respondent took responsibility for his actions, and has taken affirmative steps to correct his practices. In addition, the conduct giving rise to the disciplinary action in Missouri occurred between 2008 and 2013, with no subsequent charges, which mitigates against imposing a penalty. Finally, the Respondent asserted that there is no rational basis for imposing a harsher penalty than the MO Board imposed.

The Petitioner asserted that the Committee's decision to sustain the charges should stand because it is undisputed that the MO Board took disciplinary action taken against his MO license, and found the Respondent guilty of professional misconduct. The Petitioner pointed out that the MO Board found the Respondent had committed repeated negligence in his performance of ECT treatments. The Petitioner also argued that because the Respondent currently treats patients via telemedicine in New York, and intends to open a physical practice in New York, the ARB should amend the penalty imposed by the Committee in order to adequately protect New York residents.

The Petitioner urges the ARB to increase the stayed suspension of the Respondent's license to three years, and increase the term of probation to three years with a practice monitor.

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. In addition to the penalty imposed by the Committee, we impose a permanent limitation on the Respondent's license, precluding him from practicing ECT.

The ARB rejects the Respondent's argument that the charges should be dismissed in the interest of justice because the Respondent took responsibility for his actions and changed his practices after disciplinary action had been taken against his license. The undisputed fact is that the Respondent was found to have committed professional misconduct. The Respondent subjected his license in New York to disciplinary action because if the conduct for which he was disciplined had occurred in New York, it would constitute neglect on more than one occasion and failure to maintain accurate records reflecting the treatment and evaluation of his patients, in violation of New York law.

The ARB notes that the Committee is under no obligation to impose a penalty commensurate with a penalty of another state's professional disciplinary agency. The record reflects that the Respondent has initiated a telemedicine practice in New York, and intends to open a physical practice here. The Respondent's arguments primarily address his failure to maintain accurate records; but he was also disciplined for neglect on more than one occasion regarding his ECT treatment of three patients. The MO Board found that the Respondent willfully and continually performed inappropriate or unnecessary treatment to these patients. The Respondent failed to perform assessments within 24 hours of treatment; failed to ensure that the frequency of these ECT

treatments were warranted; and failed to document and/or reduce the frequency of ECT treatments. We agree with the Committee that suspending the Respondent's license for one year, with the suspension being stayed, and placing the Respondent on probation for one year is appropriate; but we find that the additional penalty of imposing a permanent restriction on the Respondent's license from performing ECT in New York will sufficiently protect the public.

Order

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB finds that the Respondent committed professional misconduct.
2. The ARB affirms the Hearing Committee's determination to suspend the Respondent's license to practice medicine in New York for one year, with the suspension fully stayed; and subjecting the Respondent to probation for one year pursuant to the terms attached to the Determination and Order dated April 21, 2022.
3. The ARB imposes a permanent restriction on the Respondent's license to practice medicine in New York, prohibiting him from practicing electroconvulsive therapy.

Linda Prescott Wilson
Jill Rabin, M.D.
Richard D. Milone, M.D.
Carmela Torrelli
Michael J. Reichgott, M.D., PhD.

In the Matter of Vadim Baram, M.D.

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

Dated: 9 December, 2022


Linda Prescott Wilson

In the Matter of Vadim Baram, M.D.

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

Dated: December 6th, 2022



Jill M. Rabin, M.D.

In the Matter of Vadim Baran, M.D.

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

Dated: December 13, 2022


Carmela Torrelli

In the Matter of Vadim Baram, M.D.

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


Dated: December 6, 2022


Richard D. Milone, M.D.

In the Matter of Vadim Baram, M.D.

Michael J. Reichgott, M.D., Ph.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Baram.

Dated: 12/06, 2022


Michael J. Reichgott, M.D., Ph.D.