NEW YORK STATE OF OPPORTUNITY. Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 16, 2021

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

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. 21-260) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

Jean T. Carney, Administrative Law Judge
New York State Department of Health Bureau
of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board.

Six copies of all papers must also be sent to the attention of Judge Carney at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

[redacted]

Dawn MacKillop-Soller
Acting Chief Administrative Law Judge
Bureau of Adjudication

DXM: nm
Enclosure

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

COPY

IN THE MATTER

OF

RICHARD EDWARD GRANT, M.D.

DETERMINATION

AND

ORDER

BPMC-21-260

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("the Department"). A Notice of Referral Proceeding ("NORP") and Statement of Charges ("SOC"), dated September 14 and 15, 2021, respectively, were served upon Richard Edward Grant, M.D. ("Respondent"). The NORP and SOC are attached to this Determination and Order as Appendix 1. A hearing, pursuant to N.Y. Public Health Law ("PHL") §230 and New York State Admin. Proc. Act §§301-307 and 401, was held by videoconference on October 20, 2021.

Frank E. Iaquinta, M.D., Chair, Theodore J. Strange, M.D., and Michael N. J. Colon, Esq., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee ("Committee") in this matter. Ann H. Gayle, Administrative Law Judge, served as the administrative officer. The Department appeared by Deborah Beth Medows, Senior Attorney. Respondent appeared by Paul Walker, Esq. Evidence was received and a transcript of this hearing was made.

After consideration of the entire record, the Committee issues this Determination and Order; all findings, conclusions, and determinations herein are unanimous.

STATEMENT OF CASE

PHL §230(10)(p) provides for a hearing with circumscribed issues when a licensee is charged with misconduct based upon a criminal conviction under federal or state law and/or

upon an administrative adjudication in another state regarding conduct that would amount to a crime and/or professional misconduct if committed in New York. In the instant case, Respondent is charged with professional misconduct pursuant to Educ. Law §6530(9)(d) for having had disciplinary action taken in another state. The scope of the hearing is limited to a determination of the penalty, if any, to be imposed upon the licensee.

FINDINGS OF FACT

Citations in parentheses, which refer to transcript page numbers ("T") and exhibits ("Ex") that were accepted into evidence, represent evidence found persuasive by the Committee in arriving at a particular finding. Any evidence not cited was considered and rejected.

1. On March 8, 1989, Respondent, Richard Edward Grant, M.D., was authorized by the issuance of license number 177603 by the New York State Education Department to practice medicine in New York State. (Ex 5)
2. On July 9, 2020, the Alabama Board of Examiners ("Alabama Board") brought an Order to Show Cause ("OSC") against Respondent. The OSC alleged that from 2016 to June 2020 Respondent excessively dispensed opioids to all eleven patients whose charts the Board reviewed, in some instances in amounts not reasonably related to the proper medical management of the patients' illnesses or conditions, and that he failed to properly follow or adhere to protocols and standards that would assure patient safety. (Ex 4)
3. On November 18, 2020, the Alabama Board and Respondent entered into a joint settlement agreement ("Agreement"). On November 23, 2020, the Alabama Board issued a Consent Order pursuant to, and which incorporated by reference, the parties' Agreement. The Alabama Board found that Respondent excessively prescribed controlled substances to all eleven patients, and made numerous other findings with regard to ten of the eleven

patients. The Alabama Board: permanently restricted Respondent's authority to order, manufacture, distribute, possess, dispense, administer, or prescribe controlled substances; specified additional restrictions for specific substances; restricted Respondent from providing pain management services; ordered Respondent to complete specific intensive continuing medical education ("CME") in controlled substance prescribing and specific CME in medical record keeping; and ordered Respondent to pay $19,255 administrative costs. (Ex 3; Ex 6)

4. On September 30, 2021, the Georgia Composite Medical Board ("Georgia Board") issued a Consent Order disciplining and sanctioning Respondent pursuant to the Alabama Board's disciplinary action against Respondent. (Ex E)

CONCLUSIONS OF LAW

The Department charged Respondent with one Specification of professional misconduct under Educ. Law §6530.9(d) for having his license to practice medicine revoked, suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state. In his Answer, Respondent admitted to the factual allegations in the SOC[1]. Respondent's misconduct in Alabama would constitute misconduct in New York pursuant to Educ. Law §6530(3), practicing the profession with negligence on more than one occasion, and §6530(32)[2], failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.

The Committee concludes that this Specification is sustained.

---

[1] *At the hearing, Respondent did not pursue the affirmative defense (to have the charges dismissed in the interest of justice) raised in his Answer. (T 33)*

[2] *The SOC erroneously cited Educ. Law §6530(3); this was corrected to §6530(32) at the hearing. (T 17-19)*

DISCUSSION AND DETERMINATION AS TO PENALTY

The Department is seeking a revocation of Respondent's license or as an alternative "there should be proper and appropriate safety mechanisms in place to reflect patient safety" such as a three-year stayed suspension, three years of probation with a practice monitor, CME, and a permanent limitation precluding the prescribing, ordering, distributing and administering of all controlled substances (T 7-8, 53-55).

Respondent does not believe revocation or probation with monitoring is warranted; neither the Georgia Board nor the Alabama Board required a practice monitor. Respondent testified that he does not intend to practice pain management again but would like to practice psychiatry preferably in a solo practice in New York but "would have no objection to working in a clinic" (T 42, 43) when he returns to New York in four or five years following his wife's retirement from her position in Georgia.

Respondent completed the Alabama Board's required intensive course in Controlled Substance Prescribing in March 2021 (Ex C; T 28) and he is seeking a sanction similar to the Georgia Board's more lenient (than the Alabama Board's) prescribing restrictions. Respondent testified that he does not need or want to prescribe opioids again, but needs the ability to prescribe medications some psychiatry patients require: benzodiazepines such as Alprazolam or Klonopin, and stimulants such as Haldol or Focalin (T30-32).

The Committee finds that while a revocation is not warranted, neither is a penalty that does not require probation with monitoring. The Committee, having considered the full range of penalties available pursuant to PHL §230-a, determined the appropriate penalty for Respondent's wrongdoing to be (1) a suspension of his license, (2) a limitation on Respondent's license that he not practice pain management and not prescribe Schedule II medications, (3) a requirement to

take courses in medical recordkeeping and I-STOP (Internet System for Tracking Over-Prescribing) prior to resuming practicing in New York, and (4) probation to include a practice monitor.

While the Committee finds Respondent's working with indigent populations laudable, the directives and conditions in the Alabama and Georgia Orders based on his misconduct regarding 11 of 11 patients the Alabama Board reviewed highlight the seriousness of Respondent's misconduct. The Committee is very concerned that Respondent, aware that formal training in pain management is available, began practicing pain management in approximately 2016 without any such formal training (T 27, 40). The Committee finds this to be a very big lapse of judgment. Also concerning to the Committee is Respondent's contention that the Alabama charges seemed to have "come out of the blue" and that the Board somehow "selected … [their] most difficult patients which were difficult to defend." (T38-39). This indicates to the Board that Respondent is not taking full responsibility for his misconduct.

The Committee believes that a revocation is not warranted at this time as the significant penalty of restricting Respondent's license (coupled with the other penalties) provides ample protection of/for the public.

ORDER

IT IS HEREBY ORDERED THAT:

1. The charge of misconduct pursuant to Educ. Law §6530(9)(d) is sustained.
2. Pursuant to PHL §230-a(2)(e), Respondent's license to practice medicine shall be suspended wholly, until Respondent complies with the terms or conditions of this board order, specifically Respondent must demonstrate to the Director of OMPC (Office of Professional Medical Conduct) that he has satisfactorily completed the terms of paragraph 4, *infra*, of this Order.
3. Pursuant to PHL §230-a(3), there shall be a permanent limitation on Respondent's license. Respondent's practice shall be limited to psychiatry; Respondent shall not

practice pain management; Respondent shall not order, distribute, possess, dispense, administer, or prescribe Schedule II medications.

4. Pursuant to PHL §230-a(8), Respondent shall take courses in medical recordkeeping and I-STOP. These courses shall be proposed to and approved by the Director of OPMC and completed as a condition precedent no longer than six months prior to Respondent seeking to resume practice in New York State, unless the Director of OPMC requires a timeframe other than six months.

5. At the completion of the aforesaid courses, pursuant to PHL §230-a(9), Respondent's license shall be placed on probation for a period of two (2) years during which he shall comply with the Terms of Probation annexed as Appendix 2.

6. This Order shall be effective upon service on Respondent as required under PHL §230(10)(h).

DATED: Westchester, New York
December 15, 2021

[redacted]

FRANK E. IAQUINTA, M.D., Chair
THEODORE J. STRANGE, M.D.
MICHAEL N. J. COLON, Esq.

To: 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

Paul E. Walker, Esq., PLLC
315 West 106th Street
Suite 1A
New York, New York 10025

Richard Edward Grant, M.D.
c/o Paul E. Walker, Esq.

APPENDIX 1

Exhibit 1

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

RICHARD EDWARD GRANT, M.D.

NOTICE OF REFERRAL PROCEEDING

TO:

Richard Edward Grant, M.D.
C/O Paul Walker, Esq.
Via email

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on October 20, 2021, at 10:30 a.m., at the offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, NY 10007, or by video conference as directed by the Administrative Law Judge, and at such other adjourned dates, times and places as the committee may direct.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding, or by video conference if directed by the Administrative Law Judge, and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The

Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges at least ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. You may also file a written brief and affidavits with the Committee. All such documents shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below, at least ten days prior to the date of the hearing. Should the parties have objection(s) to proposed witnesses or documentary evidence, the party raising the objection(s) shall contact the Bureau of Adjudication at least three days prior to the hearing date to arrange for a pre-hearing conference with the Administrative Law Judge, prior to the hearing date.

Not later than ten days prior to the date of the hearing, you are required to file one copy of your proposed exhibits (if any) with the Bureau of Adjudication at the address indicated above, and a copy of all such documents/exhibits must be served on the same date on the Department of Health attorney indicated below. On the day of the hearing, you are also required to provide the original of such exhibits and three copies, for use by the Committee.

Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of

witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here [redacted]

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
September 14, 2021

[redacted]
Henry Weintraub
Chief Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Deborah Beth Medows
Senior Attorney
Bureau of Professional Medical Conduct
90 Church Street
New York, NY 10007
(212) 417-4389

EXHIBIT "A"

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

RICHARD EDWARD GRANT, M.D.

STATEMENT

OF

CHARGES

Richard Edward Grant, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 8, 1989, by the issuance of license number 177603 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 23, 2020, Respondent entered into a Consent Order with the Alabama State Board of Medical Examiners. The Consent Order incorporated by reference a settlement agreement dated on or about November 18, 2020, and the Board found that Respondent excessively prescribed controlled substances as alleged in the Order to Show Cause, dated on or about July 9, 2020. The Order to Show Cause alleged that the Board's investigation reviewed eleven charts and showed probable cause that beginning on or about 2016 and continuing through June, 2020, Respondent excessively dispensed opioids to eleven patients. The Board alleged that in some of those patients, Respondent: dispensed opioids in amounts not reasonably related to the proper

medical management of a patient's illnesses or conditions; and that he failed to: properly utilize toxicology screening, make chemical dependency referrals and obtain chemical dependency consults, keep accurate, complete, and legible records, consider and document non-narcotic and alternative treatment modalities, employ risk and abuse mitigation strategies when prescribing controlled substances by failing to document the use of risk and abuse mitigation strategies when prescribing controlled substances for the treatment of pain, and failed to query the PMP when prescribing controlled substance.

B. In the Consent, the Board: permanently restricted Respondent's authority to order, manufacture, distribute, possess, dispense, administer or prescribe controlled substances and the Board specified additional restrictions with regard to specific substances. Among other provisions, Respondent was restricted from providing pain management services; ordered to complete intensive continuing medical education in both controlled substance prescribing and in record keeping; and fined administrative costs of $19,255.

1: The conduct resulting in the Order would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State Law:

a. New York Education Law §6530(3) (Practicing the profession with negligence on more than one occasion.)
b. New York Education Law §6530(3) (Failure to maintain a record.)

SPECIFICATION OF CHARGES

HAVING A DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state, namely N.Y. Educ. Law §6530 (3) and (32), as alleged in the facts of the following:

1. The facts in Paragraph A.

DATE: September 15, 2021
New York, New York

[redacted]
Henry Weintraub
Chief Counsel
Bureau of Professional Medical Conduct

APPENDIX 2

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 an 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, New York 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 in person 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 subject to the written approval of the Director of OPMC.
    a. Respondent shall make available to the monitor any and all records --particularly ALL I-STOP records-- or access to the practice 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 (no fewer than 15, or all records if Respondent's practice consists of fewer than 15 patients) of records maintained by the Respondent, including patient records, prescribing information and office records. The review will determine whether the 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 fees, if any, 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 § 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent commencing practice within New York State.

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 and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in the Determination and Order or as are necessary to protect the public health.

7. The Director of OPMC 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 interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.

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

9. Respondent may, at the conclusion of the first year of probation, petition the Director of OPMC to remove the practice monitor requirement.