



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.  
Commissioner

Wendy E. Saunders  
Chief of Staff

February 25, 2009

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Timothy J. Mahar, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
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George J. Szary, Esq.  
David Kunz, Esq.  
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90 State Street  
Albany, New York 12207

David A. Rigle, M.D.  
Redacted Address

**RE: In the Matter of David A. Rigle, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 08-192) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
Hedley Park Place  
433 River Street-Fourth Floor  
Troy, New York 12180

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,

Redacted Signature

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

In the Matter of

David A. Ragle, 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. 08-192

COPY

Before ARB Members Lynch, Pellman, Wagle and Wilson<sup>1</sup>  
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Timothy J. Mahar, Esq.

For the Respondent:

David F. Kunz, Esq. & George J. Szary, Esq.

After a hearing below, a BPMC Committee found that the Respondent engaged in professional misconduct and the Committee voted to suspend the Respondent's license to practice medicine in New York State (License), to stay the suspension and to place the Respondent's License on probation for two years. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2009), both the parties ask the ARB to nullify or modify that Determination. After reviewing the hearing record and the parties' review submissions, the ARB affirms the Committee findings that the Respondent committed professional misconduct. The ARB votes 4-0 to overturn the stayed suspension and probation. The ARB votes to revoke the Respondent's License.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(8), 6530(21) & 6530(29) (McKinney 2009) by committing professional misconduct under the following specifications:

<sup>1</sup> ARB Member Richard Milone, M.D. did not participate in this case. The ARB proceeded to consider the case with a four-member quorum, Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

- being a habitual abuser of alcohol, being dependent on or a habitual abuser of narcotics or other drugs, or having a psychiatric condition that impairs the ability to practice;
- failing to file a report required by the Department of Health; and,
- violating a condition or limitation that a BPMC Committee imposed on the Respondent.

The charges concerning impairment, dependence and/or habitual abuse all alleged such conditions existed or conduct occurred prior to December 6, 2006. The allegations involving narcotics or other drugs involved cocaine and hydrocodone. The charges involving conditions or limitations concerned an order to pay a fine and a condition by which the Respondent agreed to limit his practice and to provide the Office for Professional Medical Conduct (OPMC) with thirty days notice of the Respondent's intention to return to practice. Following the hearing, the Committee rendered the Determination now under review.

The Committee dismissed the charges that the Respondent practiced while dependent on or while habitually abusing cocaine.

The Committee sustained charges that the Respondent abused alcohol. The Committee found that the Respondent surrendered his License in 1991 and entered a thirty-day treatment program to treat alcohol abuse. Following the completion of the program, the Respondent regained his License, subject to two years on probation. The Committee found that the Respondent acknowledged using alcohol during probation and monitoring and that the Respondent failed to comply with recommendations for his continued treatment and abstinence from alcohol following the completion of the program. The Committee found further that the Respondent was found slumped over the wheel of a car in 1996, with alcohol odor on his breath and that the Respondent tested for blood alcohol at .05%. The Committee stated that the Respondent admitted to drinking to excess on more than one occasion between December 2005 and January 2006. The Respondent entered a Pennsylvania hospital involuntarily in January 2006 with a blood alcohol level at .187%.

The Committee also sustained the charge that the Respondent abused hydrocodone. The Committee found that the Respondent received prescriptions to obtain hydrocodone for back pain. The Respondent, however, received prescriptions from more than one physician at the same time, redeemed the prescriptions at different pharmacies during that period and obtained hydrocodone in excess of his recommended regimen. The Committee found the Respondent's conduct consistent with drug seeking behavior and found that the Respondent intended to conceal his activities by using multiple physicians and multiple pharmacies.

The Committee determined that the Respondent suffered from a psychiatric condition in the summer of 2005, when he exhibited signs of clinical depression and acknowledged severe depression and inability to function. The Committee noted that an evaluation on the Respondent determined that alcohol and opioid use had affected the Respondent's cognition adversely.

The Committee found that the Respondent violated a 2007 BPMC Committee Determination that imposed a \$2,500.00 fine and a License suspension against the Respondent for failure to attend an evaluation. The Determination required the Respondent to pay the \$2,500.00 fine within thirty days, which fell on or about March 15, 2007. The Respondent's payment arrived in August 7, 2007.

The Committee found that the Respondent violated a 1998 Agreement by failing to provide OPMC with thirty days advance notice prior to resuming the practicing medicine. The Committee found that the Respondent practiced medicine by prescribing erectile dysfunction medication for himself. The Committee found further that the failure to provide advance notice constituted a failure to file a report.

In making their findings, the Committee assessed the credibility of testimony that the Respondent gave at the hearing. The Committee found the Respondent a completely "incredible and unbelievable" witness. The Committee found the Respondent in full denial of his alcoholism, with no insight into his condition. The Committee found that the Respondent participates in no continuing support groups or outpatient treatment programs and that the Respondent failed to advise his treating physicians concerning the history of alcohol dependency and the Respondent's participation in a residential treatment program in 1991.

The Committee voted to suspend the Respondent's License for two years, to stay the suspension in full and to place the Respondent on probation under the terms that appear at Appendix II to the Committee's Determination. The Committee concluded that the Respondent had been dependent on or habitually used alcohol and hydrocodone, prior to December 2006, but that the Respondent's life appeared to have stabilized. The Committee indicated that the increase in stability influenced the Committee to reject the Petitioner's request for License revocation. The Committee found it necessary to include in the probation terms abstinence from alcohol and unauthorized substances due to the Respondent's past history of appearances before OPMC, his unsuccessful and inadequate attempts at rehabilitation and the Respondent's failure to accept his condition and recommendations for treatment. The Committee also found that the Respondent presents no public health threat due to the Respondent's voluntary agreement to treat no patients.

#### Review History and Issues

The Committee rendered their Determination on October 10, 2008. This proceeding commenced on October 21 and October 30, 2008, when the ARB received the Petitioner's and then the Respondent's Notice requesting a 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 record closed when the ARB received the reply briefs on December 12, 2008.

The Respondent argues that procedures before and during the hearing denied him due process. The Respondent also argued the Committee should not have considered the charges involving self-prescribing because that issue was considered in a previous BPMC case against the Respondent. The Respondent contended that the Petitioner had failed to prove habitual alcohol abuse, meaning regular, excessive use of alcohol. Further, the Respondent contended that his depression was in remission and he used hydrocodone for therapeutic purposes only. The

Respondent conceded late payment on the fine, but argued that the late payment should result in no significant consequences. The Respondent argued that no violation occurred under the 1998 Voluntary Agreement because the self-prescribing did not constitute the practice of medicine. The Respondent also challenged the probation terms that the Committee imposed.

The Petitioner also challenged the Committee's Determination to place the Respondent on probation, but the Petitioner requested that the ARB overturn the Committee and revoke the Respondent's License.

#### 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' briefs. We affirm the Committee's Determination to dismiss the charge relating to cocaine abuse or dependence. The Petitioner made no challenge to the Committee's findings on the charge. The ARB also affirms the Committee's Determination that the Respondent made a late payment on the 2007 fine. The Respondent conceded the violation. As to the charges in dispute on this review, the ARB affirms the charges that the Respondent abused alcohol habitually, abused or was dependent on hydrocodone and suffered from a condition that impairs practice. The ARB also affirms the charges that the Respondent violated the Voluntary Agreement and that the Respondent failed to provide OPMC with notice that the Respondent was practicing medicine. The ARB votes 4-0 to overturn the Committee and to revoke the Respondent's License.

The Respondent's Brief at Point I, pages 19-29, challenges several procedures and rulings from the hearing in this case. The Respondent challenged the role that the ALJ and the Committee play in the hearing, the scope of disclosure in the hearing and the absence of voir dire of and open instructions to the Committee. Under PHL § 230-c(4)(b), the ARB may remand a case to the Committee for reconsideration or further proceedings. The ARB sees no reason to remand this case, because the ARB sees nothing improper in the way the Committee or the Committee's Administrative Officer conducted the hearing. The Committee and the Administrative Officer conducted the hearing according to the standard rules and procedures for BPMC hearings. The Respondent in effect challenges those standard rules and procedures because the rules and procedures differ from those in effect at a civil trial. The Petitioner's brief notes that the Respondent already raised those challenges in New York Supreme Court and that the Court indicated that the Respondent should raise those issues in the courts following the hearing process, Rigle v. DOH, 19 Misc. 3d 1124A (Sup. Ct. Rensselaer Co. 2008).

The ARB affirms the Committee's Determination that the Respondent abused alcohol habitually. The Respondent entered inpatient alcohol treatment in 1991. The Respondent admitted to returning to the use of alcohol after 1993. The Respondent was found slumped over this car in 1996, with the odor of alcohol on the Respondent's breath. A breathalyzer test placed the Respondent's blood alcohol level at .05%. The record included evidence that the Respondent drank to excess in December 2005 to January 2006 and in January 2006 the Respondent's sister admitted the Respondent involuntarily to a hospital. At admission to that hospital; a test revealed the Respondent's blood alcohol level at .187%. The Respondent argued that he used alcohol socially, but that he is not a habitual abuser. The Committee found the Respondent lacked credibility as a witness. The Committee also found that the Respondent ignored advice from

treating physicians, that the Respondent participated in no continuing support group and that the Respondent exhibited no insight into his condition. The ARB holds that the evidence the Committee found credible demonstrates that the Respondent engaged in conduct that violated EL § 6530(8).

The ARB affirms the Committee's Determination that the Respondent was dependent on and/or habitually used hydrocodone. The Respondent contended that he used hydrocodone only as therapeutically necessary. The record, however, demonstrated that the Respondent received a prescription for hydrocodone, in doses up to six tablets per day. At times in 2005 and 2006, the Respondent was getting prescriptions for hydrocodone from two physicians at the same time and was filling the prescriptions at different pharmacies. Between May 12 and June 11, 2005, the Respondent filled prescriptions for 640 tablets and between September 2 and November 22, 2005, the Respondent filled prescriptions for 840 tablets. The Committee found such conduct demonstrated a pattern of drug seeking behavior. The ARB agrees.

The ARB affirms the Committee's Determination that the Respondent suffers from a condition that impairs the practice of medicine. The evidence at the hearing demonstrated that the Respondent exhibited signs and symptoms of depression in 2005. The Committee also found that the Respondent's alcohol and drug use had affected the Respondent's cognition adversely.

The ARB affirms the Committee's Determination that the Respondent violated a BPMC Order and failed to file a report that the Health Department required, when the Respondent engaged in the practice of medicine without giving thirty days prior notice to OPMC. The Respondent signed a Voluntary Agreement in 1998 in which he promised that he would provide such prior notice before resuming the practice of medicine. The Voluntary Agreement defined the practice of medicine to mean diagnosing, treating, operating or prescribing for any human

disease, pain, injury, deformity or physical condition. The Committee found that the Respondent engaged in practice by prescribing medication for himself that required a prescription. The Respondent argued that self-prescribing does not amount to medical practice because the law requires medical licensure to protect the general public. The Committee rejected that argument and the ARB agrees with the Committee. In the Voluntary Agreement, the Respondent agreed that practicing medicine included diagnosing, treating or diagnosing for any human condition. Although the Voluntary Agreement made a specific exception to allow the Respondent to work as private medical expert and witness, the Voluntary Agreement made no exception for self-prescribing. Further, the Committee noted that the medication at issue required a physician's prescription because the medication has potential side effects. The Committee found that a lay person could gain access to the medication only after a licensed provider considered possible complications and determined the medication would be appropriate. The Committee determined that the Respondent's conduct amounted to the practice of medicine, because the Respondent used his status as a physician to obtain medication he would have been unable to obtain otherwise. The Committee also rejected the Respondent's contention that a prior BPMC Committee had considered the self-prescribing issue in a 2007 proceeding. The ARB affirms that Determination as well.

The ARB overturns the Committee's Determination to suspend the Respondent's License, to stay the suspension in full and to place the Respondent on probation. Both parties challenged the probation terms. The ARB finds the Committee's Determination inconsistent with the Committee's findings and conclusions and inappropriate. The Respondent's repeated pattern of misconduct and the repeated violation of BPMC Orders over the years, standing alone, provides the grounds for a severe sanction, such as revocation. The Committee also found that

the Respondent's alcohol and hydrocodone abuse have affected the Respondent's cognition adversely. The Committee rejected revocation as a penalty because they felt that probation with monitoring and mandatory reporting would provide an effective sanction. The ARB notes that the Respondent has violated sanctions previously and such past violations lead the ARB to conclude that the Respondent presents as a risk to violate the probation terms in the Committee's Order. As recently as 2007, BPMC brought disciplinary action against the Respondent for failing to comply with a BPMC Order that the Respondent attend an evaluation. The Committee also found that the Respondent made unsuccessful and inadequate attempts at rehabilitation, found the Respondent in denial and without insight into his alcoholism and found that the Respondent refused to accept responsibility for his actions.

The ARB considered imposing a sanction less severe than revocation to offer the Respondent another chance to retain his License, but the ARB concluded that the Respondent has already received enough chances.

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 suspend the Respondent's License, to stay the suspension and to place the Respondent on probation.
3. The ARB votes 4-0 to revoke the Respondent's License.

Thea Graves Pellman  
Datta G. Wagle, M.D.  
Linda Prescott Wilson  
Therese G. Lynch, M.D.

In the Matter of David A. Ragle, M.D.

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

Dated: 22 February 2009

Redacted Signature

Linda Prescott Wilson

In the Matter of David A. Ragle, M.D.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the Matter of Dr. Ragle.

Dated: July 24, 2009

Redacted Signature

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Thea Graves Pellman



In the Matter of David A. Ragle, M.D.

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Ragle.

Dated: February 23 2009

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Therese G. Lynch, M.D.