

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

January 4, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Bryan Eggert, M.D.

REDACTED

Jude B. Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Bryan Eggert, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-07) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,

REDACTED

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

In the Matter of

Bryan Eggert, 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. 13-07

Before ARB Members D'Anna, Koenig, Wagle, Wilson and Milone
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Jude Mulvey, Esq.

For the Respondent: Pro Se

The Respondent holds medical licenses in Texas and New Jersey, in addition to the Respondent's license to practice medicine in New York State (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2012), the ARB considers whether to impose a sanction against the Respondent's License following an Agreed Order against the Respondent's license in Texas. After a hearing below, a BPMC Committee sustained charges that the Respondent engaged in conduct in Texas that made the Respondent liable for disciplinary action in New York. The Committee voted to suspend the Respondent's License indefinitely, until 1.) the Respondent completed satisfactorily a ten year disciplinary penalty from Texas and 2.) then petitioned for reinstatement in New York. The Respondent now asks that the ARB modify the Committee's Determination to remove the provision that binds the New York penalty to the Texas penalty and to withdraw the sustained charges. After considering the record below and the parties review submissions, the ARB votes to overturn the suspension. The ARB places the Respondent on probation for ten years and requires the Respondent to provide advance notice concerning his future plans to return to practice in New York.

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 charged that the Respondent violated New York Education Law (EL) §§ 6530(9)(b) & 6530(9)(d) by committing professional misconduct, because the duly authorized professional disciplinary agency from another state, Texas,

- found the Respondent guilty for improper professional conduct [6530(9)(b)], and/or,
- took disciplinary action against the Respondent's medical license in that state [6530(9)(d)],

for conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York. The Petitioner's Statement of Charges [Direct Referral Hearing Exhibit 1] alleged that the Respondent's misconduct in Texas would constitute misconduct if committed in New York, under the following specifications:

- habitually abusing alcohol or drugs, a violation under EL § 6530(8); and,
- engaging in conduct in the practice of the profession that evidences moral unfitness, a violation under EL § 6530(20).

Following the Direct Referral Proceeding, the Committee rendered the Determination now on review. In the Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The evidence before the Committee demonstrated that the Respondent began suffering substance abuse problems in high school and that the problems worsened during the

Respondent's residency at Baylor College of Medicine in Texas [2009 Texas Agreed Order, Hearing Exhibit 4]. The Texas Medical Board placed restrictions on the Respondent's license in that State in 1986 due to the Respondent's substance abuse while practicing medicine and the Texas Board suspended the Respondent's Texas license in 2000. The Respondent entered the 2009 Texas Agreed Order that allowed the Respondent to regain a Texas license, with certain terms and conditions. The Texas Board required first that the Respondent complete successfully a mini-residency. The Respondent then received a license with restrictions for a ten year period. The restrictions included abstinence, drug testing and participation in Alcoholics Anonymous (AA) or Narcotics Anonymous (NA). The 2009 Texas Agreed provided the basis for the New York Direct Referral Hearing.

The Committee determined that the Respondent's conduct in Texas would have constituted misconduct in New York as practicing while impaired and engaging in conduct that evidenced moral unfitness. The Committee determined further that the Respondent's conduct made the Respondent liable for disciplinary action against his license under PHL §§ 6530(9)(b) and 6530(9)(d). The Committee found further that the Respondent's testimony and supporting documentation established that the Respondent has been in sustained recovery in New Jersey.

The Committee voted to suspend the Respondent's License indefinitely during the period of the 2009 Texas Agreed Order. The Committee expressed concern over the Respondent's many problems with sobriety over the years and the Committee concluded that the Respondent should satisfy the Texas restrictions before New York should consider restoring the Respondent's License. The Committee provided that the following satisfaction of the restrictions in the 2009 Texas Agreed Order, the Respondent could petition BPMC for removal of the indefinite suspension.

Review History and Issues

The Committee rendered their Determination on August 7, 2012. This proceeding commenced on August 15, 2012, 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 notice and brief and the Petitioner's reply brief. The record closed when the ARB received the reply brief on or about September 28, 2012.

The Respondent argued that he no longer practices in Texas and that he can never satisfy the Texas restrictions while practicing in New Jersey, because the restrictions in Texas are tolled while the Respondent remains outside that state. The Respondent requested that the ARB remove any conditions that bind the New York sanction to the 2009 Texas Agreed Order. The Respondent indicated that, although he practices in New Jersey now, he plans to return to practice in New York eventually. The Respondent notes that he now practices under restrictions in New Jersey that include abstinence, drug testing and attendance at AA meetings. The Respondent requests that the ARB remove the suspension against his License and that the ARB withdraw the specifications of professional misconduct as set forth in the charges.

The Petitioner asks that the ARB leave the Committee's Determination untouched. The Petitioner argues that the Respondent left Texas to escape the strict terms of the 2009 Texas Agreed Order and that the restrictions on the Respondent's New Jersey license result from a letter agreement rather than a disciplinary order. The Petitioner contends that the Respondent's history of substance abuse requires extensive restrictions to protect medical consumers in New York. The Petitioner asks that, if the ARB does disturb the Committee's Determination, the ARB suspend the Respondent's License for an indefinite period of not less than three years and that the ARB then establish procedures for the Respondent to seek a modification in the suspension.

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 parties' briefs. We affirm the Committee's Determination that the Respondent's conduct in Texas made the Respondent liable for disciplinary action against his License under EL §§ 6530(b) & 6530(d). The ARB overturns the Determination to suspend the Respondent's License indefinitely. We place the Respondent on probation for ten years and we place a condition on the Respondent's License to require the Respondent to provide notice at least ninety days prior to the time that the Respondent intends to return to practice in New York.

The Respondent requested that the ARB withdraw the misconduct charges that the Committee affirmed on grounds that the Respondent has maintained his sobriety over the last six years and is in compliance with the terms under the Letter Agreement with New Jersey. The ARB rejects that request. The Respondent engaged in conduct in Texas for which the Texas Board disciplined the Respondent. That conduct would have amounted to misconduct in New York and that conduct and the 2009 Texas Agreed Order provide the grounds to take disciplinary action against the Respondent's License. The ARB agrees with the Committee that the Respondent's continuing pattern of substance abuse requires New York to impose restrictions on the Respondent's future practice in this State that will assure that the Respondent continues to remain sober and safe to practice.

The ARB overturns the Committee's Determination to suspend the Respondent indefinitely and to bind any penalty in New York to the Respondent's compliance with the sanctions under the 2009 Texas Agreed Order. The ARB also rejects the Petitioner's request that we impose an indefinite suspension on the Respondent's License and establish a procedure for the Respondent to seek modification on that suspension. Neither a Committee nor the ARB may impose an indefinite suspension of a medical license under PHL § 230-a, Ostad v NYS Dept. of Health, 309 A.D.2d 989, 766 N.Y.S.2d 441 (3d Dept. 2003). As PHL §230-a provides no authorization to suspend a license indefinitely, neither that statute nor PHL §230 provide procedures for modifications in indefinite suspensions. The ARB overturns the provision in the Committee's Determination that binds the New York penalty to compliance with the Texas penalty. The ARB agrees with the Respondent that there is no way the Respondent can satisfy the Texas penalty if the Respondent no longer practices in that state, because the Texas penalty would be tolled during the Respondent's absence from that state. Although the Committee made clear their intent to impose protections for the Respondent's continued sobriety, the Committee's Determination gave no indication that the Committee intended to ban the Respondent from any future practice in New York. Binding the New York sanction to satisfaction of the Texas penalty would mean that the Respondent would be unable to ever return to practice in New York.

The ARB votes to place the Respondent on probation for a period of ten years under such terms as the Director of the Office of Professional Medical Conduct (Director) may impose pursuant to the Director's authority under PHL §18(a). The ARB votes further to place a limitation on the registration of the Respondent's License, pursuant to PHL § 230-a(6), to require that the Respondent provide the Director with notice concerning the Respondent's intent to

return to practice in New York, no less than ninety days prior to the date that the Respondent intends to resume practice. The ten year probation will provide a sufficient time to assure that the Respondent can maintain sobriety. The ninety-day notice period will allow the Director to verify that the Respondent has remained compliant with any disciplinary conditions in his prior practice locations. The notice period would also provide the Director the opportunity to convene a BPMC Committee pursuant to PHL § 230(7)(a) to determine if the Respondent should submit to an evaluation to determine if the Respondent continues to suffer from impairment to alcohol or drugs.

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.
3. The ARB places the Respondent on probation for ten years as we specified in our Determination.
4. The ARB places a limitation on the Respondent's future registration of his License to require the Respondent to provide notice to the Director no less than ninety days prior to the time that the Respondent intends to return to the practice of medicine in New York State.

Peter S. Koenig, Sr.
Datta G. Wagle, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Bryan Eggert, M.D.

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

Dated: *Linda Prescott Wilson*, 2012

REDACTED

Linda Prescott Wilson

In the Matter of Bryan Eggert, M.D.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the
Matter of Dr. Eggert.

Dated: ___ December 20, 2012

REDACTED

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Peter S. Koenig, Sr.

In the Matter of Bryan Eggert, M.D.

Datta G. Wagle, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Dr. Eggert.

Dated: 12/19/ 2012

REDACTED

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Datta G. Wagle, M.D.

In the Matter of Bryan Eggert, M.D.

Richard D. Milone, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Eggert.

Date December 19, 2012

REDACTED

Richard D. Milone, M.D.

In the Matter of Bryan Eggert, M.D.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Dr. Eggert.

Dated: Dec 21, 2012

REDACTED

John A. D'Anna, M.D.