

NEW YORK
state department of
HEALTH

Public

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

Sue Kelly
Executive Deputy Commissioner

July 7, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Felix Vinluan Llamido, M.D.

REDACTED

Michael G. Bass, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Felix Vinluan Llamido, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-82) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine if **said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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

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

Felix Vinluan Llamido, 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. 11-82

COPY

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): Michael G. Bass, Esq.
For the Respondent: Pro Se

In this proceeding pursuant to New York Public Health Law (PHL) § 230-c
(4)(a)(McKinney 2011), the ARB considers what action to take against the Respondent's license
to practice medicine in New York State (License) following the Respondent's surrender of his
license to practice medicine in Michigan. After a hearing below, a BPMC Committee determined
that the Respondent engaged in conduct in Michigan that would constitute professional
misconduct if committed in New York. The Committee voted to censure and reprimand the
Respondent and to fine the Respondent \$10,000.00. The Respondent now asks the ARB to
reduce the fine and the Petitioner requests that the ARB overturn the Committee and revoke the
Respondent's License. After reviewing the hearing record and the parties' review submissions,
the ARB overturns the censure/reprimand and the fine. The ARB votes 5-0 to suspend the
Respondent's License for three years, to stay the suspension in full and to place the Respondent
on probation for three years, under the terms the appear as the Appendix to this Determination.

Committee Determination on the Charges

The Committee conducted a hearing in this matter 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, Michigan,

- 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 Michigan would constitute misconduct if committed in New York, under the following specifications:

- practicing medicine with negligence on more than one occasion, a violation under EL § 6530(3);
- practicing medicine with gross negligence, a violation under EL § 6530(4); and,
- engaging in conduct in the practice of medicine that evidences moral unfitness to practice, 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 at hearing indicated that the Respondent entered a Consent Order with the Disciplinary Sub-Committee from the State of Michigan, Department of Community Health, Bureau of Health Professions, Board of Medicine (Michigan Board). In the Consent Order the

Respondent agreed to surrender permanently the Respondent's Michigan medical license. The Respondent agreed further that the Michigan Board could treat as true allegations that the Respondent:

- engaged in negligence or the failure to exercise due care;
- negligently supervised or delegated to employees or others;
- engaged in conduct that evidenced a lack of good moral character; and,
- engaged in conduct that evidenced obtaining, possessing, or attempting to obtain or possess a controlled substance or drug without lawful authority, and/or selling, prescribing, giving away or administering drugs for other than lawful diagnostic or therapeutic purposes.

The Respondent's conduct involved issuing over 2000 prescriptions for controlled substances over the Internet. The Respondent never saw or examined the patients. The Respondent resided in Florida and authorized prescriptions for patients to fill in pharmacies in Michigan.

The Committee determined that the Respondent's conduct, if committed in New York State, would have amounted practicing with negligence on more than one occasion, practicing with gross negligence and engaging in conduct that evidenced moral unfitness. The Committee concluded that the Respondent's conduct made him liable for disciplinary action against his License. The Committee rejected the Petitioner's request to revoke the Respondent's License. The Committee found mitigating factors in the record due to the Respondent's long and distinguished career as a surgeon on Long Island, his medical missionary work and his philanthropy. The Committee also noted that the Respondent's record was previously without a blemish. The Committee voted to censure and reprimand the Respondent and to fine the Respondent \$10,000.00.

Review History and Issues

The Committee rendered their Determination on April 8, 2011. This proceeding commenced on April 14 and April 18, 2011, when the ARB received both parties' Notices

requesting Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's response brief. The record closed when the ARB received the Petitioner's brief on May 16, 2011.

The Petitioner asked that the ARB revoke the Respondent's License, or in the alternative, that the ARB place a permanent restriction on the Respondent's License to prevent the Respondent from prescribing controlled substances and from participating in any Internet prescribing or telemedicine. The Petitioner noted that the Respondent claimed that he was tricked into participating in an Internet prescribing business and that he quit the business after realizing that something was wrong. The Respondent admitted on cross-examination, however, that he remained with the business for nine months after learning that controlled substances had been prescribed by the Respondent for 2000 patients without the Respondent's knowledge, consent or supervision. The Petitioner also noted that the Committee found the Respondent both naïve and greedy.

The Respondent asked that the ARB reduce the amount of the fine against the Respondent or allow the Respondent to pay the fine by installments. The Respondent noted that he continued to perform pro bono work, that he had no intention to return to practice in New York and that the Internet business was the only blot on the Respondent's record after over forty years in medical practice.

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 as conceded under the Michigan Consent Order would amount to misconduct in New York. Neither party challenged the Committee's Determination on the charges. We overturn the Committee's Determination to impose a censure/reprimand and fine. We vote to suspend the Respondent's License for three years, to stay the suspension in full and to place the Respondent on probation for three years.

The ARB agrees with the Petitioner that the Respondent engaged in serious misconduct and we agree that the Respondent should face an actual restriction on his practice should the Respondent ever return to practice in New York. We overturn the Committee's Determination to censure/reprimand the Respondent. We also overturn the fine the Committee imposed. We note that the Petitioner made no argument in support of the fine. We agree with the Committee that the Respondent's past career, missionary work and past philanthropy present mitigating factors that make License revocation too severe a sanction in this case. We also find an actual License suspension would be impractical as the Respondent no longer practices in New York State. We vote to suspend the Respondent's License, to stay the suspension and to place the Respondent on probation for three years. The probation shall commence running at such time as the Respondent ever returns to practice in this State. The probation terms will include a prohibition on prescribing controlled substances, prescribing on the Internet and practicing telemedicine.

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 censure and reprimand the Respondent and overturns the Determination to fine the Respondent \$10,000.00.
3. The ARB suspends the Respondent's License for three years, stays the suspension in full and places the Respondent on probation for three years, under the terms that appear as the Appendix to this Determination.

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 Felix Vinluan Llamido, M.D.

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

Dated: 15 June, 2011

REDACTED

✓
Linda Prescott Wilson

In the Matter of Felix Vinluan Llamido, M.D.

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

Dated: 06/25, 2011

REDACTED

Peter S. Koenig, Sr.

In the Matter of Felix Vinluan Llamido, M.D.

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

Dated: July 6, 2011

REDACTED

Datta G. Wagle, M.D. /

In the Matter of Felix Vinluan Llamido, M.D.

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

Matter of Dr. Llamido.

Dated June 14, 2011

REDACTED

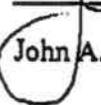
Richard D. Milone, M.D.

In the Matter of Felix Vinluan Llamido, M.D.

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

Dated: JUNE 15, 2011

REDACTED


John A. D'Anna, M.D.

Appendix

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records, which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Respondent's License shall be limited during the probation period to prohibit the Respondent from prescribing controlled substances and to prohibit the Respondent from prescribing over the Internet and from any practice of telemedicine.

8. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.