

April 2, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anna R. Lewis, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

Ifeoma Ezekwo, M.D.
REDACTED

Kevin D. Porter, Esq.
Bartlett, McDonough & Monaghan, LLP
81 Main Street – Suite 400
White Plains, New York 10601

RE: In the Matter of Ifeoma Ezekwo, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-82) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine if **said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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
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

Ifeoma Ezekwo, 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. 14- 82

CCPY

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

For the Department of Health (Petitioner): Anna R. Lewis, Esq.
For the Respondent: Kevin D. Porter, Esq.

After a hearing below, a BPMC Committee found that the Respondent committed professional misconduct by willfully filing a false report. The Committee voted to suspend the Respondent's license to practice medicine in New York State (License) for two years, to stay the suspension and to place the Respondent on probation under the terms that appear at Appendix 2 to the Committee's Determination. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2014), the Respondent asks the ARB to nullify that Determination and the penalty the Committee imposed. After reviewing the record below and the parties' briefs, the ARB affirms the Committee's Determination in full.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(2), 6530(14) & 6530(21) (McKinney Supp. 2014) by committing professional misconduct under the following specifications:

- practicing the profession fraudulently, a violation under EL § 6530(2);

- violating PHL § 2805-k by failing to provide accurate information in an application for professional privileges, a violation under EL § 6530(14); and,
- willfully making or filing a false report, required under law or by the Department of Health or by the Education Department, a violation under EL § 6530(21).

The charges involved the Respondent's 2010 application for privileges (Application) as a staff physician at Saint Barnabas Hospital in Bronx County. The Petitioner charged that the Respondent stated incorrectly that she was Board Certified in Internal Medicine and Ophthalmology, omitted a prior denial of privileges at Montefiore Medical Center, omitted a prior affiliation with Harlem Hospital and failed to disclose that Bronx Health Plan and Blue Cross/Blue Shield denied the Respondent participation in managed care networks. The Committee conducted a hearing on the charges and rendered the Determination and Order now on review.

The Committee dismissed the charges alleging practicing fraudulently and violating PHL § 2805-k and dismissed the Factual Allegations concerning the Board Certifications in Internal Medicine and Ophthalmology, the prior affiliation at Harlem Hospital and the disclosure concerning Blue Cross/Blue Shield. The Petitioner made no challenge to the Committee's Determination to dismiss those charges. As relevant on this review, the Committee sustained the charge that the Respondent willfully filed a false report on the Application by denying that any healthcare institution ever denied the Respondent privileges and by denying that a managed care network ever denied the Respondent participation. The Committee found that Bronx Health Plan, a managed care network, denied the Respondent participation in 1990 (Bronx Denial). The Committee found further that the Board of Trustees of Montefiore Medical Center denied the Respondent's application for privileges by final decision by letter dated October 12, 1995, after the Medical Staff Executive Committee and the Medical Committee of the Board of Trustees recommended the denial (Montefiore Denial). The Committee found that the Respondent was aware of the Montefiore Denial as of October 12, 1995.

The Committee held that proof on a false report charge must establish that a licensee made or filed a false statement as a knowing, intentional or deliberate act, Matter of Brestin vs.

Commissioner of Education, 116 A.D.2d 357, 501 N.Y.S.2d 923 (3rd Dept. 1986). In considering the evidence on the charge, the Committee may reject a licensee's explanation for erroneous reports (such as errors resulting from inadvertence or carelessness) and draw the inference that the licensee intended or was aware of the misrepresentation, with other evidence as the basis, Matter of Brestin vs. Commissioner of Education (supra). The Respondent neither appeared nor testified at the hearing, but did provide a written statement [Hearing Exhibit B]. The Respondent's statement indicated that she was aware of the Bronx Denial, but she omitted the denial from the Application because the panel was closed, the decision was not adverse to the Respondent, the plan no longer exists and the plan is out of business. As to the Montefiore Denial, the Respondent indicated that she was confused about the time frame about which the Application inquired. The Respondent indicated that she thought the Application was inquiring only about the last ten years prior to the Application.

The Committee found that the Respondent's own statement proved that the Respondent was aware of the Bronx Denial and rejected the Respondent explanation for omitting the Bronx Denial from the Application. The Committee found that the Respondent should have answered the question truthfully and provided the explanation concerning the denial on space provided on the Application. The Committee found that Respondent knew about the Montefiore Denial due to three letters the Respondent received during separate stages of the Montefiore credentialing process. The Committee found that one of the three letters came in response to the Respondent's own appeal of the Montefiore Denial.

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 for two years under the terms that appear as Appendix 2 to the Committee's Determination. Paragraph 4 in the Probation Terms tolls the Probation during any period in which the Respondent is not in active medical practice in the State of New York. The Committee noted that the Petitioner had requested revocation as a penalty, but the Committee held that the sustained charge failed to warrant revocation. The Committee ruled that BPMC could not tolerate false reporting on a credentialing application and

the Committee found that the stayed suspension with probation admonished the licensee and ensured public safety.

Review History and Issues

The Committee rendered their Determination on December 27, 2013. This proceeding commenced on January 15, 2014, 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 March 3, 2014.

The Respondent argued that the Committee failed to apply the standards under Matter of Brestin and the Respondent requested that the ARB dismiss the false report charge and impose no penalty. The Respondent's Brief stated that she submitted a writing to Saint Barnabas in which she indicated that the Bronx Health Plan was closed and that the Plan was no longer in existence. The Respondent contended that Bronx Denial was not a denial of participation in the Plan if the physician panel was closed as it was in the Respondent's case. The Respondent also argued that the Respondent should not have had to disclose the Bronx denial. The Respondent's Brief acknowledged the Montefiore Denial but expressed confusion over the time frame about which the Application inquired. The Respondent indicated that she had no intent to mislead Saint Barnabas concerning the Montefiore denial. The Respondent's Brief also indicated that the Respondent has been totally disabled since 2011 and that the Respondent's License is inactive.

The Petitioner replied that the Respondent submitted material on review that was not before the Committee, such as the information about the Respondent's disability. The Petitioner

argued that the ARB should give such material no consideration. The Petitioner requested that the ARB affirm the Committee's Determination in full.

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. The ARB affirms the Committee's Determination that the Respondent willfully filed a false report and we affirm the Committee's Determination to suspend the Respondent's License for two years, stay the suspension and place the Respondent on probation for two years.

The Committee rejected the explanations by the Respondent and found that the Respondent provided false information on the Application knowingly concerning the Bronx and Montefiore Denials. Under Matter of Brestin, the Committee may reject such explanations and rely upon other evidence in the record. The evidence before the Committee indicated that the Respondent knew about both Denials and that the Respondent omitted that information from the Application. The ARB finds no error in the Committee's Determination that the Respondent willfully filed a false report.

The ARB agrees with the Committee that false reporting on credentialing applications requires a strong sanction against a licensee who commits such misconduct. We conclude that a stayed suspension with probation provides that sanction. We agree further with the provision in

Paragraph 4 in the Probation that tolls the Probation Terms during any time in which the Respondent is not engaged in the active practice of medicine in the State of New York.

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 affirms the Committee's Determination to suspend the Respondent's License for two years, to stay the suspension and to place the Respondent on probation under the terms that appear at Appendix 2 to the Committee's Determination.

Peter S. Koenig, Sr.
Steven Grabiec, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

To:

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White Plains, NY 10601-1711

Ifeoma Ezekwo, M.D.
REDACTED

In the Matter of Ifeoma Ezekwo, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Ezekwo.

Dated: 26 March, 2014

REDACTED

Linda Prescott Wilson

In the Matter of Ifeoma Ezekwo, M.D.

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

Dated: March 26, 2014

REDACTED


Peter S. Koenig, Sr.

In the Matter of Ifeoma Ezekwo, M.D.

Steven Grabiec, M.D., an ARB Member concurs in the Determination and Order in the

Matter of Dr. Ezekwo.

Dated: 3/26/, 2014

REDACTED

Steven Grabiec, M.D.

In the Matter of Ifeoma Ezekwo, M.D.

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

Dated March 27, 2014

REDACTED

Richard D. Milone, M.D.

In the Matter of Ifeoma Ezekwo, M.D.

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

Dated: March 28, 2014

REDACTED

John (A. D) Anna, M.D.