



*Public*  
STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.  
Commissioner

James W. Clyne, Jr.  
Executive Deputy Commissioner

January 7, 2010

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ambroise Forte, M.D.

Redacted Address

Ambroise Forte, M.D.  
7920 Hampton Road, Apt. 801  
North Lauderdale, Florida 33068

Robert Bogan, Esq.  
NYS Department of Health  
Bureau of Professional Medical Conduct  
433 River Street, Suite 303  
Troy, New York 12180

Richard Jasper, Esq.  
276 Fifth Avenue - Suite 501  
New York, New York 10001

**RE: In the Matter of Ambrose Forte, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 09-135) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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

Ambrose Forte, 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. 09-135

**COPY**

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

For the Department of Health (Petitioner): Robert Bogan, Esq.  
For the Respondent: Richard Jasper, Esq.

The Respondent holds a license to practice medicine in Florida, in addition to his 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 2009), the ARB considers what penalty to impose against the Respondent's License following the Respondent's Federal felony conviction and disciplinary action against the Respondent's Florida license. After a hearing below, a BPMC Committee voted to revoke the Respondent's License. The Respondent then requested this review and asked that the ARB reduce the penalty to an indefinite license suspension. After reviewing the hearing record and the parties' review submissions, the ARB votes 5-0 to affirm the Determination by the Committee.

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 commenced the proceeding by a May 21, 2008 Summary Order from the New York Commissioner of Health

suspending the Respondent's License pursuant to the Commissioner's authority under PHL § 230(12). The Petitioner's Statement of Charges [Hearing Exhibit 1] alleged that the Respondent committed professional misconduct under the definition in N. Y. Education Law (EL) § 6530(9)(a)(ii) (McKinney 2009) by engaging in conduct that resulted in a felony conviction under Federal Law. The Petitioner alleged further that the Respondent engaged in conduct that made him liable for disciplinary action against his License under EL § 6530(9)(d), because the duly authorized medical disciplinary body in Florida took disciplinary action against the Respondent's Florida medical license for conduct that would constitute professional misconduct in New York. In the Direct Referral Hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence at the hearing demonstrated that the Respondent was convicted in the United States District Court for the Southern District of Florida upon a guilty plea to Healthcare Fraud, a felony under Title 18, United States Code § 1347. The Court sentenced the Respondent to two years probation, one hundred hours community service, a \$100.00 assessment and \$1,530.00 in restitution. Due to the Federal conviction, the Florida Board of Medicine (Florida Board) reprimanded the Respondent's Florida medical license, required the Respondent to perform fifty hours of community service, placed the Respondent's Florida license on probation for one year and required the Respondent to pay a \$5000.00 fine and \$1,843.72 in costs.

The Committee found that the Respondent's conviction resulted from his role as the medical director at a no-fault mill to defraud insurance companies over automobile accidents. The Committee found that the Respondent's conviction and the Florida Board action made the

Respondent liable for disciplinary action against his License under EL §§ 6530(9)(a)(ii) & 6530(9)(d). The majority of the Committee found that the Respondent showed very poor judgment in working at the no-fault mill and that majority found that allowing the Respondent to retain his License would create the risk that the Respondent would repeat his criminal conduct in New York. The Committee voted 2-1 to revoke the Respondent's License. One Committee member voted to restrict the penalty to an indefinite suspension.

#### Review History and Issues

The Committee rendered their Determination on July 17, 2009. The Petitioner made no objection to the Respondent receiving an extension in time to file the review brief in this proceeding. 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 November 5, 2009.

The Respondent asked that the ARB reduce the penalty to an indefinite suspension. The Respondent argued that his decision to appear pro se at the hearing was a mistake. The Respondent noted that Florida allowed him to retain his medical license in that state. The Respondent argued further that an indefinite suspension would provide protection to people in New York because New York could guarantee that the Respondent has kept up with medical developments and could continue further oversight if New York reinstates the License.

The Petitioner argues that the Respondent showed no remorse for his conduct in his testimony at the Direct Referral Hearing and the Petitioner asks the ARB to affirm the Committee's Determination.

### 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. The ARB affirms the Committee Determination that the Respondent engaged in conduct that made him liable for disciplinary action under EL §§ 6530(9)(a)(ii) & 6530(9)(d). Neither party challenged the Committee's Determination on the charges. The ARB also affirms the Committee's Determination to revoke the Respondent's License.

The ARB rejects the Respondent's suggestion that the Committee revoked the Respondent's License because he appeared pro se. The ARB concludes that the Committee revoked the Respondent's License due to the Respondent's criminal conduct in Florida and the Respondent's refusal to admit wrongdoing. Florida's decision to allow the Respondent to continue in practice amounted to a factor for the Committee's consideration in fashioning a penalty in New York, but the Florida decision neither bound New York nor amounted to the primary factor for consideration.

The ARB also finds an indefinite suspension an inappropriate penalty in this case. Under PHL § 230-a(2), an actual suspension constitutes an appropriate penalty only for a fixed time, during a course of retraining, therapy or rehabilitation, or to comply with terms of a BPMC Order. The case presents none of the possible grounds for a suspension. The Respondent's brief mentioned the chance to assure that the Respondent has remained current with medical

developments [Respondent's Brief page 5], but nothing in the record suggests that the Respondent's criminal conduct resulted from a failure to remain current in continuing education.

The ARB agrees with the Committee that the Respondent's lack of remorse leaves the Respondent at risk to repeat his conduct if he retains his License in New York. As to the Respondent's suggestion in his testimony that he may have been unaware about what happened at the no-fault mill, a medical director should have known what happened at any medical practice he directed. The ARB agrees that the Respondent has demonstrated his unfitness to practice medicine in New York State.

#### 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 revoke the Respondent's License.

Thea Graves Pellman  
Datta G. Wagle, M.D.  
Linda Prescott Wilson  
John A. D'Anna, M.D.  
Richard D. Milone, M.D.

In the Matter of Ambrose Forte, M.D.

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

Dated: *25 December*, 2009

Redacted Signature

\_\_\_\_\_  
Linda Prescott Wilson

In the Matter of Ambrose Forte, M.D.

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

Dated: ku. 22 2009

Redacted Signature

Thea Graves Pellman

In the Matter of Ambrose Forte, M.D.

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

Matter of Dr. Forte.

Dated: 12/28/, 2009

Redacted Signature

A horizontal line with a scribbled-out signature underneath it, indicating that the signature has been redacted.

Datta G. Wagle, M.D.

In the Matter of Ambrose Forte, M.D.

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

Matter of Dr. Forte.

Dr. December 22, 2009

Redacted Signature

Richard D. Milone, M.D.

In the Matter of Ambrose Forte. M.D.

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

Dated: 12-29-09, 2009

Redacted Signature

---

John A. D'Anna, M.D.