



Department
of Health

KATHY HOCHUL
Governor

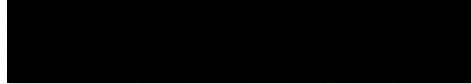
MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

October 5, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ian H. Silverman, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

Jen-Kway Shen, MD


Jen-Kway Shen, M.D.


RE: In the Matter of Jen-Kway Shen, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 22-208) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,



Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

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

In the Matter of

Jen-Kway Shen, 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. 22- 208

COPY

Before ARB Members Reichgott, Rabin, Wilson and Milone
Administrative Law Judge Jean T. Carney drafted the Determination

For the Department of Health (Petitioner): Ian H. Silverman, Esq.
For the Respondent: *Pro se*

Following the Respondent's disciplinary action by the Medical Board of California (CA Board), a BPMC Hearing Committee (Committee) determined that the Respondent's conduct amounted to professional misconduct and voted to revoke 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), the Petitioner asked the ARB to review that Determination. After reviewing the hearing record and the parties' review submissions, the ARB affirms the hearing committee's determination.

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 Committee in this case conducted a hearing under the expedited hearing procedures (Direct Referral Hearing) in PHL § 230(10)(p). The Petitioner's Statement of Charges alleged that the Respondent committed professional misconduct under New York Education Law (Educ. Law) § 6530(9)(d) by having disciplinary action taken against his license to

practice medicine in California (CA license), where the conduct resulting in the disciplinary action would constitute professional misconduct if committed in New York State. 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 before the Committee demonstrated that on February 1, 2021, the CA Board issued a public reprimand against the Respondent's CA license, finding gross negligence based on the Respondent's failure to recognize and properly treat severe blood loss after giving birth, resulting in the patient's death; and failure to document discussion with the patient of the risks associated with elective Pitocin induction. In addition to the public reprimand, the CA Board ordered the Respondent to complete 20 hours of continuing medical education.

The Committee determined that the Respondent's conduct constituted professional misconduct pursuant to Educ. Law § 6530(9)(d) in that the conduct for which the Respondent was disciplined, if committed in New York State, would violate Educ. Law § 6530(4), practicing the profession with gross negligence on a particular occasion; and/or Educ. Law § 6530(32), failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.

In considering an appropriate penalty, the Committee determined that due to the gravity of the consequences of the Respondent's actions, and the Respondent's failure to appear at the hearing, revocation was the only appropriate remedy.

Review History and Issues

The Committee issued their Determination on February 2, 2022. This proceeding commenced on February 17, 2022, 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 April 14, 2022.

The Respondent argued that he did not receive the Notice of Hearing and Statement of Charges; that he only became aware of the proceeding when he received the Committee's Determination and Order. The Respondent further argued that he did his best, that he has retired from the practice of medicine, and it would be unfair to punish him further.

The Petitioner argued that the Respondent was properly served at his last known address. The Petitioner further asserted that the Committee's decision was supported by the evidence, and it should be upheld. The Petitioner noted that, in his brief, the Respondent raised arguments contesting the CA Board findings, which are outside the scope of the Direct Referral Hearing.

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 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. As an initial matter, the ARB finds that the Respondent was properly served with the Notice of Hearing and Statement of Charges at his last known address pursuant to PHL § 230(10)(d)(i). We note that the Committee's Determination and Order, which the Respondent admitted receiving, was sent to the same address as the Notice of Hearing and Statement of Charges. The ARB concurs with the Petitioner's assertion that the Respondent's brief contained arguments outside the scope of the record, and therefore cannot be considered herein. We find that the Respondent does not seem to recognize the tragedy of this case, or accept responsibility for his actions. The ARB agrees with the Committee that the Respondent's conduct constitutes professional misconduct, and affirms the Committee's Determination.

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 to practice medicine.

Linda Prescott Wilson

Jill Rabin, M.D.

Richard D. Milone, M.D.

Michael J. Reichgott, M.D.

In the Matter of Jen-Kway Shen, M.D.

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

Dated: 29 September 2022

A black rectangular redaction box covers the signature of Linda Prescott Wilson.

Linda Prescott Wilson

In the Matter of Jen-Kway Shen, M.D.

Jill M. Rabin, M.D., an ARB Member concurs in the Determination and Order in
the Matter of Dr. Shen.

Dated: September 19th, 2022

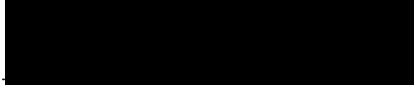


Jill M. Rabin, M.D.

In the Matter of Jen-Kway Shen, M.D.

Michael J. Reichgott, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Shen.

Dated: 09/14/2022, 2022


Michael J. Reichgott, M.D.

In the Matter of Jen-Kway Shen, M.D.

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

Dated: September 13, 2022



Richard D. Milone, M.D.