

January 4, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael G. Bass, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2405
Albany, New York 12237-0032

Mark X. Huang, M.D.
136-20 38th Avenue – Suite 5F
Flushing, New York 11354

Alfredo F. Mendez, Esq.
Abrams Fensterman
630 Third Avenue
New York, New York 10017

RE: In the Matter of Mark X. Huang, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-06) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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

Mark X. Huang, 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. 13-06

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: Alfredo F. Mendez, Esq.

In this proceeding pursuant to New York Public Health Law (PHL) § 230-c
(4)(a)(McKinney 2012), the ARB considers whether to take disciplinary action against the
Respondent's license to practice medicine in New York State (License) following the
Respondent's criminal conviction for health care fraud. After a hearing below, a BPMC
Committee determined that the conduct that resulted in the Respondent's conviction constituted
professional medical conduct and the Committee voted to suspend the Respondent's License for
nine months, to monitor the Respondent's practice for one year following the suspension and to
require the Respondent to complete 15 hours continuing education in business practices and
ethics and billing issues related to the practice of medicine. The Petitioner now requests this
review and asks that the ARB overturn the Committee and revoke the Respondent's License. The
Respondent asks the ARB to affirm the Committee's Determination. After reviewing the hearing
record and the parties' review submissions, the ARB affirms the Committee's Determination on
the charges but the ARB overturns the Committee's Determination on the penalty. The ARB
votes to revoke the Respondent's License.

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)(a)(ii)(McKinney Supp. 2012) by engaging in acts that resulted in the Respondent's criminal conviction under Federal Law. The case began by a Summary Order from the Commissioner of Health of the State of New York that suspended the Respondent's License, pursuant to the Commissioner's authority under PHL § 230(12)(b). 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 showed that the Respondent entered a guilty plea in United States District Court for the Eastern District of New York to one count of health care fraud, a felony. The Court sentenced the Respondent to pay \$2,549,977.00 in restitution and sentenced the Respondent to twelve months imprisonment. The Court provided for a stay of the imprisonment if the Respondent paid \$2,000,000.00 of the restitution within eight months. The Respondent paid the restitution within the required period and the Court sentenced the Respondent to three years supervised release. The conviction arose from the Respondent's billings to government health care programs and health insurers over a five-year period. The Respondent billed for physical therapy services provided by physical therapists. Although patients received services, licensed physical therapists did not provide the services.

The Committee found that the Respondent's acts constituted professional misconduct and made the Respondent liable for disciplinary action against his License under EL § 6530(9)(a)(ii). The Committee stated that the Respondent's conduct warranted action for some substantial period due to the scale of the fraud and the time period during which the Respondent engaged in the conduct knowingly. The Committee, however, found no criticisms in the record concerning the quality of care the Respondent provided and the Committee also found the Respondent genuinely remorseful and willing to accept full responsibility for his actions. The Committee voted to suspend the Respondent's License for nine months. The Committee provided further that the Respondent's billing and business practices should be subject to monitoring for twelve months and the Committee ordered the Respondent to undergo 15 hours continuing education in business practices, ethics and billing issues related to the practice of medicine.

Review History and Issues

The Committee rendered their Determination on August 8, 2012. This proceeding commenced on August 24, 2012, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and the Respondent's reply brief. The record closed when the ARB received the reply brief on or about October 12, 2012.

The Petitioner asks that ARB the overturn the Committee and revoke the Respondent's License. The Petitioner notes that the Federal Judge at the Respondent's sentencing stated the Respondent engaged in a very serious health care fraud offense due to the length and magnitude of the fraud. The Judge also stated that the only apparent motive for the Respondent's crime was greed. The Petitioner argues that fraudulent practice, standing alone, provides a sufficient ground

on which to revoke a physician's License, Matter of Glassman v. Department of Health, 208 A.D.2d. 1060, 617 N.Y.S.2d 413 (3rd Dept. 1994).

The Respondent argues that this case involves no substandard medical care, that the Respondent cooperated with Federal law enforcement, that the Respondent has served patients over a long medical career and that the Respondent's conduct is common place in the medical community in which the Respondent works. The Respondent contends that the Respondent will be in no position to repeat his misconduct because he has been excluded from participation in the Medicaid and Medicare Programs and by several private insurers. The Respondent contends that his conduct should not lead to revocation due to the amount involved in the case alone. The Respondent also contends that revocation is only appropriate in a fraud case when there was personal aggrandizement, Adler v. Bureau of Professional Medical Conduct, 211 A.D.2d 990, 622 N.Y.S.2d 609 (3rd Dept. 1995). The Respondent argues that there was no personal aggrandizement in this case, because patients received services. The services came from acupuncturists and massage therapists, rather than physicians, physician assistants, physical therapists or physical therapy assistants. The Respondent requests that the ARB uphold 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 (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 committed professional misconduct. Neither party challenged the Committee's Determination on the charges. We overturn the Committee's Determination on penalty and we revoke the Respondent's License.

The Respondent engaged in a huge, fraudulent scheme over a long period of time. He knew it was wrong and he continued to do it. He preyed upon the population he served by providing services from less-qualified individuals and then billing as if physical therapists had provided the services. The Respondent demonstrated that he lacks the integrity necessary to practice medicine and he obtained funds from public programs and insurers that he did not deserve and that could have gone to cover other necessary services. The Respondent's conduct demonstrates he is unfit 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 overturns the Committee's Determination to suspend the Respondent's License for six months and to practice monitoring and continuing education following the suspension.
3. The ARB revokes the Respondent's License.

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 Mark X. Huang, M.D.

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

Matter of Dr. Huang.

Dated: *Linda Prescott Wilson* 2012

12:02p Linda P. Wilson

REDACTED

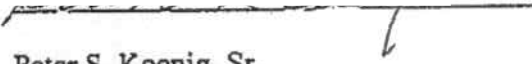
Linda Prescott Wilson

In the Matter of Mark X. Huang, M.D.

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

Dated: December 21, 2012

REDACTED


Peter S. Koenig, Sr.

In the Matter of Mark X. Huang, M.D.

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

Matter of Dr. Huang.

Dated: 26th 2012

REDACTED

Datta G. Wagle, M.D.

In the Matter of Mark X. Huang, M.D.

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

Matter of Dr. Huang.

Dated: December 20, 2012

REDACTED

Richard D. Milone, M.D.

In the Matter of Mark X. Huang, M.D.

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

Dated: Dec 21, 2012

REDACTED

John A. D'Anna, M.D.