



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

August 28, 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marc S. Nash, Esq.
Bureau of Professional Medical Conduct
Corning Tower Building – Room 2512
Empire State Plaza
Albany, New York 12237

Nicholas Roussis, M.D.
[REDACTED]
USP Lewisburg
2400 Robert F. Miller Drive
Lewisburg, Pennsylvania 17837

Marvin S. Robbins, Esq.
666 Old Country Road
Suite 101
Garden City, New York 11530

RE: In the Matter of Nicholas Roussis, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.18-185) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,

A solid black rectangular redaction box covering the signature of James F. Horan.

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cac
Enclosure

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

In the Matter of

Nicholas Roussis, 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. 18-185

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): Marc S. Nash, Esq.

For the Respondent: Marvin S. Robbins, Esq.

Following the Respondent's Federal criminal conviction for accepting a bribe, a BPMC Committee determined that the Respondent's conduct amounted to professional misconduct. The Committee voted to suspend the Respondent's license to practice medicine in New York State (License) during his incarceration on the criminal conviction and to place the Respondent on probation for five years following release from incarceration, with a practice monitor for the first two years of probation. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2018), the Petitioner requested that the ARB place the Respondent on further suspension following the incarceration and the Petitioner provided the ARB information which was not before the Committee. After considering the hearing record and the parties' review submissions, the ARB remands this to the Committee to consider the additional information the Petitioner submitted on review.

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's Statement of Charges [Hearing Exhibit 1] alleged that the Respondent committed professional misconduct under the definition in New York Education Law (EL) §6530(9)(a)(ii) (McKinney 2018) by engaging in conduct that resulted in a criminal conviction under Federal Law. 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 case began with a December 26, 2017 Order suspending the Respondent from practice summarily following the criminal conviction, pursuant to PHL § 230(12)(b).

The evidence before the Committee demonstrated that the Respondent entered a guilty plea on June 21, 2017 in the United States District Court for the District of New Jersey to Racketeering-Transporting in Aid of Travel Act-Acceptance of Bribes, a felony under 18 U.S.C. §§ 2 and 1952(a)(3). The criminal conviction involved accepting bribes in exchange for referring patients' blood specimens to a laboratory that then submitted claims to insurers. The Court sentenced the Respondent to 24 months incarceration, one year of supervised release, a \$5,000.00 fine, a \$100.00 special assessment and \$175,000.00 in forfeiture, for which a co-defendant shares responsibility.

The Committee determined that the Respondent's criminal conduct made the Respondent liable for action against his License pursuant to EL § 6530(9)(a)(ii). The Committee voted to suspend the Respondent's License wholly until the Respondent completes his term of incarceration and to place the Respondent on probation for five years following the suspension, with a practice monitor during first two of the years on probation. The Committee based the Determination on the Respondent's acknowledgment of his poor judgment in accepting bribes and his remedial efforts in appearing before the Richmond County Medical Society to lecture about learning from his misdeeds. The Committee also noted that the Respondent offered in mitigation letters from patients and testimony from Simon Kokkinakis, M.D. and Michael Moretti, M.D., concerning the Respondent's commitment to his obstetrics and gynecological practice.

Review History and Issues

The Committee rendered their Determination on June 11, 2018. This proceeding commenced on June 18, 2018, 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 July 25, 2018.

The Petitioner requested that the ARB modify the penalty by increasing the License suspension for an additional fifteen months following release, on the grounds that suspension during incarceration is not an actual suspension. The Petitioner's brief stated that Federal Bureau of Prisons website indicates that the Respondent, with no time off for good behavior, is scheduled for release from prison in August 2019, which is approximately fifteen months from

the date of the Committee hearing. The Petitioner stated that if the Committee wished to suspend the Respondent for fifteen months, "its decision did not accomplish this effort." The Respondent argued that to fully recognize the Hearing Committee's wishes, the ARB must suspend the Respondent for fifteen months from the release from prison in August 2019, or sooner if the Respondent is released sooner. The Petitioner also requested that the ARB modify the terms of probation to allow the Department to audit the Respondent's billing.

The Respondent replied that the release date and the Bureau of Prisons website were not part of the hearing, so the release date is not an issue for review. The Respondent stated that the review is limited to the issues raised and presented at hearing. The Respondent argued that, even if the Petitioner is permitted to raise the release date as an issue on appeal, the Petitioner's argument does not take into account that the Respondent has been on suspension from the time of the Summary Order in December 2017 and not just from the date of 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 ARB may also remand a case to the Committee for further proceedings, pursuant to PHL § 230-c(4)(b).

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 agree with the Respondent that the release date is not an issue for our review because that issue was not before the Committee. We also decline to speculate on how the Committee would have fashioned the

sanction if the Petitioner had raised the issue at hearing. We remand to the Committee, pursuant to PHL § 230-c(4)(b), to consider the information on the release date.

The Committee should receive a copy of this Remand Order, along with copies of the Petitioner's brief and the Respondent's reply brief. The Committee may then decide if they wish to receive any further information from the parties, to reconvene the hearing or to conduct deliberations with only the additional material which the ARB has forwarded to the Committee. If the Committee wishes further clarification on this Remand Order from the ARB, the Committee may request such clarification through a letter from the Committee's Administrative Officer to the Administrative Officer for the ARB, on notice to the parties. When the Committee has concluded with the Remand, they should render a Supplemental Determination and serve the Determination upon the parties. The parties may then request Administrative Review of the Supplemental Determination in the same way as requesting initial administrative review pursuant to PHL § 230-c.

ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

The ARB remands this matter to the Committee for further proceedings as we discussed in this Remand Order.

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

In the Matter of Nicholas Roussis, M.D.

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

Dated 14 August, 2018



Linda Prescott Wilson

In the Matter of Nicholas Roussis, M.D.

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

Dated: August 10, 2018

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Peter S. Koenig, Sr.

In the Matter of Nicholas Roussis, M.D.

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

Matter of Dr. Nicholas Roussis.

Dated: 8/14/ 2018



Steven Grabiec, M.D.

In the Matter of Nicholas Roussis, M.D.

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

Date: August 18, 2018



Richard D. Milone, M.D.

In the Matter of Nicholas Roussis, M.D.

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

Dated: AUGUST 13, 2018



John A. D'Anna, M.D.