



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

April 3, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mohammad Jaghory, M.D.

Ian H. Silverman, Esq.
NYS Department of Health
ESP-Coming Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Mohammad Jaghory, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 17-102) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,



James P. Horap
Chief Administrative Law Judge
Bureau of Adjudication

JFH:nm
Enclosure

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

In the Matter of

Mohammad Jaghory, 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. 17- 102

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): Ian H. Silverman, Esq.
For the Respondent: *Pro Se*

Following the Respondent's New York State criminal conviction for stabbing a man, a
BPMC Committee determined that the Respondent's conduct amounted to professional
misconduct. The Committee voted to revoke the Respondent's 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 2016), the Respondent challenged his underlying criminal conviction,
argued that he failed to receive effective legal assistance before the Committee and requested
that the ARB overturn the Committee's Determination. After reviewing the hearing record and
the parties' review submissions, the ARB affirms the Committee's Determination in full.

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)(i) (McKinney 2016) by engaging in conduct that resulted in a criminal conviction under New York 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 evidence before the Committee demonstrated that the Respondent entered a guilty plea on February 26, 2015 in the Queens County Supreme Court to Assault in the Second Degree in violation of New York Penal Law § 120.05 (McKinney Supp. 2016). The Court sentenced the Respondent to one year incarceration, 5 years on probation and \$375.00 in court fees. The Court also issued an eight-year Order of Protection.

The Committee determined that the Respondent's criminal conduct made the Respondent liable for action against his License pursuant to EL § 6530(9)(a)(i). The Committee voted to revoke the Respondent's License. The Committee noted that Respondent's counsel raised several mitigating factors at hearing, including the Respondent's compliance with the Court's conditions and probationary terms and the Respondent's practice history, which involved no malpractice claims or disciplinary actions. The Committee also noted a discrepancy between the Queens County Supreme Court Certificate of Conviction [Petitioner Hearing Exhibit 4], which listed the time for incarceration as one year, and the claim at hearing by the Respondent's counsel that the incarceration period was one day. Despite the mitigating factors, the Committee found concerning the Respondent's violent conduct and his judgment, to commit such an egregious offense against another person. The Committee voted to revoke the Respondent's License.

Review History and Issues

The Committee rendered their Determination on September 13, 2016. This proceeding commenced on October 3, 2016, when the ARB received the Respondent's Notice requesting a Review. The Notice included several attached documents and there was no indication on the letter that the Respondent provided a copy of the Notice to the Petitioner, as PHL § 230-c requires. The Administrative Officer for the ARB then advised the parties by letter concerning the date to submit briefs and reply briefs to the ARB. The Appellant made no further submission. The ARB then reviewed the matter and assumed that the Respondent may have intended his October 3rd Notice with attachments as his brief as well as well as the Notice. The ARB then directed the Administrative Officer to provide the Notice packet to both parties and present the Petitioner the opportunity to submit a reply. The record closed when the ARB received the Petitioner's reply brief on January 3, 2017.

The Respondent's Notice criticized the stabbing victim and alleged that the victim had beaten and extorted the Respondent. The Respondent also criticized his hearing counsel and attempted to explain the Respondent's failure to appear on time for his hearing. The Committee conducted the hearing in the Respondent's absence. The attachments to the Notice were documents from outside the hearing record.

The Petitioner replied that the Respondent impermissibly submitted and commented upon material from outside. The Petitioner asked the ARB to disregard these submissions and the Respondent's attempt to challenge his underlying conviction. The Petitioner argued that the Committee considered mitigating factors, which the Respondent's counsel raised, but the

Committee's concerns about the Respondent's violent conduct and judgment outweighed any mitigation. The Petitioner urged the ARB to uphold the Committee.

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 conduct that resulted in the Respondent's criminal conviction constituted professional misconduct. We affirm the Committee's Determination to revoke the Respondent's License.

The Respondent's arguments about the stabbing victim amount to an attempt to re-open the Respondent's guilty plea from his criminal conviction. The ARB rejects those arguments. The Respondent should direct any challenge from the criminal conviction to the courts. Further, the Respondent should direct any criticism concerning the quality of his legal representation to the courts as well.

The ARB sees no basis on this record to overturn the Committee. We share the Committee's concerns over the Respondent's violent conduct and his judgment and we find that those concerns outweigh any mitigating factors in this case.

ORDER

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

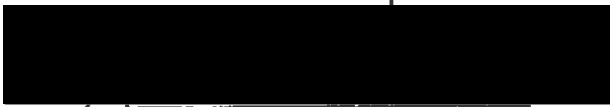
- 1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.**
- 2. The ARB affirms the Committee's Determination to revoke the Respondent's License.**

**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 Mohammad Jaghory, M.D.

Steven Grabiec, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Dr. Jaghory.

Dated: 4/11/, 2017



Steven Grabiec, M.D.

In the Matter of Mohammad Jaghory, M.D.

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

Dated: May 2, 2017

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Peter S. Koenig, Sr.

In the Matter of Mohammad Jaghory, M.D.

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

Dated: April 10, 2017



Richard D. Milone, M.D.

In the Matter of Mohammad Jaghory, M.D.

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

Dated: May 2, 2017



John A. D'Anna, M.D.

In the Matter of Mohammad Jaghory, M.D.

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

Dated: 14 April, 2017

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

Linda Prescott Wilson