



## Department of Health

ANDREW M. CUOMO  
Governor

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

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

February 13, 2018

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Anna Lewis, Esq.  
NYS Health Department  
Division of Legal Affairs  
90 Church Street, 4<sup>th</sup> Floor  
New York, New York 10007

Samir Haddad, M.D.



Nathan Dembin, Esq.  
Nathan L Dembin & Associates PC  
1123 Broadway #1117  
New York, New York 10010

**RE: In the Matter of Samir Haddad, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 032) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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 box used to redact 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

Samir Haddad, 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- 032

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): Anna Lewis, Esq.  
For the Respondent: Nathan Dembin, Esq.

After a hearing below, a BPMC Committee determined that the Respondent violated a term of probation or condition or limitation imposed on the Respondent's license to practice medicine in New York State (License). The Committee voted to suspend the Respondent's License, to place the Respondent on probation following the suspension, to fine the Respondent and to retain a permanent limitation on the Respondent's License. The probation terms required the Respondent to practice with a monitor, complete continuing medical education (CME) and maintain malpractice insurance in certain amounts. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a) (McKinney 2018), the Petitioner asks the ARB to overturn the Committee's Determination and revoke the Respondent's License. In reply, the Respondent requested that the ARB reduce the sanction substantially. After considering the record and the parties' review submissions, we affirm the Committee's Determination on the charges and the sanction. We modify the Determination to place time limits on certain conditions the Committee imposed.

### Committee Determination on the Charges

The Respondent has held a License since 2001. In December 2009, the Respondent entered into a Consent Agreement and Order with BPMC (Consent), which suspended the Respondent's License for 36 months, with three months actual suspension, and placed the Respondent on probation for 36 months following the actual suspension. The Consent:

- limited the Respondent's License permanently to preclude him, either individually or through a professional corporation, from evaluating, treating or billing patients whose medical services are reimbursed through No-Fault Insurance or Workers' Compensation;
- required the Respondent to pay a \$10,000.00 fine;
- limited the Respondent, during probation, to practice only when overseen by a monitor approved by the Director of the Office of Professional Medical Conduct (OPMC Director);
- required the Respondent to maintain malpractice insurance coverage during probation to no less than \$2,000,000.00 per occurrence and \$ 6,000,000.00 per policy per year (2/6 Coverage); and
- required the Respondent to complete continuing medical education (CME), as directed by the OPMC Director within the first 90 days of probation.

The Order became effective in January 2010.

The Committee conducted a hearing into charges that the Respondent committed misconduct under the definition at New York Education Law (EL) §§ 6530(29) (McKinney Supp. 2017) by violating a term of probation, a condition or a limitation placed on the Respondent's License. The Petitioner's factual allegations alleged that Respondent violated the Consent by:

- failing to comply with the permanent limitation on his License prohibiting the rendering of medical services reimbursed through No-Fault Insurance;
- paying only \$4,000.00 of the \$10,000.00 fine;

- practicing without a monitor;
- failing to maintain malpractice insurance in the 2/6 Coverage amounts that the Consent required; and
- failing to complete the CME.

Following the hearing, the Committee rendered the Determination now on review.

The Committee dismissed the charge that the Respondent violated the practice limitation. The Committee sustained the charges that the Respondent failed to practice with a monitor, failed to maintain sufficient malpractice coverage and failed to undergo the CME required under the Consent. The Committee also found that the Respondent violated the Consent by paying only \$4,000.00 of the \$10,000.00 fine that the Consent required. As a sanction for the Respondent's misconduct, the Committee voted to suspend the Respondent's License for 15 months and placed the Respondent on probation for 40 months following the suspension. The Probation Terms, which appear following the Committee's Order, include requirements that the Respondent practice with a monitor for 24 months, maintain 2/6 Coverage, complete a course in Ethics and 30 hours CME and pay the remaining \$6,000.00 in the fine from the Consent. The Committee also left in place the limitation on the Respondent's License, which the Consent imposed.

The Committee found that revocation would constitute too severe a penalty as no evidence questioned the Respondent's competence as a physician or indicated that patient harm had occurred. The Committee also recognized that financial hardship may have played a role in the lack of compliance with some parts of the Consent and that the Respondent may have believed legitimately that one of his proposed monitors had been approved by OPMC. Despite these mitigating circumstances, the Committee noted that the Respondent had failed to comply with provisions of the Consent even though the Respondent had ample time and the failure to comply over seven years went largely unexplained. The Committee also found some of the compliance failures unrelated to financial hardship.

### Review History and Issues

The Committee rendered their Determination on October 18, 2017. This proceeding commenced on October 30, 2017, 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 December 18, 2017.

The Petitioner called the sanction from the Committee's Determination inappropriate and inconsistent with the Committee's findings. The Petitioner questioned how the Committee can trust the Respondent to comply with the requirements under the Committee's Determination, after the Committee found that the Respondent failed to comply with requirements under the Consent, even though the Respondent had ample time to do so. The Petitioner argued that the Respondent offered no persuasive reasons to believe that he will comply with the requirements under the Committee's Determination. The Petitioner requested that the ARB revoke the Respondent's License.

The Respondent replied that the failure to comply resulted in part from the Respondent's good faith belief that there was an approved monitor in place and the failure was aggravated by the lengthy and onerous probation terms under the Consent. The Respondent described revocation as an excessive penalty as no patient harm occurred and the Consent arose from only a single assertion the Respondent made in accepting the Consent, that he was unable to defend successfully a single allegation of misconduct. The Respondent's reply describes the harsh financial results from the limitation on the Respondent's License. The Respondent indicates that

he is ready to take the CME course that the Determination requires. The Respondent requests that the ARB reduce the period for monitoring and probation.

#### 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. We affirm the Committee's Determination that the Respondent committed professional misconduct and we affirm the Committee's Determination to retain the limitation on the Respondent's License. The Respondent accepted that limitation in agreeing with BPMC to the Consent. The Respondent was represented by counsel when the Respondent signed the Consent. The ARB affirms the Committee's Determination to suspend the Respondent's License for 15 months and to place the Respondent on probation for 40 months. We modify the Probation Terms to place tighter limits on the times for compliance.

We reject the Petitioner's request that the ARB overturn the Committee and revoke the Respondent License and we reject the Respondent's request that we reduce the penalty against the Respondent. Violating probation or a condition on a License constitutes serious misconduct and can warrant revocation as a penalty, but the ARB agrees with the Committee that mitigating evidence in this case makes a lesser sanction appropriate. The Respondent may have had a good faith belief that there was an approved monitor in the case and there may have been financial



reasons for some of the non-compliance. The Committee still imposed a strict penalty with actual suspension, a substantial period on probation and the retention of the Limitation. The ARB finds that such penalty sanctions the Respondent appropriately and serves to deter others from similar misconduct.

The ARB finds troubling the seven-year period during which the violations at issue occurred and we see the need to set stricter time limits on compliance than merely the end of the probation, which will follow the suspension. The Committee adopted some such stricter limits in the Order that follows the Committee's Determination at page 9. At paragraph 8 in the Order, the Committee required the Respondent to pay the \$6,000.00 remaining on the fine. The Order provided that the Respondent pay the fine in \$1,000.00 installments, over six months, beginning within 30 days of the effective date of the Determination. As to the 24-months during the probation that the Respondent must practice with a monitor, the Order requires that the monitor be in place at the commencement of the 40-month probation period (paragraph 5). As to the 2/6 Coverage, the Order requires the Respondent to maintain such coverage during the 24-months the Respondent will practice under a monitor (paragraph 6). The ARB modifies paragraph 6 to require that the 2/6 Coverage be in place prior to the commencement of the probationary period. As to the CME, the Determination requires that the Respondent must complete a medical ethics course and 30-hours CME, to the OPMC Director's satisfaction (paragraph 7). The ARB modifies paragraph 7 to require the Respondent to complete the course and the CME to the Director's satisfaction prior to the commencement of the 40-month probationary period.

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 by violating a term of probation, condition or limitation imposed on the Respondent's License.
2. The ARB affirms the Committee's Determination to suspend the Respondent's License, place the Respondent on probation following the suspension, fine the Respondent and limit the Respondent's License permanently.
3. The ARB affirms the probation terms that require the Respondent to complete continuing medical education, practice with a monitor and maintain malpractice insurance in certain amounts.
4. The ARB modifies the sanction relative to certain compliance time frames, as we provide in our Determination.

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 Samir Haddad, M.D.

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

Dated: 9 February 2018



Linda Prescott Wilson

In the Matter of Samir Haddad, M.D.

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

Dated: February 8, 2018

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Peter S. Koenig, Sr.

In the Matter of Samir Haddad, M.D.

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

Dated: 2/8, 2018

[REDACTED]

Steven Grabiec, M.D.

In the Matter of Samir Haddad, M.D.

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

Date February 6, 2018

  
Richard D. Milone, M.D.

In the Matter of Samir Haddad, M.D.

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

Dated: Feb 8, 2018

  
John A. D'Anna, M.D.