



## 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 7, 2018

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Gerard A. Cabrera, Esq.  
New York State Department of Health  
90 Church Street - 4<sup>th</sup> Floor  
New York, New York 10007

Craig Alan Schaum, Esq.  
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600 Old Country Road, Suite 320  
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Nasim Haider, M.D.  
[REDACTED]

Nasim Haider, M.D.  
[REDACTED]

Nasim Haider, M.D.  
Corona Medical Care  
111-21 Roosevelt Avenue  
Corona, New York 11368

**RE: In the Matter of Nasim Haider M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No.18-029) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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 F. Moran  
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

Nasim Haider, 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. 18-029

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): Gerard A. Cabrera, Esq.  
For the Respondent: Craig Schaum, Esq.

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct, including abusing a patient and violating a Consent Order. 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 2018), the Respondent asks the ARB to nullify that Determination. After considering the hearing record and the parties' review submissions, the ARB affirms the Committee's Determination.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(2-3), 6530(5), 6530(20-21), 6530(29) & 6530(31-32) (McKinney Supp. 2018) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- practicing medicine with negligence on more than one occasion,
- practicing medicine with incompetence on more than one occasion,

- engaging in conduct in the practice of medicine that evidences moral unfitness,
- willfully making or filing a false report, or failing to file a report required by law or by the Department of Health or the Education Department,
- violating any term of probation, condition or limitation imposed on a license pursuant to PHL § 230,
- willfully harassing or abusing a patient either physically or verbally,
- failing to maintain adequate medical records, and
- failing to use accepted infection control practices pursuant to PHL § 230(a).

The Respondent denied all the alleged specifications of misconduct. Following the hearing the Committee rendered the Determination now under review.

The Committee sustained misconduct specifications charging that the Respondent engaged in conduct that evidenced moral unfitness in the practice of medicine and willfully abused a patient. The Committee found that the Respondent performed an immigration exam on Patient H and then offered her a job cleaning the Respondent's office. The Committee found that the Respondent abused Patient II physically at the office and that Patient H went directly to the police to report the incident. The Respondent denied the incident, but the Committee found testimony by Patient H more credible.

The Committee dismissed the allegation that the Respondent abused Patient A.

The Respondent entered into a Consent Order with BPMC in December 2004 (Order) in satisfaction of charges that alleged sexual misconduct and fraud. The Order imposed a \$10,000.00 fine, suspended the Respondent from practice for 36 months, with four months actual suspension, placed the Respondent on probation for three years and placed a permanent limitation on the Respondent's License that requires the Respondent to consult and treat all female patients with a chaperone present. The chaperone must be a licensed or registered health care professional, who has been vetted and approved by the Office of Professional Medical Conduct (OPMC) and who has signed an acknowledgement that the chaperone had read the Consent Order and understood the duties and responsibilities of a chaperone (Chaperone Requirements). The Consent Order required that the chaperone must be present for the entirety

of each patient encounter, that the chaperone maintain and control exclusively a chaperone log, submit quarterly chaperone reports, produce the log for inspection and report to OPMC immediately upon any violation of the Order or inappropriate behavior. The Respondent examined Patient H without a chaperone [Hearing Committee Finding of Fact (FF) 16].

The Committee found that the Respondent proposed four chaperones, of which only one was a licensed or certified health care professional. The OPMC approved that licensed health care professional as chaperone in May 2005, but the chaperone ceased employment with the Respondent in 2006. The Respondent failed thereafter to propose or seek OPMC approval for another chaperone. From 2006 until September 2015, the Respondent employed chaperones who were neither vetted nor approved by OPMC. The Respondent, thereafter, hired unapproved chaperones, failed to make the chaperones aware of the Order and retained access to and control over the chaperone logs. The Committee determined that the Respondent's conduct violated the Order.

The Committee found that the Respondent violated the Order further by failing to report his March 8, 2012 arrest for abusing Patient H. The Respondent submitted Compliance Declarations to OPMC on October 7, 2012 and November 11, 2013, which declared that the Respondent was in compliance with the Order and had not been arrested, charged or convicted in any criminal or civil matter. The Respondent had in fact been arrested and charged on March 8, 2012 with Forcible Touching and Sexual Abuse. Those charges were dismissed on April 10, 2013. The Respondent claimed at hearing that he did not report the arrest because there was "no case". The Committee found the dismissal irrelevant because the Respondent was arrested and charged and because the Respondent submitted the first Compliance Declaration to OPMC following the arrest and charges, but prior to the dismissal.

The Committee sustained allegations that the Respondent practiced with negligence on more than one occasion and failed to maintain adequate records relating to the treatment of six persons (Patients C, D, E, F, G, and I). In making their findings, the Committee relied on the testimony by Robert Fuentes, M.D., the Petitioner's expert witness. Dr. Fuentes testified that the Respondent's own medical records showed that the Respondent regularly diagnosed, treated and

wrote prescriptions for patients without obtaining and recording appropriate histories and vital signs, without conducting and recording the results of a focused physical examination and without ordering appropriate lab work and tests. If the Respondent did order tests, he failed to record or consider the results. The Respondent also failed to obtain and record a full set of vital signs at each patient visit and sometimes failed to record any vital signs. The Committee found that the Respondent repeatedly prescribed medications without assessing whether the medications were necessary, such as prescribing antibiotics without confirming a patient had a fever. The Respondent also prescribed medications contraindicated during pregnancy to female patients of child bearing years without obtaining menstrual history and pregnancy status. Also, the Committee found that the Respondent repeatedly prescribed anti-fungal medication to female patients complaining of vaginal discharge without obtaining a temperature or performing an examination. In addition, the Committee found that the Respondent treated patients who presented with complaints of a rash, without examining the rash and recording a description of the size and location of the rash.

The Committee dismissed charges that the Respondent practiced with incompetence on more than one occasion. The Committee found that the Respondent possessed the skill and knowledge necessary to practice medicine safely, but that the Respondent failed to follow accepted medical practice and procedures. The failure to follow accepted practices constitutes negligence rather than incompetence.

The Committee found that the Respondent failed to follow accepted infection control practices. Dr. Fuentes testified that accepted practices require a physician to store used sharps in a specially engineered container, which prevents people from coming in contact with, and being infected by, used sharps. A handwashing sink must remain clutter free and accessible so that a physician and employees can wash hands between patients. Accepted practices also require a physician to store vaccines and patient specimens at a temperature between 35-40 degrees Fahrenheit, to insure their integrity. The Committee noted that evidence from the Respondent's office showed that the Respondent stored used sharps in both an open spice container and an open pail on the floor, that a hand wash sink in the blood draw room was cluttered and

inaccessible to the Respondent and staff and that the Respondent stored vaccines and patient specimens in a refrigerator which lacked a thermometer to monitor temperature.

The Committee found that revoking the Respondent's License constituted the appropriate penalty for committing abuse against Patient H. The Committee noted in addition that the Respondent repeatedly violated the Order that arose from prior allegations of abuse and fraud and that the Respondent repeatedly violated the standard of care in the treatment of patients.

#### Review History and Issues

The Committee rendered their Determination on August 9, 2017. This proceeding commenced on September 1, 2017, 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 October 5, 2017.

The Respondent asks that the ARB overturn the Committee's findings and conclusions. The Respondent repeated that he failed to disclose his arrest due to incorrect legal advice and argued that it would be a miscarriage of justice to discipline a physician for failure to report a charge that was later dismissed. The Respondent noted that the charge involving Patient H was dismissed for her failure to appear for court dates and the Respondent suggested that this failure to appear reflects upon the credibility of the testimony that Patient H gave against the Respondent at the hearing. In response to the Committee's findings concerning the unapproved chaperones, the Respondent noted that there were no assertions that the chaperones would not have been approved if they had undergone credentialing by OPMC. The Respondent also disputed the Committee's findings on patient care.

The Petitioner urged that the ARB sustain 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 (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 in full.

The Committee's findings concerning the abuse against Patient H, standing alone, warranted the revocation of the Respondent's License. The Committee heard from both the Respondent and Patient H and the Committee found Patient H to be more credible in her testimony. We defer to the Committee as finder of fact in their judgment on credibility. The testimony the Committee found credible proved that the Respondent willfully abused Patient H.

There was no factual dispute about the Respondent's failure to comply with the Order. The Respondent submitted Compliance Declarations to OPMC stating that the Respondent was in compliance with the Order and had not been arrested, charged or convicted in any criminal or civil matter. The Respondent had in fact been arrested and charged on March 8, 2012 with Forcible Touching and Sexual Abuse. Those charges were dismissed, but not until April 10, 2013. The Respondent claimed at hearing that he did not report the arrest because there was "no case". The Committee found the dismissal irrelevant because the Respondent was arrested and charged and because he submitted the first Compliance Declaration to OPMC following the arrest and charges, but prior to the dismissal. The Committee found further that filing the

Compliance Declarations without listing the arrest amounted to fraud in practice and in willfully filing a false report. In sustaining these charges, the Committee can reject the Respondent's explanation for conduct and infer matters from other evidence. There is a reasonable inference in this case that the Respondent withheld information on the arrest from OPMC, because the Respondent feared that reporting the arrest would lead OPMC to investigate the matter. When OPMC did find out about the arrest, they did begin an investigation, which included a visit to the Respondent's Office. It was during that visit that OPMC Staff discovered that the Respondent was disregarding the Chaperone Requirements and that Staff noticed the failure to follow accepted infection control practices.

The Respondent also failed to abide by the Chaperone Requirements. The Respondent defended that failure by claiming there was no assertion that the unapproved chaperones would have been rejected if they had undergone credentialing by OPMC. The ARB finds that defense to be speculation, because the Respondent failed to submit the chaperones for credentialing, as the Order required. The Respondent also failed to provide the unapproved chaperones with copies of the Order, he retained control over chaperone logs and he examined patients without chaperones present [FF 15-24].

The Respondent's failure to comply with the Order, standing alone, warranted the revocation of the Respondent's License. The Respondent entered into the Order to settle prior allegations concerning patient abuse. The Order contained provisions to protect patients. The Respondent violated those provisions and the Respondent engaged in abuse against Patient H that the provisions were meant to prevent.

The Respondent contested the Committee's findings on the care for Patients C, D, E, F, G and I, but the Committee found that the testimony by Dr. Fuentes and the Respondent's own

medical records established that the Respondent practiced with negligence on more than one occasion and failed to maintain accurate patient records. The Committee also found that the Respondent failed to follow accepted infection control procedures. The Committee sustained those charges based on the testimony by Dr. Fuentes and, in some instances, on photographs from the Respondent's office. The Committee found Dr. Fuentes credible in his testimony and rejected contrary testimony from the Respondent. Once more, the ARB defers to the Committee as finder of fact in their judgment on credibility.

The record in this case demonstrates the Respondent's unfitness 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 on the charges.
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 Nasim Haider, M.D.

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

Dated: 1. 27<sup>th</sup>, 2018

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

Linda Prescott Wilson

In the Matter of Nasim Haider, M.D.

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

Dated: January 25, 2018

A solid black rectangular box redacting the signature of Peter S. Koenig, Sr.

Peter S. Koenig, Sr.

In the Matter of Nasim Haider, M.D.

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

Dated: 1/29, 2018



Steven Grablec, M.D.

In the Matter of Nasim Haider, M.D.

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

Date July 25, 2018

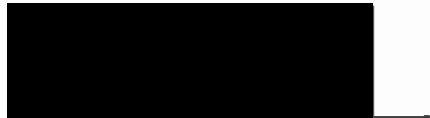


Richard D. Milone, M.D.

In the Matter of Nasim Haider, M.D.

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

Dated: Jan 26, 2018



John A. D'Anna, M.D.