



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

June 23, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

David A. Zarette, Esq.
Weiss Zarett Brofman Sonnekler & Levy PC
333 New Hyde Park Road, Suite 211
New Hyde Park, New York 11042

RE: In the Matter of Malini Rao, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 23-134) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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 redacting the signature of the sender.

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

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

In the Matter of

Malini Rao, M.D. (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 23- 134

A proceeding to review a Determination by
a Committee (Committee) from the Board
for Professional Medical Conduct (BPMC)

COPY

Before ARB Members Torrelli, Rabin, Wilson, Milone and Reichgott
Administrative Law Judge Jean T. Carney drafted the Determination

For the Department of Health (Petitioner):

Mark S. Nash, Esq.

For the Respondent:

David A. Zarett, Esq.

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by violating the terms of her probation. 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 2019), the Respondent asked the ARB to reverse the Committee's Determination and allow the Respondent to retain her License. After reviewing the hearing record and the parties' review submissions, the ARB affirms the Committee's Determination 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 on 20 specifications alleging that the Respondent, who was subject to Terms of Probation resulting from a prior disciplinary proceeding, violated the following terms and conditions of her probation:

Probation Term 1

Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to PHL § 230(19).

Probation Term 3

Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of her employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.

Probation Term 4

Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of her compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.

Probation Term 7(d)

Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with § 230(18)(b) of the Public Health Law. Proof of

coverage shall be submitted to the Director of OPMC prior to Respondent commencing practice within the State of New York.

The Committee determined that the Respondent violated Probation Term 1 by knowingly making false representations with intent to mislead when she completed a credentialing initial appointment application to the Nassau University Medical Center (NUNC).

The Committee determined that the Respondent violated Probation Term 3 by failing to provide, in writing, a full description of her employment and practice, and all professional and residential addresses and telephone numbers within and outside New York State. The Respondent provided false information regarding the status of her employment on multiple occasions, failed to provide a true work history, failed to provide her professional addresses, and failed to provide any additions or changes to her employment information as required.

The Committee determined that the Respondent violated probation Term 4 by failing to respond to multiple requests for written verification relating to her employment.

The Committee determined that the Respondent violated Probation Term 7(b) by failing to provide proof of proper medical malpractice insurance in the amounts required by OPMC.

The record contained testimony from several witnesses whose credibility the Committee evaluated. The Department presented the testimony of April Soltren, Senior Medical Conduct Investigator; and two witnesses from Northwell Health (Northwell): Megan Asseng, Administrator; and Bradley Sherman, M.D. Investigator Soltren was assigned to monitor the Respondent's compliance with BPMC Order. She testified to the specifics of her communications with the Respondent, and to her numerous requests for written confirmation of her compliance. Ms. Asseng testified to the Respondent's dates of employment with Northwell. Dr. Sherman testified to the scope of the Respondent's

employment, and why her employment was terminated. The Committee found the testimony of these witnesses credible and consistent with the evidence.

The Respondent testified in her own behalf. The Committee found the Respondent's testimony evasive, unreliable, riddled with inconsistencies and falsehoods. The Respondent's testimony was not credited.

The Committee found that the preponderance of the evidence supported sustaining the charges against the Respondent. The Committee determined that due to the Respondent's numerous violations of probation, coupled with her failure to accept accountability for her conduct, placing the blame on others, and complete lack of sincerity, revocation of her License was warranted.

Review History and Issues

The Hearing Committee issued their Determination on January 18, 2023. This proceeding commenced on February 7, 2023, 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 April 13, 2023.

The Respondent argued that the penalty imposed by the Committee was excessive under the facts and circumstances of this case. The Respondent contends that her actions amount to no more than administrative inattentiveness, involving no risk of harm to any patients. Additionally, the uncertainty and obstacles created by the COVID-19 pandemic impacted her ability to comply with her probation requirements. The Respondent further argues that there has been no allegation regarding her competency to practice medicine, thereby mitigating against a penalty of revocation. Finally, the Respondent claims that she did not act in bad faith or maliciously, that she attempted to rectify her errors once she became aware of them. The Respondent asks the ARB to impose a penalty of extending her term of probation, along with re-education and/or public service as a more appropriate sanction.

The Petitioner replied that the Respondent's arguments for modifying the Committee's determination were neither compelling nor persuasive. The Petitioner argued that revocation is appropriate where, as in this matter, a physician falsifies documents and displays a lack of integrity despite having been the subject of multiple disciplinary proceedings. The Petitioner urges the ARB to affirm 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 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 agree with the Committee that the Department met its burden of proving each of the specifications contained in the violation of Probation letter. We affirm the Committee's Determination to revoke the Respondent's License.

The ARB agrees with the Committee's assessment of the Department's witnesses. The record reflects that the Respondent has a history of professional misconduct, and has engaged in a pattern of prevarication and obfuscation, as evidenced by her testimony. The ARB noted particularly the portion of the Respondent's testimony relating to her signature on her application as being particularly evasive and mendacious.

The ARB rejects the Respondent's argument that extending the Respondent's term of probation and requiring "re-education" would be appropriate here. The Respondent has shown a stubborn unwillingness to ameliorate her conduct with no evidence to suggest that she will benefit from additional monitoring. The Respondent has had numerous opportunities to comply and cooperate with OPMC, and we find that expending further resources would be futile. It is well settled that "fraudulent conduct standing alone is sufficient to uphold the penalty of revocation." *Bezar v. DeBuono*, 240 A.D. 2d 978, 980 (3rd Dept. 1997). Here, the Committee found, and the ARB agrees, that the Respondent practiced medicine fraudulently.

The Respondent also contends that revocation is not warranted here because there is no evidence of patient harm. However, patient harm is not required to show

fraudulent practice. *Josifidis v. Daines*, 89 A.D. 3d 1257 (3d Dept 2011). The record contains ample evidence to support the Committee's determination to revoke the Respondent's license, and the ARB affirms the committee's determination.

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.

Linda Prescott Wilson
Jill Rabin, M.D.
Richard D. Milone, M.D.
Carmela Torrelli
Michael J. Reichgott, M.D., PhD

In the Matter of Malini Rao, M.D.

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


Dated: 4 June, 2023


Linda Prescott Wilson

In the Matter of Malini Rao, M.D.

Jill M. Rabin, M.D., an ARB Member concurs in the Determination and Order in
the Matter of Dr. Rao.

Dated: 6/9/19, 2023


Jill M. Rabin, M.D.

In the Matter of Malini Rao, M.D.

Carmela Torrelli, an ARB Member concurs in the Determination and Order in the
Matter of Dr. Rao.

Dated: June 9, 2023 .

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Carmela Torrelli

In the Matter of Malini Rao, M.D.

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

Dated: June 9, 2023



Richard D. Milone, M.D.

In the Matter of Malini Rao, M.D.

Michael J. Reichgott, M.D., Ph.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Rao.

Dated: 06/09/2023, 2023



Michael J. Reichgott, M.D., Ph.D.