



## 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 14, 2020

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Sanjeev Saxena, M.D.  
[Redacted]

Re: License No. 258941

Dear Dr. Saxena:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Modification Order No. 20-092. This order and any penalty provided therein goes into effect April 14, 2020.

Please direct any questions to: Board for Professional Medical Conduct, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204, telephone # 518-402-0846.

Sincerely,

[Redacted Signature]  
Michael S. Jakubowski, M.D.  
Interim Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Mark Lee, Esq.  
Parsons, Lee & Juliano, PC.  
By Fax: (205) 324-7097

NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

BPMC No. 20-092

IN THE MATTER  
OF  
Sanjeev Saxena, M.D.

MODIFICATION

ORDER

Upon the proposed Application for a Modification Order Pursuant to N.Y. Pub. Health Law § 230(10)(q) of Sanjeev Saxena, M.D. (LICENSEE), which is made a part of this Modification Order, it is agreed to and

ORDERED, that the attached Application, and its terms, are adopted and SO ORDERED, and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Modification Order, either by first class to Respondent at the address in the attached Application or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 4/13/2020

  
THOMAS T. LEE, M.D.  
Interim Chair  
State Board for Professional Medical Conduct

NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

**IN THE MATTER  
OF  
Sanjeev Saxena, M.D.**

**APPLICATION  
FOR  
MODIFICATION  
ORDER**

Sanjeev Saxena, M.D., represents that all of the following statements are true:

That on or about October 6, 2010, I was licensed to practice as a physician in the State of New York and issued License No.258941 by the New York State Education Department.

My current address is \_\_\_\_\_.

and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I am currently subject to a Determination and Order of the Professional Medical Conduct Administrative Review Board (BPMC Order # 19-186) (Attachment I) (henceforth "Original Order"), which went into effect on July 29, 2019, and which amended and affirmed BPMC Order #19-019, which went into effect on February 1, 2019, pursuant to N.Y. Pub. Health Law § 230(10). Pursuant to N.Y. Pub. Health Law § 230(10)(q), I hereby apply to the State Board for Professional Medical Conduct for an Order (henceforth "Modification Order"), modifying the Original Order, as follows:

The sanction imposed in the Original Order was:

- Censure and Reprimand;

- Respondent must immediately notify the Board for Professional Medical Conduct if he returns to New York State to practice medicine; and
- If Respondent returns to New York to practice medicine, he shall be placed on Probation for one year, with monitoring of his record-keeping.

The sanction imposed shall be modified to eliminate the term of probation imposed by the Original Order;  
and

All remaining Terms and Conditions will continue as written in the Original Order.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance by the Board of this Application, I knowingly waive my right to contest the Original Order or the Modification Order for which I apply, whether administratively or judicially, and ask that the Board grant this Application.

I understand and agree that the attorney for the Bureau of Professional Medical Conduct, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE April 7, 2020

  
SANJEEV SAXENA, M.D.  
RESPONDENT

The undersigned agree to Respondent's attached Application for Modification Order and to its proposed penalty, terms and conditions.

DATE: 4/3/20

  
MARK LEE, ESQ.  
Attorney for Respondent

DATE: 4/10/2020

  
PAULA M. BREEN  
Director  
Office of Professional Medical Conduct

## ATTACHMENT "I"



## Department of Health

ANDREW M. CUOMO  
Governor

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

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

July 22, 2019

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Sanjeev Saxena, M.D.



Mark Lee, Esq  
Parsons, Lee & Juliano, P.C  
600 Vestavia Parkway, Suite 300  
Birmingham, Alabama 35216

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

**RE: In the Matter of Sanjeev Saxena, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 19-186) 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. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cmg  
Enclosure



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

In the Matter of

Sanjeev Saxena, 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. 19-186

Before ARB Members D'Anna, Grabiec and Wilson<sup>1</sup>  
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Marc S. Nash, Esq.  
For the Respondent: Mark Lee, Esq.

The Respondent holds a license as a physician in Alabama as well as his license to practice as a physician in the State of New York (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney Supp. 2019), the ARB considers whether to impose a penalty against the Respondent's License following disciplinary action against the Respondent's Alabama license. After a hearing below, a BPMC Committee found that the Respondent's misconduct in Alabama would amount to misconduct if committed in New York. The Committee voted to Censure and Reprimand the Respondent and to place him on probation for one year, if the Respondent chooses to return to New York. On this review, the Petitioner asks that the ARB to amend a statutory citation inserted in two places in the Committee's Determination and modify the Committee's Determination regarding the probation terms to require the Respondent to practice under the supervision of a practice monitor. After considering the hearing record and the parties' review submissions, the ARB amends the citations, but denies the request to add a practice monitor.

<sup>1</sup> Jill Rabin, M.D. was unable to participate in the consideration of this case. The ARB considered the matter with a three-member quorum, Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

### 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 charged that the Respondent violated New York Education Law (EL) § 6530(9)(d) (McKinney Supp. 2019) by committing professional misconduct - because the duly authorized professional disciplinary agency from another state took disciplinary action against the Respondent's license in that state for conduct that would constitute professional misconduct - if the Respondent had committed such conduct in New York. The Petitioner's Statement of Charges [Direct Referral Hearing Exhibit 1] alleged that the Respondent's misconduct in Alabama would constitute misconduct if committed in New York under EL § 6530(32) for failure to maintain a record for each patient, which accurately reflects the evaluation and treatment of each patient.

Following the Direct Referral Hearing, the Committee rendered the Determination now on review. In the Direct Referral Hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The evidence before the Committee demonstrated that on November 17, 2017, the Respondent entered a Joint Stipulation and Consent Order (Consent Order) with the Alabama Board of Medical Examiners (Alabama Board), in which the Respondent admitted to failing to maintain a medical record for a patient that met the minimum standards under Alabama law. The Alabama Board placed the Respondent on indefinite probation, for not less than one year, with

leave to apply for termination after completing an intensive course in medical documentation, attending a cardiac rhythm device summit, submitting charts for review every three months and receiving satisfactory review reports for those charts.

The Committee found that the Respondent's conduct, if committed in New York, would have violated EL § 6530(32) for failing to maintain a complete and accurate patient record. The Committee found that the Respondent's conduct made him liable for disciplinary action against his License pursuant to EL § 6530(9)(d).

In assessing a sanction for the Respondent's misconduct, the Committee considered that the Respondent expressed remorse, cooperated fully with the probation the Alabama Board imposed and expected to conclude his probation after a hearing on December 20, 2018. The Committee voted to censure and reprimand the Respondent and placed the Respondent on probation for one year. The Probation Terms appear as an Appendix to the Committee's Determination and include a provision for random monitoring of the Respondent's medical records during probation.

#### Review History and Issues

The Committee rendered their Determination on January 25, 2019. This proceeding commenced on March 1, 2019, 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 March 11, 2019.

The Petitioner asks first that the ARB amend the Committee's Determination to correct errors at pages 1 and 3 that cite the charge against the Respondent as a violation under EL §

6530(9)(a)(ii). The citation should be to EL § 6530(9)(d). The Respondent has no objection to the correction.

The Petitioner asks further that the ARB modify the Committee's Determination and add a provision to the probation terms restricting the Respondent to practice only under monitoring by another physician (Physician Monitor). The Petitioner's Brief stated that, on the surface, the Committee's penalty terms appear reasonable because the Respondent admitted to failing to maintain medical records. The Brief states, however, that the original charges against the Respondent also alleged practice as to endanger patient health, gross or repeated malpractice, gross negligence and performing unnecessary tests. The Petitioner argues that in addition to admitting to record keeping violations, he also admitted that the facts contained in the Alabama allegations would, if proven, constitute grounds for disciplinary action. The Respondent opposes the modification because there were no findings by either the Alabama Board or the Committee concerning any charge other than a failure to maintain adequate records.

#### 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 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 Respondent's brief. We affirm the Committee's Determination that the Respondent committed professional misconduct. Neither party challenged the Committee's Determination on the charges. We amend the Committee's Determination at pages 1 and 3 to change the citation from "EL §6530(9)(a)(ii)" to read "EL §

6530(9)(d)". The Respondent made no objection to the Petitioner's request for the amendment. We deny the request to modify the Committee's Determination to add a Physician Monitor.

Although the complaint before the Alabama Board alleged violations under several categories, the Respondent admitted only to failure to maintain accurate records and the Alabama Board and the Committee assessed penalties appropriate for deficiencies in record keeping. The ARB sees no basis to make any change based on unproven allegations. In commencing the Direct Referral Proceeding, the Petitioner alleged that the Respondent's Alabama misconduct would constitute misconduct in New York under only one misconduct specification: failure to maintain accurate records as defined in EL § 6530(32). The Petitioner now seeks to modify the penalty the Committee imposed based upon uncharged conduct. The ARB can not base a sanction on uncharged conduct, Dhabuwala v. State Board for Professional Medical Conduct, 225 A.D.2d 209, 651 N.Y.S.2d 249 (3<sup>rd</sup> Dept. 1996).

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 and the ARB affirms the Committee's Determination on penalty.
2. We amend the Committee's Determination at pages 1 and 3 to change the citation from EL § 6530(9)(a)(ii) to EL § 6530(9)(d).

Steven Grabiec, M.D.  
Linda Prescott Wilson  
John A. D'Anna, M.D.

In the Matter of Sanjeev Saxena, M.D.

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

Dated: 27 June, 2019

A black rectangular redaction box covers the signature of Linda Prescott Wilson. The box is positioned over the handwritten signature, which appears to be "Linda Prescott Wilson".


Linda Prescott Wilson



In the Matter of Sanjeev Saxena, M.D.

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


Dated: 6/24, 2019

  
Steven Grabiec, M.D.

In the Matter of Sanjeev Saxena, M.D.

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

Dated: JUNE 24, 2019

  
John A. D'Anna, M.D.