



## Department of Health

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Commissioner

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

October 15, 2019

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ricky Sayegh, M.D.



Amy Kulb, Esq.  
Jacobson Goldberg & Kulb, LLP  
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Garden City, New York 11530

Pooja Rawal, Esq.  
Bureau of Professional Medical Conduct  
Corning Tower Building – Room 2512  
Empire State Plaza  
Albany, New York 12237

**RE: In the Matter of Ricky Sayegh, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 19-259) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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:nm  
Enclosure

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

In the Matter of

Ricky Sayegh, 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- 259

Before ARB Members D'Anna, Grabice and Wilson  
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Pooja Rawal, Esq.  
For the Respondent: Amy Kulb, Esq.

Following the Respondent's Federal criminal conviction, a BPMC Committee determined that the Respondent's conduct amounted to professional misconduct. The Committee voted to suspend the Respondent's license to practice medicine in New York State (License) for two years and to require the Respondent to complete and pass a course in medical ethics during the suspension. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2019), the Petitioner requested that the ARB overrule the Committee and revoke the Respondent's License, or at least increase the sanction and add three years on probation following the suspension. 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)(ii) (McKinney Supp. 2019) by engaging in conduct that resulted in a criminal conviction under Federal 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). The proceeding began with an Order by the Commissioner of Health of the State of New York suspending the Respondent's License summarily pursuant to PHL §230(12)(b). 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 May 18, 2017 in the United States District court for the District of New Jersey to one count of Racketeering - Transporting in Aid of Travel Act -- Acceptance of Bribes, in violation of Title 18 USC §§ 2 and 1952(e). The Court sentenced the Respondent to thirty months imprisonment and one year of supervised release. The Court also ordered that the Respondent pay a \$10,000.00 fine and \$400,000.00 forfeiture.

The Committee determined that the Respondent's criminal conduct made the Respondent liable for action against his License pursuant to EL § 6530(9)(a)(ii). The Committee voted to suspend the Respondent's License for two years following the Respondent release from prison. The Committee ordered further that the Respondent complete successfully and pass a medical ethics course, pre-approved by BPMC, during the two-year suspension.

### Review History and Issues

The Committee rendered their Determination on January 15, 2019. This proceeding commenced on January 31, 2019, when the ARB received the Petitioner's Notice requesting a Review. The record on review included 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 22, 2019.

The Petitioner asked that the ARB overturn the Committee's suspension Order and revoke the Respondent's License. The Petitioner notes that the Respondent had a prior disciplinary action against him that resulted in a three-year probation period. In the current case, the Respondent received cash bribes for referring blood samples to Biodiagnostic Laboratory Services (BLS), which in turn billed Medicare and private insurance for testing the samples. The Petitioner claimed that the Respondent received these bribes while on probation under the prior disciplinary Order. The Petitioner contended that Respondent admitted that his actions were wrong, but he continued to accept the bribes for three years. The Petitioner argued that the Respondent's conduct warranted revocation. If the ARB denies the request for revocation, the Petitioner requested in the alternative that the ARB place the Respondent on probation for three years following the suspension and limit the Respondent's License permanently to practice in a facility holding licensure under PIIL Article 28.

The Respondent urged the ARB to sustain the Committee's Determination based upon the nature and severity of the conduct, the record of the Respondent's medical practice and good character in the community, his remorse and the disciplinary penalties against other physicians convicted of Federal offenses for receiving payments from BLS. The prior disciplinary order

involved record keeping violations and, contrary to what the Petitioner's Brief states, the probation on the prior violations began in 2015, subsequent to the time the BLS payments ceased in 2013. The Respondent practiced in the underserved community where he was raised. He now suffers from debilitating and progressive rheumatoid arthritis, which has sidelined him from medical practice. The Respondent's treating physicians have determined that the arthritis and the Respondent's numerous other serious medical conditions leave the Respondent unable to sustain the rigors of providing clinical care in a busy practice. The Respondent's wife and two of his four children also suffer from medical problems. The Respondent supported his family through practice administration, consulting and teaching for the three years leading up to the Respondent's November 2017 surrender, to start serving his criminal sentence. The Respondent asserted that he caused no patient harm and that he will only use his License post-suspension for non-clinical practice activities. The Respondent indicated he engaged in rehabilitative activities during his incarceration and he expressed remorse for his conduct.

The Respondent's Reply contends that there have been several prosecutions in the U.S. District Court in New Jersey against New York licensed physicians for accepting payments from BLS. The penalties against these physicians in subsequent Direct Referral Proceedings before BPMC ranged from fully stayed suspensions with probation, to suspensions during incarceration and two-year actual suspensions following release. The Respondent concluded that the Committee in this case imposed a sanction consistent with the penalties in the other BLS cases.

#### ARB Authority

Under PHL §§ 230(10)(i), 230-c) 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 conduct that resulted in the Respondent's criminal conviction constituted professional misconduct. Neither party challenged the Committee's Determination on the charges. We also affirm the Committee's Determination on the penalty. The Committee in this case acted consistently with other BPMC Committees which penalized physicians for criminal conduct arising from payments by BLS. The Respondent has already undergone incarceration and will now undergo an actual suspension. Even after his suspension, the Respondent's health will limit him to non-clinical practice. We see no reason to change 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 suspend the Respondent's License for two years following his incarceration and to require the Respondent to complete and pass a course in medical ethics during the suspension.

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



In the Matter of Ricky Sayegh, M.D.

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

Dated: 29 June, 2019



Linda Prescott Wilson

In the Matter of Ricky Sayegh, M.D.

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

Dated: \_\_\_\_\_, 2019



Steven Grabiec, M.D.

In the Matter of Ricky Sayegh, M.D.

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

Dated: JUNE 10, 2019

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John A. D'Anna, M.D.