



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 2, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel Guenzburger, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
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Attorney at Law
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Isaac Steven Herschkopf, MD
201 East 37th Street, Suite L 1
New York, New York 10016-3159

RE: In the Matter of Isaac Steven Herschkopf, MD

Dear Parties:

Enclosed please find the Determination and Order (No. 21-247) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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 redaction box covering the signature of Dawn MacKillop-Soller.

Dawn MacKillop-Soller
Acting Chief Administrative Law Judge
Bureau of Adjudication

DXM:nm
Enclosure

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

COPY

In the Matter of

Isaac Steven Herschkopf, M.D.
(Respondent)

Administrative Review Board (ARB)
Determination and Order No. 21- 247

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

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

For the Department of Health (Petitioner): Daniel Guenzburger, Esq.
For the Respondent: Anthony Z. Scher, Esq.

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by violating minimal acceptable standards of care in the psychotherapeutic relationship. 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 overrule the Committee and allow the Respondent to retain his 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 charges that the Respondent violated New York Education Law (EL) §§ 6530(2-6), 6530(17), 6530(20) and 6530(32) by:

- practicing the profession fraudulently,
- practicing the profession with negligence on more than one occasion,
- practicing the profession with gross negligence,
- practicing the profession with incompetence on more than one occasion,
- practicing the profession with gross incompetence,
- exercising undue influence,
- conduct in the practice of medicine evidencing moral unfitness, and
- failing to maintain accurate patient records.

The misconduct occurred over the course of many years while the Respondent, a psychiatrist, provided psychotherapy to three patients (Patients A-C) through his private practice. The record identified the patients by letters to protect patient privacy.

The Committee determined that the Respondent committed professional misconduct by practicing fraudulently, with negligence on more than one occasion and with gross negligence, with incompetence on more than one occasion and with gross incompetence, by exercising undue influence over patients, with conduct evidencing moral unfitness, and failing to maintain records.

The Committee found that the Respondent established therapeutic relationships with the patients, then exerted increasing influence over the patients' personal and professional decisions. The Respondent advised patients to disinherit family members in favor of naming him or his family as beneficiaries in their wills; he directed one patient to create a charitable foundation that the Respondent controlled, and that another patient to contributed significant funds to with Respondent's knowledge and consent. The Respondent insinuated himself into one patient's business, creating a pseudonym concealing his therapeutic relationship with the patient, and even allowing the patient to make the Respondent a joint owner of a swiss bank account.

The evidence shows that the Respondent socialized with patients, inviting one patient to be his guest at galas and charitable events, at his birthday party, his

daughter's bat mitzvah, and making a toast at the patient's wedding. In addition, he appropriated a patient's home in a prestigious area of Long Island as his own, and over the course of nearly 20 years, hosted extravagant parties there, inviting certain patients which made them feel special. The Respondent consistently failed to adhere to accepted principles of medical ethics applicable to psychiatry in his conduct and treatment of these patients.

The evidence further reflects that the Respondent failed to keep accurate records regarding the treatment of these patients. He did not consistently make progress notes, or treatment plans and goals, there were no termination letters in the records of two patients to indicate the therapeutic relationship had ended. A third patient was sent a termination letter, but there was no prior notice or discussion with the patient regarding the therapeutic benefit of terminating treatment.

The record also contained testimony from several witnesses, whom the Committee evaluated for credibility. The Department presented the testimony of Patients A and C, as well as the testimony of Stephen Price, M.D., a board certified psychiatrist. Patients A and C testified to their experiences as the Respondent's patients. The Committee found the testimony from both these witnesses credible and consistent with the evidence. Dr. Price testified to the ethical standards for psychiatrists promulgated by the American Medical Association (AMA) in 1973. Dr. Price reviewed the medical records for all three patients, as well as the testimony of Patients A and C, and identified how the Respondent deviated from the AMA standards of care in treating these patients. Dr. Price identified a pattern of professional misconduct wherein the Respondent engaged in inappropriate financial, social, and business involvement with his patients from which he benefitted financially, socially, and professionally.

The Respondent testified in his own behalf, and presented character witnesses Richard Joel, Esq., and Ira Kassen, M.D. Robert Cancro, M.D., gave expert testimony on behalf of the Respondent. The Committee considered the character testimony and

evidence; but gave it limited weight because it was not central to the charges against the Respondent. The Committee found Dr. Cancro's testimony limited by the fact that he was not provided complete medical records for all three patients, and lacked familiarity with the records he was provided with. The Committee found that the Respondent's testimony was replete with contradictory assertions that attempted to justify his conduct. His assertion that the only standard of ethical conduct applicable to psychiatrists before 1991 prohibited sexual relationships with patients was not supported by the evidence.

The Respondent conceded that these patients named him and/or his family members as beneficiaries and/or executors in their wills, and that Patient A made him a co-owner of a bank account with the Respondent's knowledge and consent. The Respondent also testified that his therapeutic relationships with Patients A and B terminated before the alleged misconduct occurred, and he transitioned to acting as a business consultant for them. The Committee found this testimony inconsistent with treatment records and testimony suggesting otherwise.

The parties submitted post-hearing memoranda addressing the definition of undue influence. The Committee considered those memoranda in evaluating the evidence related to the charges of undue influence.

The Committee voted to revoke the Respondent's License. The Committee found the Respondent showed little insight or remorse into his conduct and how that conduct adversely affected his patients. The Department had asked for a \$10,000 fine in addition to revocation; but the Committee determined that imposing a monetary penalty on the Respondent would serve little or no purpose.

Review History and Issues

The Hearing Committee rendered their Determination on April 5, 2021. This proceeding commenced on April 12, 2021, 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 Petitioner's reply brief on June 11, 2021.

The Respondent asked the ARB to overturn the Committee's determination to revoke the Respondent's license. The Respondent argued that the allegations of misconduct included periods of time after the patients' therapeutic relationships with the Respondent had terminated. Specifically, the Respondent argued that his relationship with Patient A transitioned from psychiatrist to business consultant sometime in 1983-1984, not in 2010; that a similar transition occurred with Patient B in 1986, not in 2003; and that the therapeutic relationship with Patient C terminated sometime between 2001-2002, not in 2004.

The Respondent also argued that he did not exert undue influence over these patients because he did not take money from the bank accounts and other funds he had access to; and he did not intend to accept the distributions of any estates of which he and/or his family members were named beneficiaries.

Finally, the Respondent argued that the ethical standards regarding non-sexual boundary violations between psychiatrists and patients were not promulgated until after the Respondent's therapeutic relationship with Patients A and C had transitioned to a business consultancy. The Respondent further argued that it was not unusual for psychiatrists in New York City to become business advisors to their prominent patients.

The Petitioner replied that the Committee evaluated the evidence properly, and found that the Respondent exploited these patients by placing his own interests above their needs. The Petitioner argued that the Respondent failed to raise an appealable issue, and was inappropriately asking the ARB to substitute its judgment for the Committee's on each factual finding. The Petitioner further argued that the Committee reasonably found Patient A's testimony credible, reasonably rejected the Respondent's defenses regarding ethical standards of psychiatric boundaries, and reasonably found

the Respondent's testimony not credible. Finally, the Petitioner argued that considering the unique position of power a psychiatrist has over patients, this Respondent's disdain for psychiatric ethical concerns, and the personal gain afforded him by his misconduct, revocation of the Respondent's license is the most appropriate sanction to protect the public.

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 affirm the Committee's determination that the Respondent's conduct constitutes professional misconduct. We affirm the Committee's determination to revoke the Respondent's license.

The ARB rejects the Respondent's argument that the therapeutic relationship with Patients A and B terminated and the Respondent acted as a business consultant rather than a therapist. There is no credible evidence in the record to support that contention. Rather, the record is replete with evidence that these patients regarded the Respondent as their therapist, and turned to him for advice in all areas of their lives.

The Respondent has engaged in repeated patterns of disregarding the property of others, lying, and deception that deviates from acceptable standards of care. The Respondent appropriated Patient A's house as his own and threw dozens of parties there. He accepted significant donations from his patients into a charitable foundation he controlled; and allowed his patients to name him and his family members in their wills. The Respondent created an alias for the purpose of receiving monetary payments from Patient A. This repeated fraudulent conduct demonstrates his unfitness to practice medicine, and provides sufficient grounds to revoke his license. Arnett v. New York State Dept. of Health, 69 AD 3d 1001 (3d Dept, 2010); Matter of Glassman v. Dept. of Health, 208 A.D.2d 1060; -- N.Y.S.2d -- (3rd Dept. 1994).

The ARB also rejects the Respondent's argument that ethical standards pertaining to psychiatrists for acts other than sexual impropriety were not established until after he stopped treating these patients. The American Medical Association (AMA) promulgated its Principles of Medical Ethics in 1973, with annotations pertaining specifically to psychiatry in 1981 that prohibit a psychiatrist from "exploiting information furnished by the patient and should not use the unique position of power afforded him/her by the psychotherapeutic situation to influence the patient in any way not directly relevant to treatment goals." The record reflects that the Respondent used his position to influence his patients in drafting their wills, cutting off contact with their family, and distribution of their income. The Respondent failed to articulate how his conduct directly related to his patients' treatment goals.

The Respondent's arguments in this review are largely based on the premise that the Committee should have found the Respondent's testimony credible. The Committee articulated a rational basis for not crediting the Respondent's testimony. The Committee found that the Respondent's testimony pertaining to ethical standards, a material issue of fact, was contradicted by the AMA Principles of Medical Ethics. The Respondent's testimony was at times inconsistent and evasive, giving credence to the Committee's determination that he lacked credibility. In his brief, the Respondent contends that the penalty of revocation is "Grossly Excessive." (Respondent's brief at p. 28). Clearly, the Respondent lacks insight into his misconduct, exhibiting no remorse, and continues to believe he behaved appropriately. From the record before us, it appears that neither retraining nor continuing medical education will give the Respondent such insight, or protect the public from his egocentricity. Consequently, revocation of the Respondent's license is the most appropriate penalty.

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's conduct constituted professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's license.

Linda Prescott Wilson

Richard D. Milone, M.D.

Carmela Torrelli

In the Matter of Isaac Steguz Herschkopf, M.D.

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

Dated: *November 29* 2021



Carmela Torrelli

In the Matter of Isaac Steven Herschkopf, M.D.

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

Dated: 23 November, 2021



Linda Prescott Wilson

In the Matter of Isaac Steven Herschkopf, M.D.

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

Dated November 29, 2021


Richard D. Milone, M.D.