



Department of Health

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Commissioner

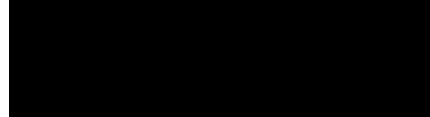
SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

May 15, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Muhammed Mirza, M.D.



Richard West, Esq.
The Law Office of Richard West, LLC
180 River Road
Summit, New Jersey 07901

RE: In the Matter of Muhammed Mirza, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 20-124) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine if **said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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 black rectangular redaction box covering 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 Lawrence Womack, MHEALTH
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

In the Matter of

Muhammed Mirza, 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. 20- 1 24

Before ARB Members Grabiec, Wilson and Rabin
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Marc Nash, Esq.
For the Respondent: No Appearance

The Respondent holds a license to practice medicine in New Jersey, in addition to his license to practice medicine in New York (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2020), the ARB considers what action to take against the Respondent's License after disciplinary action against the Respondent in New Jersey. After a hearing below, a BPMC Committee placed the Respondent on probation for 18 months under terms that included practicing with a female chaperone for all examinations and all consultations on female patients. The Petitioner then sought administrative review, asking the ARB to overrule the Committee and revoke the Respondent's License. After reviewing the record below and the Review request, the ARB overturns the probation which the Committee imposed and we vote 3-0 to place a permanent limitation on the Respondent's License to require that the Respondent practice with a chaperone for all examinations and consultations on all patients.

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)(d) (McKinney Supp. 2020) by engaging in conduct that resulted in disciplinary action in another state that would constitute misconduct if committed in New York. 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 evidence before the Committee demonstrated that the Respondent entered into a Final Consent Order with the New Jersey Board of Medical Examiners (New Jersey Board) that suspended the Respondent's New Jersey license for one year, with three months actual suspension, and the remaining nine months on probation. The Consent Order also required that the Respondent complete an ethics course and pay a civil penalty and costs totaling \$29,944.21. The penalties under the Consent Order result from the Respondent's non-compliance with a 2012 Agreement that required the Respondent to have a female employee from his medical practice serve as a chaperone during all his examinations and consultations with female patients. The Agreement required that the chaperone initial all charts to indicate she was present during the examinations and prohibited a family member to act as the chaperone. The Consent Order found that the Respondent allowed his daughter to serve as chaperone and did not require the daughter

to initial patient charts. The Consent Order also recited that the Respondent entered into the 2012 Agreement after his arrest in Jersey City, NJ for criminal sexual contact with a former patient.

The Committee determined that the Respondent's conduct made the Respondent liable for action against his License pursuant to EL § 6530(9)(d). The Committee found that the Respondent's conduct, if committed in New York, would have amounted to misconduct under EL § 6530(29) for violating any term of probation, condition or limitation imposed on the licensee pursuant to the provisions of PHL §230.

The Committee rejected the Petitioner's recommendation that the Committee revoke the Respondent's License. The Committee found that too harsh a penalty, because the New Jersey Consent Order indicated that the Respondent had a chaperone present during female patient visits at issue in the Consent Order, albeit a family member. The Committee found that the New Jersey noncompliance appeared to be isolated to a particular day rather than persistent over a period of time. The Committee noted that the Respondent was past his period of active suspension in New Jersey and that information from the Petitioner indicated that the Respondent had no intention of activating his License and commencing the practice of medicine in New York. The Committee also pointed out that there was no information in the record as to the length of time the Respondent must practice with a chaperone under the New Jersey Consent Order.

The Committee voted to place the Respondent on probation for 18 months, commencing when the Respondent returns to the practice of medicine in New York. Paragraph 3 in the Probation Terms requires the Respondent to provide a female chaperone to all female patients during medical visits, whether the visit is for examination or consultation. The Probation Term bars the chaperone from being a member of the Respondent's family.

Review History and Issues

The Committee rendered their Determination on January 7, 2020. This proceeding commenced on January 16, 2020, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and the Petitioner's brief. The Respondent made no submission. The record closed when the ARB received the Petitioner's brief on or around February 13, 2020.

The Petitioner requests that the ARB overturn the Committee and revoke the Respondent's License. In the alternative, the Petitioner requested that the ARB place a permanent restriction on the Respondent's License, to require a non-family member, female chaperone to be present at all examinations and consultations. The Petitioner urged that the chaperone should be a licensed or registered health care professional or other health care worker, proposed by the Respondent and subject to the approval of the Director of the Office for Professional Medical Conduct (Director). The Petitioner also urged that the proposed chaperone must submit to the Director an acknowledgment to undertake the chaperone's responsibilities, including quarterly reporting, reporting non-compliance, maintaining a log recording the chaperone's presence at examinations/consultations and providing copies of the log to OPMC quarterly.

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 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 (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 engaged in conduct in New Jersey that made the Respondent liable for disciplinary action against his License. Neither party challenged the Committee's Determination on the charges. We overturn the Committee's Determination to place the Respondent on probation. We place a permanent restriction on the Respondent's License to require the Respondent practice only with a chaperone present for all examinations and consultations for all patients.

The Respondent's non-compliance under the 2012 New Jersey Agreement occurred in a medical setting and showed intent to evade the Agreement. The Committee found the non-compliance limited to a single incident, so we agree with the Committee that revocation constitutes too severe a sanction. We see no reason, however, to limit the chaperone to only an 18-month period. The chaperone must be a licensed or registered health care professional or health worker, to be nominated by the Respondent and approved by the Director. The chaperone shall work pursuant to a written acknowledgment, the terms of which shall be specified and be approved by the Director.

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 overturns the Committee's Determination to place the Respondent on probation.
3. The ARB limits the Respondent's License to require that a chaperone shall be present for all examinations and consultations for all patients and that chaperone shall be subject to approval and conditions as specified in this Determination.

Steven Grabiec, M.D.
Linda Prescott Wilson
Jill Rabin, M.D.

In the Matter of Muhammed Mirza, M.D.

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

Dated: 27 April, 2020


Linda Prescott Wilson

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Physician Monitoring

APR 30 2020

Office of Professional
Medical Conduct

In the Matter of Muhammed Mirza, M.D.

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

Dated: 4/15, 2020



Jill Rabin, M.D.

In the Matter of Muhammed Mirza, M.D.

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

Dated: 4/16, 2020


Steven Grabiec, M.D.