



Department of Health

KATHY HOCHUL
Governor

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

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

February 1, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Christina Radman, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007

Michael Hiser, Esq.
Abrams Fensterman, LLP
54 State Street, Suite 803
Albany, New York 12207

RE: In the Matter of Arnold Mandelstam, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 23-018) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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 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

COPY

In the Matter of

Arnold Mandelstam, M.D. (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 23- 018

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

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

For the Department of Health (Petitioner): Christine M. Radman, Esq.
For the Respondent: Michael A. Hiser, Esq.

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by violating minimum 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 reverse the Committee's Determination 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(3), 6530(4), 6530(20), 6530(31) and 6530(32) by:

- practicing the profession with negligence on more than one occasion;

- practicing the profession with gross negligence;
- conduct in the practice of medicine evidencing moral unfitness;
- willfully harassing, abusing, or intimidating a patient; and
- failing to maintain a record for each patient which accurately reflects the care and treatment of that patient.

The misconduct occurred while the Respondent, a psychiatrist, provided outpatient psychiatric treatment to two patients (Patients A and B) 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 with negligence on more than one occasion and with gross negligence, with conduct evidencing moral unfitness, by willfully harassing, abusing or intimidating both patients, and by failing to maintain accurate records.

The Committee found that the Respondent provided medication management to both patients; but he knowingly and willfully exploited the patients' vulnerability for his own self-interest by talking about himself, his physical appearance, and his sex life. The Respondent asked both patients increasingly personal questions about their sex lives, using crude and vulgar language. The Respondent gradually escalated his inappropriate conduct, making more unwelcome, sexually provocative comments, all of which had no medical purpose; and made the patients increasingly uncomfortable.

The evidence shows that the Respondent treated Patient B from October of 2000 until June of 2009. The Respondent treated Patient A from February of 2014 until May of 2017. Both patients made strikingly similar, contemporaneous reports to their respective therapists and spouses concerning the Respondent's behavior. There is no evidence that the patients knew each other, or had any contact prior to making these allegations. The Committee found the patients' testimonies credible and consistent with their initial reports; and that the Respondent consistently failed to adhere to accepted principles of medical ethics applicable to psychiatry in his conduct and treatment of these patients.

The Committee further found that the Respondent failed to keep accurate records regarding the treatment of these patients. He failed to document medical status exams, a treatment plan, a rational diagnosis, reactions to medication, or relevant family history.

In addition to the testimonies of Patients A and B, the record contained testimony from several witnesses whose credibility the Committee evaluated. The Department presented the expert testimony of Michael Mahelsky, M.D.; Sharon Goldblum, ACSW, PhD; Amy Korn, LCSW; and Patient B's husband. The Committee found the testimony of these witnesses credible and consistent with the evidence. Dr. Mahelsky testified to the ethical standards for psychiatrists promulgated by the American Medical Association (AMA) Code of Medical Ethics. Dr. Mahelsky reviewed the medical records for both patients, and identified how the Respondent deviated from the AMA standards of care in treating these patients. Dr. Mahelsky identified a pattern of professional misconduct wherein the Respondent's conduct in the care and treatment of these patients failed to meet minimum acceptable standards of care expected of a psychiatrist working in a similar setting and with a similar patient population, at the time the treatment was provided.

The Respondent testified in his own behalf; presented the expert testimony of Frank Dowling, M.D; and character witnesses Marci Zaslav, LCSW; Mari Halem, LCSW; Ross Tabisel, LCSW; Ronnie Rabinowitz, LCSW; and four patients. The Committee found the character testimony credible; but gave it limited weight because it was not central to the charges against the Respondent's care and treatment of either Patient A or B. The Committee found Dr. Dowling's testimony failed to focus on the facts and evidence presented in this case.

The Committee did not credit much of the Respondent's testimony. His testimony at the hearing was not consistent with his prior statements made during interviews with OPMC, or with his own records. The Committee was not persuaded by

the Respondent's testimony explaining his use of crude and vulgar language during his sessions with these patients; or his claim that the patients' reactions to his conduct was distorted.

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 serious acts of misconduct and violations of the sanctity of the physician patient relationship, his License should be revoked.

Review History and Issues

The Committee rendered their Determination on September 21, 2022. This proceeding commenced on October 5, 2022, 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 December 1, 2022.

The Respondent asked the ARB to overturn the Committee's determination to revoke the Respondent's license. The Respondent argued that he was substantially prejudiced by the ALJ allowing the Department to amend the Statement of Charges after the first day of the hearing to include an allegation of failure to maintain complete and accurate records reflecting the treatment of each patient.

The Respondent also argued that the evidence did not support the findings or penalty imposed by the Committee. Specifically, the Respondent contended that the Committee should have afforded more weight to his expert witness' testimony; and less weight to the Department's expert, alleging inconsistencies with Dr. Mahelsky's initial reports and his testimony. The Respondent makes similar arguments regarding the testimonies of Patient A and Patient B. The Respondent also urged the ARB to credit his own testimony, noting the high respect his character witnesses hold for him. The Respondent emphasized his defense to the allegation that he masturbated during a

session with Patient A, contending that he was jet-lagged from having just returned from Israel, and had slumped in his chair, falling asleep.

Finally, the Respondent argued that the ALJ and the Department's attorney made inappropriate comments that improperly affected the Committee's determination.

The Petitioner replied that the Committee evaluated the evidence properly, and revocation was an appropriate penalty. The Petitioner argued that the Committee's credibility findings were reasonable, and that the evidence showed the Respondent did not meet minimum standards of care in the practice of psychiatry.

The Petitioner also argued that there was no prejudice to the Respondent by amending the Statement of Charges, noting that the Respondent had ample opportunity to fully cross examine all of the Department's witnesses. Additionally, the Respondent moved to admit Patient B's medical record into evidence prior to the Petitioner moving to amend the charges. The Petitioner asserted that because the Respondent had received an administrative warning in 2012 for failing to maintain complete and accurate records of his treatment of Patient B, he was aware of this issue. Subsequent to the record being admitted into evidence, the Petitioner's expert reviewed the record and was recalled to testify on the third day, giving the Respondent an opportunity to fully cross examine the witness on the amended charges.

Finally, the Petitioner argued that the hearing was fundamentally fair, vehemently denying any improper conduct that could have affected the decision rendered by the Committee.

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 agrees with the Committee's assessment of Patient A and B's testimony; as well as the testimonies of Dr. Goldblum and Ms. Korn. The ARB notes that the patients' accounts were strikingly similar, yet they did not know each other, and the

incidents occurred years apart. Both patients describe the Respondent moving from sitting behind his desk to sitting in a chair across from them, with nothing between. Both patients described the Respondent discussing his personal life with them, including his sex life, and asking them extremely personal questions about their sex lives with their spouses. Both patients described the Respondent recommending they masturbate, and using crude and vulgar language during their sessions. The ARB found the Respondent's testimony narcissistic, and laced with victim blaming comments. The ARB did not find credible the Respondent's account of his session with Patient A, that he had not masturbated, but had fallen asleep. The Respondent failed to demonstrate how his conduct and language furthered the treatment of his patients. The evidence clearly showed that the Respondent took advantage of these vulnerable patients. He was fully aware of the firm boundaries that comprise the relationship between a psychiatrist and his patients, yet he crossed them. The ARB finds that the record provides a rational basis for sustaining the charges.

The ARB rejects the Respondent's argument that he was substantially prejudiced by the Statement of Charges being amended to add the charge of inaccurate recordkeeping after the first day of hearing. The relevant regulation allows for a Statement of Charges to be amended by any party, prior to a hearing committee's final determination, absent substantial prejudice to the other party. (10 NYCRR 51.6). Here, the Respondent failed to show substantial prejudice. The record reflects that the Department moved to amend the Statement of Charges after the Respondent moved to have Patient B's medical records, that were in the Respondent's possession, admitted into evidence. The record further reflects that the Respondent was given the opportunity to fully explore the amended allegations through cross-examination of the Department's witnesses and through his own evidence.

Similarly, the ARB finds that the Respondent failed to show conduct by either the ALJ or the Prosecutor that improperly affected the Committee's determination. The

evidence relied on by the Committee supports sustaining the allegations against the Respondent. Both patients presented compelling testimony that was corroborated by the evidence presented. The Respondent presented a robust defense, including his own testimony over two days, an expert of his choosing, and several character witnesses. The fact that the Committee placed greater weight on some evidence over other evidence does not indicate undue influence.

The Respondent has repeatedly engaged in conduct that violated his patients' trust in a physician. This conduct demonstrates his unfitness to practice medicine, and provides sufficient grounds to revoke his license. *D'Souza v. New York State Dept. of Health*, 68 A.D. 3d 1562 (2009); *Matter of D'Angelo v. State Bd. For Professional Med. Conduct*, 66 A.D.3d 1154 (2009). 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 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
Jill Rabin, M.D.
Richard D. Milone, M.D.
Michael J. Reichgott, M.D., PhD.

In the Matter of Arnold Mandelstam, M.D.

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

Dated: January 24th, 2023



Jill Rabin, M.D.

In the Matter of Arnold Mandelstam, M.D.

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

Dated: January 24, 2023




Richard D. Milone, M.D.

In the Matter of Arnold Mandelstam, M.D.

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


Dated: 25 January, 2023


Linda Prescott Wilson

In the Matter of Arnold Mandelstam, M.D.

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

Dated: 01/24, 2023


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