



## Department of Health

KATHY HOCHUL  
Governor

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

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

September 17, 2021

### CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nathanial White, Esq.  
NYS Department of Health  
Corning Tower Building, Room 2512  
Empire State Plaza  
Albany, New York 12237

Eric Kanefsky, Esq.  
Calcagni Kanefsky LLP  
One Newark Center  
1085 Raymond Blvd. 14<sup>th</sup> Floor  
Newark, New Jersey 07102

Samuel A. Preschel, M.D.  
[REDACTED]

**RE: In the Matter of Samuel A. Preschel, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 21-194) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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: cmg  
Enclosure

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

In the Matter of

Samuel A. Preschel, M.D. (Respondent)

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

Administrative Review Board (ARB)

Determination and Order No. 21- 194

**COPY**

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

For the Department of Health (Petitioner): Nathaniel White, Esq.  
For the Respondent: Eric Kanefsky, Esq.

Following disciplinary action against the Respondent's license to practice medicine in New Jersey, a BPMC Committee determined that the Respondent's conduct amounted to professional misconduct. The Committee declined to take any disciplinary action, or impose any penalty against the Respondent's New York State license to practice medicine (License); but voted to dismiss the charges in the interest of justice. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a), the Petitioner asked the ARB to modify that Determination. After reviewing the hearing record and the parties' review submissions, the ARB overturns the Committee's Determination to dismiss the charges in the interest of justice. The ARB imposes the penalties of censure and reprimand and places the Respondent on probation for three years, with a practice monitor.

**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 alleged that the Respondent committed professional misconduct under Education Law (EL) § 6530(9)(d), by having disciplinary action taken against his license by a duly authorized professional disciplinary agency of another state where the conduct resulting in the disciplinary action would constitute professional misconduct under Educ. Law §§ 6530(3) and (5) if committed in New York State. (Hearing Exhibit 1). 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). Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence before the Committee demonstrated that on November 18, 2019, the New Jersey State Board of Medical Examiners (NJ Board) issued a Consent Order, finding that the Respondent failed to maintain his office in a safe and sanitary condition in violation of regulations governing policies and procedures for infection control, waste management and medication inventory (Exhibit 4). The NJ Board reprimanded the Respondent, and required him to retain and comply with the recommendations of an infection control preventionist, as approved by the NJ Board, for no less than one year; complete successfully a NJ Board approved course in infection prevention and pay a \$10,000 civil penalty (Id). The Order arose from an investigation that found the Respondent failed to develop and implement adequate infection control, waste management and/or medical equipment maintenance protocols and failure to adequately monitor and manage his medication and medical supply inventories.

The Committee determined that the Respondent's conduct made him liable for action against his License pursuant to EL §§ 6530(9)(d), based on the Respondent's practicing the profession with negligence on more than one occasion in violation of EL § 6530(3), and practicing the profession with incompetence on more than one occasion in violation of EL § 6530(5). On the issue of penalty, the Petitioner requested that the Committee impose the penalties of censure and reprimand, a three-year period of probation with a practice monitor, and an unspecified monetary fine. The Committee determined by a vote of 2-1 to dismiss the charges against the Respondent in the interests of justice, based on the Respondent's compliance with the NJ Consent Order.

#### **Review History and Issues**

The Committee rendered their Determination on March 30, 2021. This proceeding commenced on April 16, 2021, 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 Respondent's brief on May 21, 2021.

The Petitioner argued that the Committee's decision to dismiss the charges was inconsistent with its determination that the NJ Board's Order established that the Respondent violated EL §§ 6530(9)(d) as charged; noting that the Committee's determination was based on the Respondent's compliance with the Consent Order. The Petitioner argued that dismissal in the interest of justice is an unusual remedy and there is nothing unusual, rare, or troubling in this matter that would warrant dismissal. The Petitioner requested that the ARB overturn the Committee, sustain the charges against the Respondent and impose an appropriate penalty in

order to protect patients in New York, noting that the Respondent practices medicine in New York at a summer camp and a hotel every year. The Petitioner requested that the ARB impose a censure and reprimand, three years of probation with a practice monitor, and a fine.

The Respondent replied that the Committee's determination was supported by extraordinarily compelling circumstances and should be affirmed. The Respondent argued that the Respondent had no prior disciplinary record; the Consent Order concerned issues with the physical hygiene of the Respondent's office, not with his treatment of patients; the Respondent accepted responsibility for his actions, has learned from his mistakes, continues to remain compliant and poses no threat to 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 (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). Further, 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 agree with the Committee that the Respondent's conduct resulting in disciplinary action in New Jersey would constitute professional misconduct if committed in New York State. We overturn the Committee's Determination to dismiss the charges against the Respondent in the interest of justice. The record reflects that the Respondent failed to appreciate the adverse effects the condition of his office and inadequate infection controls would have on his patients. In weighing the mitigating

circumstances, and the duty to protect vulnerable patients, we conclude that a penalty is warranted.

The ARB imposes the penalties of censure and reprimand and a three-year term of probation with a practice monitor. The terms of the probation appear as the Appendix to this 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 overturns the Committee's Determination to dismiss the charges.
3. Pursuant to PHL § 230-a(1), the ARB censures and reprimands the Respondent.
4. Pursuant to PHL § 230-a(9), the ARB places the Respondent on probation for a period of three years commencing immediately pursuant to the terms appended herein.

Linda Prescott Wilson

Jill Rabin, M.D.

Richard D. Milone, M.D.

Carmela Torrelli



In the Matter of Samuel A. Preschel, M.D.

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

Dated: Sept 8, 2021

A solid black rectangular box used to redact the signature of Carmela Torrelli.

Carmela Torrelli

In the Matter of Samuel A. Preschel, M.D.

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

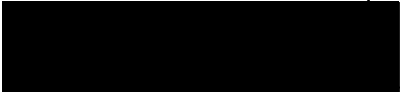
Dated: September 8, 2021

  
Richard D. Milone, M.D.

In the Matter of Samuel A. Preschel, M.D.

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


Dated: September 8<sup>th</sup>, 2021

  
Jill Rabin

In the Matter of Samuel A. Preschel, M.D.

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

Dated: 13 September, 2021

  
Linda Prescott Wilson

# APPENDIX A

### **Terms of Probation**

1. Respondent shall conduct himself in all ways in a manner befitting his professional status; and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.

2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, OPMC, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of her employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within 30 days of each action.

3. Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of his compliance with these terms. Respondent shall personally meet with a person designated by the Director of OPMC as directed.

4. Any civil penalty not paid by the date prescribed herein shall be subject to provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges, and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses. (Tax Law §171[27]; State Finance Law §18; CPLR §5001; Executive Law §32).

5. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or

electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.

6. During the probationary period, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.

a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly; and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

8. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations.

9. Respondent shall enroll in and complete a continuing education program subject to the written approval of the Director of OPMC and be completed within the first year of probation.

10. Respondent shall comply with all terms, conditions, restrictions, limitations, and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the

Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

11. The Respondent's period of probation shall commence immediately.