



Department of Health

KATHY HOCHUL
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Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

February 17, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nathaniel White, Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

Daniel Nevarre, M.D.


RE: In the Matter of Daniel Nevarre, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 22-034) 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.

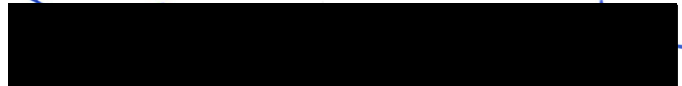
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified 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 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

Daniel Nevarre, M.D. (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 22- 034

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

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

For the Department of Health (Petitioner): Nathaniel White, Esq.
For the Respondent: *Pro se*

Following the Respondent's conviction in Pennsylvania of False Information/Claims and Insurance Fraud, and the State Board of Medicine of the Commonwealth of Pennsylvania (PA Board) having denied the Respondent's application for reinstatement of his license in Pennsylvania, a BPMC Hearing Committee determined that the Respondent's conduct amounted to professional misconduct and voted to suspend his license to practice medicine in New York State (license) until such time as the PA Board reinstates his license in Pennsylvania (PA license). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c(4)(a), the Petitioner and the Respondent asked the ARB to review that Determination. After reviewing the hearing record and the parties' review submissions, the ARB affirms the hearing committee's determination to sustain the charges against the Respondent, and overturns its determination to impose a suspension on the Respondent's license. The ARB unanimously votes 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 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 New York Education Law (Educ. Law) § 6530(9)(a)(iii) by being convicted of committing an act constituting a crime under New York State Law, or the law of another jurisdiction which would have constituted a crime under New York State Law if committed in this state.

The Statement of Charges also alleged that the Respondent committed professional misconduct under Educ. Law § 6530(9)(d) by having his license to practice medicine revoked, suspended, or having other 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 if committed in New York State as defined in Educ. Law §§ 6530(2) and/or (20) by:

- practicing the profession fraudulently or beyond its authorized scope; and/or
- conduct in the practice of medicine which evidences moral unfitness to practice medicine.

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 May 25, 2018, the Respondent pled guilty to two felonies; one count of False Information/Claims and one count of Insurance Fraud; in Cambria County Pennsylvania Court of Common Pleas.

The Respondent was sentenced to six months of house arrest with electronic monitoring, 36 months of probation, and ordered to pay a total of \$294,274 in restitution, civil penalties, and fees. The Respondent's conduct would constitute the crime of Health Care Fraud pursuant to Penal Law § 177.05 if it occurred in New York State. Based on his conviction, the PA Board accepted the Respondent's disciplinary voluntary surrender of his PA license. On March 20, 2019, the Respondent applied to the PA Board for reinstatement. After a hearing, the PA Board issued a Final Order on September 3, 2019, denying the application due to the Respondent's conviction of a felony related to the health profession, found the Respondent had both practiced the healing arts fraudulently, and was guilty of immoral conduct by committing acts of moral turpitude.

The Committee sustained both specifications, finding that the Respondent's conviction in Pennsylvania would have constituted a crime if the conduct was committed in New York State; and that the PA Board's action against the Respondent's license would constitute professional misconduct if the underlying conduct was committed in New York State, in violation of Educ. Law §§ 6530(2) and (20).

On the issue of penalty, the Petitioner requested that the Committee revoke the Respondent's License. The Respondent asked that he be allowed to keep his license, arguing that his conduct did not constitute a crime or misconduct. In the alternative, the Respondent asked that his License be allowed to expire, and he would not renew it. The Committee determined to wholly suspend the Respondent's license until he can demonstrate that the PA Board has reinstated his PA license, and that he has complied with any terms and conditions imposed by the PA Board.

Review History and Issues

The Hearing Committee rendered their Determination on June 8, 2021. This proceeding commenced on July 9, 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 brief. The record closed when the ARB received the Respondent's brief on August 7, 2021.

The Petitioner asked the ARB to modify the Committee's determination to suspend the Respondent's license, and impose a penalty of revocation. The Petitioner argued that the Respondent's conduct resulting in convictions on two felonies and the PA Board's decision to deny the Respondent's application for reinstatement of his PA license supports the penalty of revocation. In addition, the Petitioner argued that the Respondent engaged in fraudulent practice over a prolonged period of time, and such conduct is sufficient to warrant revocation. The Petitioner noted that the Respondent denied any wrongdoing during the hearing, and failed to take responsibility for his actions. This lack of insight is evidence of Respondent's unfitness, and could lead to future fraudulent conduct.

The Petitioner also argued that the Committee's determination to suspend the Respondent's license until the PA Board reinstates the Respondent's PA license amounts to an indefinite suspension because the PA Board may never reinstate the Respondent's PA license. Indefinite suspension is not a penalty recognized under PHL § 230-a. Further, if the PA Board reinstates the Respondent's PA license, and the suspension in New York is lifted, there would be no oversight to ensure the Respondent's safe practice. Alternatively, the Petitioner suggested a stayed suspension, followed by a period of probation with a practice monitor be imposed.

The Respondent argued that the charges against him should not be sustained, and no action should be taken against his License. The Respondent continued to assert that he did not commit any crimes, and there were no victims other than insurance companies.

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 agree with the Committee that the Respondent's conviction in Pennsylvania would have constituted a crime if the conduct was committed in New York State; and that the PA Board's action against the Respondent's license would constitute professional misconduct if the underlying conduct was committed in New York State. However, we overturn the Committee's Determination to suspend the Respondent's License until the PA Board reinstates his PA license. Instead, the ARB determines to revoke the Respondent's license.

The Committee's determination to suspend the Respondent's license until he can demonstrate that the PA Board has reinstated his PA license leaves the status of the Respondent's license unresolved because it is dependent on a variety of factors, rendering the penalty indefinite.

In reviewing the record, the ARB notes that the Respondent surrendered his PA license as part of a disciplinary proceeding that arose from the Respondent's conviction of two felonies involving fraudulent conduct. The Respondent applied to the PA Board for reinstatement while still serving his sentence of house arrest followed by probation. The PA Board denied his application based on that conviction, and additionally found the Respondent guilty of unprofessional conduct by practicing the healing arts fraudulently. It is well settled in New York that fraudulent conduct alone forms a sufficient basis to revoke a license to practice medicine. (*Matter of Ostad v. New York State Dept. of Health*, 40 AD3d 1251 [3rd Dept. 2007]). Here, the fact that the Respondent pled guilty to Insurance Fraud and false Information/Claims, coupled with the PA Board's finding of fraudulent conduct, supports imposing the penalty of revocation. In addition, the PA Board found that the Respondent's conduct evinced immoral conduct, constituting an aggravating circumstance that supports revocation of his license.

The ARB further notes that during the hearing and in his brief, the Respondent argued that he committed no crimes. His failure to take responsibility for his actions, or even acknowledge his conviction of two felonies does not indicate a willingness to rehabilitate or deter this behavior. Based on the record before us, we unanimously determine that revoking the Respondent's license is necessary to protect society.

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 as to penalty and determines to revoke the Respondent's License.

Linda Prescott Wilson

Jill Rabin, M.D.

Richard D. Milone, M.D.


Carmela Torrelli

In the Matter of Daniel Nevarre, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order

in the Matter of Dr. Nevarre.

Dated: 16 February, 2022


Linda Prescott Wilson

In the Matter of Daniel Newarre, M.D.

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

Dated: February 15, 2022


Carmela Torrelli



In the Matter of Daniel Nevarre, M.D.

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

Dated: February 15, 2022


Richard D. Milone, M.D.

In the Matter of Daniel Nevarre, M.D.

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

Dated: 2/15/22, 2022



Jill M. Rabin, M.D.