



Department
of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

June 29, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Andrew S. Holland, Esq.
Wilson Elser Moskowitz Edelman
and Dicker LLP
200 Great Oaks Boulevard, Suite 228
Albany, New York 12203

RE: In the Matter of Brian S. Kahan, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 22-154) 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.

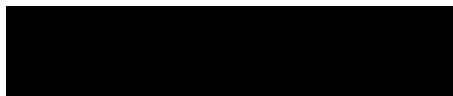
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified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



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

DXM: cmg
Enclosure

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

In the Matter of

Brian S. Kahan, D.O. (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. 22- 154

COPY

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

For the Department of Health (Petitioner):
For the Respondent:

John Thomas Viti, Esq.
Andrew S. Holland, Esq.

Following the Respondent's disciplinary action by the Maryland State Board of physicians (MD Board), a BPMC Hearing Committee determined that the Respondent's conduct amounted to professional misconduct and voted to impose a censure and reprimand on his license to practice medicine in New York State (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c(4)(a), the Petitioner 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.

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)(d) by having disciplinary action taken against his license to practice medicine in Maryland (MD license), where the conduct resulting in the disciplinary action would constitute professional misconduct if committed in New York State. 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 July 9, 2020, the MD Board charged the Respondent with failing to meet appropriate standards of medical care for two patients by failing to monitor them with more frequent follow-up visits, drug urine screens; and by failing to review the Chesapeake Regional Information System (CRISP) and the Prescription Drug Monitoring Program (PDMP). The Respondent entered into a consent agreement with the MD Board that was memorialized in an Order dated December 9, 2020, reprimanding the Respondent and ordering him to take a continuing medical education (CME) course in prescribing controlled substances, and pay a civil fine of \$2,000. On January 6, 2021, the MD Board issued an Order maintaining the reprimand, and finding that the Respondent had fully complied with their Order arising from the consent agreement.

The Committee determined that the Respondent's conduct constituted professional misconduct pursuant to Educ. Law § 6530(9)(d) in that the conduct for which the Respondent was disciplined would violate Educ. Law § 6530(3), practicing the profession with negligence on more than one occasion, if committed in New York State.

In considering an appropriate penalty, the Committee determined that censure and reprimand would adequately address the Respondent's wrongdoing. The Committee found the Respondent had taken adequate steps to address the deficiencies

in his practice, so additional penalties were not necessary to protect the public in New York.

Review History and Issues

The Committee rendered their Determination on December 20, 2021. This proceeding commenced on January 4, 2022, 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 reply brief on February 17, 2022.

The Petitioner argued that the penalty imposed by the Committee was not consistent with the findings of facts and inappropriate to protect the public. The Petitioner asked the ARB to impose a penalty of three years of probation with a practice monitor in addition to censure and reprimand.

The Respondent asserted that the Committee's decision should stand because it is consistent with the findings of fact, and appropriate based on the record. The Respondent also argued that the Petitioner's arguments for placing the Respondent on probation for three years were unsupported by the facts.

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. The ARB rejects the Petitioner's assertion that the hearing committee disregarded facts found by the MD Board, and ignored the Respondent's prior discipline. We agree with the Committee that the Respondent's conduct constitutes professional misconduct. We affirm the Committee's Determination, finding the penalty imposed to be reasonably related to the charge, and commensurate with the record.

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 affirms the Committee's determination regarding penalty as more fully set forth in the Determination and Order dated December 20, 2021.

Linda Prescott Wilson

Jill Rabin, M.D.

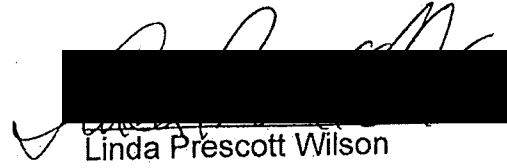
Richard D. Milone, M.D.

Carmela Torrelli

In the Matter of Brian S. Kahan, D.O.

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

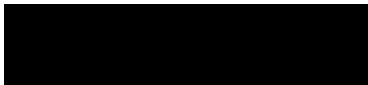
Dated: 27 June, 2022


[Redacted Signature]
Linda Prescott Wilson

In the Matter of Brian S. Kahan, D.O.

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

Dated: June 23rd, 2022



Jill M. Rabin, M.D.

In the Matter of Brian S. Kahan, D.O.

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

Dated: June 23, 2022



Richard D. Milone, M.D.

In the Matter of Brian S. Kahan, D.O.

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

Dated: June 24, 2022


Carmela Torrelli