



Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 15, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Samirkumar J. Shah, MD
[REDACTED]
5756 Hartford & Pointville Road
Joint Base MDL, NJ 08640

Paul Tsui, Esq.
New York State Department of Health
Corning Tower, Room 2512
Albany, New York 12237

RE: In the Matter of Samirkumar J. Shah, MD

Dear Parties:

Enclosed please find the Determination and Order (No. 22-253) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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 box redacting the signature of Natalie J. Bordeaux.

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

In the Matter of

Samirkumar J. Shah, M.D. (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 22- 253

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

COPY

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

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

Following the Respondent's conviction of Health Care Fraud in the United States District Court, Western District of Pennsylvania, a BPMC Hearing Committee determined that the Respondent's conduct amounted to professional misconduct and voted to revoke 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 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 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)(ii) by having been convicted of a crime under federal law; specifically, two counts of Health Care Fraud under 18 USC § 1347.

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 June 14, 2019, the Respondent was found guilty after a jury trial of two counts of Health Care Fraud for engaging in a scheme to defraud health care benefit programs, including Medicaid and Medicare, from January 2008 until December 2014. The Respondent was sentenced to 78 months incarceration, followed by three years of post-release supervision, and ordered to pay \$1,234,983.60 in restitution.

The Committee determined that the Respondent's conduct made him liable for action against his license pursuant to Educ. Law § 6530(9)(a)(ii), based on the Respondent's conviction of federal crimes.

The Committee determined to revoke the Respondent's License, citing the Respondent's conduct of submitting bills for medical procedures and treatments for patients he falsely diagnosed with angina, over a sustained period of time. The Committee did not credit the Respondent's testimony denying that he profited from performing procedures on more than 1,000 patients at a cost of \$130-\$140 each, which resulted in an order for more than \$1.2 million dollars. Finally, the Committee rejected the Respondent's request to delay imposing a penalty due to his pending appeal of his criminal conviction.

Review History and Issues

The Hearing Committee issued its Determination on June 8, 2022. This proceeding commenced on June 17, 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 reply brief on August 1, 2022.

The Respondent contended that he was impeded in preparing for the hearing by Covid restrictions imposed by the prison. He asked that the ARB allow him a full hearing, where he could present witnesses, and defend himself against the underlying charges for which he was convicted.

The Petitioner replied that the Committee's determination and penalty were well-reasoned and appropriate, given the facts of this case. The Petitioner also argued that the Respondent was given ample time to prepare his defense; having been granted three adjournments, and the record having been left open so he could submit affidavits from character witnesses.

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 conduct resulting in his conviction of Health Care Fraud constitutes professional misconduct. We affirm the Committee's Determination to revoke the Respondent's License.

We agree with the Committee that the Respondent's appeal of his criminal conviction has no bearing on this proceeding. The Committee's purview is limited to determining the nature and severity for the penalty to impose against the licensee based on the existing facts and circumstances, not a potential future outcome. We also agree with the Committee that revoking the Respondent's license to practice medicine is appropriate to provide adequate protection to the public. The ARB notes that the hearing below was adjourned numerous times to accommodate the Respondent's request for time to prepare; and find that the Respondent attempted to use the administrative proceeding to contest his criminal conviction. Ultimately, the Respondent raised no persuasive issue of fact or law that would warrant modifying the Committee's determination.

Order

NOW, with this Determination as our basis, the ARB renders the following
ORDER:

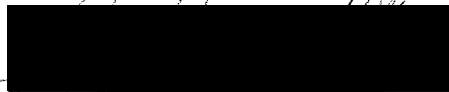
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's determination to revoke the Respondent's License.

Linda Prescott Wilson
Jill Rabin, M.D.
Richard D. Milone, M.D.
Carmela Torrelli
Michael Reichgott, M.D., Ph.D.

In the Matter of Samirkumar J. Shah, M.D.

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

Dated: 5 December, 2022



Linda Prescott Wilson

In the Matter of Samirkumar J. Shah, M.D.

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

Dated: November 19, 2022

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Jill M. Rabin, M.D.

In the Matter of Samirkumar J. Shah, M.D.

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

Dated: Dec 1, 2022

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Carmela Torrelli

In the Matter of Samirkumar J. Shah, M.D.

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

Dated: November 19, 2022




Richard D. Milone, M.D.

In the Matter of Samirkumar J. Shah, M.D.

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

Dated: November 30, 2022



Michael J. Reichgott, M.D.