



Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

June 2, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Enker, M.D.
825 Northern Blvd., Suite 201
Great Neck, New York 11021

Mamie Stathatos-Fulgieri, Esq.
Vigorito, Barker, Patterson, Nichols
and Porter, LLP
300 Garden City Plaza, Suite 100
Garden City, New York 11530

David W. Quist, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, 25th Floor
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Paul Enker, M.D.

Dear Parties:

Enclosed please find a CORRECTED copy of the Determination and Order (No. 22-112) of the Professional Medical Conduct Administrative Review Board in the above referenced matter to state the Respondent's first name as Paul instead of Peter, as indicated in the original determination. 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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

COPY

In the Matter of

Paul Enker, M.D. (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 22- 112

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): David W. Quist, Esq.
For the Respondent: Mamie Stathatos-Fulgieri, Esq.

Following the Respondent entering into a stipulation and order to resolve an enforcement action, and subsequent charge of misconduct, a BPMC Hearing Committee determined to dismiss the misconduct charge 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 review that Determination. After reviewing the hearing record and the parties' review submissions, the ARB modifies 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)(e) by having been found by the Commissioner of Health of violating PHL Article 33. 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 11, 2019, the Respondent entered into a Stipulation and Order with the Department of Health to settle an administrative enforcement action. The Respondent admitted to violating PHL § 3343-a(2)(b)(iii) by failing to safeguard his Prescription Monitoring Program (PMP) username and password, which resulted in unauthorized access to the PMP in 2015, and violating PHL § 3343-a(2)(a) by failing to consult the PMP prior to writing 16 prescriptions for controlled substances in 2018. As a consequence of those admissions, the Respondent agreed to pay a civil monetary penalty of \$4,000.

The Committee determined to dismiss the charge in the interest of justice. The Committee found that the Respondent accepted responsibility for his actions, and immediately implemented changes to his office policies after being informed of the violations. The Respondent's record is otherwise unblemished, and the Committee was satisfied that he had learned his lesson. The Committee credited the Respondent's testimony, and determined that he had already been sufficiently penalized through the enforcement action.

Review History and Issues

The Committee rendered their Determination on December 8, 2021. This proceeding commenced on December 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 reply brief on February 8, 2022.

The Petitioner argued that there was no basis for dismissing the charge, and that a penalty is warranted. The Petitioner further argued that the Committee ignored the separate nature and focus of the two proceedings brought against the Respondent and urged the ARB to impose a penalty of censure and Reprimand, as well as an appropriate fine.

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 failed to explain how a penalty would serve a legitimate regulatory purpose, other than being punitive.

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 N.Y.S.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 find that the Department met its burden of proof in showing that the Respondent committed professional misconduct by having been found by the Commissioner of Health of violating PHL Article 33. However, we agree with the Committee that the Respondent has been sufficiently penalized, and decline to impose any penalty in this matter.

Order

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

1. The ARB finds that the Respondent committed professional misconduct.
2. The ARB declines to impose any penalty.

Linda Prescott Wilson

Jill Rabin, M.D.

Richard D. Milone, M.D.


Carmela Torrelli

In the Matter of Paul Enker, M.D.

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

Matter of Dr. Enker.


Dated: 20 May, 2022


Linda Prescott Wilson

In the Matter of Paul Enker, M.D.

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

Dated: 5/10/2022 2022



Jill M. Rabin, M.D.

In the Matter of Paul Enker, M.D.

Richard D. Milone, M.D., an ARB Member concurs in the Determination and

Order in the Matter of Dr. Enker.

Dated: May 20, 2022

A large black rectangular redaction box covers the signature of Richard D. Milone, M.D.

Richard D. Milone, M.D.

In the Matter of Paul Enker, M.D.

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

Dated: May 24, 2022


Carmela Torrelli