



## 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

Shannon Calhoun, D.O.



Marc S. Nash, Esq.  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower, Room 2512  
Empire State Plaza  
Albany, New York 12237

**RE: In the Matter of Shannon Calhoun, D.O.**

Dear Parties:

Enclosed please find the Determination and Order (No. 22-254) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,



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

Shannon Calhoun, 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- 254

COPY

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

For the Department of Health (Petitioner): Marc S. Nash, Esq.

For the Respondent: *Pro se*

Following the Respondent's disciplinary action by the Colorado Medical Board (CO Board), a BPMC Hearing Committee (Committee) determined that the Respondent's conduct amounted to professional misconduct and declined to impose a penalty 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 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 Colorado (CO 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 August 26, 2021, the Respondent entered into a Stipulation and Final Agency Order with the CO Board, where he, in relevant part, admitted to habitually or excessively using or abusing alcohol. The Respondent was placed on probation for five years, during which time he was required to engage in treatment and monitoring as required by the Colorado Physician Health Program.

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, if committed in New York State, would violate Educ. Law § 6530(8): "Being a habitual user of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, except for a licensee who is maintained on an approved therapeutic regimen which does not impair the ability to practice, or having a psychiatric condition which impairs the licensee's ability to practice".

In considering an appropriate penalty, the Committee determined that the Respondent had voluntarily sought assistance in his home state of Oklahoma, and has been fully compliant with his treatment program, having completed three and a half years of a five-year program. Additionally, the state of Colorado has placed the Respondent on probation for five years, with compliance with a treatment program

being a condition of that probation. The Committee determined that no further penalty was warranted under these facts and circumstances.

### **Review History and Issues**

The Committee issued their Determination on July 25, 2022. This proceeding commenced on August 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, and the Petitioner's brief. The record closed on September 19, 2022; the last day pursuant to the scheduling letter that the Respondent could have submitted a reply brief.

The Petitioner argued that the Committee erred in declining to impose a penalty, and urged the ARB to impose a penalty of Censure and Reprimand, and place the respondent on probation for five years with a sobriety monitor. In support of its position, the Petitioner contended that the Committee considered information outside the record; and was relying on other states to monitor the Respondent's sobriety.

### **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). 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 (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 Petitioner's brief. We reject the Petitioner's argument that the Committee considered information outside the scope of the proceeding. The Petitioner cites to the lack of documentary evidence regarding orders that the Respondent is subject to in other states. However, the Respondent testified about those orders, thereby placing that information before the Committee and making it part of the record. Further, the Committee properly relied on that information in making its determination because it credited the Respondent's testimony.

The record below reflects that the Respondent is licensed to practice in over 40 states, practicing as a teleradiologist. This proceeding was based on disciplinary action taken in Colorado, after the Respondent failed to report to the Colorado Medical Board that he had a substance use disorder until after he was released from inpatient treatment; and had not enrolled in the Colorado Physician Health Program (PHP). The ARB determined that the Respondent's conduct with respect to Colorado would

constitute a violation of Educ. Law § 6530(8) if it had occurred in New York State. The ARB acknowledges that the Respondent was enrolled in an approved therapeutic program in his home state of Oklahoma, but his actions with respect to his license in Colorado forms the basis of this proceeding. Applying the facts and circumstances pertaining to the Respondent's conduct in Colorado, the ARB finds that the Respondent would have violated Educ. Law § 6530(8) if the conduct had occurred in New York.

However, the ARB does find certain mitigating factors, including facts that the Respondent voluntarily sought assistance from the Oklahoma Health Professionals Program, and engaged in treatment prior to any disciplinary action being initiated. As of the date of the hearing, the Respondent had fully complied with that program and completed three and a half years of his five-year contract. In addition, the Respondent's sobriety is being monitored in at least four other jurisdictions. All of which constitute mitigating factors when determining penalty. The ARB agrees with the Committee that the Respondent's sobriety is being adequately monitored, and affirms the Committee's Determination to impose no additional penalty.

#### 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 impose no penalty against the Respondent's license to practice medicine.

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

In the Matter of Shannon Calhoun, D.O.

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

Dated: 5 December, 2022

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Linda Prescott Wilson



In the Matter of Shannon Calhoun, D.O.

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

Dated: November 30<sup>th</sup>, 2022




Jill M. Rabin, M.D.

In the Matter of Shannon Calhoun, D.O.

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

Dated: Dec. 1 2022

  
Carmela Torrelli

In the Matter of Shannon Calhoun, D.O.

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

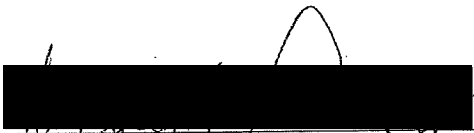
Dated: November 30, 2022

  
Richard D. Milone, M.D.

In the Matter of Shannon Calhoun, D.O.

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

Dated: November 30, 2022

A black rectangular redaction box covers the signature of Michael J. Reichgott, M.D. A handwritten flourish is visible above the box.

Michael J. Reichgott, M.D.