



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

June 23, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Charles Avetian, D.O.
[REDACTED]

FMC Devens
42 Patton Road
Ayer, MA 01432

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

RE: In the Matter of Charles Avetian, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 23-133) 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.

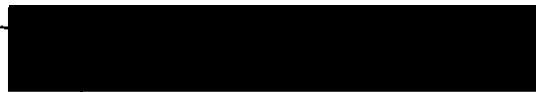
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified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

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB:nm
Enclosure

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

COPY

In the Matter of

Charles Avetian, D.O. (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 23- 133

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

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

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

For the Respondent:

Pro se

Following the Respondent's convictions of Distribution of a Controlled Substance, Aiding and Abetting the Distribution of a Controlled Substance, and Making and Subscribing False Federal Income Taxes in the United States District Court, Eastern 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, the Respondent pled guilty to 13 counts of Distribution of a Controlled Substance and Aiding and Abetting the Distribution of a Controlled Substance in violation of 21 USC §§ 841(a)(1), (b)(1)(E) and 18 USC § 2; and three counts of Making and Subscribing False Federal Income Taxes in violation of 26 USC § 7206(1).

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 the convictions were based on the Respondent issuing 13 prescriptions for Fioricet, a Schedule III controlled substance, outside the course of professional practice and not for a legitimate medical purpose. The recipients of the prescriptions were not examined by the Respondent or any other physician; merely completing an online questionnaire to receive the medications. Additionally, during the tax years 2012 through 2014, the Respondent failed to report approximately \$363,830 of income earned from his practice. The Respondent was sentenced to one year and one day incarceration, followed by three years of post-release supervision, and ordered to pay an assessment of \$1,600.

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 a federal crime.

The Committee determined to revoke the Respondent's License, citing the Respondent's conduct of prescribing controlled substances to individuals based solely on their responses to an online questionnaire, without having examined them; and for intentionally failing to report income earned on his federal tax returns for three years.

The Committee noted that the Respondent had previously been disciplined by the Pennsylvania Board of Osteopathic Medicine for his prescribing practices, and continues to refuse to accept responsibility for his actions.

Review History and Issues

The Hearing Committee issued their Determination on February 1, 2023. This proceeding commenced on February 16, 2023, 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 April 3, 2023¹.

The Respondent argued that the penalty imposed by the Committee was too severe. He claimed that his incarceration prevented him from mounting an adequate defense, and maintained his innocence of the underlying charges. Along with his brief, the Respondent submitted documents outside the scope of the record. Because the ARB's review is limited to the record below, those documents were not considered.

The Petitioner averred that the Committee's determination and penalty were consistent with the facts and prevailing law. The Petitioner argued that the Respondent's continued, improper use of his medical license for personal gain; lack of respect for the law; unwillingness to change his practice; failure to take responsibility for his own actions; and unwillingness to change his practice; pose a danger to the public and warrants revocation of the Respondent's license.

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

¹ The Respondent asked for an extension of time to submit his brief due to his incarceration, and the Petitioner consented to an extended briefing schedule.

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 convictions in federal court of Distribution of a Controlled Substance, Aiding and Abetting the Distribution of a Controlled Substance, and Making and Subscribing False Federal Income Taxes

constitutes professional misconduct. We affirm the Committee's Determination to revoke the Respondent's License.

The ARB agrees with the Committee that the Respondent's prior disciplinary history, coupled with his continued assertions of his innocence, indicate an unwillingness to modify his prescribing practices. Despite having pled guilty, The Respondent showed no remorse. The Respondent argued that the convictions concerning his prescribing practice were invalid, blamed others for his incarceration, and never mentioned his conviction on three counts of filing false taxes for intentionally and repeatedly under reporting his income. There is no evidence to suggest that the Respondent will change his behavior if allowed to retain his license to practice medicine in New York. The ARB finds that the Respondent's conduct has violated the public trust, evinces a pattern of disregard for the law and accepted standards of practice, and we find that the penalty of revocation is appropriate.

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 J. Reichgott, M.D., PhD

In the Matter of Charles Avetian, D.O.

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

Dated: 6 June, 2023


Linda Prescott Wilson

In the Matter of Charles Avetian, D.O.

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

Dated: June 6th, 2023



Jill M. Rabin, M.D.

In the Matter of Charles Acetian, D.O.

Carmela Tarrelli, an ARB Member concurs in the Determination and Order in the Matter of Dr. Acetian.

Dated: June 3, 2023

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Carmela Tarrelli

In the Matter of Charles Avetian, D.O.

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


Dated: June 6, 2023


Richard D. Milone, M.D.

In the Matter of Charles Avetian, D.O.

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

Dated: 06/06/2023, 2023


Michael J. Reichgott, M.D., PhD.