



# Department of Health

**KATHY HOCHUL**  
Governor

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

**JOHANNE E. MORNE, M.S.**  
Acting Executive Deputy Commissioner

January 9, 2024

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

James Sakr, M.D.  


**RE: In the Matter of James Sakr, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 24-006) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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:nm  
Enclosure

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

COPY

In the Matter of

James Sakr, M.D. (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 24-006

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): Marc S. Nash, Esq.  
For the Respondent: *Pro se*

Following the Respondent's entering into a Settlement Agreement with the United States Attorney's Office for the Western District of New York and the New York State Office of the Attorney General whereby he admitted to submitting claims for payment to the Medicare and Medicaid programs for services that were either not performed or were not medically necessary; a BPMC Hearing Committee determined that the Respondent's conduct amounted to professional misconduct. The Hearing Committee voted to impose a penalty of censure and reprimand; and permanently prohibited the Respondent from performing all invasive procedures, including surgical procedures, endoscopic procedures, and debridement. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c(4)(a), the Respondent asked the ARB to review that Determination. The ARB dismisses the Respondent's request for failure to perfect the notice of review as required by PHL § 230-c(4)(a).

**Review History and Issues**

The Hearing Committee rendered their Determination on August 21, 2023. This proceeding commenced on August 24, 2023, when the ARB received the Respondent's

Notice requesting a Review. By letter dated September 25, 2023, the parties were notified to submit their briefs by October 26, 2023. The ARB received no submissions from either the Respondent or the Petitioner, and neither party requested an extension of time within which to respond. Pursuant to PHL § 230-c(4)(a), a “notice of review shall be perfected only if a brief is timely submitted.” Here, the Respondent failed to submit a brief, or in any other way communicate with the ARB regarding his request.

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.

#### 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).

#### **Determination**

The ARB has considered the record and the time afforded the Respondent to perfect his Notice of Review. We dismiss the Respondent's request for failure to perfect his Notice of Review.

#### **Order**

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

1. The ARB dismisses the Respondent's request for review.

Linda Prescott Wilson

Jill Rabin, M.D.

Carmela Torrelli

Richard D. Milone, M.D.

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

In the Matter of James Sakr, M.D.

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

Dated: 19 December, 2023



Linda Prescott Wilson

In the Matter of James Sakr, M.D.

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

Dated: December 19<sup>th</sup>, 2023

  
\_\_\_\_\_

Jill M. Rabin, M.D.



In the Matter of James Sakr, M.D.

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

Dated: Dec 29, 2023

A solid black rectangular redaction box covering the signature of Carmela Torrelli.

Carmela Torrelli



In the Matter of James Sakr, M.D.

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

Dated: December 11, 2023



Richard D. Milone, M.D.

In the Matter of James Sakr, M.D.

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

Dated: \_\_December 20, 2023



---

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