



Department of Health

KATHY HOCHUL
Governor

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

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

April 1, 2024

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul E. Walker, Esq.
315 West 106th Street
Suite 1A
New York, New York 10025

Nathanial White, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Woojin Cho, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 24-073) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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

Woojin Cho, M.D. (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 24-073

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):
For the Respondent:

Nathanial White, Esq.
Paul E. Walker, Esq.

Following the Respondent's conviction of Forcible Touching and Sexual Abuse in Bronx County Criminal Court, a BPMC Hearing Committee determined that the Respondent's conduct amounted to professional misconduct and voted to partially suspend 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 of misconduct, and overturns its determination to impose a partial suspension. The ARB unanimously determines to revoke the Respondent's license.

Hearing 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)(i) by having been convicted of committing an act constituting a crime under New York law. Specifically, the Respondent was found guilty after a jury trial of Forcible Touching - Intimate Parts pursuant to New York Penal Law (PL) §130.52(1), a class A misdemeanor; and Sexual Abuse in the third degree pursuant to PL § 130.55, a class B misdemeanor.

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 forcibly touching a patient's breasts and vagina under her clothes, taking the patient's hand and placing it on Respondent's erect penis, and telling the patient not to tell anyone about the conduct because he might get into trouble. The Respondent was sentenced to nine months incarceration on the class A misdemeanor, 90 days incarceration on the class B. misdemeanor, with the sentences to run concurrently; and was issued an order of protection to stay away from and refrain from any contact with the patient for five years.

The Committee determined that the Respondent's conduct made him liable for action against his license pursuant to Educ. Law § 6530(9)(a)(i), based on the Respondent's conviction of committing an act constituting a crime under New York State law.

In a split decision, the Committee determined to partially suspend the Respondent's License until he completed 60 hours of continuing medical education (CME) in professional boundaries, sexual misconduct, and patient privacy. The majority on the Committee were swayed by the Respondent's character witness' testimony

regarding his contributions to the community and their personal trust in the Respondent.

Review History and Issues

The Hearing Committee issued their Determination on November 21, 2023. This proceeding commenced on December 4, 2023, 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 January 8, 2024.

The Petitioner argued that the penalty imposed by the Committee was not commensurate with the Respondent's misconduct, and failed to adequately protect patients. The Petitioner contends that the Respondent's conduct severely violated patient's trust in their physician, and demonstrates a willingness to use his medical license to victimize a patient for his own sexual gratification.

The Respondent argues that the Committee's determination should be sustained because there is no indication of bias or improper influence in the Committee's analysis of the evidence. The Respondent also asserts that a criminal conviction does not require that Committee believe in the Respondent's guilt. The Committee could reasonably find mitigating factors, including the credibility of the character witnesses and the Respondent's previously unblemished career until this conviction.

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 agree with the Committee that the Respondent's conduct resulting in his convictions in Bronx criminal court of forcible touching intimate parts and sexual abuse constitutes professional misconduct. However, we overturn the Committee's Determination as to penalty. Instead, the ARB determines to revoke the Respondent's license.

In reviewing the record, the ARB notes that the Respondent's conduct occurred while engaged in the practice of medicine, and was perpetrated upon a patient. The ARB also notes that after being found guilty of these criminal acts, the sentence of nine months incarceration on one charge, 90 days incarceration on the second charge, and a five year order of protection was significant, and indicative of the serious nature of these crimes. The ARB considered these aggravating factors in determining penalty.

The ARB carefully considered the character witnesses testimony that persuaded two Committee members, and was troubled by the fact that neither witness had worked in a clinical setting with the Respondent in more than 10 years. In addition, neither witness indicated a willingness to hire the Respondent in their own practice. The ARB considered this factor in assessing the witnesses' credibility regarding the material fact of the Respondent's conduct with patients.

The ARB also noted that the Respondent took no personal responsibility for his conviction for such serious crimes. Instead, he painted himself as the victim, testifying that the charges were unfair to him, and he accused the patient of being delusional. The Respondent's testimony mitigates against rehabilitation and deterrence.

In determining the appropriate penalty in this case, the ARB considered both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence. We have serious concerns that despite having been found guilty of forcibly touching and sexually abusing a patient, the Respondent has shown little insight or inclination to change his behavior. The ARB determines that it is not likely that the Respondent has been rehabilitated, and his license should be revoked in order to adequately protect the public.

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 overturns the Committee's determination as to penalty.
3. The ARB determines 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 Woojin Cho, M.D.

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

Dated: 21 March, 2024



Linda Prescott Wilson

In the Matter of Woojin Cho, M.D.

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

Dated: 3/11, 2024



~~Jill M. Rabin, M.D.~~

In the Matter of Woojin Cho, M.D.

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

Dated: March 2, 2024



Richard D. Milone, M.D.

In the Matter of Wookin Cho, M.D.

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

Dated: March 26, 2024

A solid black rectangular box redacting the signature of Carmela Torrelli.

Carmela Torrelli

In the Matter of Woojin Cho, M.D.

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

Dated: 03/21/2024, 2024

A black rectangular redaction box covers the signature of Michael J. Reichgott. Above the box, there is a handwritten letter 'D'.

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