

NEW YORK  
state department of  
**HEALTH**


Public

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

April 10, 2014

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Anthony Casamassima, M.D.  


Michael G. Bass, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

**RE: In the Matter of Anthony Casamassima, M.D.**

*lic#165128*

Dear Parties:

Enclosed please find the Determination and Order (No. 14-87) 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.

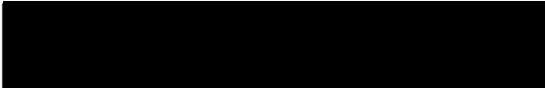
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified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



James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah

Enclosure

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

In the Matter of

Anthony Casamassima, M.D. (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. 14-87

COPY

Before ARB Members D'Anna, Koenig, Grabiec, Wilson and Milone  
Administrative Law Judge James F. Horan drafted the Determination.

For the Department of Health (Petitioner): Michael G. Bass, Esq.  
For the Respondent: Pro Se

Following a hearing below, a Committee determined that the Respondent committed professional misconduct by practicing fraudulently and by engaging in conduct that resulted in a criminal conviction under New York Law. The Committee voted to revoke the Respondent's License to practice medicine in New York State (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2014), the Respondent asks the ARB to nullify that Determination and remit for a new hearing. After considering the record below and the parties' review submissions, the ARB affirms the Committee's Determination in full.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) § 6530(2)(McKinney Supp. 2014) by practicing medicine fraudulently. The Petitioner also charged that the Respondent violated EL § 6530(9)(a)(i) by engaging in conduct that resulted in the Respondent's conviction for a crime under New York State Law. The Respondent appeared by counsel at the hearing and the Respondent participated in the hearing by

telephone. The proceeding began with an Order by the Commissioner of Health of the State of New York that suspended the Respondent's License summarily, pursuant to PHL § 230(12)(b), due to the Respondent's conviction for a felony under New York Law.

The Committee found that the Respondent was arraigned on criminal charges in Suffolk County New York on October 18, 2010. The Respondent entered a not guilty plea and was released on his own recognizance. The Committee found further that the Respondent submitted a registration renewal (Renewal) for his License to the State Education Department (SED) on October 6, 2011. In the renewal, the Respondent answered "no" to a question as to whether any criminal charges were pending against the Respondent in any court. The Committee concluded that the Respondent answered "no" falsely and with intent to mislead SED. The Committee also found that the Respondent was convicted of Grand Larceny in the Third Degree, a felony, and Petit Larceny, a misdemeanor. The Court sentenced the Respondent to five years on probation and to pay \$43,000.00 in restitution. The Committee sustained the charge that the Respondent's answer in the Renewal amounted to practicing fraudulently and sustained the charge that the Respondent's criminal conviction amounted to professional misconduct and made the Respondent liable for disciplinary action against his License under EL § 6530(9)(a)(i).

The record indicated that the Respondent obtained his License in 1986 and practiced until 2002. The Respondent also attended law school between 1990 and 1994 and began the full time practice of law in 2002. The Respondent testified that the larceny involved taking clients' money that the Respondent held in escrow accounts. The Respondent also testified that he used the clients' money to pay extortion to members of organized crime. The Respondent indicated that he never complained to law enforcement about the extortion due to threats against the Respondent and his wife. The Respondent also testified that he gave the "no" answer on the Renewal on advice from two attorneys. The Respondent stated that one of the attorneys based her opinion on the fact that there was not yet a conviction and the charges were unrelated to the practice of medicine.

The Committee voted to revoke the Respondent's License. The Committee determined the theft of clients' money and the lie on the Renewal demonstrated that the Respondent lacked

the personal integrity necessary to resume medical practice in New York State. The Committee also found that the Respondent lacked credibility in his testimony. The Committee stated that, even if the Respondent did receive the advice about the answer on the Renewal, it was incredible that the Respondent would accept "no" as an honest answer to a straight forward question whether criminal charges were pending against the Respondent in any court.

#### Review History and Issues

The Committee rendered their Determination on November 13, 2013. This proceeding commenced on December 2, 2013, 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 March 21, 2014. The Respondent requested and received several extensions in the time for filing the review brief in this case, because the Respondent was awaiting a copy of the hearing transcript from the Department of Health Records Access Office pursuant to a Freedom of Information Law request.

The Respondent's brief contended that the hearing denied the Respondent due process because the Committee conducted the hearing improperly in an expedited manner and because the Committee's Administrative Officer excluded testimony and documentation that the Respondent wished to present into the record. The Respondent also contended that the Committee imposed a penalty that shocks one's sense of fairness by revoking the Respondent's License for an isolated incident. The Respondent argued that he has accepted responsibility for his criminal conduct and begun to make restitution. The Respondent also asserted that he made the incorrect answer on the Renewal because he took bad advice rather than because he intended

to deceive SED. The Respondent asked that the ARB annul the revocation and remit the case for a new hearing.

The Petitioner replied that the Respondent received a full opportunity to explain his side concerning the fraud allegation, submit other evidence and answer panel questions from the Committee. The Petitioner argued that the Respondent was able to submit documents to the Committee and was allowed to appear at the hearing by telephone. The Petitioner argued further that the Committee imposed an appropriate penalty in a case in which the Committee determined that the Respondent lacked the integrity necessary to practice medicine.

#### 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 substitute our judgment and 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 parties' briefs. We affirm the Committee's Determination that the Respondent committed professional misconduct and we affirm the Determination revoking the Respondent's License.

We decline the Respondent's request that we remit this matter for a new hearing. The Respondent may address that request to the courts. The ARB members conclude that it lies beyond our authority to annul a Committee Determination on procedural grounds and order a new hearing. Under PHL § 230-c(4)(b), the ARB may remand a case to the Committee for reconsideration or further proceedings. The ARB sees no reason to remand this case.

The Respondent was able to appear by telephone and counsel appeared for the Respondent at the hearing. The Respondent testified and presented other evidence. Under PHL §230(10)(p), when a case involves only charges under EL § 6530(9), an expedited hearing may occur. In this case, the Petitioner brought the charges concerning the criminal conviction under §6530(9). The Petitioner also brought the charges concerning the Renewal under EL § 6530(2), for which the Respondent was entitled to a full hearing. The Respondent fails to explain, however, what further process he should have received on the charge relating to the Renewal. The Respondent noted how long the hearing lasted, but he failed to indicate how much longer he felt the hearing on the fraud charge should have taken. The Respondent had the opportunity to provide his explanation for his answer on the Renewal, which the Committee found unbelievable. As the Petitioner's Reply noted, neither the Respondent nor his counsel objected to the proceedings at the hearing. The Respondent also had the opportunity to testify about his allegations that he took client funds to pay extortionists. The Committee's Administrative Officer refused to accept similar testimony from the Respondent's wife. As the Petitioner's Reply notes, Title 10 NYCRR § § 51.9(c)(6) & 51.9(c)(7) allow an Administrative Officer to exclude evidence and limit repetitious, corroborative or cumulative testimony in a full or an expedited hearing.

The ARB affirms the Committee's Determination that the Respondent committed professional misconduct under both EL §§ 6530(2) & 6530(9)(a)(i). The criminal conviction binds the Respondent and makes the Respondent liable for disciplinary action against his License. The Committee also found that the false answer on the Renewal constituted practicing fraudulently. To prove fraud requires evidence that a licensee made a deliberate, untruthful statement, with the intent to mislead, Steckmeyer v. State Board for Professional Medical



Conduct, 295 A.D.2d 815, 744 N.Y.S.2d 82 (3<sup>rd</sup> Dept. 2002). Although the Respondent claimed he made the false answer due to legal advice, the Committee may reject the Respondent's explanation and rely on other evidence in the record to infer that the Respondent intended to mislead, Matter of Brestin vs. Commissioner of Education, 116 A.D.2d 357, 501 N.Y.S.2d 923 (3<sup>rd</sup> Dept. 1986). The Committee could infer from the evidence that the Respondent intended to mislead SED because the Respondent had been arraigned within the last year on charges that were pending when the Respondent completed the Renewal. The Renewal question asked about pending criminal charges in any court, rather than criminal convictions that arose from medical practice. The ARB finds no error in the Committee's conclusion to reject the Respondent's testimony. Even if two attorneys suggested that the Respondent answer "no", the Respondent is also an attorney and the ARB fails to see how an attorney or a non-attorney reading the Renewal question could have concluded that "no" would have been a truthful answer to the Renewal question.

The ARB affirms the Determination to revoke the Respondent's License because the Respondent's conduct has demonstrated that he lacks integrity. The Respondent referred to his misconduct as an isolated incident. The ARB finds that stealing the clients' money and then lying on the Renewal constituted a pattern of misconduct. We also find that the conduct reflected directly on the Respondent's ability to practice medicine. Medical practice requires that a physician act truthfully with patients, with other physicians, with licensing authorities and credentialing bodies and with government and private insurers. A physician must prepare truthful and accurate records on which other health care practitioners may rely. A physician must also submit truthful billing records. Further, a physician must answer truthfully on credentialing and licensing documents so that medical facilities, practices, specialty boards and state licensing

boards may determine if physicians are safe to treat a facility's or practice's patients and a state's citizens. The Respondent stole from legal clients who had entrusted the Respondent with escrow funds. The Respondent then lied to SED about facing criminal charges. The Respondent had an opportunity to explain his behavior to the Committee, but he provided answers that the Committee found unbelievable. The ARB finds that the Committee acted appropriately in revoking the Respondent's License.

#### 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.

Peter S. Koenig, Sr.  
Steven Grabiec, M.D.  
Linda Prescott Wilson  
John A. D'Anna, M.D.  
Richard D. Milone, M.D.

In the Matter of Anthony Casamassima, M.D.

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

Dated: 7 April, 2014


A large black rectangular redaction box covering the signature of Linda Prescott Wilson.

Linda Prescott Wilson

In the Matter of Anthony Casamassima, M.D.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the Matter of Dr. Casamassima.

Dated: April 7, 2014

  
Peter S. Koenig, Sr.

In the Matter of Anthony Casamassima, M.D.

Steven Grabiec, M.D., an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Casamassima.

Dated: 4/7, 2014



Steven Grabiec, M.D.

In the Matter of Anthony Casamassima, M.D.

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

Matter of Dr. Casamassima.

Dated: April 8, 2014

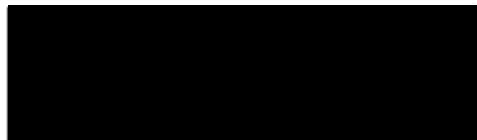


Richard D. Milone, M.D.

In the Matter of Anthony Casamassima, M.D.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Casamassima.

Dated: April 8, 2014



John A. D'Anna, M.D.

To: Michel G. Bass, Esq.  
NYS Dept. of Health  
Rm. 2512 Corning Tower – ESP  
Albany, NY 12237

Anthony Casamassima

