

November 19, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Shaikh Monirul Hasan, M.D.

REDACTED

Raphael R. Scotto, Esq.
17 Battery Place – Suite 1226
New York, New York 10004

David W. Quist, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Shaikh Monirul Hasan, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-291) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,

REDACTED

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:

Enclosure

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

In the Matter of

Shaikh Monirul Hasan, 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. 14-291

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): David W. Quist, Esq.
For the Respondent: Raphael F. Scotto, Esq.

After a hearing below, a BPMC Committee Determined that the Respondent committed professional misconduct by engaging in conduct that resulted in a criminal conviction under New York Law. The Committee voted for a stayed suspension of the Respondent's license to practice medicine in New York State (License), five years on probation, a non-permanent restriction on the Respondent prescribing narcotics and twelve hours mandatory continuing medical education (CME) on use of narcotics and pain management. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2014), the Petitioner asks the ARB to overturn the Committee and revoke the Respondent's License, or in the alternative, for the ARB to modify provisions in the penalty. The ARB votes 5-0 to reject the request for revocation. The ARB modifies the penalty to suspend the Respondent's License for two years, to stay the suspension in full, to limit the Respondent's License to prohibit the Respondent from prescribing controlled substances for one year and to place the Respondent on probation for five years under terms that will include practice monitoring and completing, in one year, 12 hours CME in prescribing controlled substances and pain management.

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 [Hearing Exhibit 1] alleged that the Respondent committed professional misconduct under the definition in New York Education Law (EL) §6530(9)(a)(i) (McKinney Supp. 2014) by engaging in conduct that resulted in a conviction under Federal Law. The action against the Respondent began with an order from the Executive Deputy Commissioner of Health suspending the Respondent's License summarily (Summary Order) pursuant to PHL § 230(12)(b). The Summary Suspension became effective February 25, 2014. 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 indicated that the Respondent entered guilty pleas on October 10, 2013, in the Supreme Court for the State of New York, New York County, to forty-one counts for criminal sale of a prescription for a controlled substance, a felony, in violation of New York Penal Law § 220.65 (McKinney Supp. 2013). The Supreme Court sentenced the Respondent to 30 days imprisonment, probation for five years and suspension of the Respondent's driver's license for six months.

The Committee determined that the Respondent committed professional misconduct under the definitions at EL § 6530(9)(a)(i) and the Committee determined that the Respondent's conduct warranted a sanction against the Respondent's License. The Committee voted for a stayed suspension and five years on probation. The Committee also voted to restrict the Respondent's License to limit the Respondent from prescribing narcotics (Limitation) until a "committee of OPMC" determines to lift the limitation. The Committee also ordered the

Respondent to complete successfully twelve hours of continuing medical education on the use of narcotics and pain management.

The Committee indicated that they considered many factors in assessing the penalty, such as the sorrow and remorse the Respondent expressed for what he had done. The Committee also cited testimony from a patient who described the Respondent as a caring physician. In addition, the Committee noted that there were no complaints from Respondent's patients about their care and that the Respondent provides care in an underserved community.

Review History and Issues

The Committee rendered their Determination on or about August 1, 2014. This proceeding commenced on August 5, 2014, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and reply brief and the Respondent's brief and reply brief. The record closed when parties filed the reply briefs on September 25, 2014.

The Petitioner asked that the ARB overturn the Committee and revoke the Respondent's License. The Petitioner argued that the Committee selected a penalty incommensurate with the offense, which failed to protect the public and which provided no deterrence. The Petitioner noted that, despite the mitigating factors the Committee considered, the Respondent's actions related directly to the practice of medicine. The Petitioner also referred to the improper use of prescribing privileges as a violation of the public trust in the medical profession and as among the worst things a physician can do. In support of the request for revocation, the Petitioner's Brief discussed several cases in which BPMC Committees or the ARB imposed penalties more severe than the penalty in this case, for what the Petitioner described as similar conduct.

In the alternative, if the ARB chooses against revoking the Respondent's License, the Petitioner requests that the ARB at least modify the penalty to impose a specific period for the License suspension and the Limitation and that the ARB impose standard probation terms and conditions that the Office for Professional Medical Conduct would be able to administer.

The Respondent requested that the ARB affirm the Committee's Determination. In reply to those portions in the Petitioner's Brief that discussed more severe sanctions in other cases that involved conduct supposedly similar to the Respondent's conduct, the Respondent argued that the conduct in the other cases involved far more serious conduct than the Respondent's and argued that the physicians in the other cases were acting more as drug dealers than as physicians.

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 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 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 (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 affirm the Committee's Determination that the Respondent committed professional misconduct under EL § 6530(9)(a)(i) by engaging in conduct that resulted in a criminal conviction under New York Law. Neither party challenged the Committee's Determination on the charge. The ARB rejects the Petitioner's request that we overturn the Committee and revoke the Respondent's License. The ARB affirms the Committee's Determination to suspend the Respondent's License, stay the suspension, place the Respondent on probation for five years, order the Respondent to complete twelve hours CME

and restrict the Respondent's License. The ARB modifies the Limitation to one year and we also modify terms in the probation.

The Committee received the opportunity to observe and assess the Respondent's testimony. We defer to the Committee's judgment that the Respondent expressed genuine sorrow and remorse. We also recognize mitigating factors in the record, such as the Respondent's practice in an underserved area and the three months actual suspension the Respondent had served. The evidence in the case included letters and petitions supporting the Respondent. The Respondent also served a period of imprisonment under his criminal sentence.

Under the penalty we have modified, the Respondent will need to complete twelve hours CME and practice under probation with a monitor. This penalty will also restrict the Respondent from prescribing controlled substances for a specific period. We conclude that these sanctions will protect the public and deter others from misconduct.

The Committee voted to suspend the Respondent's License and then to stay the suspension. The Committee never specified the duration for the suspension. The ARB believes that some suspension is appropriate in this case, but we note that the Respondent already spent time on actual suspension under the Commissioner's Summary Order and the Respondent spent time incarcerated and away from practice during the incarceration. The ARB votes to suspend the Respondent's License for two years and to stay the suspension in full, in consideration of the time that the Respondent has spent away from practice already.

The Respondent's conviction involved improper prescribing of controlled substances, specifically Oxycodone. The conviction raises concerns about the Respondent's prescribing practices and leads the ARB to conclude that any sanction in this case must include CME dealing with, restrictions upon and monitoring over those prescribing practices.

The Committee's Determination placed the Respondent on probation for five years under terms at Appendix II to the Committee's Determination. Paragraph 7 at Appendix II mentions monitoring over the Respondent's records. The ARB agrees that the Respondent should practice under probation for five years, but the ARB modifies the Probation Terms to include more specific terms concerning the monitoring, including a requirement that the monitor review a number of records and prescriptions at least every month.

The Committee ordered that the Respondent complete twelve hours CME in the areas of use of narcotics and pain management. The Committee gave no direction concerning when the Respondent should complete the CME. The ARB modifies the CME Order to require that the Respondent complete 12 hours CME on prescribing controlled substances and pain management. The ARB concludes that the CME should address more specifically the deficiencies that the criminal proceeding revealed. The ARB adds the CME Order to the Probation Terms and we direct that the Respondent complete the CME during the first year on probation.

We agree with the Committee that there should be a less than permanent restriction on the Respondent's prescribing practices. The Committee placed a restriction on the Respondent's prescription of narcotics, until such time as a BPMC Committee determines that the restriction could be lifted. The Committee provided no standards for judging when the restriction should be lifted and gave no indication what provision under PHL § 230 permits such a BPMC Committee to function. Under PHL § 230(7)(a-c), BPMC Committees may direct a licensee to submit to medical or psychiatric examinations or may obtain medical records if there is reason to believe the licensee suffers from physical or mental disability or alcohol or drug impairment. That statute also allows a BPMC Committee to direct a licensee to submit to a clinical competency examination if the Committee has reason to believe a licensee has practiced with incompetence.

There is no procedure under that statute for a Committee to decide when a restriction on a license may end.

The ARB votes to limit the Respondent's License to restrict the Respondent from prescribing controlled substances for one year. The Committee chose against imposing a fixed time Limitation. The Committee may have done so because they were wary of removing the Limitation without some way to measure the Respondent's fitness to return to unrestricted prescribing, such as bringing the Respondent before a BPMC Committee to judge the Respondent's fitness. The ARB concludes that we can set the restriction at one year because the Respondent will have had to complete the CME during the first year under the Probation and because the Respondent's Monitor will have had at least twelve occasions to monitor the Respondent's records and prescriptions in the first year under the Probation. If the Respondent fails to complete the CME Order in one year or if the probation monitoring reveals further problems, the Respondent would face probation violation charges that would bring the Respondent before a BPMC Committee under the provisions for probation violation hearings under PHL § 230(19).

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 modifies the Committee's Determination on penalty.
3. The ARB suspends the Respondent's License for two years and stays the suspension in full.
4. The ARB limits the Respondent's License to restrict the Respondent from prescribing controlled substances for one year.
5. The ARB places the Respondent on probation for five years under the Terms that appear at the Appendix to this Determination, including the requirement that the Respondent complete 12 hours CME in prescribing controlled substances and pain management in the first year under the Probation and the requirement that the Respondent practice with a monitor for the full five years under the Probation.

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

Appendix

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of his license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Menands, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of his employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of his compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if he is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in the Determination and Order or as are necessary to protect the public health.
6. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
7. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training

and oversight of all office personnel involved in medical care, with respect to these practices.

8. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
9. Within thirty days of the Determination and Order's effective date, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.
 - a. Respondent shall make available to the monitor any and all records and prescriptions or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
 - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC within 30 days after the effective date of this Order.
10. Respondent shall enroll in and successfully complete a continuing education program in the area of prescribing controlled substances and pain management of 12 credit hours. This continuing education program is subject to the Director of OPMC's prior written approval and shall be successfully completed within one year from beginning the probation period.
11. Respondent shall comply with these probationary terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.

In the Matter of Shaikh Monirul Hasan, M.D.

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

Dated: 3 November 2014

REDACTED

Linda Prescott Wilson

In the Matter of Shaikh Monirul Hasan, M.D.

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

Dated: November 13 2014

REDACTED

~~_____~~
Peter S. Koenig, Sr.

In the Matter of Shaikh Monirul Hasan, M.D.

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

Dated: 11/13/, 2014

REDACTED

Steven Grabcic, M.D.

In the Matter of Shaikh Monirul Hasan, M.D.

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

Matter of Dr. Hasan.

Date August 17, 2014

REDACTED

Richard D. Milone, M.D.

In the Matter of Shaikh Monirul Hasan, M.D.

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

Matter of Dr. Hasan.

Dated: Nov 13, 2014

REDACTED

John A. D'Anna, M.D.