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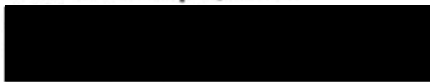
HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

May 13, 2015

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ivan D. Baraque, M.D.



Mark L. Furman, Esq.  
Hoffman, Polland & Furman, PLL  
220 East 42<sup>nd</sup> Street – Suite 435  
New York, New York 10017

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

**RE: In the Matter of Ivan Dario Baraque, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 15-126) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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 James F. Horan.

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

Ivan Dario Baraque, M.D. (Respondent)

Administrative Review Board (ARB)

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

Determination and Order No. 15-126

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 Quist, Esq.  
For the Respondent: Mark Furman, Esq.

In this proceeding pursuant to New York Public Health Law (PHL) § 230-c  
(4)(a)(McKinney 2015), the ARB considers whether to take disciplinary action against the  
Respondent's license to practice medicine in New York State (License) following the  
Respondent's Federal felony conviction for conspiracy to commit mail fraud and health care  
fraud. Following a hearing below, a BPMC Committee voted to suspend the Respondent's  
License for five years, to stay the suspension, to place the Respondent on probation for five years  
and to order the Respondent to complete 50 hours continuing medical education (CME) in each  
year under the stayed suspension/probation. In this proceeding pursuant to PHL § 230-c, the  
Petitioner asks the ARB to overturn the Committee and revoke the Respondent's License. After  
reviewing the hearing record and the parties' review submissions, the ARB votes 5-0 to affirm  
the Committee's Determination to suspend the Respondent's License, stay the suspension and  
place the Respondent on probation. We modify the CME provisions to require that the  
Respondent complete a course on medical ethics in each year under the stayed  
suspension/probation.

### 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 N. Y. Education Law (EL) §6530(9)(a)(ii) (McKinney 2015) by engaging in conduct that resulted in a conviction under Federal Law. The action against the Respondent began with an order from the Acting Commissioner of Health suspending the Respondent's License summarily (Summary Suspension) pursuant to PHL § 230(12)(b). The Summary Suspension became effective July 15, 2015. 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 a guilty plea in United States District Court for the Southern District of New York, to felony Conspiracy to Commit Mail Fraud and Health Care Fraud, a violation under Title 18 United States Code § 1349. The Court sentenced the Respondent to thirteen months' incarceration, three years supervised release with conditions, a \$100.00 assessment and \$70,000.00 restitution. The evidence before the Committee showed that the Respondent incorporated a medical clinic using his name and License, but that non-physician owners actually ran the clinic. The Committee found that the clinic's purpose was to defraud no-fault and workers' compensation insurance

companies. The Committee's Determination also noted that BPMC disciplined the Respondent in 2001, following the Respondent's Federal conviction for claiming full disability for working part-time.

The Committee determined that the Respondent committed professional misconduct by engaging in the conduct that resulted in the Federal conviction. The Committee voted to suspend the Respondent's License for five years, stayed the suspension and placed the Respondent on probation for five years, under the terms that appear at Appendix 2 to the Committee's Determination. The Probation terms require that the Respondent practice with a monitor and that the Respondent enroll in and complete 50 CME, including at least twenty hours in internal medicine and one course in medical billing, subject to prior written approval from the Director of the Office for Professional Medical Conduct (OPMC).

The Committee stated that they imposed the above sanction because no patient harm occurred and because the Committee found the Respondent truly remorseful. The Committee indicated further that they found the Respondent's prior conviction unrelated to the conduct at issue in this case. In addition, the Committee noted that the Respondent's involvement in the no-fault scheme lasted only four or five months and that the Respondent acknowledged that he should have been more careful in overseeing what was going on in the clinic incorporated under his name.

#### Review History and Issues

The Committee rendered their Determination on December 30, 2014. This proceeding commenced on January 8, 2015, 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 March 3, 2015.

The Petitioner argued that the Committee imposed an inappropriately lenient penalty, which fails to protect society or provide appropriate deterrence. The Petitioner noted that the disciplinary sanction following the Respondent's first criminal conviction included a twenty month actual License suspension. The Petitioner asserted that the Respondent remained negligently, if not willfully, ignorant of the actions of employees at the clinic, including with regard to billing for services. The Petitioner argued further that the clinic could not have operated without the Respondent's actions as a licensed physician and that the Respondent's conduct, whether rooted in passive ignorance or active fraud, are a betrayal of the honesty and integrity expected of physicians. The Petitioner asked the ARB to overturn the Committee and revoke the Respondent's License, because the Respondent has breached the trust, which the public place in physicians, and engaged in fraud that resulted in a criminal conviction for a second time. In the alternative, the Petitioner requests that ARB clarify the probation terms in the Committee's Determination and add the requirement for a practice monitor.

The Respondent reminded the ARB that the Committee relied on five factors in making their Determination: 1.) the Respondent's remorse, 2.) the lack of patient care issues, 3.) the prior disciplinary action unrelated factually to the instant case, 4.) the Respondent's brief involvement in the scheme, and, 5.) the Respondent's acknowledgement that he should have been more careful in overseeing operations at the clinic that operated under his License. The Respondent noted that in the prior disciplinary action, although the Respondent was working part-time, the sentencing court found that the Respondent remained partially disabled and the court lowered the restitution portion in the criminal sentence. In reply to the Petitioner's alternative request for a

practice supervisor during probation, the Respondent argued that there was no basis for a practice supervisor, because there were no patient care issues in the case. In addition on the practice supervisor request, the Respondent argued he has been excluded from Medicare/Medicaid participation and is likely to be unable to practice in a medical practice or health care setting anyway. The Respondent requested that the ARB affirm the Committee's Determination in full.

#### 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 conduct that resulted in the Respondent's criminal conviction amounted to professional misconduct. Neither party challenged the Committee's Determination on the charges. We also affirm the Committee's Determination to suspend the Respondent's License for five years, to stay the suspension and to place the Respondent on probation for five years, under the terms that appear at Appendix 2 to the Committee's Determination. We modify the probation terms on CME to require that the Respondent complete one course annually on medical ethics.

The Respondent received a criminal sentence that included incarceration and restitution. We conclude that the criminal sentence will provide deterrence. Further, we see no patient care



issues that raise concern for public protection. We find that the Committee crafted an appropriate penalty, due to the mitigating factors the Committee cited in their Determination.

The Committee's Determination found the Respondent's prior conviction unrelated to the issues in the current case. We agree that the factual issues were unrelated to those in the prior conviction, but we note that both convictions involved fraudulent conduct. We modify the CME provisions in the Committee's Determination to require the Respondent to complete a course on medical ethics annually during the probation period. The probation terms at the third sentence in Paragraph 10 read currently:

*"Each year, Respondent must take at least twenty hours CME in the area of internal medicine."*

We amend that sentence to read:

*"Each year, Respondent must take at least twenty hours CME in the area of internal medicine and one course in medical ethics."*

We see no need to add a provision requiring a practice supervisor, because there were no patient care issues in this case.

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 suspend the Respondent's License for five years, to stay the suspension and to place the Respondent on probation for five years, under terms that include fifty hours CME per year.
3. The ARB modifies the CME probation terms to require that the Respondent complete one CME course per year on medical ethics.

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 Ivan Dario Baraque, M.D.

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

Dated: 11 May, 2015

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

Linda Prescott Wilson

In the Matter of Ivan Dario Baraque, M.D.

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

Dated: April 29, 2015

A large black rectangular redaction box covers the signature of Peter S. Koenig, Sr.

Peter S. Koenig, Sr.

In the Matter of Ivan Dario Baraque, M.D.

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

Dated: 4/30, 2015

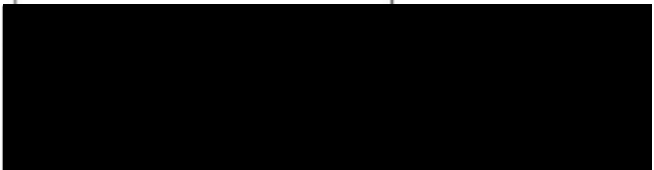


Steven Grabiec, M.D.

In the Matter of Ivan Dario Baraque, M.D.

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

Dated April 29, 2015



Richard D. Milone, M.D.

In the Matter of Ivan Dario Baraque, M.D.

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

Dated: May 6, 2015



John A. D'Anna, M.D.