



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

April 12, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Tsul, Esq.
NYS Department of Health
ESP-Coming Tower-Room 2512
Albany, New York 12237

Zelnab S. Elbaz, M.D.



Michael Cassell, Esq.
Hogen & Cassell, LLP
500 North Broadway – Suite 153
Jericho, New York 11753

RE: In the Matter of Zelnab Elbaz, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 16-120) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

Zeinab Elbaz, 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. 16- 20

**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): Paul Tsui, Esq.
For the Respondent: Michael Cassell, Esq.**

Following the Respondent's New York State criminal conviction for destroying property intentionally, a BPMC Committee determined that the Respondent's conduct amounted to professional misconduct. The Committee voted to suspend the Respondent's license to practice medicine in New York State (License) for one year, to stay the final six months of the suspension and to place the Respondent on probation for two years following the actual suspension, under terms that included completing a course in anger management. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2016), the Respondent asked the ARB to nullify that Determination. After reviewing the hearing record and the parties' review submissions, the ARB affirms the Committee's Order concerning the suspension and overturns the Order imposing probation. On our own motion, the ARB votes to request that the Director of the Office of Professional Medical Conduct (PMC Director) to convene a Committee under PHL § 230(7)(a) to conduct a hearing on whether the Respondent should undergo an evaluation to determine if the Respondent suffers from a disability that impairs her ability to practice medicine (Evaluation Committee).

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)(i) (McKinney 2016) by engaging in conduct that resulted in a conviction under New York Law. 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 a jury in the District Court for Suffolk County, New York convicted the Respondent, following trial, of Criminal Mischief in the Fourth Degree, a misdemeanor in violation of New York Penal Law § 145.00(1)(McKinney Supp. 2015). The statute defines Criminal Mischief in the Fourth Degree as intentionally damaging property of another person, when having no right to do so nor any reasonable ground to believe that he or she has any right to do so. The Suffolk District Court sentenced the Respondent to a conditional discharge, 140 hours community service, participation in an anger management program and payment of \$250.00 in fees and surcharges. The Respondent insisted before the Committee that the conduct underlying the conviction never occurred.

The Committee stated that the hearing's scope excluded attempts to re-litigate the underlying criminal conviction and centered on the nature and extent of any penalty against the Respondent's License. The Committee found that the evidence proved the criminal conviction, which involved property damage. The Committee noted that the criminal sentence required the Respondent to complete successfully anger management counselling, to provide 140 hours community service and to pay fees and surcharges. The Committee questioned whether the Respondent took any steps to comply with the criminal sentence, especially completing the

required course in anger management. The Committee noted that the Respondent's hearing testimony focused on how the criminal process victimized and wronged the Respondent, which resulted in the Committee questioning whether the Respondent had learned to control her emotions and anger effectively.

The Committee voted to suspend the Respondent's License for one year and to stay the final six months of the suspension. Further, the Committee voted to place the Respondent on probation for two years following the actual suspension, under the terms that appear at Appendix II to the Committee's Determination. The probation terms include a requirement that the Respondent complete a course in anger management [Probation Terms paragraphs 3 and 4].

Review History and Issues

The Committee rendered their Determination on December 1, 2015. This proceeding commenced on December 17, 2015, 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 January 25, 2016.

The Respondent asked that the ARB overturn the Committee's Order because: 1) the conduct at issue in the criminal proceeding was unrelated to the Respondent's medical practice; 2) the Respondent has complied in full with the terms from the criminal sentence; 3) the Department of Health determined initially that there was no basis to discipline the Respondent, but then referred the Respondent to a disciplinary proceeding; and, 4) the Committee suspended the Respondent's License based upon inaccurate information. The Respondent's brief attached information indicating that the Respondent completed an anger management course and 140 hours of community service. The Respondent argued that the Committee premised their decision

on erroneous facts and that the Committee imposed a sanction that was disproportionate to the criminal offense.

The Petitioner replied that the Respondent's brief attempted to introduce documents from outside the hearing record. The Petitioner noted that, in the Respondent's testimony, she answered at first that she had completed community service and an anger management course, but then testified that she had not [Hearing Transcript pages 36-37]. The Petitioner argued that the Respondent's hearing testimony and her disruptive behavior at hearing demonstrated an utter lack of accountability and lack of remorse for her actions. The Petitioner asked 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 (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 conduct that resulted in the Respondent's criminal conviction constituted professional misconduct and made the Respondent liable for sanctions against her License. We vote 4-1 to affirm the Committee's Determination to suspend the Respondent's License for one year and to stay the final six months of the suspension. We vote 5-0 to overturn the Committee's Determination to place the Respondent on probation for two years following the actual suspension. We also vote 5-0 to modify the Committee's Determination and to request that the OPMC Director convene an Evaluation Committee under PHL § 230(7)(a).

As the ARB noted above, we may choose to substitute our judgment and impose a different 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, (supra). We elect to substitute our judgment in this case.

There was conflicting evidence in this case concerning whether the Respondent satisfied the sentence from the underlying criminal proceeding. That evidence included the Respondent's own contradictory testimony. If the Respondent did complete the criminal sentence's anger management course, the ARB finds no mitigation in such completion. At hearing, the Respondent was unable to manage her anger or control herself over an incident that began almost eight years ago. The Respondent interrupted the hearing continually to complain about the criminal proceeding. The Committee found the Respondent's contradictory answers confusing and the Committee imposed probation terms that required the Respondent to complete another anger management course.

The ARB finds the Respondent's conduct at the hearing deeply troubling and we worry that the conduct may indicate that there is an underlying psychiatric problem. The Committee's Administrative Officer called for several breaks in the hearing in an effort to calm the Respondent and center the Respondent on the issue before the Committee, which was whether the criminal conviction should result in disciplinary action against the Respondent's License. The ARB sees no point in ordering the Respondent to complete another anger management course. The Respondent should appear instead before an Evaluation Committee, so that the Committee can determine whether grounds exist to order the Respondent to undergo a medical and/or psychiatric evaluation. In addition to any other material that the Committee may receive from the parties, the Committee shall receive a copy of the transcript from the hearing.

The ARB sustains the actual suspension against the Respondent practicing. One ARB member agrees with the Respondent that an actual suspension was disproportionate to the underlying criminal conviction. The remaining ARB Members feel that an actual suspension is appropriate during the time period surrounding the Evaluation Committee hearing. The Respondent's License shall be suspended for one year, retroactive to the date that the Hearing Committee's Order became effective. The ARB stays the final six months in the suspension, on condition that the Respondent comply with all orders during the Evaluation Committee proceeding.

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 votes 4-1 to affirm the Committee's Determination to suspend the Respondent's License for one year and to stay the suspension for six months, under the condition we specified above.**
- 3. The ARB overturns the Committee's Determination to place the Respondent on probation for two years following the suspension.**
- 4. The ARB requests that the OPMC Director convene an Evaluation Committee pursuant to PHL § 230(7)(a).**

**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 Zeinab Elbez, M.D.

Linda Prescott Wilson, an ARB Member, affirms that she took part in the deliberations in this case and that this Determination and Order represents the opinion of the ARB majority in the

Matter of Dr. Elbez

Dated: 7 April, 2015

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Linda Prescott Wilson

In the Matter of Zeinab Elbaz, M.D.

Peter S. Koenig, Sr., an ARB Member, affirms that he took part in the deliberations in this case and that this Determination and Order represents the opinion of the ARB majority in the Matter of Dr. Elbaz.

Dated: March 29, 2016

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

Peter S. Koenig, Sr.

In the Matter of Zeinab Elbaz, M.D.

Steven Grabiec, M.D., an ARB Member, affirms that he took part in the deliberations in this case and that this Determination and Order represents the opinion of the ARB majority in the Matter of Dr. Elbaz.

Dated: 3/29/, 2016



Steven Grabiec, M.D.

In the Matter of Zeinab Elbaz, M.D.

Richard D. Milone, M.D., an ARB Member, affirms that he took part in the deliberations in this case and that this Determination and Order represents the opinion of the ARB majority in the Matter of Dr. Elbaz.

Dated: March 29, 2016


Richard D. Milone, M.D.

In the Matter of Zelnab Elbaz, M.D.

John A. D'Anna, M.D., an ARB Member, affirms that he took part in the deliberations in this case and that this Determination and Order represents the opinion of the ARB majority in the Matter of Dr. Elbaz.

Dated: 3 - 29 - 16, 2016



John A. D'Anna, M.D.