



Department of Health

ANDREW M. CUOMO
Governor

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

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

November 18, 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Pooja A. Rawal, Esq.
New York State Department of Health
Empire State Plaza
Corning Tower Building, Room 2512
Albany, New York 12237

Ewald Antoine, M.D.
[REDACTED]
FCI Otisville
Two Mile Drive
Otisville, New York 10963

RE: In the Matter of Ewald Antoine, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 19-285) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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: cmg
Enclosure

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

In the Matter of

Ewald Antoine, 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. 19285

Before ARB Members Grabiec, Wilson and Rabin
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Pooja A. Rawal, Esq.

For the Respondent: *Pro Se*

Following a hearing, the Committee found the Respondent guilty of professional misconduct, due to the Respondent's Federal criminal conviction for fraud. 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 2019), the Respondent requests that the ARB overrule a Determination by a BPMC Committee and reinstate the Respondent's License. After reviewing the hearing record and the parties' submissions, we vote 3-0 to affirm the Committee in full.

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)(ii) (McKinney Supp. 2019) by engaging in conduct that resulted in a

criminal conviction under Federal 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).

The evidence before the Committee demonstrated that the Respondent entered a guilty plea in the United States District Court for the Southern District of New York to one count of Conspiracy to Commit Health Care Fraud, Mail Fraud and Wire Fraud, a violation under Title 18 USC § 1349, and one count of Health Care Fraud, a violation under Title 18 USC § 1347. The District Court sentenced the Respondent to one year and one day of imprisonment on each count to run concurrently, followed by a three-year supervised release, a \$200 assessment and severable restitution with co-defendants amounting to \$1,825,544.

The Committee determined that the Respondent's criminal conduct made the Respondent liable for action against his License pursuant to EL § 6530(9)(a)(ii). The Committee voted to revoke the Respondent's License. The Committee found that the Respondent's statement at hearing centered on his concerns over regaining earning power for his family and restoring his personal image. The Committee found that the Respondent's aspiration to return to medical practice was motivated solely by self-interest, with no desire to contribute to and serve society. The Committee found revocation the appropriate penalty due to the severity of the crime and the Respondent's self-focused remorse.

Review History and Issues

The Committee rendered their Determination on May 30, 2019. This proceeding commenced on June 14, 2019, when the ARB received the Respondent's Notice requesting a Review. The record on review included the hearing record, the Respondent's brief and the

Petitioner's reply brief. The record closed when the ARB received the reply brief on July 31, 2019.

The Respondent asked that the ARB overturn the Committee's Determination and the Respondent attacked his criminal conviction. He argued that he committed no crime but was pressured to make a guilty plea and was set up by an FBI informant. The Respondent went on to allege that he failed to receive a fair hearing and he contended that License revocation constitutes too harsh a sanction.

The Petitioner replied that the Respondent's Brief attempts to add new evidence before the ARB, which was not before the hearing Committee. The Petitioner argues that the ARB may not consider evidence from outside the hearing and asks the ARB to disregard the additional evidence, Matter of Ramos v. DeBuono, 243 AD2d 847, 663 NYS2d 361 (3rd Dept. 1997). The Petitioner disputes claims in the Respondent's Brief that the Respondent had trouble representing himself and that the Respondent's statement to the Committee was not presented as an exhibit into the record. The Petitioner notes that the Respondent's daughter, Alexandra Huffman, assisted the Respondent at hearing and that the Respondent's statement to the Committee appears in the hearing record at pages 18-30 of the hearing transcript. The Petitioner also contends that the License revocation is the only appropriate sanction for the Respondent's misconduct.

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. We reject the Respondent's attempt to repudiate his guilty plea and re-litigate his Federal conviction. We note that at the hearing, the Respondent's daughter stated that the Respondent admitted that he was involved in a conspiracy and that he took full responsibility for his actions [Hearing Transcript pages 11-12]. If the Respondent wishes to re-open his guilty plea or appeal his Federal conviction, he must do that through the Federal courts. The Respondent's guilty plea binds him in this proceeding. The ARB finds that the guilty plea, the Federal conviction and the underlying criminal conduct made the Respondent liable for action against his License pursuant to EL § 6530(9)(a)(ii).

The ARB also rejects the Respondent's contentions that he failed to receive a fair hearing. The Respondent received assistance from Ms. Huffman and his statement became part of the hearing record. The Committee cited to the Respondent's statement in their discussion about the penalty that the Committee imposed. The Respondent's Brief claimed that he failed to receive enough time to prepare a defense, but the Petitioner's entire case involved the Respondent's criminal conviction, with which the Respondent was quite familiar by the time of the hearing.

The ARB finds that the Committee acted appropriately in revoking the Respondent's License. The Respondent used his License to engage in serious criminal conduct. The Committee found that the Respondent's statement at the hearing was motivated solely by self-interest. Before the ARB, the Respondent denied all wrongdoing, so he showed no remorse whatsoever.

The ARB finds no mitigating factors in this case and we see no reason to overturn the Committee's determination to revoke 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.

Steven Grabiec, M.D.
Linda Prescott Wilson
Jill Rabin, M.D.

In the Matter of Ewald Antoine, M.D.

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

Dated: 12 November 2019

A black rectangular redaction box covers the signature of Linda Prescott Wilson. Above the box, the initials "L.P.W." are handwritten in cursive.

Linda Prescott Wilson

In the Matter of Ewald Antoine, M.D.

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

Dated: 10/31, 2019


A solid black rectangular redaction box covering the signature of Steven Grabiec, M.D.

Steven Grabiec, M.D.

In the Matter of Ewald Antoine, M.D.

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

Dated: 10/31, 2019


Jill Rabin, M.D.