



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

Nathaniel White, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Doron Feldman, M.D.
#23618-055
FCI McKean
P.O. Box 8000
Bradford, Pennsylvania 16701

Michelle L. Merola, Esq.
William J. Comiskey, Esq.
Hodgson Russ LLP
677 Broadway – Suite 301
Albany, New York 12207

RE: In the Matter of Doron Feldman, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 16-121) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine if **said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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

Doron Feldman, 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. 16-121

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): Nathaniel C. White, Esq.

For the Respondent:

Michele L. Merola, Esq. and William J. Comiskey,
Esq.

Following the Respondent's Federal criminal conviction for conspiracy to commit mail fraud and filing a false tax return, 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 five years, with four years stayed, to limit the Respondent's License, to place the Respondent on probation for five years following the suspension and to require that the Respondent complete 300 hours continuing medical education (CME). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2016), Petitioner asked the ARB to modify that Determination. After reviewing the hearing record and the parties' review submissions, the ARB affirms the Committee's Determination 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 Direct Referral Hearing began with a July 2, 2015 Order by the Commissioner of Health of the State of New York suspending the Respondent's License summarily following the Respondent's conviction for a felony, pursuant to § PHL 230(12)(b). 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 2016) by engaging in conduct that resulted in a 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). Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence before the Committee demonstrated that the Respondent entered guilty pleas in the United States District Court for the Western District of New York to conspiracy to commit mail fraud and to filing a false tax return. The Respondent admitted to engaging in a scheme in which the Respondent submitted fraudulent invoices for professional administrative services that were never provided. The scheme caused the University of Rochester to pay \$1,460,000.00 in fraudulent annual fees to the Respondent's medical group, with \$630,000.00 paid to the Respondent. The tax charge involved the Respondent manipulating his taxable income by submitting fraudulent reimbursement requests for business expenses the Respondent never incurred. Federal District Judge Frank P. Geraci, Jr. sentenced the Respondent to 24 months imprisonment, two years supervised release following imprisonment and \$1,617,561.00 in restitution. The restitution amount comprised \$1,460,000.00 for the conspiracy to commit mail fraud and \$157,561.00 for filing a false tax return.

The Committee determined that the conduct that resulted in the Respondent's convictions constituted professional misconduct and made the Respondent liable for disciplinary action against his License pursuant to EL § 6530(9)(a)(ii). The Committee rejected the Respondent's request for License revocation as a disciplinary penalty. Instead, the Committee imposed a penalty in response to the Respondent's request to sanction him, but to give him a life line.

The Committee noted that they reviewed 30 letters supporting the Respondent, from colleagues, family, friends and patients and they heard testimony from the Respondent's brother and from a physician who had known and worked with the Respondent for 14 years. The Committee found that the letters and testimony attested to the Respondent's character and contributions to society and supported the Respondent's request for an opportunity to practice medicine again and contribute to society. The Committee also reviewed evidence from the University of Rochester, which indicated that the Respondent had misled people who trusted the Respondent. A statement from the University asked that the Committee consider the Respondent's long lasting scheme and its serious impact on the University in making the determination on the penalty. The Committee also noted that, at the Respondent's criminal sentencing, Judge Geraci stated that he had no reason to believe that the Respondent would be back before the Court or would engage in further criminal activity. The Committee concluded that they considered it more likely that the Respondent would not repeat his conduct than that he would, so the Committee found revocation unwarranted.

The Committee voted to suspend the Respondent's License for five years, with the last four years stayed. The actual suspension commences on the day the Respondent leaves prison. The Committee noted that by that time, the Respondent would have been away from medical practice for several years. The Committee voted further to require the Respondent to complete 300 hours CME during the one-year actual suspension in preparation for his return to practice. The Committee placed the Respondent on probation for five years. The probation terms require that the Respondent practice under clinical supervision for the first two weeks or first 25 cases (whichever comes last) following the return to practice. The Respondent also must practice with a monitor for one year. The Committee also limited the Respondent's License to prohibit the Respondent from billing and from holding an administrative position or a position of authority. The limitation also required that the Respondent must practice in a group with at least one other anesthesiologist.

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 Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief, the Respondent's brief and the Respondent's reply brief. The record closed when the ARB received the reply brief on February 4, 2016.

The Petitioner argued that the Respondent's competence as a clinician and his good standing in the community were insufficient reasons to prevent the revocation of the Respondent's License. The Petitioner contended that the Respondent used his License to commit fraud for his own aggrandizement and that he displayed an irreparable lack of integrity. The Petitioner also argued that the Committee relied too heavily on Judge Geraci's opinion that the Respondent should be able to practice medicine again. The Petitioner requested that the ARB overturn the Committee and revoke the Respondent's License, or in the alternative that the ARB require more intensive oversight if the ARB allows the Respondent to return to practice.

The Respondent replied that he has accepted full responsibility for his conduct and that the Committee's Penalty is consistent with the penalty in similar cases. The Respondent argued that his misconduct had no direct connection to patients and that there is no requirement in the law that makes revocation the only remedy for fraud.

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. Neither party challenged the Committee's Determination on the charges. The ARB rejects the Petitioner's request that we revoke the Respondent's License. The ARB affirms the Committee's Determination in full.

We agree with the Committee that the Respondent is unlikely to repeat any criminal conduct and we find that the Committee has imposed a serious sanction that will aid in deterring such conduct by the Respondent or others. As a result of his misconduct, the Respondent has spent time in prison and has paid over \$1.6 million in restitution. The Respondent will also spend actual time on suspension from practice, will serve five years on probation and will practice with permanent limitations on his License. The Respondents' criminal scheme involved billing for expenses while the Respondent was President of the medical group that provided services in the Anesthesiology Department at the University of Rochester. The penalty the Committee imposed limits the Respondent's License to ban him permanently from billing or from holding an administrative position.

We also find no reason to impose additional oversight for the Respondent's return to practice. This case involved no allegations concerning patient care. The penalty the Committee imposed requires the Respondent to complete 300 hours CME during the time the Respondent spends on actual suspension and to serve five years on probation. The probation terms include brief clinical supervision, but also one year practicing with a monitor. The ARB concludes that these measures will assure patient safety.

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, with four years stayed, to limit the Respondent's License permanently, to require the Respondent to complete 300 hours CME during the actual suspension and to place the Respondent on probation for five years under the terms that appear at Appendix 2 to the Committee's Determination.

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 Doron Feldman, M.D.

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

Dated: 7 April, 2016

A large black rectangular redaction box covers the signature area. A small circular mark is visible to the left of the box.

Linda Prescott Wilson

In the Matter of Doron Feldman, M.D.

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

Dated: April 7, 2016



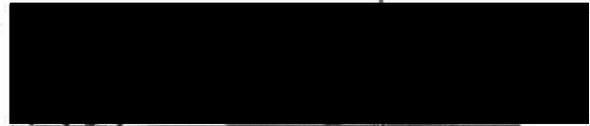
Peter S. Koenig, Sr.

In the Matter of Doron Feldman, M.D.

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

Matter of Dr. Feldman.

Dated: 4/7/, 2016



Steven Grabiec, M.D.

In the Matter of Doron Feldman, M.D.

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

Dated: April 7, 2016



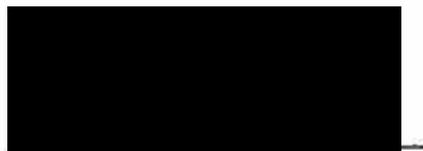
Richard D. Milone, M.D.

In the Matter of Doron Feldman, M.D.

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

Matter of Dr. Feldman.

Dated: April 8, 2016



John A. D'Anna, M.D.