

Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299
www.health.ny.gov

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

April 7, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Alexander Rozenberg, M.D.
REDACTED

Nathan L. Dembin, Esq.
225 Broadway – Suite 1400
New York, New York 10007

Michael G. Bass, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Alexander Rozenberg, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 10-271) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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
Hedley Park Place
433 River Street-Fourth Floor
Troy, New York 12180

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, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

In the Matter of

Alexander Rozenberg, 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. 10-271

COPY

Before ARB Members Koenig, Wagle, Wilson and Milone¹
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Michael G. Bass, Esq.
For the Respondent: Nathan L. Dembin, Esq.

In this proceeding pursuant to New York Public Health Law (PHL) § 230-c
(4)(a)(McKinney 2011), the ARB considers whether to impose a sanction against the
Respondent's license to practice medicine in New York State (License) following the
Respondent's criminal conviction for falsifying business records. After a hearing below, a
BPMC Committee voted to revoke the Respondent's License. The Respondent then sought
review and requested that the ARB overturn the Committee. After reviewing the hearing record
and the parties' review submissions, the ARB votes 4-0 to affirm the Committee's
Determination.

Committee Determination on the Charges

The Committee held a hearing into charges that the Respondent committed professional
misconduct under New York Education Law (EL) §§ 6530(9)(i) (McKinney 2010) by engaging
in conduct that resulted in a criminal conviction under New York law. The Committee conducted

¹ ARB Member John A. D'Anna, M.D. did not participate in this case. The ARB proceeded to consider the case with
a four-member quorum, Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

the hearing under the expedited hearing procedures (Direct Referral Hearing) at PHL §230(10)(p). At a Direct Referral Hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). Following the Hearing, the Committee rendered the Determination now on review.

The evidence at hearing indicated that the Respondent was convicted in New York State Supreme Court for Kings County, following trial, for Falsifying Business Records in the First Degree, a Class E Felony, and Insurance Fraud in the Fifth Degree, a Class A Misdemeanor [Hearing Exhibit 4]. Under New York Penal Law (PL) § 175.10(McKinney 2011), Falsifying Business Records in the First Degree amounts to:

- making or causing a false entry in the business records of an enterprise; or,
- altering, erasing, obliterating, deleting, removing or destroying a true entry in the business records of an enterprise; or,
- omitting to make a true entry in the business records of an enterprise in violation of a duty to do so which he/she knows to be imposed on him/her by law or by the nature of his/her position; or,
- preventing the making of a true entry or causing the omission thereof in the business records of an enterprise;

with an intent to defraud which includes the intent to commit another crime or conceal the commission thereof. Under PL § 176.10, Insurance Fraud in the Fifth Degree amounts to committing a fraudulent insurance act. Supreme Court sentenced the Respondent to fifteen days incarceration, three hundred hours community service, five years on probation and \$320.00 in fees and surcharges.

The Committee determined that the Respondent's criminal conviction made him liable for disciplinary action against his License under EL § 6530(9)(i). The Committee voted to revoke the Respondent's License. The Committee noted that the Respondent argued that he was convicted on only two of fifty charges in an indictment and that the Respondent was innocent on the charges for which he was convicted. The Committee rejected the Respondent's contention

that the convictions resulted from a simple \$25.00 billing mistake. The Committee found that the Respondent's conviction on a felony made revocation an appropriate penalty. The Committee also found that the Respondent failed to express remorse or acknowledge guilt.

Review History and Issues

The Committee rendered their Determination on December 17, 2010. This proceeding commenced on January 11, 2011, 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 March 1, 2011.

The Respondent requests that the ARB overturn the Committee and impose no further sanction. The Respondent alleged error by the Committee for failing to determine or evaluate the underlying circumstances and to consider mitigating evidence in determining the nature of the penalty. The Respondent argued that the Committee imposed revocation as a penalty due to the Respondent's felony conviction alone and that no prior precedent by the Courts or BPMC recognizes revocation as an automatic penalty for a felony conviction. The Respondent argued that he has already endured the penalty in the criminal case, the cost of the criminal defense and the Summary Suspension of his License by the Commissioner of Health. The Respondent also argued that he was not trying to re-litigate the criminal case by continuing to assert his innocence, but rather trying to establish that there was a logical reason for his belief that he was falsely accused.

The Petitioner replied that the Respondent presented no character witnesses, written testimonials nor other documentation and that the Respondent refused repeatedly to acknowledge guilt or express remorse. The Petitioner noted that the Respondent contended that his conviction

resulted solely from a \$25.00 billing error by the Respondent's billing service. The Petitioner replied that the Respondent would later admit that there was no mention about any billing error in the Respondent's indictment or criminal sentencing and that there were no charges against the Respondent's billing service.

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's criminal conviction made the Respondent liable for disciplinary action against his License pursuant to EL § 6530(9)(i). The ARB votes unanimously to affirm the Committee's Determination to revoke the Respondent's License.

The Respondent's conviction bound the Committee and it binds the ARB and so the ARB rejects the Respondent's assertions concerning false accusations. We agree with the Respondent that no section in the penalty provisions in PHL § 230-a provides for automatic revocation following a licensee's conviction for a felony. Under such circumstances, any BPMC committee or the ARB may consider mitigating circumstances, such as character witnesses or testimonials about the Respondent. The Petitioner's reply brief noted that the Respondent submitted no such mitigation evidence at hearing. The Respondent limited mitigation evidence to his own testimony that his conviction resulted from an error by his billing service. The Petitioner's reply

brief noted that the Respondent's indictment and criminal sentencing included no mention about a billing error and that there were no criminal charges against the Respondent's billing service. Both physicians on the Committee also sought clarification about the Respondent's assertions about a billing error. The ARB concludes that the Committee considered and rejected the Respondent's mitigation evidence.

The ARB finds the Respondent's argument about billing error unconvincing. Falsifying Business Records in the First Degree includes the intent to defraud. We find no credible evidence in this record to mitigate the intent to defraud. The Committee found no remorse and so the possibility remains that the Respondent will repeat his fraudulent conduct if he receives a further opportunity. The ARB affirms 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.

Peter S. Koenig, Sr.
Datta G. Wagle, M.D.
Linda Prescott Wilson
Richard D. Milone, M.D.

In the Matter of Alexander Rozenberg, M.D.

Linda Prescott Wilson, an ARB Member, affirms that she participated in the consideration of this case and that the above Determination and Order comprises the decision of the ARB in the Matter of Dr. Rozenberg.

Dated: 5 April, 2011

REDACTED

Linda Prescott Wilson

In the Matter of Alexander Rozenberg, M.D.

Peter S. Koenig, Sr., an ARB Member, affirms that he participated in the consideration of this case and that the above Determination and Order comprises the decision of the ARB in the Matter of Dr. Rozenberg.

Dated: 04/04, 2011

REDACTED

Peter S. Koenig, Sr.

In the Matter of Alexander Rozenberg, M.D.

Datta G. Wagle, M.D., an ARB Member, affirms that he participated in the consideration of this case and that the above Determination and Order comprises the decision of the ARB majority in the Matter of Dr. Rozenberg.

Dated: 5 April, 2011

REDACTED _____

Datta G. Wagle, M.D.

In the Matter of Alexander Rozenberg, M.D.

Richard D. Milone, an ARB Member, affirms that he participated in the consideration of this case and that the above Determination and Order comprises the decision of the ARB in the Matter of Dr. Rozenberg.

Dated April 4, 2011

REDACTED

Richard D. Milone, M.D.