

STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

March 3, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Vladimir Kirkorov, M.D.

Redacted Address

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place
433 River Street – 4th Floor
Troy, New York 12180

Vladimir Kirkorov, M.D.

Redacted Address

RE: In the Matter of Vladimir Kirkorov, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.07-246) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 Signature

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

Vladimir Kirkorov, 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. 07-246

Before ARB Members Grossman, Lynch, Pellman, Wagle and Wilson
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Robert Bogan, Esq.
For the Respondent: Pro Se

In this proceeding pursuant to New York Public Health Law (PHL) § 230-c
(4)(a)(McKinney 2008), the ARB determines whether to take disciplinary action against the
Respondent's license to practice medicine in New York State (License) following the
Respondent's criminal convictions for several felonies under New York Law. After a hearing
below, a BPMC Hearing Committee determined that the Respondent's criminal conduct
constituted professional misconduct and the Committee voted to revoke the Respondent's
License. Upon considering the record below and the parties' review submissions, the ARB
affirms the Committee's Determination in full.

Committee Determination on the Charges

The Committee conducted a hearing in this matter under the expedited hearing
procedures (Direct Referral Hearing) in PHL § 230(10)(p). The Petitioner commenced the
proceeding by a December 21, 2006 Summary Order from the New York Commissioner of

Health suspending the Respondent's License pursuant to the Commissioner's authority under PHL § 230(12). The Petitioner alleged that the Respondent committed professional misconduct under the definition in N. Y. Education Law (EL) §§ 6530(9)(a)(i) (McKinney 2008) by engaging in conduct that resulted in a felony conviction under New York Law. In the Proceeding, 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). The Respondent made no appearance at the Hearing and the Hearing proceeded in the Respondent's absence. Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence at the hearing demonstrated that the Respondent was convicted in Queens County Supreme Court for:

- seven counts of Insurance Fraud in the Third Degree, a Class D Felony under New York Penal Law (PL) § 176.20;
- seventeen counts of Insurance Fraud in the Fourth Degree, a Class E Felony under PL § 176.15;
- one count of Grand Larceny in the Third Degree, a Class D Felony under PL § 155.35;
- seven counts of Grand Larceny in the Fourth Degree, a Class E Felony under PL § 155.30;
- twenty-four counts of Falsifying Business Records in the First Degree, a Class E Felony under PL § 175.10;
- one count of Scheme to Defraud, a Class E Felony under PL § 190.65; and,
- two counts of Petit Larceny, a Class A Misdemeanor under PL § 155.25.

The Court sentenced the Respondent to concurrent sentences of two to six years imprisonment for the Insurance Fraud Third Degree and Grand Larceny Third Degree convictions, one to three years imprisonment on the other felony convictions and one year imprisonment for the Petit

Larceny convictions. The charges involved insurance billings and medical reports relating to automobile accident victims.

The Committee noted that the Respondent failed to appear at the hearing after the Committee's Administrative Officer denied an adjournment request from the Respondent. The Administrative Officer found that the Petitioner followed the requirements of law for serving the Notice of Hearing and the Commissioner's Order upon the Respondent and that the Petitioner obtained jurisdiction over the Respondent, so that the hearing could proceed in the Respondent's absence.

The Committee found that the Respondent committed serious and numerous crimes and that the Respondent's failure to appear at the Direct Referral Proceeding left the record devoid of evidence about mitigating circumstances, rehabilitation or remorse. The Committee voted to revoke the Respondent's License.

Review History and Issues

The Committee rendered their Determination on November 8, 2007. This proceeding commenced on November 19, 2007, 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 9, 2008.

The Respondent's Brief alleged misconduct by his legal counsel, the Assistant District Attorney and the Judge in the Respondent's criminal trial and various other persons in the criminal justice system. The Respondent also challenged the decision to allow the Direct Referral Hearing to proceed in his absence.

In reply, the Petitioner argues that the Respondent's brief made no challenge addressing the penalty that the Committee imposed, but instead attacked the criminal convictions underlying

the Direct Referral Hearing. The Petitioner contends that the Respondent engaged in serious misconduct that impacts on the health, welfare and safety of patients indirectly, due to the impact of fraud on medical costs. The Petitioner requested that the ARB affirm the Committee's Determination to revoke the Respondent's License.

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. The ARB affirms the Committee's Determination that the Respondent's criminal conduct constitutes professional misconduct under EL § 6530(9)(a)(i). The ARB also affirms the Committee's Determination to revoke the Respondent's License.

The Respondent's brief concentrated almost entirely on the criminal prosecution against him and on the Respondent's allegations against various persons involved in the criminal case. The ARB lacks any authority to overturn the Respondent's criminal convictions or to disregard the Respondent's convictions. The Respondent's review submission indicates that he has filed complaints related to his allegations and if the Courts overturn the Respondent's convictions, then no basis will exist for any action against the Respondent's License. Until such time as any Court overturns the convictions, then the Respondent's criminal convictions provide the basis for disciplinary action against the Respondent's License and neither the ARB nor the Hearing

Committee must await the result of the Respondent's criminal appeals before taking such disciplinary action.

The Respondent also challenged the Direct Referral Hearing going forward in the Respondent's absence, but he conceded that he knew the Hearing could proceed in his absence. The Committee's Administrative Officer determined that the Respondent received legally sufficient notice concerning the Direct Referral Hearing. The Respondent also had an opportunity to submit evidence for consideration at the Hearing. The ARB notes that the Respondent had the opportunity to submit argument to the ARB in his review brief concerning mitigating circumstances, rehabilitation and/or remorse. The Respondent chose instead to challenge his criminal conviction only. The ARB sees no reason to overturn the Committee's Determination because the Hearing proceeded in the Respondent's absence.

The ARB agrees with the Committee that the Respondent engaged in serious and extensive criminal conduct and the ARB agrees that the Respondent's criminal conduct demonstrates the Respondent's unfitness to practice medicine in New York State.

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.

Thea Graves Pellman
Datta G. Wagle, M.D.
Stanley L. Grossman, M.D.
Linda Prescott Wilson
Therese G. Lynch, M.D.

In the Matter of Vladimir Kirkirov, M.D.

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

Dated: *19 February* 2008

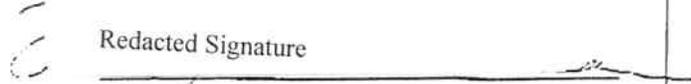
Redacted Signature

Linda Prescott Wilson

In the Matter of Vladimir Kirkirov, M.D.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the Matter of Dr. Kirkirov.

Dated: Feb 29, 2008



Redacted Signature

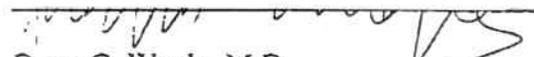
Thea Graves Pellman

In the Matter of Vladimir Kirkirov, M.D.

Datta G. Wagle, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Dr. Kirkirov.

Dated: 2/20/07, 2008

Redacted Signature


Datta G. Wagle, M.D.

In the Matter of Vladimir Kirkirov, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the
Matter of Dr. Kirkirov.

Dated: February 22, 2008

Redacted Signature

Stanley L Grossman, M.D.

In the Matter of Vladimir Kirkirov, M.D.

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Dr. Kirkirov.

Dated: February 19, 2008

Redacted Signature

Therese G. Lynch, M.D.