



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.  
Commissioner

Public

James W. Clyne, Jr.  
Executive Deputy Commissioner

December 20, 2010

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Mark L. Furman, Esq.  
Hoffman, Polland & Furman, PLLC  
220 East 42nd Street – Suite 435  
New York, New York 10017

Alexander V. Israeli, M.D.  
REDACTED

Peter Van Buren, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237-0032

**RE: In the Matter of Alexander V. Israeli, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 10-188) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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 V. Israeli, 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. 10-188

COPY

Before ARB Members D'Anna, Koenig, Wagle, Wilson and Milone  
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Peter Van Buren, Esq.  
For the Respondent: Mark L. Furman, Esq.

In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2010), the ARB considers whether to assess a sanction against the Respondent's license to practice medicine in New York State (License) following the Respondent's felony conviction under New York Law. After a hearing below, a BPMC Committee found that the Respondent's conviction made him liable for a sanction against his License and the Committee voted to censure and reprimand the Respondent. On review, the Petitioner requests that the ARB overturn the Committee and, at the very least, suspend the Respondent's License for three years. After reviewing the record below and the parties' review submissions, the ARB affirms the Committee in full.

Committee Determination on the Charges

The Committee conducted a hearing into charges that the Respondent violated New York Education Law (EL) § 6530(9)(a)(i) (McKinney 2010) by engaging in conduct that resulted in a criminal conviction under New York law. The Committee conducted 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). The Petitioner began the proceeding by a March 3, 2010 Notice and Summary Order from the Commissioner of Health of the State of New York, suspending the Respondent's License until further order by the Committee, pursuant to PHL § 230(12)(b). Following the Hearing, the Committee rendered the Determination now on review.

The evidence at hearing indicated that the Respondent entered a guilty plea in the Supreme Court of the State of New York for Queens County to Insurance Fraud in the Fourth Degree, a Class E Felony under New York Penal Law § 176.15 (McKinney 2010). Insurance Fraud in the Fourth Degree amounts to committing a fraudulent insurance act and thereby wrongfully taking, obtaining or withholding property with a value exceeding \$1000.00.

The Committee found that the Respondent's act occurred in connection with a medical billing. The Committee recognized the act as serious, but found no basis on the record to question the Respondent's medical competence and no evidence concerning any other offenses. The Committee also credited the Respondent with significant remorse concerning the conduct. The Committee found that a censure and reprimand provided the appropriate penalty. The summary suspension under the Commissioner's Order ended when the Committee rendered their Determination.

#### Review History and Issues

The Committee rendered their Determination on October 8, 2010. This proceeding commenced on October 18, 2010, 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 and the Respondent's opening brief and reply brief. The record closed when the ARB received the reply brief on or about November 24, 2010.

The Petitioner argues that testimony and evidence before the Committee warranted a more severe sanction than the Committee imposed. The Petitioner indicates that the Respondent's hearing testimony demonstrated that the Respondent worked at a high volume practice that treated mostly persons injured in automobile accidents and which billed under the State's "No-Fault" Insurance Law. The criminal conduct involved a billing to Kemper Insurance for a medical test "which was not performed in the way it was billed". The Petitioner contends that No-Fault exists to provide low cost insurance for motorists by controlling medical treatments for automobile accident victims and thus provides medical care for persons injured in accidents. The Petitioner argues that physicians who overcharge No-Fault defeat the systems' purpose. The Petitioner contends that such conduct reflects poorly on a physician's honesty, integrity and competency. The Petitioner requests that the ARB, at the least, suspend the Respondent for three years, with a stay in whole or in part, and impose probation concurrent to the suspension, with a period of monitoring.

The Respondent argues that the criminal conduct amounted to a single aberrational act and that no economic motivation existed for the conduct because the Respondent worked as an employee at the practice. The Respondent notes that the Committee found him remorseful, that the Respondent served time on suspension already under the Commissioner's Order and that the criminal conviction has resulted in the Respondent's exclusion from publicly funded medical programs and hospitals.

#### 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 (3<sup>rd</sup> 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 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> 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 (3<sup>rd</sup> 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 made him liable for disciplinary action against his License under EL § 6530(9)(a)(i). Neither party challenged the Committee's Determination on the charge. The ARB votes further to affirm the Committee's Determination to censure and reprimand the Respondent.

The Committee saw the Respondent and found him remorseful. The ARB defers to the Committee in that judgment. The Committee also found no reason to question the Respondent's competence. The Petitioner's brief, at page 4, argued that overcharging No-Fault reflects poorly on a physician's medical competence. The Petitioner failed to explain how the overcharging reflects on competence. The ARB agrees with the Committee that the single overcharge raises no question concerning the Respondent's competence. The Petitioner argued that the ARB should increase the sanction to include probation with "monitoring of some sort", because the safety of the State's citizens requires some supervision or control over the Respondent. The Petitioner fails to suggest what kind of supervision or monitoring. The ARB notes that Committees and the ARB usually impose monitoring over a physician's practice to address deficiencies in record keeping or failure to follow accepted medical standards. This case involved neither of those misconduct categories. The Petitioner also argued for license suspension, with a stay. The ARB notes that the Commissioner of Health suspended the Respondent's License summarily in March 2010 pursuant to the provisions in PHL § 230(12)(b) that permit summary suspensions following a physician's conviction for a felony. The suspension in this case lasted seven months, from the date of the Commissioner's Summary Order until the Committee's Determination. The ARB sees no need for a further actual suspension in this case. The Petitioner also suggested that the

Respondent may have engaged in further misconduct due to his prior employment at another practice that served automobile accident victims. The ARB notes that, in a Direct Referral Proceeding, we can deal only with the conviction before us.

The Respondent engaged in serious misconduct and the Respondent has received a serious sanction. The Respondent has already endured seven months with a suspended License and the Respondent has been unemployed since his arrest in the criminal case. The ARB agrees with the Committee that a censure and reprimand provided the appropriate penalty.

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 censure and reprimand the Respondent.

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



In the Matter of Alexander V. Israeli, M.D.

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

Dated: 16 December 2010

REDACTED

  
Linda Prescott Wilson

In the Matter of Alexander V. Israeli, M.D.

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

Dated: 12/13, 2010

REDACTED

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Peter S. Koenig, Sr.

In the Matter of Alexander V. Israeli, M.D.

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

Dated: 12/15, 2010

REDACTED

Datta G. Wagle, M.D. ✓

In the Matter of Alexander V. Israeli, M.D.

Richard D. Milone, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Israeli.

Dated December 3, 2010

REDACTED

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Richard D. Milone, M.D.

In the Matter of Alexander V. Israeli, M.D.

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

Dated: Dec 16, 2010

REDACTED

John A. D'Anna, M.D.