



# Department of Health

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Commissioner

**JOHANNE E. MORNE, M.S.**  
Executive Deputy Commissioner

May 22, 2024

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

David W. Quist Esq.  
New York State Department of Health  
Corning Tower Building, Room 2512  
Empire State Plaza  
Albany, New York 12237

Aimal Khan, M.D.  


**RE: In the Matter of Aimal Khan, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 24-101) 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.

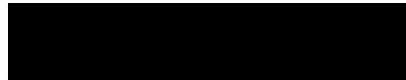
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified 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 box used to redact the signature of the sender.

Natalie J. Bordeaux  
Chief Administrative Law Judge  
Bureau of Adjudication

NJB: cmg  
Enclosure

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

In the Matter of

Aimal Khan, 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. 24-101

COPY

Before ARB Members Wilson, Rabin, Milone and Reichgott  
Administrative Law Judge Jean T. Carney drafted the Determination

For the Department of Health (Petitioner): Paul Tsui, Esq.  
For the Respondent: *Pro se*

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct by failing to comply with two Orders issued pursuant to PHL § 230(7)(a). 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 asked the ARB to reverse the Committee's Determination and dismiss the charges. After reviewing the hearing record and the parties' review submissions, the ARB affirms the Committee's Determination.

**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 on charges that the Respondent violated New York Education Law (EL) § 6530(15) by:

- Failing to submit to and cooperate with an examination by [REDACTED] (Examining Physician); and

- Failing to provide all releases or consents that the Examining Physician, the Board, or the Office of Professional Medical Conduct deem necessary.

The misconduct arose from a proceeding held pursuant to PHL § 230(7)(a), where a duly appointed committee on professional conduct found reason to believe that the Respondent may be impaired by alcohol, drugs, physical, or mental disability. The Respondent was ordered to schedule and commence an examination with the Examining Physician by March 11, 2022. The Respondent was further ordered to provide, within seven days of the order's date, any releases or consents deemed necessary by the Examining Physician, the Board, or the OPMC.

The Committee found that the Respondent did not fully comply with the order to provide releases or consents. The Respondent submitted an authorization for his medical record from one doctor to be released to the Examining Physician; but failed to provide releases from two other doctors, as had been requested by OPMC. In addition, the Respondent provided an authorization for the Examining Physician to release the results of the examination to the Respondent, and discuss health information with the "Interim Director of the OPMC;" but did not authorize the release of the Respondent's medical records to the OPMC.

The Committee further found that the Respondent failed to comply with the order to schedule and commence an examination with the Examining Physician by March 11, 2022. In fact, the Respondent had neither scheduled nor commenced said examination at any time prior to or during the hearing, which commenced on September 14, 2023, and concluded on November 9, 2023, nearly 10 months after the order was issued.

The Committee determined that the Respondent's complete disdain for the OPMC's authority, and his obstreperous resistance to complying with the orders issued pursuant to PHL § 230(7), necessitated imposing the penalty of revocation of the Respondent's license.

### Review History and Issues

The Committee rendered their Determination on December 21, 2023. This proceeding commenced on January 12, 2024, 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 Petitioner's reply brief on March 15, 2024.

The Respondent asked the ARB to overturn the Committee's determination and reinstate his license with no restrictions. The Respondent argued that he was denied due process, and that the OPMC violated his rights under the Americans with Disabilities Act (ADA).

The Respondent contends that he qualifies as a person with a disability under the ADA, and therefore must be afforded ADA protections regardless of whether he has a present disability. The Respondent therefore concludes that the underlying proceeding pursuant to PHL §230(7), finding that he may be impaired, violates the ADA. The Respondent further argues that the administrative officer (ALJ) and the Committee were biased against him by failing to ask him why he invoked the ADA in his opening and closing statements, by misrepresenting his demeanor during the hearing, and retaliated against him because he said he would file a complaint against the ALJ. Finally, the Respondent contended that his due process rights were violated by not being granted the opportunity to submit a post-hearing brief.

The Petitioner replied that the Respondent fully participated at the hearing, cross-examining the Petitioner's witnesses, testifying in his own behalf, and having been given the opportunity to present witnesses and documentary evidence. Therefore, his due process rights were not violated. Additionally, the ADA was not relevant to this proceeding, and the Respondent failed to provide any legal justification for invoking the ADA. The Petitioner contends that the Respondent's brief improperly attempts to

introduce evidence that was not part of the record below, and improperly attempts to relitigate the underlying proceeding held pursuant to PHL § 230(7).

The Petitioner asserts that the sole issue before the Committee was whether the Respondent complied with the orders issued on February 11, 2022. The evidence presented at the hearing supported sustaining the charges that the Respondent failed to comply with those orders, and the penalty of revocation is appropriate under the circumstances.

#### 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 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<sup>1</sup>. We affirm the Committee's determination that the Respondent's conduct constitutes professional misconduct. We affirm the Committee's determination to impose a penalty of revocation.

The ARB agrees with the Committee's assessment of the evidence, including the Respondent's testimony and demeanor during the hearing. The Respondent was argumentative and rude throughout the hearing. He refused to comply with the ALJ's reasonable requests for civility, interrupting the other participants and addressing them discourteously, and routinely disrupting the proceedings.

The ARB rejects the Respondent's argument that his due process rights were violated. Over the course of four hearing dates, the Respondent fully participated in the proceeding, vigorously cross-examining the Department's witnesses, testifying in his own behalf, submitting documentary evidence in support of his position, and entering objections on the record. He was given the opportunity to present his own witness; but his witness did not appear. The ALJ's decisions regarding admissibility of exhibits did not violate the Respondent's due process rights. He had the opportunity to be heard regarding the exhibits, thereby preserving his rights under the constitution. *Rigle v. Daines*, 78 A.D. 3d 1249 (3d Dept. 2010).

Similarly, the ARB finds that the Respondent's assertion of bias to be meritless. In order to show bias, the Respondent must provide factual support for the allegation, and

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<sup>1</sup> The Respondent attached several documents to his brief that were not considered by the ARB because they contained information outside the record of the proceeding.

that the Committee's determination flowed from the alleged bias. *Rigle v. Daines*, 78 A.D. 3d 1249 (3d Dept. 2010); *Khan v. New York State Dept. of Health*, 17 A.D. 3d 938 (3d Dept. 2005); 10 NYCRR 51.17(a). The Respondent claimed protection under the ADA; but failed to identify his disability, or how the Committee and ALJ were biased against him based on this unknown disability. The Respondent's conclusory statements fail to satisfy the burden imposed by the regulations and caselaw.

The ARB finds that the Committee's determination to revoke the Respondent's license was supported by the evidence presented at the hearing. In particular, the Respondent's actions to avoid complying with the orders for an examination and to provide certain releases to the OPMC flouts the OPMC's authority to ensure appropriate standards of medical practice. The Respondent has clearly demonstrated an unwillingness to follow the lawful orders of the OPMC, which warrants imposing the penalty of revocation. *Aptaker v. Administrative Review Board for Professional Medical Conduct*, 60 A.D.3d 1160 (3d Dept. 2009).

#### 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's conduct constituted professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.

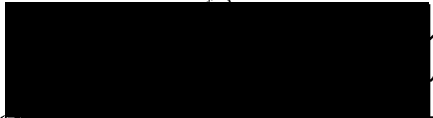
Linda Prescott Wilson  
Jill Rabin, M.D.  
Richard D. Milone, M.D.  
Michael J. Reichgott, M.D., PhD.



In the Matter of Aimal Khan, M.D.

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

Dated: 14 May, 2024



Linda Prescott Wilson

In the Matter of Aimal Khan, M.D.

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

Dated: May 8, 2024



Richard D. Milone, M.D.

In the Matter of Aimal Khan, M.D.

Jill Rabin, M.D., an ARB Member concurs in the Determination and Order in the

Matter of Dr. Khan.

Dated: 5/1/24, 2024




Jill Rabin, M.D.

In the Matter of Aimal Khan, M.D.

Michael J. Reichgott, M.D., Ph.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Khan.

Dated: May 17, 2024

  
Michael J. Reichgott, M.D., Ph.D.