§ 230-c. Administrative review board for professional medical conduct. 1. There is hereby created an administrative review board for professional medical conduct for the purpose of reviewing determinations of committees on professional conduct of the state board for professional medical conduct. The review board may not review a commissioner's summary order under subdivision twelve of section two hundred thirty of this title.

2. The review board shall consist of five members of the board appointed by the governor with the consent of the senate. Three of the members of the review board shall be physicians from the board for professional medical conduct. Two of the members of the review board shall be lay members from the board for professional medical conduct. The chairperson shall assign appropriate staff to assist the review board.

3. All members shall serve three year terms, provided that two of the initial appointments shall serve for a term of two years and one of the initial appointments shall serve for one year.

4. Filing and determination of review. (a) The determinations of a committee on professional conduct of the state board for professional medical conduct may be reviewed by the administrative review board for professional medical conduct. Either the licensee or the department may seek a review. A notice of review must be served by certified mail upon the administrative review board and the adverse party within fourteen days of service of the determination of the committee on professional conduct of the state board for professional medical conduct. A commissioner's summary order under subdivision twelve of section two hundred thirty of this title and the penalty in any case in which annulment, suspension without stay or revocation of the licensee's license is ordered by the committee on professional conduct shall remain in effect until the review board renders its determination. Any penalty imposed by the order of the committee on professional medical conduct, other than a penalty of annulment, suspension without stay or revocation, is stayed by the service of the notice of review upon the administrative review board and remains stayed until the review board

renders its determination. All parties have thirty days from the service of the notice of review to submit briefs to the board. A notice of review shall be perfected only if a brief is timely submitted. All parties shall have seven days from the receipt of the submitted brief to file a response. All reviews shall consist of a review of the record of the hearing and submitted briefs only. A written determination of the review board must be rendered within forty-five days of the submission of briefs and a stipulated record.

(b) The review board shall review whether or not the determination and the penalty are consistent with the findings of fact and conclusions of law and whether or not the penalty is appropriate and within the scope of penalties permitted by section two hundred thirty-a of this title. The review board shall have the authority to remand a case to the committee on professional conduct for reconsideration or further proceedings.

(c) All determinations shall be based upon a majority concurrence of the administrative review board.

(d) The administrative review board shall issue an order based upon the determination of the administrative review board. Such order shall be served on all parties by certified mail.

5. Judicial review. An order of the administrative review board for professional medical conduct or a determination of a committee in which no review by the administrative review board was requested may be reviewed pursuant to the proceedings under article seventy-eight of the civil practice law and rules. Such proceeding shall be returnable before the appellate division of the third judicial department and such decisions shall not be stayed or enjoined except upon application to such appellate division after notice to the department and to the attorney general and upon a showing that the petitioner has a substantial likelihood of success. Failure to seek an order of the administrative review board shall not be grounds for dismissal of such a proceeding.