



**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

May 4, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Gerard A. Cabrera
Associate Counsel
NYS Health Department
Division of Legal Affairs
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, NY 10007

Lawrence D. Mason, M.D.


Lilian Walanka, Esq.
Crick Walanka Law Group, Ltd.
111 West Washington Street, Suite 1820
Chicago, IL 60602

RE: In the Matter Of Lawrence D. Mason, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 17-131) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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,



James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: mw
Enclosure

COPY

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

In the Matter of

Lawrence D. Mason, 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. 17- 131

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

For the Department of Health (Petitioner): Gerard A. Cabrera, Esq.
For the Respondent: Lilian Walanka, Esq.

The Respondent holds medical licenses in Illinois and Ohio in addition to his license to practice medicine in New York State (License). After a hearing, a BPMC Committee found the Respondent liable for disciplinary action against his License after Ohio revoked the Respondent's medical license in that state and Illinois suspended the Respondent's license indefinitely in that state. The Committee voted to revoke the Respondent's License. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2017), the Respondent asked the ARB to remand the case to the Committee for further consideration. After reviewing the hearing record and the parties' review submissions, the ARB remands this case to the Committee.

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 under the expedited hearing procedures (Direct Referral Hearing) in PHL

§230(10)(p). The Petitioner charged that the Respondent violated New York Education Law (EL) § 6530(9)(d)(McKinney Supp. 2016) by committing professional misconduct, because the duly authorized professional disciplinary agency from two other states took disciplinary action against the Respondent's medical licenses in those states for conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York. The Petitioner's Statement of Charges [Direct Referral Hearing Exhibit 1] alleged that the Respondent's misconduct in Illinois and Ohio would constitute misconduct if committed in New York for practicing the profession while impaired, a violation under EL § 6530(8). Following the Direct Referral Hearing, the Committee rendered the Determination now on review. In the 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 evidence before the Committee demonstrated that the Respondent agreed to surrender permanently his Ohio license in lieu of a further investigation into the Respondent's impairment to practice medicine, which resulted in the State Medical Board of Ohio's (Ohio Board) May 13, 2015 action permanently revoking the Respondent's license in that state. The State of Illinois Department of Financial and Professional Regulation, Division of Regulation (Illinois Board) suspended the Respondent's license in that state indefinitely on June 30, 2016 and prohibited the Respondent seeking restoration for a minimum of three years.

The Committee voted to revoke the Respondent's based solely upon the Ohio action, because the charges before the Committee involved impairment to practice. The Ohio action relied on the Respondent's surrender of his Ohio license in lieu of the Ohio Board pursuing a further investigation regarding the Respondent's impairment due to drugs, alcohol or other

substances. The Committee noted that the Illinois Board action made no reference to the Respondent's impairment. The Committee also stated that the Respondent made no appearance at hearing and failed to file a written answer to the charges, so the record contained no evidence of mitigating circumstances, rehabilitation or remorse.

Review History and Issues

The Committee rendered their Determination on November 15, 2016. This proceeding commenced on December 6, 2016 when the Respondent filed a Notice requesting a Review and the Review Brief. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's reply. The record closed when the ARB received the reply December 30, 2016.

The Respondent requested that any disciplinary action should contain a penalty less severe than revocation and should be based on the Illinois rather than the Ohio disciplinary action. The Respondent argued that he has not practiced in Ohio for 25 years and he agreed to the Ohio surrender because he was unable to afford an intensive evaluation that Ohio would require to return to practice in Ohio and that the only alternative was the surrender. The Respondent indicated that he has practiced in Illinois exclusively for 20 years and that he had no adverse disciplinary record in Illinois prior to the Ohio surrender. Although the Respondent has been diagnosed with alcoholism, he asserted that he never practiced while impaired and that he has been sober for four years. The Respondent gave indications that Illinois may be considering reinstating his license in that state, with probation.

The Petitioner replied that it is uncertain when the Respondent will return to practice due to the Illinois indefinite suspension and the Ohio revocation. The Petitioner argued that allowing

the Respondent to retain his License would place patients in New York at risk. The Petitioner also noted that the Respondent received the opportunity to appear and present mitigating evidence, but h failed to do so.

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' submissions. The Respondent has submitted material about his sobriety from outside the hearing record. Rather than considering this material, the ARB remands to the Committee for further proceedings and their consideration of the new material. The Committee's Determination will remain in effect during the time of the remand. If the Committee has any questions for the ARB concerning the remand, the Committee may put those questions in writing in a letter from the Administrative Officer for the Committee to the Administrative Officer for the ARB, with copies of any such communications and responses to both parties. When the Committee has concluded with the remand, they should render a Supplemental Determination and serve the Determination upon the parties. The parties may then request Administrative Review of the Supplemental Determination in the same way as requesting initial administrative review pursuant to PHL § 230-c.

ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. **The ARB remands this matter to the Committee for further proceedings and consideration.**

**Peter S. Koenig, Sr.
Steven Grabic, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.**

In the Matter of Lawrence D. Mason, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Mason.

Dated: 23 April, 2017

A large black rectangular redaction box covers the signature area. A small white arrow-like shape points to the bottom left corner of the redaction.

Linda Prescott Wilson

In the Matter of Lawrence D. Mason, M.D.

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

Dated: April 22, 2017

A solid black rectangular box redacting the signature of Peter S. Koenig, Sr.

Peter S. Koenig, Sr.

In the Matter of Lawrence D. Mason, M.D.

Steven Grabiec, M.D., an ARB Member concurs in the Determination and Order in the

Matter of Dr. Mason.

Dated: 4/19, 2017



Steven Grabiec, M.D.

In the Matter of Lawrence D. Mason, M.D.

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

the Matter of Dr. Mason.

Dated: April 18, 2017



Richard D. Milone, M.D.

In the Matter of Lawrence D. Mason, M.D.

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

Matter of Dr. Mason.

Dated: April 18, 2017



John A. D'Anna, M.D.