



Department  
of Health

KATHY HOCHUL  
Governor

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

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

November 2, 2021

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Marc S. Nash, Esq.  
NYS Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower, Room 2512  
Empire State Plaza  
Albany, New York 12237

Jesse B. Baldwin, Esq.  
Kenney Shelton Liptak Nowak, LLP  
233 Franklin Street  
Buffalo, New York 14202

Anthony Leone, M.D.  


**RE: In the Matter of Anthony Leone, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 21-225) 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to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate.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: cmg  
Enclosure

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

COPY

In the Matter of

Anthony J. Leone, M.D. (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 21-225

A proceeding to review a Determination by  
a Committee (Committee) from the Board  
for Professional Medical Conduct (BPMC)

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

For the Department of Health (Petitioner):

Mark S. Nash, Esq.

For the Respondent:

Jesse B. Baldwin, Esq.

Following the Respondent's conviction in the United States District Court, Western District of New York, of one felony count of making materially false statements and one misdemeanor count of unlawful possession of a controlled substance, a BPMC Hearing Committee determined that the Respondent's conduct constituted professional misconduct. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c(4)(a), both the Petitioner and the Respondent asked the ARB to review that Determination. After reviewing the hearing record and the parties' review submissions, the ARB affirms the hearing committee's determination and modifies the penalty imposed.

**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's Statement of Charges alleged that the Respondent committed professional misconduct under New York Education Law (Educ. Law) § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law. (Hearing Exhibit 1). In the Direct Referral Hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence before the Committee demonstrated that on September 4, 2019, in the United States District Court, Western District of New York, the Respondent pled guilty to one felony count of making materially false statements in violation of Title 18, United States Code, Section 1001(a)(2); and one misdemeanor count of unlawful possession of a controlled substance in violation of Title 21, United States Code, Section 844(a). On December 16, 2019, the Respondent was sentenced to two years of probation, with three months of home detention monitored by an electronic monitoring device, participation in substance abuse treatment and testing as recommended, and participation in mental health treatment as recommended. (Hearing Exhibits 5, 7 and 8).

The conviction arose from an investigation by the Drug Enforcement Agency (DEA) concerning the Respondent using his DEA license to order controlled substances for his own use. When confronted by DEA agents, the Respondent initially told them that he had dispensed all the medications to his patients, but then admitted that he had used them himself, and dispensed some to his wife. The Respondent engaged in treatment and at the time of the hearing had maintained his sobriety for about two years. (Hearing Exhibits 6, 7 and 8; Respondent's testimony at pp. 43-47).

The Committee determined that the Respondent's conduct constituted professional misconduct under Educ. Law §§ 6530(9)(a)(ii). The Committee imposed a permanent limitation on the Respondent's license, prohibiting him from maintaining a

DEA license; suspending his license to practice medicine in New York State for one year, effective from February 25, 2020; upon completion of the suspension, placing the Respondent on probation for a period of three years with a practice monitor and a sobriety monitor; and requiring the Respondent to complete a course of education or training in spinal surgery.

### **Review History and Issues**

The Hearing Committee rendered their Determination on May 27, 2020. This proceeding commenced on June 10, 2020, when the ARB received the Respondent's Notice requesting a Review. Subsequently, on June 15, 2020, the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the parties' briefs and reply briefs. The record closed when the ARB received the Respondent's reply brief on August 10, 2020.

The Respondent contends that "portions of the penalty imposed are grossly disproportionate to the conduct and inconsistent with the evidence...." (Respondent's brief). Specifically, the Respondent requests that the ARB remove the permanent restriction on the Respondent's license prohibiting him from holding a DEA license; and the condition of probation requiring a practice monitor.

The Petitioner argues that the penalty of probation should be modified to include a practice supervisor, require the Respondent to engage in therapy, and remain active in self-help groups such as NA, AA, and Caduceus.

### **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. We affirm the Committee's determination that the Respondent's conduct constitutes professional misconduct. Neither party disputed that determination. We overturn the imposition of



a permanent limitation on the Respondent's license, affirm the one-year suspension on the Respondent's license to practice, and modify the terms of probation.

The Respondent was convicted of two federal crimes related to his abuse of prescriptions medications. We recognize that the Respondent immediately sought treatment for his addiction, and has progressed in maintaining his sobriety. However, we note that two years of sobriety is a relatively short period of time. In his brief, the Respondent argues that this case is comparable to other proceedings where a physician has been diagnosed with a substance abuse disorder and convicted of a crime such as driving while under the influence of drugs or alcohol. However, the examples cited can be distinguished from this matter. Here, the Respondent used his license to obtain controlled substances for his own use, and committed a felony by lying about it to federal DEA agents.

We also note that the Respondent cannot identify when his use of prescription medication became abuse and an addiction, so the extent to which his addiction affected his patients is unclear. The Respondent's conduct is intrinsically linked to his practice as a spinal surgeon. On multiple occasions for approximately two years, the Respondent ordered bulk quantities of controlled substances from a commercial distributor of controlled substances, claiming that the controlled substances were neither for his own use, nor for a family member's use. (Exhibit 7). He further claimed that the controlled substances were used for outpatient procedures. (Id). All of which were false statements. We recognize that addiction is a disease, and the Respondent is relatively early in his recovery.

Therefore, we impose a five-year term of probation with a practice monitor and sobriety monitor, order the Respondent to obtain a substance abuse and mental health evaluation as approved by the OPMC, and follow any all recommendations of the evaluator. During the term of probation, the Respondent may not apply to have his DEA license reinstated; but he may apply at the end of five years. If his application is

approved, and he obtains a DEA license, then the period of probation is extended an additional three years, with the addition of obtaining a practice supervisor.

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 pursuant to § 6530(9)(a)(ii).
2. The ARB overturns the permanent limitation on the Respondent's license.
3. The ARB affirms a one-year suspension on the Respondent's license, effective February 25, 2020.
4. The ARB modifies the terms of probation as attached hereto as Appendix I.

Linda Prescott Wilson

Jill Rabin, M.D.

Richard D. Milone, M.D.

Carmela Torrelli



In the Matter of Anthony Leone, M.D.

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

Dated: October 4, 2021

  
Richard D. Milone, M.D.

In the Matter of Anthony Leone, M.D.

Carmela Torrelli, an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Leone.

Dated: October 6, 2021

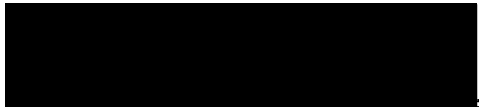
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Carmela Torrelli

In the Matter of Anthony Leone, M.D.

Jill M. Rabin, M.D., an ARB Member concurs in the Determination and Order in  
the Matter of Dr. Leone.

Dated: October 4<sup>th</sup>, 2021.



Jill M. Rabin, M.D.

In the Matter of Anthony Leone, M.D.

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

Dated: November, 2021

A black rectangular redaction box covers the signature of Linda Prescott Wilson.

Linda Prescott Wilson

APPENDIX I

## Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to any action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, NY 12204, with the following information, in writing, and ensure that this information is kept current: a full description of his employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state, or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to, or changes in, the required information.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of his compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet with the Director's designee.
5. Respondent shall submit to a substance abuse and mental health evaluation, to be conducted by a qualified forensic evaluator in mental health and substance abuse dual diagnoses, proposed by Respondent and approved in writing by the Director of OPMC. Respondent shall comply with any all recommendations resulting from such evaluation.
6. Respondent shall abstain from the use of alcohol and controlled substances except as prescribed by another physician for legitimate and documented therapeutic purposes during the probation period and shall be monitored by a qualified health care professional proposed by Respondent and approved in writing by the Director of OPMC (sobriety monitor).
  - a. The sobriety monitor shall be provided with a copy of the evaluation conducted pursuant to paragraph 5 above. The sobriety monitor shall oversee Respondent's compliance with the terms and conditions imposed herein; and

shall cause to be performed forensically valid, random, supervised, unannounced blood, breathalyzer, and/or urine tests for the presence of alcohol and controlled substances; except as prescribed by another physician for legitimate and documented therapeutic purposes. The sobriety monitor shall notify the Director of OPMC immediately if Respondent refuses such a test or if a test reveals the presence of alcohol or controlled substances.

b. The sobriety monitor shall submit quarterly reports to OPMC certifying compliance with these terms or describing any failure to comply.

7. During the probation period, Respondent shall practice medicine in New York State only when monitored by a licensed physician, board certified in an appropriate specialty (practice monitor), who is proposed by Respondent and approved in writing by the Director of OPMC.

a. Respondent shall make available to the monitor any and all records, or access to the practice as requested by the monitor, including on-site observation. The practice monitor shall visit the Respondent's medical practice at each and every location, on a random, unannounced basis at least monthly; and shall examine a selection of no fewer than 20 records maintained by Respondent, including patient records, prescribing information, and office records. The review will determine whether Respondent's medical practice is conducted in accordance with generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care, or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

b. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.

c. Respondent shall be solely responsible for all expenses associated with monitoring, including any fees to the monitoring physician.

d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with PHL § 230(18)(b). Proof of coverage shall be provided to OPMC's Director.

8. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC in writing if he is not currently engaged



in, or intends to leave, active medical practice in New York State for a consecutive 30-day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume. Respondent shall fulfill any remaining probation terms and such additional requirements as the Director may reasonably impose related to the matters set forth in the Determination and Order, or are necessary to protect the public health.

9. OPMC's Director may review Respondent's professional performance. This review may include but shall not be limited to a review of office records, patient records, hospital charts, and/or electronic records; and periodic visits or interviews with Respondent and his staff at practice locations or OPMC offices.

10. Respondent shall not apply for renewal of his DEA license until successfully completing the initial term of probation of five years. Upon successful completion of the initial term of probation, Respondent may apply to have his DEA license restored. If such application is approved, the term of probation shall be extended three years. During the extended term of probation, Respondent shall be supervised in his practice of medicine in New York State by a licensed physician (practice supervisor) proposed by Respondent, and approved in writing by the Director of OPMC.

a. The practice supervisor shall be on-site at all locations, unless otherwise determined by the Director of OPMC.

b. The practice supervisor shall oversee Respondent's compliance with prescribing, administering, dispensing, inventorying, waste and disposal of controlled substances.

c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.

d. Any suspected deviation from acceptable medical practices relating to prescribing, administering, dispensing, inventorying, waste and disposal of controlled substances; or refusal to cooperate with the practice supervisor or other suspected violation of this provision shall be reported to the Director of OPMC with 24 hours.

11. Respondent shall comply with these probationary terms and shall bear all associated costs. Upon receiving evidence of noncompliance with, or violations of these

terms, the Director of OPMC and/or Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.