



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

September 25, 2017

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Lawrence D. Mason, M.D.  

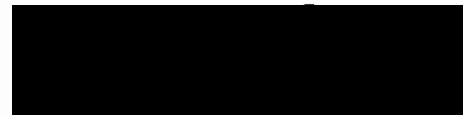

Re: License No. 158486

Dear Dr. Mason:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Modification Order No. 17-275. This order and any penalty provided therein goes into effect October 2, 2017.

Please direct any questions to: Board for Professional Medical Conduct, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204, telephone # 518-402-0846.

Sincerely,



Robert A. Catalano, M.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Lillian Walanka, Esq.  
Crick Walanka Law Group, Ltd.  
111 W. Washington St., Suite 1820  
Chicago, Illinois 60602

IN THE MATTER  
OF  
LAWRENCE D. MASON, M.D.

MODIFICATION  
ORDER

Upon the proposed Application for a Modification Order Pursuant to N.Y. Pub. Health Law § 230(10)(q) of LAWRENCE D. MASON, M.D. (LICENSEE), which is made a part of this Modification Order, it is agreed to and

ORDERED, that the attached Application, and its terms, are adopted and SO ORDERED, and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Modification Order, either by first class to Respondent at the address in the attached Application or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 9/22/2017

  
ARTHUR S. HENGERER, M.D.  
Chair  
State Board for Professional Medical Conduct

NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER  
OF  
LAWRENCE D. MASON, M.D.

APPLICATION  
FOR  
MODIFICATION  
ORDER

LAWRENCE D. MASON, M.D., represents that all of the following statements are true:

That on or about June 25, 1984, I was licensed to practice as a physician in the State of New York, and issued License No. 158486 by the New York State Education Department. My license has not been registered since 1985.

My current address is [REDACTED] and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I am currently subject to a Determination and Order (BPMC Order # 16-375) of the State Board for Professional Medical Conduct (Attachment I) (henceforth "Original Order"), which went into effect on November 22, 2016, and which was issued following a hearing before a Committee of the State Board for Professional Medical Conduct, pursuant to N.Y. Pub. Health Law § 230(10). I am also currently subject to a subsequent Determination and Order (ARB # 17-131), of the Administrative Review Board for Professional Medical Conduct (Attachment II) (henceforth "ARB Order"), which was issued by the ARB following review of my Appeal from the Original Order, pursuant to N.Y. Pub. Health Law § 230-c (4)(a), and which went into effect on or about May 1, 2017, remanding my case to the Hearing Committee for further consideration as to penalty.

Pursuant to N.Y. Pub. Health Law § 230(10)(q), I hereby withdraw my Appeal from the Original Order, in anticipation of the Board's granting this Modification Application, but without prejudice to my right to renew my Appeal, should the Board reject it, and hereby apply to the State Board for Professional Medical Conduct for an Order (henceforth "Modification Order"), modifying the Original Order, as follows:

- The sanction imposed in the Original Order was revocation.
- The sanction imposed shall be modified to read as follows:

Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for a period of 60 months, subject to the terms set forth in the "Terms of Probation" (Attachment III); and

I further agree that the Modification Order shall impose the following conditions:

That Respondent shall comply with each and every penalty imposed by this Order pursuant to N.Y. Pub. Health Law § 230-a; and

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ. Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 120 days

after the Order's effective date and will continue so long as Respondent remains a licensee in New York State; and

That Respondent shall remain in continuous compliance with all requirements of N.Y. Pub. Health Law § 2995-a(4) and 10 NYCRR 1000.5, including but not limited to the requirements that a licensee shall: report to the department all information required by the department to develop a public physician profile for the licensee; continue to notify the department of any change in profile information within 30 days of any change (or in the case of optional information, within 365 days of such change); and, in addition to such periodic reports and notification of any changes, update his or her profile information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to his or her physician profile information either electronically using the department's secure web site or on forms prescribed by the department, and licensee shall attest to the truthfulness, completeness and correctness of any changes licensee submits to the department. This condition shall take effect 30 days after the Order's effective date and shall continue so long as Respondent remains a licensee in New York State. Respondent's failure to comply with this condition, if proven and found at a hearing pursuant to N.Y. Pub. Health Law § 230, shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(21) and N.Y. Educ. Law § 6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional

misconduct set forth in N.Y. Pub. Health Law § 230-a, including but not limited to: revocation or suspension of license, Censure and Reprimand, probation, public service and/or fines of up to \$10,000 per specification of misconduct found; and

That Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719, with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's 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. This condition shall take effect 30 days after the Order's effective date and shall continue at all times until Respondent receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Respondent has fully complied with and satisfied the requirements of the Order, regardless of tolling; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Modification

Order and in its investigations of matters concerning Respondent.

Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Modification Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Modification Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Modification Order shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

I agree that, if I am charged with professional misconduct in future, based on this Application, this Modification Order shall be admitted into evidence in that proceeding.

I ask the Board to adopt this Modification Application.

I understand that if the Board does not adopt this Modification Application, none of its terms shall bind me; this Modification Application shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the N.Y. Pub. Health Law.

I agree that, if the Board adopts this Modification Application, the Chair of the Board shall issue a Modification Order in accordance with its terms. I agree that this Modification Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Modification Order by first class mail to me at the address in this Modification Application, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Modification Order, this application, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website. OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I stipulate that the proposed sanction and Modification Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance by the Board of this Application, I knowingly waive my right to contest the Modification Order for which I apply, whether administratively or judicially, and ask that the Board grant this Application. I understand and agree that the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and Order, based upon my application, or to decline to





do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.


DATE 9/12/17



LAWRENCE D. MASON, M.D.  
RESPONDENT

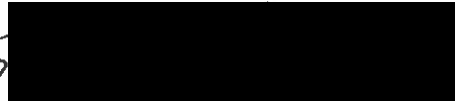
The undersigned agree to Respondent's attached Application for Modification Order and to its proposed penalty, terms and conditions.

DATE: 9/12/2017



LILLIAN WALANKA, ESQ.  
Attorney for Respondent

DATE: 9/22/17



KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

**ATTACHMENT I**

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

IN THE MATTER  
OF  
LAWRENCE D. MASON, M.D.

DETERMINATION

AND

ORDER

BPMC #16-375

**COPY**

A hearing was held on October 20, 2016, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and Statement of Charges dated September 7, 2016, were served upon Lawrence D. Mason, M.D., the Respondent. Pursuant to Section 230(10)(e) of the Public Health Law, Airlie A.C. Cameron, M.D., Chairperson, Florence Kavalier, M.D., M.P.H., and Michael N.J. Colon, Esq., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. William J. Lynch, Esq., Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by Richard J. Zahnleuter, Esq., General Counsel, by Roy Nemerson, Esq., of Counsel. The Respondent did not appear at the hearing, either in person or by counsel. The Administrative Law Judge, after considering the documentary evidence concerning service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Ex. 2) ruled that the Petitioner had met the requirements of law for service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed on the merits despite the Respondent's absence.

Evidence was received and transcripts of these proceedings were made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of New York Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed.

In the instant case, the Respondent is charged with professional misconduct pursuant to New York Education Law Section 6530(9)(d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:	None
For the Respondent:	None

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Lawrence D. Mason, M.D., the Respondent, was authorized to practice medicine in New York State on June 25, 1984, by the issuance of license number 158486 by the New York State Education Department (Petitioner's Ex. 5).

2. On May 13, 2015, the State Medical Board of Ohio ("Ohio Board") permanently revoked the Respondent's license to practice medicine and surgery in the State of Ohio. The basis for the Ohio Board's action was the Respondent's agreement to permanently surrender his Ohio license in lieu of the Ohio Board's further investigation of an impairment of his ability to practice according to acceptable and prevailing standards of care because of the habitual or excessive use of drugs, alcohol, or other substances (Petitioner's Ex. 3, 3A).

3. On June 30, 2016, the State of Illinois Department of Financial and Professional Regulation, Division of Professional Regulation ("Illinois Board") indefinitely suspended the Respondent's Illinois Physician and Surgeon License and prohibited the Respondent from seeking restoration for a minimum of three years (Petitioner's Ex. 4, 4A).

#### HEARING COMMITTEE CONCLUSIONS

The Ohio Board revoked the Respondent's license based on his agreement to permanently surrender his license instead of the Ohio Board pursuing a further investigation regarding his impairment due to drugs, alcohol or other substances. An impairment due to drugs, alcohol or other substances would constitute professional misconduct as defined in Education Law Section 6530(8), if the Respondent had committed this conduct in New York State. Therefore, the Hearing Committee concludes that the Respondent has committed misconduct as defined in New York Education Law Section 6530(9)(d) based upon the disciplinary action taken by the Ohio Board.

The Petitioner alleged that the Illinois Board's indefinite suspension of the Respondent's license constituted an additional basis for concluding that the Respondent had committed misconduct as defined in New York Education Law Section 6530(9)(d). Although the Statement of Charges alleges that the suspension was based on the Respondent's impairment, the evidence presented by the Petitioner regarding the Illinois Board's action makes no reference to Respondent's alleged impairment. As such, the Hearing Committee concludes that the Respondent has committed misconduct as defined in Education Law Section 6530(9)(d) based solely upon the disciplinary action taken by the Ohio Board.

#### VOTE OF THE HEARING COMMITTEE

##### FIRST SPECIFICATION

Respondent violated New York State Education Law Section 6530(9)(d) by having his license to practice medicine revoked by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State.

VOTE: (3-0) Sustained

#### HEARING COMMITTEE DETERMINATION

The Respondent consented to the surrender of his license to the Ohio Board to avoid a further investigation, and he did not submit a written answer to the Statement of Charges or appear at the hearing in New York State. Therefore, the record contains no evidence of mitigating circumstances, rehabilitation or remorse. The Petitioner recommended that the Respondent's license be revoked.

The Hearing Committee considered the full spectrum of penalties available pursuant to statute, including revocation, suspension, probation, censure, and the imposition of civil

penalties. The Hearing Committee determined that the Respondent's license must be revoked because the record contains no evidence that he can practice medicine safely, and no other penalty will adequately protect the people of New York State.

ORDER

IT IS HEREBY ORDERED THAT:

The Respondent's license to practice medicine in the State of New York is revoked;

and

This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: New York, New York  
November 11, 2016

  
Airlie A.C. Cameron, M.D.  
Chairperson

Florence Kavalier, M.D., M.P.H.  
Michael N.J. Colon, Esq.



# APPENDIX I

NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER  
OF  
LAWRENCE D. MASON, M.D.

NOTICE OF  
REFERRAL  
PROCEEDING

TO: Lawrence D. Mason, M.D.  
[REDACTED]

PLEASE TAKE NOTICE THAT:

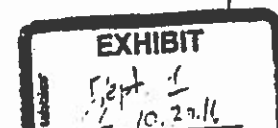
An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10) (p) and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on OCTOBER 20, 2016, at 10:30 a.m., at the offices of the New York State Department of Health, 90 Church Street, 4<sup>th</sup> Floor, New York, N.Y. 10007.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau

DEPT EXHIBIT 1



of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges at least ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. You may also file a written brief and affidavits with the Committee. All such documents shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below, at least ten days prior to the date of the hearing. Should the parties have objection(s) to proposed witnesses or documentary evidence, the party raising the objection(s) shall contact the Bureau of Adjudication at least three days prior to the hearing date to arrange for a pre-hearing conference with the Administrative Law Judge, prior to the hearing date.

Not later than ten days prior to the date of the hearing, you are required to file one copy of your proposed exhibits (if any) with the Bureau of Adjudication at the address indicated above, and a copy of all such documents/exhibits must be served on the same date on the Department of Health attorney indicated below. On the day of the hearing, you are also required to provide the original of such exhibits and three copies, for use by the Committee.

Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

**YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.**

Department attorney: Initial here 

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name

appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A  
DETERMINATION THAT YOUR LICENSE TO PRACTICE  
MEDICINE IN NEW YORK STATE BE REVOKED OR  
SUSPENDED, AND/OR THAT YOU BE FINED OR  
SUBJECT TO OTHER SANCTIONS SET OUT IN NEW  
YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED  
TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN  
THIS MATTER.

DATED: New York, New York  
September 7, 2016



ROY NEMERSON  
Deputy Counsel  
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Gerard A. Cabrera  
Associate Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
90 Church Street, 4<sup>th</sup> Floor  
New York, NY 10007  
212-417-4358

NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

LAWRENCE D. MASON, M.D.

STATEMENT  
OF  
CHARGES

Lawrence D. Mason, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 25, 1984, by the issuance of license number 158486 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about May 13, 2015, the State Medical Board of Ohio ("Ohio Board") issued a public order, which ratified Respondent's permanent surrender of his certificate and license to practice medicine and surgery and his agreement to permanently withdraw his application for Ohio license restoration, in lieu of further investigation of impairment of ability to practice due to substance use or abuse, as described in Ohio law governing the discipline of physicians. Respondent's surrender was deemed a permanent revocation of his license and a permanent bar from any future licensure application. The basis for the Ohio Board action was reported to the Federation of State Medical Boards as substance abuse.

1. The conduct resulting in the Ohio disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following section of New York State law:
  - a. New York State Education Law § 6530(8) (being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, or having a psychiatric condition which impairs the licensee's ability to practice).

B. On or about July 13, 2015, the State of Illinois Department of Financial and Professional Regulation, Division of Professional Regulation ("Illinois") ordered an emergency temporary suspension of Respondent's license, based on a finding that public interest, safety and welfare required it, in that Respondent's actions constituted an immediate danger to the public. Subsequently, on or about June 30, 2016, Illinois issued public disciplinary Order No. 2014-07362, in which Respondent's Certificate of Registration and Illinois Physician and Surgeon License was indefinitely suspended, and in which Respondent was prohibited from seeking restoration for a minimum of three (3) years.

1. The conduct resulting in the Illinois disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to the following section of New York State law:

a. New York State Education Law § 6530(8) (being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, or having a psychiatric condition which impairs the licensee's ability to practice).

#### **SPECIFICATION OF CHARGES**

#### **FIRST AND SECOND SPECIFICATION HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation,

suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law § 6530(8)) as alleged in the facts of the following:

1. Paragraph A and its subparagraphs.
2. Paragraph B and its subparagraphs.

DATE: September 7, 2016  
New York, New York

  
ROY NEMERSON  
Deputy Counsel  
Bureau of Professional Medical Conduct

**ATTACHMENT II**



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 (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' 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.

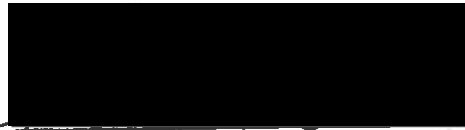
Peter S. Koenig, Sr.  
Steven Grabiec, M.D.  
Linda Prescott Wilson  
John A. D'Anna, M.D.  
Richard D. Milone, M.D.

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

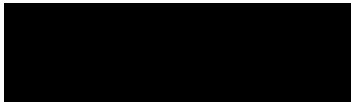


Linda Prescott Wilson

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.

**ATTACHMENT III**

### 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 an action pursuant to N.Y. Pub. Health Law § 230(19).
- 2) Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
- 3) Respondent shall remain free from alcohol and all other mood altering substances other than those prescribed for Respondent 's treatment by a licensed health care professional aware of Respondent 's history of chemical dependency and/or mental illness. Respondent shall not self-prescribe any medications.
- 4) Respondent shall remain active in self-help groups such as, but not limited to, Narcotics Anonymous, Alcoholics Anonymous and/or Caduceus.
- 5) Respondent shall notify all treating physicians of Respondent's history of substance abuse. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating health care professionals.
- 6) Beginning 30 days after the effective date of the Order, Respondent shall not be permitted to practice medicine except when monitored by qualified health care professional monitors: a Toxicology Monitor, a Practice Supervisor, and a Therapist, proposed by Respondent and approved, in writing, by the Director of OPMC. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine,

Within 7 days of learning an approved monitor is no longer willing or able to serve, Respondent shall submit the name of a proposed successor to the Director of OPMC. Monitors shall not be family members or personal friends or be in professional relationships that would pose a conflict with monitoring responsibilities. All monitors shall execute acknowledgment forms provided by OPMC certifying familiarity with Respondent's history of substance abuse, with this Order and its terms, and acknowledging a willingness to comply with the monitor's reporting responsibilities regarding Respondent's compliance with the terms of this Order.

- a) Respondent shall ensure that the monitors are familiar with Respondent's history of substance abuse and with the terms of this Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.
- b) Respondent shall submit to random, unannounced observed blood, breath, hair, and/or urine screens for the presence of drugs and alcohol (hereafter "drug screen"), when requested by a monitor. The monitoring shall be on a random, unannounced, directly-observed, 7-day-a-week, 24-hour-a-day basis. Respondent shall report for a drug screen within 8 hours of being contacted by a monitor. Monitors shall report to OPMC immediately if Respondent refuses or delays a test or if a test is positive for alcohol, or any other unauthorized drug or substance. Respondent shall avoid all substances that may cause positive urine drug screens, such as poppy seeds, mouthwash or cough medicine. Any positive test result shall constitute a violation of the terms of this Order.
- c) Respondent shall meet regularly with a Toxicology Monitor. During the first 12 months of monitoring, Respondent shall cause the Toxicology Monitor to obtain drug screens at a frequency of no less than 6 times per month. If Respondent is compliant throughout the first 12-month period, subsequent drug screens shall be obtained at a frequency to be proposed by the Toxicology Monitor and approved by OPMC. Respondent shall cause the Toxicology Monitor to submit quarterly reports to OPMC certifying Respondent's sobriety or lack of sobriety. These reports are to include forensically valid results of all drug screens performed and an assessment of self-help group (e.g., AA/NA/Caduceus) attendance and 12-step progress.
- d) Respondent shall practice only when supervised in medical practice by a licensed physician (hereafter "Practice Supervisor"). The Practice Supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC, and shall be in a position to regularly observe and assess Respondent's medical practice. The Practice Supervisor shall oversee Respondent's compliance with the terms of practice imposed by the Order and Respondent's prescribing, administering, dispensing, inventorying, wasting and disposal of controlled substances. Respondent shall cause the Practice Supervisor to report to OPMC immediately any suspected impairment, inappropriate behavior, questionable medical practice, possible misconduct, or violation by Respondent of any of the terms of this Order. Respondent shall cause the Practice Supervisor to submit quarterly reports to OPMC regarding the quality of Respondent's medical practice and prescribing practices, any unexplained absences

from work, and certifying Respondent's compliance or detailing Respondent's failure to comply with each term imposed.

- e) Respondent shall engage and continue in therapy with a treating health care professional (hereafter "Therapist"). Respondent shall cause the Therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Therapist. Respondent shall cause the Therapist to report to OPMC immediately if Respondent leaves treatment against medical advice or displays any symptoms of a suspected or actual relapse. Respondent shall cause the Therapist to notify OPMC, in writing, of any termination of treatment approved by the Therapist, no less than 30 days prior to such termination.

- 7) At the direction of the Director of OPMC, Respondent shall submit to evaluations by a board-certified psychiatrist, licensed mental health practitioner or other health care professional or program designated by the Director (hereafter "Evaluator.") Respondent shall provide the Evaluator with a copy of this Order and copies of all previous treatment records. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Evaluator. The Evaluator shall report to the Director regarding Respondent's condition and fitness or incapacity to practice medicine. Respondent shall comply with all treatment recommendations based upon the evaluation; failure to comply with such treatment recommendations shall constitute professional misconduct.
- 8) Respondent shall enroll, or continue enrollment, in the Committee for Physician Health (CPH) and shall engage in a contract with CPH that defines the terms, conditions and duration of Respondent's recovery program. Respondent shall comply with the contract. Respondent shall give written authorization for CPH to provide the Director of OPMC with all information or documentation requested by OPMC to determine whether Respondent is in compliance with the contract and with this Order, including full access to all records maintained by CPH with respect to Respondent.
  - a) Respondent shall cause CPH to report to OPMC promptly if Respondent refuses to comply with the contract, refuses to submit to treatment or if Respondent's impairment is not substantially alleviated by treatment.
  - b) Respondent shall cause CPH to report immediately to OPMC if Respondent is regarded at any time to be an imminent danger to the public.

- 9) 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 Respondent 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 and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in "Appendix I" in Attachment I or as are necessary to protect the public health.
- 10) The Director of OPMC 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 interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
- 11) Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
- 12) Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
- 13) Respondent shall enroll in and successfully complete a continuing education program in the topic(s) to be determined by the Director of OPMC. This continuing education program is subject to the Director of OPMC's prior written approval and shall be successfully completed within the first 90 days of the probation period.
- 14) Respondent shall comply with this Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.