



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 8, 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel G. Giaquinto, Esq.
Frier & Levitt, LLC
84 Bloomfield Avenue
Pine Brook, New Jersey 07058

Ralph Messo, D.O.

FCI Fort Dix
5756 Hartford & Pointville Road
Joint Base MDL, New Jersey 08640

Marc S. Nash, Esq.
NYS Department of Health
Corning Tower Room 2412
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Ralph Messo, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 19-111) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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 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
Office of Professional Medical Conduct
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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on 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 of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

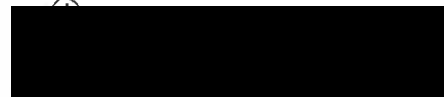
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: nm
Enclosure

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

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IN THE MATTER
OF
RALPH MESSO, D.O.

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DETERMINATION
AND
ORDER
19-111

A hearing was held on April 17, 2019, at the offices of the New York State Department of Health (Department), 90 Church Street, New York, New York. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **THOMAS T. LEE, M.D., M.B.A.**, Chairperson, **ELISA E. BURNS, M.D.**, and **RUTH HOROWITZ, Ph.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **NATALIE J. BORDEAUX, ADMINISTRATIVE LAW JUDGE (ALJ)**, served as the Administrative Officer.

The Department appeared by Marc S. Nash, Senior Attorney. A Notice of Referral Proceeding and Statement of Charges dated November 13, 2018 were duly served upon Daniel Giaquinto, Esq., who appeared at the hearing and represented Ralph Messo, D.O. (Respondent). (Exhibits 1-2.)¹ The Respondent testified by telephone, and Donna Seminara, M.D. also testified on the Respondent's behalf. The Hearing Committee received and examined documents from the Department (Exhibits 1-6) and the Respondent (Exhibits A-K), and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charges that the Respondent committed professional misconduct, in violation of Education Law (Educ. Law) §§ 6530(9)(a)(ii) and 6530(9)(d), and concludes that pursuant to PHL § 230-a, the penalty

¹ Pursuant to the Notice of Referral Proceeding, this hearing was originally scheduled for January 16, 2019. However, at the parties' request, the hearing was rescheduled for April 17, 2019.

of suspension of the Respondent's medical license, wholly, until the Respondent complies with the terms set forth below, to be followed by a twelve-month period of probation, is appropriate.

JURISDICTION

The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(a)(ii), by having been convicted of an act constituting a crime under federal law, and Educ. Law § 6530(9)(d), by "[h]aving his or her license to practice medicine revoked...or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation...or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state." In cases of professional misconduct based solely upon a violation of Educ. Law § 6530(9), a licensee is entitled to a hearing, the scope of which is limited to whether there is a relevant conviction or administrative determination and, if so, the nature and severity of the penalty to be imposed. PHL § 230(10)(p). The Department had the burden of proving its case by a preponderance of the evidence. PHL § 230(10)(f); 10 NYCRR 51.11(d)(6).

FINDINGS OF FACT

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. On October 19, 1990, the Respondent was authorized to practice medicine in New York by the Education Department and was issued license number 184376. (Exhibit 3.)
2. On January 29, 2015, in the United States District Court, District of New Jersey, the Respondent pled guilty to of one count of Racketeering – Transporting in Aid of Travel Act – Acceptance of Bribes (18 U.S.C. § 1952(a)(3) and 18 U.S.C. § 2.) On May 10, 2018, the Respondent

was convicted and sentenced to 24 months' imprisonment, followed by 2 years of supervised release. In addition, the Respondent was fined \$4,000 and ordered to pay a forfeiture of \$82,500. (Exhibits 4 and 5.)

3. On July 13, 2018, the Respondent and the New Jersey Board of Medical Examiners ("New Jersey Board") entered into a Consent Order, whereby the Respondent's license to practice medicine in New Jersey was revoked because of his January 29, 2015 guilty plea and May 10, 2018 conviction. (Exhibit 6.)

DISCUSSION

The Respondent pled guilty to, and was convicted of, a crime under federal law, specifically, Racketeering – Transporting in Aid of Travel Act – Acceptance of Bribes. The Respondent's guilty plea and conviction of a federal crime caused the New Jersey Board to revoke his license to practice medicine. Based on the Respondent's conviction, the Hearing Committee has unanimously determined that the Respondent violated Educ. Law § 6530(9)(a)(ii). The Hearing Committee also concludes unanimously that the Respondent violated Educ. Law § 6530(9)(d) because the conduct resulting in the revocation of his New Jersey license to practice medicine would, if committed in New York State, constitute professional misconduct under the laws of the State of New York, specifically, Educ. Law § 6530(9)(a)(ii).

Upon consideration of all of the penalties authorized by PHL § 230-a, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, the Hearing Committee concludes that suspension of the Respondent's medical license, wholly, until the Respondent successfully completes 50 hours of continuing medical education and a physician re-entry program, followed by additional conditions, is the most effective penalty.

At the hearing, the Respondent expressed remorse for his actions. He explained that he sold his medical offices in both New Jersey and New York, voluntarily surrendered his medical licenses in both states, and provided his patients with their complete medical records to ensure continuity of care. In addition, the Respondent enrolled in and completed a legal ethics course and has continued to read medical journals and textbooks when available.

The Respondent's witness, Dr. Donna Seminara, has known the Respondent in a professional capacity for over 20 years. She testified with certainty that the quality of the Respondent's professional practice was exemplary, and that the Respondent was held in high regard in the community in which he practiced. Dr. Seminara explained that she has treated a considerable number of the Respondent's former patients since the Respondent sold his medical office in Staten Island, NY. She confirmed that the Respondent maintained clear and detailed medical records which greatly facilitated their transition to another physician. From the Respondent's patient records and patient accounts, Dr. Seminara affirmed that the Respondent had rendered excellent care to his patients.

At the hearing, the Department recommended the revocation of the Respondent's medical license, a penalty which the Committee deems inappropriate in this case. Although the Hearing Committee does not condone the Respondent's actions, the Committee finds that the Respondent has accepted full responsibility for his errors in judgment, and that he has already begun to pay his debt to society. The Hearing Committee acknowledges the Respondent's full cooperation with law enforcement and the proactive steps that he undertook to stop practicing medicine well before his incarceration, including the sale of his medical practice and his willingness to enter into an interim out-of-practice order with the Department before his sentencing and incarceration.

As an alternative to revocation of the Respondent's medical license, the Department recommended the imposition of a whole two-year period of suspension of the Respondent's medical

license commencing upon his release from prison on December 29, 2019, the completion of retraining classes, and a requirement that the Respondent demonstrate his fitness to practice medicine to the Department's satisfaction after his suspension term ends. The Department noted that the Respondent will not have practiced medicine for five years when his suspension term ends and expressed concern that he will lack the requisite knowledge to effectively treat patients.

The Committee finds that suspension of the Respondent's medical license is the most appropriate penalty in this case due to several mitigating factors. The Committee notes the high quality of care that the Respondent provided to his patients, and the Respondent's high standing in the community in which he practiced. The Committee also places great import on the Respondent's voluntary relinquishment of his medical licenses and medical offices in both New York and New Jersey well before his sentencing. In addition, the Committee appreciates the Respondent's emphasis on his patients' continued receipt of care by ensuring that his patients were given their medical records before he sold his medical practice.

Although the Committee agrees that the suspension of the Respondent's medical license is an appropriate penalty, the Hearing Committee believes that allowing the Respondent to demonstrate his ability to safely practice medicine only after a whole two-year period of suspension commencing on the date of the Respondent's release from prison would further dull the Respondent's practical competence. Preventing the Respondent from practicing medicine for several more years would thus not effectively address the Department's expressed concerns. In reaching this determination, the Hearing Committee has considered the approximate three years in which the Respondent is already unable to practice medicine because of the voluntary sale of his medical practice no later than October 2016, and his anticipated prison release on December 29, 2019. Therefore, the Committee concludes that suspension of the Respondent's medical license until the Respondent completes 50 continuing

medical education credits and a physician re-entry program, when followed by a requirement that the Respondent practice medicine only when monitored by a practice monitor for the first twelve months in which he resumes his medical practice, would more effectively ensure that the Respondent's skills and medical knowledge are sufficiently current to safely treat patients.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are sustained;
2. The Respondent's license to practice medicine is wholly **SUSPENDED**, pursuant to PHL § 230-a(2), until the Respondent completes the following educational requirements:
 - a. The Respondent shall complete 50 continuing medical education (CME) credits, including the completion of one ethics course and one federal and state compliance course;
 - b. The Respondent shall successfully complete a physician re-entry program approved by the Department; and
3. Upon the termination of his suspension, the Respondent shall be placed on probation for a period of twelve months, subject to the terms of probation (Appendix I). During the Respondent's twelve-month probation term, the Respondent shall practice medicine in New York only when monitored by a Board-approved practice monitor.
4. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

DATED: New York, New York

May 7th, 2019


Thomas T. Lee, M.D., M.B.A.
Chairperson

Elisa E. Burns, M.D.
Ruth Horowitz, Ph.D.

To: Daniel G. Giaquinto, Esq.
Frier & Levitt, LLC
84 Bloomfield Avenue
Pine Brook, New Jersey 07058

Ralph Messo, D.O.


FCI Fort Dix
5756 Hartford & Pointville Road
Joint Base MDL, New Jersey 08640

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

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 Educ. Law 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to PHL § 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, New York 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 in person with the Director's designee.
5. 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 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 the Determination and Order or as are necessary to protect the public health.
6. 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.
7. For the Respondent's twelve-month probation period, the 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 subject to the written approval of the Director of the OPMC.
 - a. The Respondent shall make available to the monitor any and all records or access to the practice 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 (no fewer than 20) of records maintained by the Respondent, including patient records, prescribing information and office records. The review will determine whether the 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 the OPMC.

- b. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of the OPMC.
 - c. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, 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 § 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent commencing practice within the State of New York.
8. The terms set forth in the paragraphs above are the minimum probation terms to be imposed on the Respondent, and other terms may be added by the Director of the OPMC. All compliance costs, including expenses and fees associated with the practice monitor, shall be the Respondent's responsibility.
9. Respondent shall comply with these probationary 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.

APPENDIX II

IN THE MATTER
OF
RALPH MESSO, D.O.

STATEMENT
OF
CHARGES

RALPH MESSO, D.O., the Respondent, was authorized to practice medicine in New York State on or about October 19, 1990, by the issuance of license number 184376 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 29, 2015, in the United States District Court, District of New Jersey, Respondent pled guilty to one count of Racketeering – Transporting In Aid of Travel Act – Acceptance of Bribes [18 U.S.C. § 1952(a)(3) and 18 U.S.C. § 2]. On or about May 10, 2018, Respondent was convicted and sentenced to twenty-four months imprisonment followed by two years of supervised release, and assessed a \$4,000.00 fine. Respondent was also ordered to pay a forfeiture of \$82,500.00.

B. On or about July 13, 2018, Respondent and the New Jersey Board of Medical Examiners (hereinafter, "New Jersey Board") entered into a Consent Order which revoked Respondent's New Jersey's license to practice medicine. This discipline was based on Respondent's guilty plea and May 10, 2018 conviction based on the facts of Paragraph A.

C. The Conduct resulting in the New Jersey Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State pursuant to the following Section of New York State Law:

1. New York Educational Law § 6530(9)(a)(ii) (Being convicted of a committing an act constituting a crime under federal law).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. The facts in Paragraph A.

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(9)(a)(ii))) as alleged in the facts of the following:

2. The facts in Paragraphs B and B.1.

DATE: November 13, 2018
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct