



Department of Health

ANDREW M. CUOMO
Governor

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

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

March 28, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ian H. Silverman, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237-0032

Catherine A. Gale, Esq.
Gale, Gale, Hunt, LLC
P.O. Box 6527
Syracuse, New York 13217

Thomas Stavola, M.D.
Suffolk County Correctional Facility
200 Suffolk Avenue
Yaphank, New York 11980

RE: In the Matter of Thomas Stavola, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 17-096) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:nm
Enclosure

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

In the Matter of

Thomas Stavola, M.D. (Respondent)

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

COPY

Administrative Review Board (ARB)

Determination and Order No. 17- 096

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

**For the Department of Health (Petitioner): Ian H. Silverman, Esq.
For the Respondent: Catherine H. Gale, Esq.**

Following the Respondent's New York State criminal conviction for manslaughter following a drunken driving accident, a BPMC Committee determined that the Respondent's conduct amounted to professional misconduct. The Committee voted to suspend the Respondent's license to practice medicine in New York State (License) for two years and to place the Respondent on probation for five years following the suspension, with terms that include 200 hours community service per year during the probation. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2017), the Petitioner asked the ARB to modify that Determination. After reviewing the hearing record and the parties' review submissions, the ARB affirms the Committee's Determination to suspend the Respondent's License and place the Respondent on probation for five years after the suspension. The ARB votes 3-2 to modify the probation to limit the community service to 100 hours per year.

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 [Hearing Exhibit 1] alleged that the Respondent committed professional misconduct under the definition in New York Education Law (EL) § 6530(9)(a)(i) (McKinney 2017) by engaging in conduct that resulted in a conviction under New York State Law. 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 the Respondent entered a guilty plea in the Suffolk County Court on October 22, 2015 to one count of Manslaughter in the Second Degree, a Class C Felony in violation of New York Penal Law (PL) § 125.15 (McKinney Supp. 2015), one count of Leaving the Scene of an Incident without Reporting, a Class D Felony in violation of New York Vehicle and Traffic Law (VTL) § 600.2A (McKinney Supp. 2015) and Driving While Intoxicated, an unclassified misdemeanor in violation of VTL §1192.2. The Court sentenced the Respondent to incarceration for two years. The criminal conviction involved a motor vehicle collision that occurred while the Respondent was driving intoxicated. The collision killed another motorist.

The Committee determined that the Respondent's criminal conduct made the Respondent liable for action against his License pursuant to EL § 6530(9)(a)(i). On the issue of penalty, the Petitioner requested that the Committee revoke the Respondent's License. The Respondent

presented several witnesses and extensive documentation to support the Respondent's desire to continue practicing medicine. The Committee agreed that the Respondent should continue to practice, but the Committee expressed concern that the Respondent's hearing testimony was evasive, less than completely candid and in denial about the role of alcohol in the events that occurred. The Committee voted to suspend the Respondent's License for two years, retroactive to January 1, 2016, so the suspension will run approximately concurrently with the term of imprisonment. Following the suspension, the Committee placed the Respondent on probation for five years, under terms that appear following the Committee's Determination. The probation terms include practice with a sobriety monitor and the requirement that the Respondent perform 200 hours community service per year for each year on probation.

Review History and Issues

The Committee rendered their Determination on November 14, 2016. This proceeding commenced on November 28, 2016, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and the Respondent's reply brief. The record closed when the ARB received the reply brief on January 6, 2017.

The Petitioner argued that the Committee imposed an overly lenient sanction against the Respondent. The Petitioner called the Respondent's conduct a conscious, deliberate and selfish action and the Petitioner noted that the Respondent failed to provide any aid to the collision's victim and did not even call 911. The Petitioner requested that the ARB overturn the Committee and revoke the Respondent's License. In the alternative, the Petitioner requested that the ARB suspend the Respondent's License indefinitely, until the Respondent can demonstrate his fitness

and competency to the Director of the Office for Professional Medical Conduct. The Petitioner requested further that, when the Respondent returns to practice, he practice only when monitored by a board-certified cardiologist, that any random testing under the probation include hair samples and that the probation include a team of professionals and mandatory attendance at self-help groups to assist the Respondent to re-engage successfully into society. The Petitioner also asked that the ARB modify the community service terms to comply with the law. The Committee ordered that the Respondent perform 200 hours community service per year or 1000 hours total over the period of probation, while PHL § 230-a(9) limits community service to 500 hours.

The Respondent replied that the Committee imposed a penalty that is appropriate and consistent with the sum of the evidence presented and that serves the best interests of the State. The reply noted that the collision victim's family offered the Respondent their forgiveness. The Respondent argued that the evidence from the hearing showed the Respondent as a talented physician, with no alcohol or substance abuse problem, whose conduct the night of the collision was an aberration.

ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL § 230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd., 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993); in determining guilt on

the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3rd Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3rd Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3rd Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the conduct that resulted in the Respondent's criminal conviction constituted professional misconduct. Neither party challenged the Committee's Determination on the

charges. We reject the Petitioner's request that we overturn the Committee and revoke the Respondent's License. We affirm the Committee's Determination to suspend the Respondent's License for two years and to place the Respondent on probation for five years under the terms that the Committee imposed, including a sobriety monitor and community service during each year of the probation. We vote 3-2 to modify the community service to comply with PHL § 230-a(9), so that the Respondent will perform 100 hours of community service for each of the five years he practices on probation. The two dissenting members would eliminate any community service penalty

The ARB concludes that two years under incarceration provides a sufficient penalty in this matter. Nothing in the record calls into question the Respondent's abilities as a physician. The Committee has crafted a penalty to assure that the Respondent can practice safely following the suspension.

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 committed professional misconduct.**
- 2. The ARB affirms the Committee's Determination to suspend the Respondent's License for two years and to place the Respondent on probation for five years following the actual suspension, under terms that follow the Committee's Determination, except we modify the terms for community service.**
- 3. Pursuant to PHL § 230-a(9), the Respondent shall complete 100 hours community service per year for each year during the probation.**

**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 Thomas Stavola, M.D.

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

Matter of Dr. Stavola

Dated: *24 March*, 2017



Linda Prescott Wilson

In the Matter of Thomas Stavola, M.D.

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

Dated: March 22, 2017



Peter S. Koenig, Sr.

In the Matter of Thomas Stavola, M.D.

Steven Grabiec, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Dr. Stavola.

Dated: 3 / 27 /, 2017



Steven Grabiec, M.D.

In the Matter of Thomas Stavola, M.D.

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

Dated: March 22, 2017

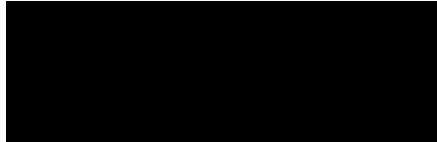
A large black rectangular redaction box covers the signature of Richard D. Milone, M.D.

Richard D. Milone, M.D.

In the Matter of Thomas Stavola, M.D.

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

Dated: March 23, 2017



John A. D'Anna, M.D.