



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

December 13, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David Quist, Esq.
NYS Department of Health
ESP-Coming Tower-Room 2438
Albany, New York 12237

Bret Ostrager, D.O.
[REDACTED]
Otisville FCI
Two Mile Drive
Otisville, New York 10963

RE: In the Matter of Bret Ostrager, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 16-405) 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.

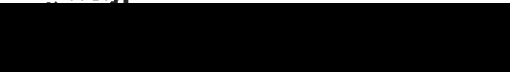
The notice of review served on the Administrative Review Board should be forwarded to:

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:cah
Enclosure

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

IN THE MATTER
OF
BRET OSTRAGER, D.O.

DETERMINATION
AND
ORDER

BPMC #16-405

COPY

A hearing was held on November 16, 2016, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order of Summary Action, Notice of Referral Proceeding and Statement of Charges dated September 2, 2016, were served upon BRET OSTRAGER, D.O., the Respondent. Pursuant to § 230(10)(e) of the Public Health Law, Kendrick A. Sears, M.D., Chairperson, John D. Thomas II, M.D., and Janet R. Axelrod, 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 David Quist, Esq., of Counsel. The Respondent participated by telephone and was represented at the hearing by Marvin S. Robbins, Esq. Evidence was received and transcripts of the 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 § 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of New York

Education Law § 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 § 6530(9)(a)(ii). Based on the Respondent's felony conviction, the Commissioner of Health summarily suspended the Respondent's license to practice medicine until the conclusion of this hearing. Copies of the Commissioner's Order of Summary Action, 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:

William Allison
Louis Faiella, M.D.
Respondent

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. Bret Ostrager, D.O., the Respondent, was authorized to practice medicine in New York State on June 9, 1992, by the New York State Education Department's issuance of license number 189123 (Petitioner's Ex. 3).

2. On June 8, 2016, in the United States District Court for the District of New Jersey, the Respondent was convicted on three felony counts: 1) conspiracy to violate federal anti-kickback statute and travel act, in violation of 18 U.S.C. § 371; 2) illegal remuneration in violation of 42 U.S.C. § 1320a-7b(b)(1)(A) and 18 U.S.C. § 2; and 3) use of the mail and facilities in interstate commerce travel to promote, carry on and facilitate commercial bribery, in violation of 18 U.S.C. §§ 2 and 1952(a)(1) and (3). The Respondent was sentenced, inter alia, to imprisonment for 37 months to be followed by a one-year term of supervised release and a \$30,000 fine. In addition, the Respondent consented to a criminal forfeiture money judgment in the amount of \$101,270 (Petitioner's Ex. 4, 5, 6).

HEARING COMMITTEE CONCLUSIONS

The Petitioner offered into evidence copies of the documents from the United States District Court related to the Respondent's conviction. The Respondent, who was incarcerated at the time of the hearing and testified by telephone, acknowledged his criminal conviction under federal law. Therefore, the Hearing Committee concluded that the Respondent has committed misconduct as defined in New York Education Law § 6530(9)(a)(ii).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York State Education Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law.

VOTE: (3-0) Sustained

HEARING COMMITTEE DETERMINATION

The first witness who testified on the Respondent's behalf was William Allison, the Senior Vice President and Chief Operating Officer of South Nassau Community Hospital. Mr. Allison stated that the Respondent was regarded by his patients and colleagues as an engaging and compassionate physician who provided high quality care. He further stated that someone of the Respondent's caliber would be an asset to the hospital's Medicaid clinic if he were permitted to return to the practice of medicine.

The second witness who testified on the Respondent's behalf was Louis Faiella, M.D., who has known the Respondent since childhood. Dr. Faiella stated that the Respondent had demonstrated an extraordinary degree of integrity during the decades that he has known him, and that the Respondent's acceptance of bribes was an aberration from an otherwise exemplary career. Dr. Faiella conveyed his belief that the Respondent was remorseful for his misconduct, and he urged the Hearing Committee to permit the Respondent to return to providing medical care to his patients.

The Respondent testified by telephone from the Otisville Correctional Facility. He acknowledged that he had received bribes for generating business to a clinical blood laboratory by referring the blood specimens of his patients to that laboratory from approximately February 2011 through April 2013. He asserted that all the testing was substantiated by the patient's medical history and diagnosis, but that he was wrong to receive payments from the clinical laboratory for referrals. He accepted responsibility for his misconduct and expressed remorse. He stated that he has kept himself current with the latest developments in medicine by reading

medical journals and discussing those issues with other incarcerated physicians. He stated that given his skill set he hoped to return to the practice of medicine after serving his term of incarceration. In addition, the Respondent offered 17 letters from patients, family members and colleagues, attesting to the quality of his medical care, kindness and compassion.

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 Petitioner recommended that the Respondent's license be revoked. The Hearing Committee, however, was persuaded that the Respondent should be provided with an opportunity to return to the practice of medicine after a period of suspension and a program of continuing medical education. The factors considered by the Committee were the Respondent's remorse, the absence of any evidence of patient harm or unnecessary medical expenditure, the Respondent's efforts to improve his medical knowledge while incarcerated, and the Respondent's capacity to provide valuable medical care to an underserved community. Accordingly, the Hearing Committee decided that the Respondent's license should be suspended for the duration of the Respondent's incarceration and further until he has demonstrated to the satisfaction of the Office of Professional Medical Conduct ("OPMC") that his medical knowledge and skills are current. Therefore, the Respondent must be required to complete a physician reentry evaluation after he has completed his term of incarceration and before he resumes the practice of medicine. The Respondent shall obtain the prior written approval of the Director of OPMC for the site where he will obtain the assessment, and he must complete any continuing medical education program required by the Director of OPMC. The Respondent shall assume and bear all costs related to the evaluation and any mandated education. The Respondent must then be placed on probation for a period of two years.

ORDER

IT IS HEREBY ORDERED THAT:

The Respondent's license to practice medicine in the State of New York is suspended wholly until he completes his term of incarceration and shall thereafter remain suspended until the Respondent completes a reentry evaluation and continuing medical education program approved in writing by the Director of OPMC. The Respondent shall then be placed on probation for a period of two years during which he shall comply with the terms of probation annexed hereto as Attachment A.

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

DATED: ^{Syracuse} Albany, New York
December 12, 2018



Kendrick A. Sears M.D.
Chairperson

John D. Thomas, II, M.D.
Janet R. Axelrod, Esq.

ATTACHMENT A

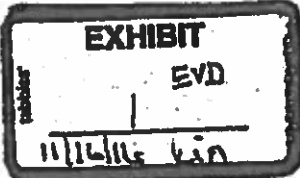
Terms of Probation

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 maintain active registration of his license (except during periods of actual suspension) 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. 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 I



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

IN THE MATTER,
OF
BRET OSTRAGER, D.O.

COMMISSIONER'S
ORDER OF
SUMMARY
ACTION

TO: BRET OSTRAGER, D.O.
[Redacted]
Otisville FCI
Two Mile Drive
Otisville, NY 10963

The undersigned, Howard A. Zucker, M.D., J.D., Commissioner of Health, pursuant to N.Y. Public Health Law §230, upon the recommendation of a committee on professional conduct of the State Board for Professional Medical Conduct, has determined that Bret Ostrager, D.O., Respondent, New York license number 189123, has pleaded or been found guilty or convicted of committing an act constituting a felony under New York State law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a felony under New York State law, as is more fully set forth in the Statement of Charges attached to the Notice of Referral Proceeding or Notice of Hearing and made a part hereof.

It is therefore:

ORDERED, pursuant to N.Y. Public Health Law §230(12)(b), that effective immediately, Respondent shall not practice medicine in the State of New York, or practice in any setting under the authority of Respondent's New York license.

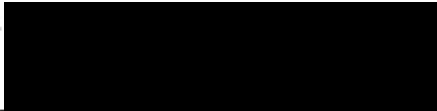
Any practice of medicine in violation of this Order shall constitute Professional Misconduct within the meaning of N.Y. Educ. Law §6530(29) and may constitute unauthorized medical practice, a Felony defined by N.Y. Educ. Law §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within ninety days of the service of this order and shall end within ninety days

thereafter. The hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Hearing or Notice of Referral Proceeding provided to the Respondent contemporaneously with this Order.

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 FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
September 2, 2016


Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner,
for
Howard A. Zucker, M.D., J.D.
Commissioner of Health
New York State Department of Health

Inquiries should be directed to:

David Quist
Associate Attorney
Bureau of Professional Medical Conduct
Coming Tower – Room 2512
Empire State Plaza
Albany, NY 12237

IN THE MATTER
OF
BRET OSTRAGER, D.O.

NOTICE OF
REFERRAL
PROCEEDING

TO: BRET OSTRAGER, D.O.

██████████
Otisville FCI
Two Mile Drive
Otisville, NY 10969

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 November 16, 2016 at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.¹

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

¹ For GPS purposes, enter "Menands", not "Albany".

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 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: Albany, New York
September 2, 2018



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

**David Quist
Associate Attorney
Bureau of Professional Medical Conduct
Corning Tower - Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282**

IN THE MATTER
OF
BRET OSTRAGER, D.O.

STATEMENT
OF
CHARGES

BRET OSTRAGER, D.O., the Respondent, was authorized to practice medicine in New York State on or about June 9, 1992, by the issuance of license number 189123 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 22, 2016 in the United States District Court for the District of New Jersey, Respondent pled guilty to three criminal counts, all federal felonies, consisting of: 1) one count of conspiracy to violate the federal anti-kickback statute and travel act, in violation of 18 USC section 371, 2) one count of illegal remuneration in violation of the federal anti-kickback statute, in violation of 42 USC section 1320a-7b(b)(1)(A) and 18 USC section 2, and 3) one count of use of the mail and facilities in interstate commerce and interstate travel to promote, carry on and facilitate commercial bribery, in violation of 18 USC sections 2 and 1952(a)(1) and (3). Pursuant to that plea, Respondent was convicted of those felonies and sentenced on or about June 8, 2016, *inter alia*, to imprisonment for a term of 37 months, to be followed by supervised release for a period of one year subject to mental health

treatment, new debt restrictions, disclosure and prior approval of any self-employment or business activity and other conditions, payment of a fine in the amount of \$30,000 and forfeiture in the amount of \$101,270.

SPECIFICATION OF CHARGES
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.

DATE: September 2, 2016
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct