



Department
of Health

ANDREW M. CUOMO
Governor

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

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

November 18, 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marc S. Nash, Esq.
NYS Department of Health
Empire State Plaza
Corning Tower Building, Room 2412
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Daniel G. Giaquinto, Esq.
Frier & Levitt, LLC
84 Bloomfield Avenue
Pine Block, New Jersey 07058

Ralph Messo, D.O.
[REDACTED]
FCI Fort Dix
5756 Hartford & Pointville Road
Joint Base MDL, New Jersey 08640

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

Dear Parties:

Enclosed please find the Determination and Order (No. 19-283) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Riverview Center
150 Broadway – Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,



James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

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

In the Matter of

Ralph Messo, D.O. (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. 19- 283

Before ARB Members Grabiec, Wilson and Rabin
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Marc S. Nash, Esq.
For the Respondent: Daniel G. Giaquinto, Esq.

Following a hearing, a BPMC Committee found the Respondent guilty of professional misconduct, due to the Respondent's Federal criminal conviction for accepting a bribe. The Committee voted to suspend the Respondent's license to practice medicine in New York State (License) until such time as the Respondent completes continuing medical education (CME) and a physician re-entry program and to place the Respondent on probation following the suspension. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2019), the Petitioner requests that the ARB overrule the Committee and revoke the Respondent's License. After reviewing the hearing record and the parties' review submissions, we vote 3-0 to affirm the suspension, but to modify the conditions for the suspension's completion and to increase the period on probation from one year to two years.

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 definitions in New York Education Law (EL) §§6530(9)(a)(ii) & 6530(9)(d) (McKinney Supp. 2019) by engaging in conduct that resulted in a criminal conviction under Federal Law and in disciplinary action by another state. 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).

The evidence before the Committee demonstrated that the Respondent entered a guilty plea on January 29, 2015 in the United States District Court for the District of New Jersey to one count of Racketeering – Transporting in Aid of Travel Act – Acceptance of Bribes, in violation of Title 18 USC § 1952(a)(3) and Title 18 USC § 2. The District Court sentenced the Respondent to 24 months imprisonment, 2 years supervised release, a \$4,000 fine and forfeiture of \$82,500. Further, the evidence showed that the Respondent entered into a July 13, 2018 Consent Order with the New Jersey Board of Medical Examiners (Jersey Board), which revoked the Respondent's New Jersey license due to the Respondent's criminal conduct.

The Committee determined that the Respondent's criminal conduct made the Respondent liable for action against his License pursuant to EL § 6530(9)(a)(ii) & 6530(9)(d). The Committee voted to suspend the Respondent's License until he completes successfully: a) 50 hours in CME credits, including one ethics course and one Federal/State compliance course and b) a physician re-entry course approved by the Department. Following the suspension, the Committee placed the Respondent on probation for one year under the terms that appear at Appendix I to the Committee's Determination. The probation terms include practice with a monitor.

The Petitioner had asked the Committee to revoke the Respondent's License, or in the alternative, that the Committee suspend the Respondent's License for two full years and then require the Respondent to complete retraining classes and to demonstrate his fitness to practice medicine to the Department's satisfaction. The Petitioner expressed concern about whether the Respondent would lack requisite skill and knowledge after the time away from practice.

The Committee rejected revocation due to several mitigating factors. The Committee found that the Respondent provided a high quality of care to his patients and held high standing in the community in which he practiced. The Committee also placed great importance on the Respondent's 2016 decision to relinquish his medical license in New York and New Jersey well before his sentencing. The Committee appreciated the Respondent's emphasis on his patients' continued receipt of care by ensuring that the patients were given their medical records before the Respondent sold his practice. Due to the relinquishment of his licensure, the Respondent will have been out of practice slightly more than 3 years by the time he is released from incarceration on December 29, 2019. The Committee also found that the Respondent accepted full responsibility for his errors in judgement, cooperated with law enforcement and began to pay his debt to society.

The Committee also rejected the Petitioner's request that the Committee suspend the Respondent's License for two full years upon the Respondent's release from incarceration. The Committee found that the two-year suspension would mean that the Respondent would have been away from practice for five years due to the relinquishment, the imprisonment and then the suspension. The Committee found that the suspension would fail to address the Petitioner's concern about the Respondent's ability to treat patients effectively. The Committee voted to limit

the suspension following release until the Respondent completes the CME and the re-entry program and then to place the Respondent on probation with a practice monitor.

Review History and Issues

The Committee rendered their Determination on May 8, 2019. This proceeding commenced on May 20, 2019, when the ARB received the Petitioner's Notice requesting a Review. The record on review included the hearing record, the Petitioner's brief and the Respondent's reply brief. The record closed when the ARB received the reply brief on July 2, 2019.

The Petitioner asked that the ARB overturn the Committee's Determination and revoke the Respondent's License. The Petitioner argued that revocation constituted the appropriate penalty due to the Respondent's admission that he violated Federal Law and accepted \$82,500 in bribes to refer patients to Biodiagnostic Laboratory Services (BLS) for blood tests. Claims for these tests were then submitted by BLS to Medicare and private insurance. The Committee rejected revocation, however, and imposed suspension instead. The Petitioner argued that the Committee failed to provide the same protection to New York residents as the New Jersey Board provided to that state's residents by revoking the Respondent's New Jersey license. In the alternative, the Petitioner argued that the terms concerning the suspension and probation are insufficient and require clarification. The Petitioner contends that the sanction should require approval for the CME component from the Director of the Office for Professional Medical Conduct (Director). As to the re-entry program, the Petitioner argued that the Committee provided no direction on what program should be used and when the Respondent should respond

to the remediation. The Petitioner suggested extensive terms for the re-entry program. Finally, the Petitioner asked the ARB to increase the probation from one year to three.

The Respondent replied that he ARB should not increase the sanction because the Committee found evidence in the record concerning the Respondent's remorse, the high quality of care he provided, his cooperation with law enforcement and his voluntary closure of his practices to allow a smooth transition of his patients to other physicians. The Respondent contested the Petitioner's assertion that the sanction the Committee imposed failed to protect the people of New York. The Respondent noted that he is currently incarcerated and his License is suspended. He will remain incarcerated until he completes 50 hours of CME and the re-entry program and then may only practice if monitored by a BPMC approved physician and if compliant with probation for 12 months.

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 findings on the charges. We affirm the Committee's Determination to suspend the Respondent's License and to place the Respondent on probation, with a monitor following the suspension. We agree with the Committee that the record reveals mitigating factors in this case that make revocation an

inappropriate penalty. We modify the conditions on the probation, we affirm the conditions the Committee placed on the re-entry program and we extend the period for the probation.

We agree that the Respondent should complete successfully 50 hours CME and that the CME should include one course on ethics and one course in Federal/State compliance. We modify the CME requirements to provide that the Director must approve the CME courses. We also require that at least forty hours in the CME must be courses in the Respondent's specialty.

We agree that the Respondent should complete a re-entry program approved by the Director. The Petitioner requested that we impose extensive terms for the program. We decline that as the Committee has already required that the Director approve the program. The Director may require such terms as part of the approval process.

We agree that the Respondent should practice on probation following the suspension, under the terms at the Appendix to the Committee's Determination, including practice with a physician monitor approved by the Director. We modify the probation terms to make the probation two years rather than one. We conclude that two years will provide a greater assurance that the CME and the re-entry program will prepare the Respondent to re-enter practice safely.

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 and to place the Respondent's on probation with a practice monitor.
3. We modify the conditions to end the suspension.
4. We increase the time on probation following the suspension from one year to two years.

Steven Grabiec, M.D.
Linda Prescott Wilson
Jill Rabin, M.D.

In the Matter of Ralph Messo, D.O.

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

Dated: 11/12, 2019




Steven Grabiec, M.D.

In the Matter of Ralph Messo, DO.

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

Matter of Dr. Messo.

Dated: 13 November, 2019




Linda Prescott Wilson

In the Matter of Ralph Messo, D.O.

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

of Dr. Messo.

Dated: 11/8, 2019



Jill Rabin, M.D.