



Department of Health

ANDREW M. CUOMO
Governor

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

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

December 22, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Pooja Rawal, Senior Attorney
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, N.Y. 12237

David Voza, Esq.
Norris, McLaughlin & Marcus, P.A.
875 Third Avenue
8th Floor
New York, New York 10022

Peter Deplas, M.D.


RE: In the Matter of Peter Deplas, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 17-360) 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.

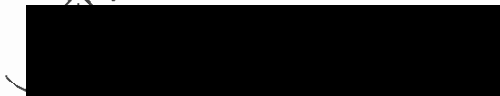
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified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

A large black rectangular redaction box covering the signature of James F. Horan.

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

Peter Deplas, 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- 360

Before ARB Members D'Anna, Grabiec, Wilson and Milone¹
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Pooja Rawal, Esq.
For the Respondent: David Voza, Esq.

In this proceeding pursuant to New York Public Health Law (PHL) § 230-c
(4)(a)(McKinney 2017), the Respondent asks the ARB to modify a Determination by a BPMC
Committee to suspend the Respondent's license to practice medicine in the State of New York
(License) following the Respondent's Federal conviction for a crime related to the Respondent's
medical practice. After considering the hearing record and the parties review submissions, the
ARB votes 3-1 to affirm the Committee's Determination in full.

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

¹ ARB Member Peter Koenig was unable to participate in the deliberations in this case. The ARB considered the case with a four-member quorum, Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

Respondent committed professional misconduct under the definition in New York Education Law (EL) §6530(9)(a)(ii) (McKinney Supp. 2017) by engaging in conduct that resulted in a criminal conviction under Federal 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, (supra). Following the Direct Referral Hearing, the Committee rendered the Determination now on review. The Petitioner began the proceeding with a Summary Order from the Commissioner of Health of the State of New York suspending the Respondent from practice pursuant to PHL § 230(12)(b).

The evidence before the Committee demonstrated that the Respondent entered a guilty plea to one count of "Interstate or foreign travel in aid of racketeering" a violation of Title 18 U.S.C. § 1952 in the United States District Court for the District of New Jersey in July 2014. The Respondent accepted payments from a commercial blood laboratory for referring patient testing to the laboratory over the period from November 2011 until March 2013. Initially, the Respondent entered into a lease agreement with the laboratory to rent the laboratory space at the Respondent's practice for \$5000.00 per month, although the laboratory occupied no space at the practice. The Respondent then accepted cash kickbacks from the laboratory which increased from \$2000.00 per month to \$7,000.00 per month as the Respondent's referrals to the laboratory increased. The Court sentenced the Respondent to three years on probation, with one year of home detention with a location monitoring device, a \$10,000.00 fine, a \$100.00 special assessment and \$120,500.00 in forfeiture.

The Committee sustained the charge that the conduct which resulted in the Respondent's criminal conviction constituted professional misconduct. The Committee rejected the Petitioner's request for revocation as the penalty, on the grounds that the Respondent cooperated with law

enforcement in the investigation into this criminal scheme. The Respondent's brief noted that the Respondent's cooperation spared him from incarceration, while all the other parties in the criminal scheme were sentenced to incarceration. The Committee concluded, however, that the Respondent began his cooperation only after receiving a subpoena. The Committee also considered that six to eight months into the sham lease and kickback scheme the Respondent realized that something was wrong, yet he kept accepting payments for an additional year. The Committee found that the crime involved the Respondent's medical practice and violated the ethical standards of the profession.

The Committee voted to suspend the Respondent's License for four years, with the last two years stayed. The Committee ruled that following the actual suspension, the Respondent would practice under probation for five years, under terms that appear in Appendix II to the Committee's Determination. After considering that the Respondent would be away from practice for three years under the actual suspension and home detention, the Committee ordered that the Respondent undergo an evaluation of his knowledge and skills, and retraining if the evaluation finds deficits, prior to returning to practice. Finally, the Committee ordered that the Respondent complete successfully fifty hours of continuing medical education (CME).

Review History and Issues

The Committee rendered their Determination on August 8, 2017. This proceeding commenced on August 24, 2017, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's reply brief. The record closed when the ARB received the reply brief on September 28, 2017.

The Respondent limits his review brief to requesting a reduction in the time for the actual suspension in this case. The Respondent accepts the other provisions from the penalty the Committee imposed. The Respondent requests that the ARB limit the actual time on suspension to between three and six months due to the Respondent's cooperation with Federal law enforcement and the Respondent's self-imposed suspension which began in April 2014, according to the Respondent's brief. The Respondent calculates that the total suspension from April 2014 to the end of the actual suspension under the Committee's Determination would amount to five and one-half years. At hearing, the Respondent introduced the prior ARB Determination in the *Matter of Bret Ostrager, D.O., BPMC #: 16-405* [Hearing Exhibit C]. The Respondent argues that the Committee in *Ostrager* limited that licensee's actual suspension to the licensee's period of incarceration, which was roughly three years. The Respondent alleges error by the Committee because the Respondent received a more severe sanction than Dr. Ostrager. The Respondent also took exception that the Hearing Committee interpreted the speed with which the Respondent retained counsel as an admission of guilt by the Respondent.

The Petitioner replied that the ARB should not consider the period of any voluntary closure of the Respondent's practice nor the penalty in any other BPMC case. The Petitioner submitted that well established precedent holds that every case must be determined on its own facts and circumstances, Matter of Ward v. Ambach, 141 A.D.2d 625, 530 N.Y.S.2d 286 93rd Dept. 1988) and the ARB should review a penalty's propriety by whether the penalty is so disproportionate to the offense as to shock one's sense of fairness, Matter of Pell v. Board of Education, 34 N.Y.2d 222. The Petitioner asked that the ARB affirm the Committee's Determination.

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 Federal conviction constituted professional misconduct. Neither party challenged the Committee's Determination on the charges. The ARB votes 3-1 to affirm in full the penalty the Committee imposed.

The majority finds no error in the Committee's Determination. The Respondent engaged in felonious conduct over an extended period of time that directly involved his medical practice and License. The Committee considered the Respondent's cooperation with law enforcement as a mitigating factor and this resulted in the Committee rejecting revocation as the appropriate penalty. The majority sees no relation between this case and *Ostrager*. The majority does not consider a voluntary closure akin to an actual suspension, home confinement or incarceration as a licensee can end a voluntary closure at any time the licensee wishes.

The ARB Member who dissents would reduce the actual suspension in this case to make this Determination consistent with the Determination in *Ostrager*.

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 votes 3-1 to affirm the Committee's Determination to suspend the Respondent's License for four years, with two years stayed, to place the Respondent on probation for five years, to require the Respondent to undergo an evaluation and training and to mandate that the Respondent complete 50 hours CME.

Steven Grabiec, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Peter Deplas, M.D.

Steven Grabiec, M.D., an ARB Member affirms that he participated in the deliberations in this matter and that this Determination and Order reflects the decision of a majority of ARB Members in the Matter of Dr. Deplas.

Dated: 12 / 7, 2017



Steven Grabiec, M.D.

In the Matter of Peter Deplas, M.D.

Richard D. Milone, M.D., an ARB Member affirms that he participated in the deliberations in this matter and that this Determination and Order reflects the decision of a majority of ARB Members in the Matter of Dr. Deplas.

Date: December 20, 2017

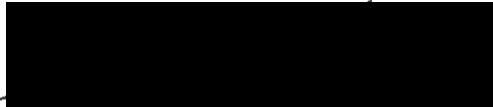


Richard D. Milone, M.D.

In the Matter of Peter Deplas, M.D.

Linda Prescott Wilson, an ARB Member affirms that she participated in the deliberations in this matter and that this Determination and Order reflects the decision of a majority of ARB Members in the Matter of Dr. Deplas.

Dated: 16 December, 2017

A large black rectangular redaction box covering the signature of Linda Prescott Wilson.

Linda Prescott Wilson

In the Matter of Peter Deplas, M.D.

John A. D'Anna, M.D., an ARB Member affirms that he participated in the deliberations in this matter and that this Determination and Order reflects the decision of a majority of ARB Members in the Matter of Dr. Deplas.

Dated: Dec 7, 2017


John A. D'Anna, M.D.