



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 26, 2019

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Peter Deplas, M.D.


Re: License No. 201091

Dear Dr. Deplas:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Modification Order No. 19-294. This order and any penalty provided therein goes into effect December 3, 2019.

Please direct any questions to: Board for Professional Medical Conduct, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204, telephone # 518-402-0846.

Sincerely,


Paula M. Breen
Acting Director
Office of Professional Medical Conduct

Enclosure

cc: David Vozza, Esq.
Norris, McLaughlin & Marcus, P.A.
875 Third Avenue, 8th Fl.
New York, New York 10022

IN THE MATTER
OF
PETER DEPLAS, M.D.

BPMC No. 19-294

**DIRECTOR'S FIRST
MODIFICATION
ORDER**

Respondent, PETER DEPLAS, M.D., is currently subject to BPMC Determination and Order # 17-224, made effective on August 15, 2017, and Administrative Review Board Determination and Order No. 17-360, affirming entirely BPMC Determination and Order No. 17-224, which was made effective on or about December 29, 2017 (Attachment I) (henceforth "Original Order"). The Original Order imposed multiple penalties, terms and conditions, including but not limited to the following:

- That Respondent's license shall be suspended for four years, with two years stayed;
- That Respondent shall be placed on probation for five years following the period of actual suspension, subject to the Terms of Probation enumerated in "Appendix II" of BPMC Determination and Order No. 17-224;
- That Respondent shall undergo an evaluation of his knowledge and skills, and education and/or retraining in the deficit areas in a program approved by the Director of the Office of Professional Medical Conduct ("OPMC"); and
- That Respondent shall complete 50 Category I (live, in-person) continuing medical education (CME) credits, pursuant to the Terms of Probation, prior to his resumption of practice.

As the Respondent has successfully completed an evaluation as directed by the Director, and the Director has reviewed the results, assessments, and recommendations, based upon all relevant facts and circumstances known to her: the following Modification is hereby ordered with regard to the results of the evaluation:

- From the effective date of this Director's First Modification Order to the termination of Licensee's probation, Licensee shall complete 50 credits of Category 1 CME in his field of practice each year of his probation.

The following Modification is hereby ordered with regard to the Probation Terms as enumerated in "Appendix II" of "Attachment I" imposed by BPMC Determination and Order Nos. 17-224 and 17-360:

- From the effective date of this Director's First Modification Order to the termination of Licensee's probation period, Licensee shall work only in an approved setting, where close practice oversight is available on a daily basis and where quality assurance and risk management protocols are in effect. Licensee shall not practice medicine until the setting proposed by Licensee is approved, in writing, by the Director of OPMC.
 - Licensee shall submit semi-annually a signed Compliance Declaration to the Director of OPMC which truthfully attests whether Licensee has been in compliance with the approved employment setting;
- and
- From the effective date of this Director's First Modification Order, and for the first six months of Licensee's practice during the probation period, Licensee shall practice medicine only when monitored by a licensed physician, board certified in an

appropriate specialty, ("practice monitor") proposed by Licensee and subject to the written approval of the Director of OPMC. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.

- Licensee 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 Licensee'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 Licensee, including patient records, prescribing information and office records. The review will determine whether the Licensee's medical practice is conducted in accordance with the 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 OPMC.
- Licensee shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
- Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
- 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 Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.

The Director reserves the authority, in her sole discretion, to subsequently stay, add, impose, re-impose, extend, or otherwise modify the conditions imposed upon Respondent's practice pursuant to BPMC Order Nos. 17-224 and 17-360 and this First Director's Modification Order, as the Director may determine appropriate, based upon all relevant facts and circumstances then known to her, including, but not limited to, those related to the underlying OPMC investigation of Respondent, the evaluation results and recommendations, and Respondent's practice in the future, as are necessary to protect the public health.

THE ABOVE IS HEREBY ORDERED; and

it is further

ORDERED, that this Order shall be effective upon issuance and mailing by first class mail to Respondent at the address in the attached Attachment I or at any other address known to the Office of Professional Medical Conduct.

DATE: 11/26/2019


PAULA M. BREEN
Acting Director
Office of Professional Medical Conduct

ATTACHMENT I



Department of Health

ANDREW M. CUOMO
Governor

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

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

August 8, 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

Dear Parties:

Enclosed please find the Determination and Order (No. 17-224) 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 (l), (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: 
Enclosure

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

**IN THE MATTER
OF
PETER DEPLAS, M.D.**

**DETERMINATION
AND
ORDER**

17-224

A hearing was held on June 14, 2017, at the offices of the New York State Department of Health ("Department"), Bureau of Adjudication, 150 Broadway, Suite 510, Albany, New York 12204. A Commissioner's Order of Summary Action, a Notice of Referral Proceeding and a Statement of Charges, all dated May 1, 2017, were served upon the Respondent, Peter Deplas, M.D., by means of service on his attorney.

Pursuant to Section 230(10)(e) of the Public Health Law, Ravinder Mamtani, M.D., Chair, Ronald Uva, M.D., and Ms. Gail S. Hornick-Herling, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee in this matter. Denise Lepicier, Administrative Law Judge, served as the administrative officer. The Department appeared by Pooja Rawal, Senior Attorney, and Marc Nash, Senior Attorney, Bureau of Professional Medical Conduct. The Respondent, Peter Deplas, M.D., appeared through his attorneys, David N. Vozza and David Adelson, of Norris, McLaughlin & Marcus. Evidence was received and a transcript of this proceeding was made. After consideration of the entire record, the hearing committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for a hearing in which evidence is "strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed" when a licensee is charged based upon a violation of New York Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a federal conviction, or a criminal conviction regarding conduct which is a crime in New York State, or upon an administrative adjudication in another state regarding conduct that would amount to professional misconduct if committed in New York.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(ii), by having been "convicted of committing an act constituting a crime under . . . (ii) federal law."

A Copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers and letters in parentheses refer to exhibits, denoted by the prefix "Ex." Transcript references are noted by a "T." followed by the page number. These citations refer to evidence found persuasive by the hearing committee in arriving at a particular finding. All hearing committee findings were unanimous.

1. Peter Deplas, M.D., the Respondent, was served with a Commissioner's Order of Summary Action, a Notice of Referral Proceeding and a Statement of Charges via service on his attorney, David Voza, on May 12, 2017. The Respondent consented to this

service. (Ex. 1; Ex. 2; T. 5-6)

2. The Respondent was authorized to practice medicine in New York State on October 19, 1995, by the issuance of license number 201091 by the New York State Education Department. (Ex. 4)
3. On or about July 15, 2014, Respondent plead guilty to one count of "Interstate or foreign travel or transportation in aid of racketeering," a violation of 18 U.S.C. § 1952 in the United States District Court, District of New Jersey. (Ex. 3, p. 1)
4. More specifically, Respondent was charged with engaging in commercial bribery by accepting payments from a commercial blood testing laboratory for the referral of patient testing to the laboratory. The payments were made in two ways. First, Respondent entered into a lease agreement with the laboratory to rent space to the laboratory at Respondent's practice for \$5000 per month, although the laboratory did not occupy or use the space. Second, Respondent accepted cash kickbacks from the laboratory which increased from \$2000 per month to \$7000 per month as his referrals to the laboratory increased. These activities occurred between at least November 2011 and March 2013. (Ex. 3)
5. On or about November 21, 2016, Respondent was sentenced to three years of probation with one year of home detention with a location monitoring device, a \$10,000 fine, a \$100 special assessment, and forfeiture of \$120,500. (Ex. 3; Ex. D, p. 25-26)

DISCUSSION

Respondent and his attorneys state that Respondent avoided incarceration, unlike other physicians who were involved in this bribery scheme, due to his substantial cooperation with

the authorities investigating and prosecuting the matter. (T. 29-63) The hearing committee accepts that Respondent cooperated extensively with the FBI and other law enforcement and helped establish criminal cases against other laboratories, their owners and employees, who offered similar bribery schemes. (Ex. D, 12, 22; T. 33-34) However, the committee is also cognizant of the fact that Respondent only became a cooperating witness after he received, on June 3, 2013, a federal subpoena to appear before a grand jury concerning his acceptance of bribes and kickbacks. (Ex. D, p. 11; T. 31) He acted quickly; hired a criminal attorney; and was cooperating with the FBI within days. (T. 31-33)

The hearing committee believes that Respondent must have known that what was going on with the laboratory providing him with payments was wrong. The laboratory rented office space in his practice but never used the space. (T. 45, 47) A representative of the laboratory provided him with in person cash payments of thousands of dollars and these payments grew as Respondent ordered more testing from the laboratory. (T. 49-51) Indeed, the very speed of Respondent in retaining criminal counsel is some indication that he knew what was occurring was wrong at the time these various payments were being made. At hearing, Respondent admitted that about six to eight months into his involvement with the sham lease and kickback scheme, he realized that something was wrong. (T. 51) Yet, Respondent kept accepting the payments for almost an additional year.

The hearing committee unanimously agreed that the Department established Respondent's conviction of a federal felony offense. The factual allegations and the specification in the Statement of Charges are sustained.

DETERMINATION AS TO PENALTY

The Hearing Committee has considered the full range of sanctions available pursuant to PHL Education § 230-a, including: (1) censure and reprimand; (2) suspension of the license, wholly or partially; (3) limitation on practice; (4) revocation of the license; (5) annulment of the license or registration; (6) limitation on registration or further licensure; (7) monetary penalties; (8) a course of education or training; (9) performance of public service; and, (10) probation.

In light of Respondent's cooperation with the government, the hearing committee rejects the Department's recommendation of revocation of Respondent's license. The Respondent avoided incarceration as a result of his significant cooperation. However, the hearing committee also recognizes that Respondent's crime involved his medical practice and violated the ethical standards of his profession.


The hearing committee has concluded that the appropriate sanction is a four year suspension, the last two years of which are stayed, with five years of probation, pursuant to the Terms of Probation attached as Appendix II, following the period of actual suspension. Respondent also testified that during the period of his cooperation with the FBI, he decided that he needed to leave his practice and that, as a result of his cooperation and his sentence to home detention, he has been out of practice for about three years. (P. 33) As part of the penalty, the hearing committee orders an evaluation of Respondent's knowledge and skills, and retraining if the evaluation finds deficits, prior to the resumption of practice by Respondent, and pursuant to the Terms of Probation attached hereto. Finally, the hearing committee orders that Respondent successfully complete fifty (50) category I (live, in-person) continuing medical education (CME) credits, pursuant to the Terms of Probation, prior to his resumption of practice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.
2. The license of the Respondent to practice medicine in New York State is **SUSPENDED** for a period of four years, the last two years of which period are stayed.
3. Respondent is subject to five years of probation, pursuant to the Terms of Probation attached hereto, following the period of actual suspension.
4. Respondent shall undergo an evaluation of his knowledge and skills and shall complete any medical training or education recommended as a result of the evaluation, pursuant to the Terms of Probation attached hereto, prior to his resumption of practice.
5. Respondent shall complete fifty (50) category I (live, in-person) continuing medical education (CME) credits, pursuant to the Terms of Probation, prior to his resumption of practice.
6. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(b).

DATE: _____, New York;
July _____, 2017

 *Aug 3, 2017*
RAVINDER MAMTANI, M.D., CHAIR

RONALD UVA, M.D.
GAB. S. HOMICK-JERLING

To:

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

Peter Deplas, M.D.



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

APPENDIX I

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

IN THE MATTER
OF
PETER DEPLAS, M.D.

STATEMENT
OF
CHARGES

Peter Deplas, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 19, 1995, by the issuance of license number 201091 by the New York State Education Department.

FACTUAL ALLEGATIONS


A. On or about July 15, 2014, Respondent pled guilty to one count of Racketeering-Transporting-In Aid Of- Bribery in Violation of the Travel Act §§ 18 U.S.C. 1952(a)(3) and 18 U.S.C. 18(2), a felony, in the United States District Court of New Jersey. On or about November 21, 2016, the Respondent was convicted and sentenced in the same court to three years probation, a \$10,000.00 fine, forfeit \$120,500.00, required to pay a special assessment of \$100.00 and required to pay for and undergo mental health treatment and location monitoring for twelve months.

SPECIFICATION OF CHARGES

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6350(9)(a)(ii) by having been convicted of an act constituting a crime (felony) under federal law as alleged in the facts of the following:

1. The facts as alleged in paragraph A.

DATE: May 1, 2017
Albany, New York



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX II

TERMS OF PROBATION

1. Respondent's conduct shall conform to moral and professional standards of conduct and to governing law. Any act of professional misconduct by Respondent as defined by New York Education Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York Public Health Law § 230 (10) or (19), or both.
2. Respondent shall remain in continuous compliance with all requirements of New York Education Law § 6502, including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in New York Education Law § 6502(4) to avoid registration and payment of fees.
3. Respondent shall provide to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, Suite 355, 150 Broadway, Albany, New York, 12204, at least every six months and as otherwise requested, or within thirty days of any change in the information, the following information in writing:
 - a. a full description of the Respondent's employment and practice;
 - b. all professional and residential addresses and telephone numbers within and outside of New York State;
 - c. any and all information concerning investigations, arrests, charges, convictions or disciplinary actions by any local, state, or federal agency;
 - d. any and all information concerning investigations, terminations, or disciplinary matters by any institution or facility.
4. Respondent shall provide to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, Suite 355, 150 Broadway, Albany, New York, 12204, copies of all applications relating to the practice of medicine, including but not limited to, applications for privileges, insurance, and licensure, in any jurisdiction, concurrent with their submission.
5. Respondent shall cooperate fully with, and will respond within two weeks to, OPMC requests to provide written periodic verification of Respondent's compliance with these

terms of probation. Upon the Director of OPMC's request, Respondent shall meet personally with a person designated by the Director.

6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive thirty day period. Respondent shall then notify the Director again at least fourteen 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. The Director of OPMC, or his/her designee, may review Respondent's professional performance. This review may include but shall not be limited to:
 - a. A review of office records, patient records, hospital charts, and/or electronic records;
 - b. Interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
7. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients, and contain all information required by State rules and regulations concerning controlled substances.
8. Prior to resuming the practice of medicine, Respondent shall submit to an evaluation of his skills and knowledge by an appropriate evaluator approved by the Director of OPMC. If the evaluator finds deficits in Respondent's knowledge or skills, the evaluator will recommend either education and/or retraining in the deficit areas, and the Respondent will complete such education and/or retraining in a program approved by the Director of OPMC.
9. In addition to any education required as a result of an evaluation of Respondent's knowledge and skills, Respondent shall enroll in and successfully complete fifty (50) category one (live) continuing medical education (CME) credits prior to resuming medical practice. All CME courses are subject to the prior written approval of the Director of OPMC. Courses taken in the past may not be used to fulfill this requirement.

10. Respondent shall comply with these Terms of Probation, 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 for Professional Medical Conduct may initiate a violation of probation proceeding, and/or any other proceeding authorized by law, against the Respondent.



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,


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 Vozza, 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 Grablec, 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 Grablec, 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: 16th December, 2017

A 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.