



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 (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.

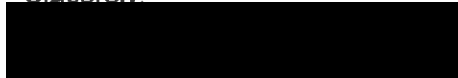
The notice of review served on the Administrative Review Board should be forwarded to:

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: 
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. Homick-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. Voza 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)(h).

DATED: _____, New York;
July _____, 2017

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

RONALD UVA, M.D.
GAIL S. HOMICK-HERLING

To:

Pooja Rawal, Senior Attorney
Bureau of Professional Medical Conduct
Coming 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.