

January 16, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael G. Bass, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
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1425 RXR Plaza
15th Floor – East Tower
Uniondale, New York 11556

Michael Steven Turano, M.D.
#64830-054-FCI Otisville
P.O. Box 1000
Otisville, New York 10963

RE: In the Matter of Michael Steven Turano, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-15) 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,

REDACTED

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

In the Matter of

Michael Steven Turano, M.D. (Respondent)

A proceeding to review a Determination by a Committee
(Committee) from the Board for Professional Medical
Conduct (BPMC)

Administrative Review Board (ARB)

Determination and Order No. 14-15

COPY

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

For the Department of Health (Petitioner): Michael G. Bass, Esq.
For the Respondent: Alexander G. Bateman, Jr., Esq.

Following a hearing below, a BPMC Committee determined that the conduct that resulted in the Respondent's Federal criminal conviction amounted to professional misconduct. The Committee voted to revoke the Respondent's license to practice medicine in New York State (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2013), the Respondent asked the ARB to modify the Committee's Determination or return the matter for consideration by a different BPMC Committee. After considering the record below and the parties' review submissions, the ARB votes 3-2 to overrule the Committee's Determination to revoke the Respondent's License. The ARB majority votes to suspend the Respondent's License for two years, to stay the suspension and to place the Respondent on probation under the terms that appear in the attachment to this Determination.

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 charged that the Respondent violated New York Education Law (EL) §§ 6530(9)(a)(ii)(McKinney Supp. 2013) by engaging in acts that resulted in the Respondent's criminal conviction under New York State Law. Following the Direct Referral Proceeding, the Committee rendered the Determination now on review. In the Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The evidence before the Committee showed that the Respondent entered a guilty plea in the United States District Court for the Southern District of New York to Conspiracy to Commit Bribery, a felony. The Court sentenced the Respondent to imprisonment for twenty four months and to pay \$223,534.00 in restitution. The Respondent was still incarcerated at the time of the hearing and participated in the hearing by telephone, with his attorney present at the hearing.

The Committee concluded that the conduct that resulted in the Respondent's conviction constituted professional misconduct and made the Respondent liable for action against his License under EL § 6530(9)(a)(ii). The Committee found further that the Respondent participated with former New York State Senator Carl Kruger in a massive, long term scheme to solicit and obtain bribes in exchange for supposed legislative action. The scheme funneled bribe funds through two consulting firms that the Respondent owned and the Respondent and Kruger benefited directly from the arrangement.

The Committee voted to revoke the Respondent's License. The Committee noted that the Respondent expressed remorse for his actions and expressed a willingness to abide by any condition the Committee might impose in order to be able to practice medicine after release from prison. The Committee stated that they didn't doubt the Respondent's remorse by the time of the

hearing, but found no evidence of remorse prior to the Respondent's arrest and conviction. The Committee also stated that the amount the Respondent paid in restitution represented money he obtained unlawfully in the first place. The Committee described the Respondent's actions as morally reprehensible, found that the Respondent used his standing as a physician to aid and abet a scheme to defraud the public and found that the Respondent profited from the proceeds.

Review History and Issues

The Committee rendered their Determination on June 12, 2013. This proceeding commenced on July 1, 2013, 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 November 8, 2013.

The Respondent argued that: 1.) the Committee erred by proceeding without the Respondent present physically and deprived the Respondent of the ability to prepare with and assist counsel; 2.) the Committee erred in considering the Respondent's case in light of the wholly unrelated atmosphere of recent corruption in Albany; 3.) a similarly situated physician received a less severe penalty; and, 4.) the severe penalty shocks the conscience and the sense of fairness. The Respondent requested that the ARB overturn the Committee or return the matter for a new hearing before a different hearing committee. The Respondent also requested, in a cover letter with the review brief and in a separate letter, to present oral argument to the ARB.

The Petitioner replied that the Respondent received the chance to testify by telephone at the hearing and to present witnesses, so that the Respondent suffered no prejudice at the hearing. The Petitioner argued that the Respondent's criminal conduct resulted in the License revocation

and nothing in the Committee's Determination indicated that they based their decision on anyone else's actions. The Petitioner argued further that the Committee acted appropriately in revoking the Respondent's License because the Respondent acted with greed as his motivation, he attempted to blame others for his crimes and he expressed remorse for his crimes only after his arrest. The Petitioner also opposed the request for oral argument.

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 of 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 Respondent's criminal conduct constituted professional misconduct and made the Respondent liable for disciplinary action against his License under EL § 6530(9)(a)(ii). Neither party challenged the Committee's Determination on the charges. The ARB votes 5-0 to reject the Respondent's request for oral argument and to reject the Respondent's request for a new hearing. The ARB votes 3-2 to overturn the Committee's Determination to revoke the Respondent's License. The ARB majority suspends the Respondent's License for two years, stays the suspension and places the Respondent on probation under the terms that appear as the Appendix to this Determination.

The ARB denies the Respondent's request to present oral argument to the ARB. Nothing in PHL § 230-c provides for oral argument, the ARB never permits oral argument and we see no reason to change our procedure in this case.

The ARB also denies the request to send the case for a new hearing. No provision in PHL

§ 230-c authorizes the ARB to order a new hearing. The ARB may remand a case “to the committee” for reconsideration or further proceedings under PHL § 230-c(4)(b), but the Respondent made no request for a reconsideration by the Committee that revoked the Respondent’s License. The ARB sees no error by the Committee in proceeding with the hearing in the Respondent’s physical absence. The provisions on Direct Referral Proceedings at PHL §230(10)(p) provide that a licensee may appear in person, may appear by an attorney and may present evidence and sworn testimony. The Respondent appeared by an attorney, presented evidence and participated in the hearing by telephone. Nothing in PHL § 230(10)(p) bars a Direct Referral Proceeding from going forward in a Respondent’s absence, as long as the Respondent received notice about the time, place and nature of the hearing. The ARB also sees no prejudice to the Respondent due to the statement by the Petitioner’s counsel that related the Respondent’s conduct to the political corruption scandals that embroil the New York State Legislature currently. The Respondent argued that the Committee should not have considered the political corruption argument, but instead should have judged the Respondent only on his own wrongdoing. The ARB finds that the Committee did limit their Determination to the Respondent’s own wrongdoing.

The ARB majority agrees with the Respondent that the Committee imposed too harsh a sanction in revoking the Respondent’s License. We note that in another case involving the Kruger bribery convictions, the ARB imposed a stayed suspension and a license limitation against a physician convicted for conspiracy to commit bribery, Matter of Aquino, 2013 WL 327517. The ARB finds that the Respondent engaged in serious misconduct and that he obtained funds illegally from a criminal scheme. The United States District Court, however, has already

ordered the Respondent imprisoned and the Court has required the Respondent to make restitution of the funds he obtained illegally. The ARB concludes that the imprisonment and restitution has provided punishment to the Respondent and will provide deterrence against any other professional who would consider participating in a scheme similar to the Respondent's. The ARB majority also concludes that we can allow the Respondent to retain his License, with certain safeguards, without endangering the public. There was no evidence that the Respondent provided substandard medical care in his practice as an Obstetrician/Gynecologist and there was no evidence that the criminal scheme involved the Respondent's medical practice in any way. The majority suspends the Respondent License for two years and we stay the suspension in full due to the time the Respondent has spent away from practice due to the criminal proceedings and imprisonment.

The ARB majority does feel concern over the Respondent's time away from practice and we wish to assure that the Respondent has retained his competency to practice medicine safely and by accepted standards. The majority votes to place the Respondent on probation for five years with a monitor on the Respondent's office practice for that entire period and with the same monitor on the Respondent's surgical practice for a limited number of procedures. For the first fifteen procedures under the probation, the monitoring physician shall scrub and serve as the second attending physician at the procedure.

The two ARB members in dissent would affirm the Committee's Determination to revoke the Respondent's License.

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 3-2 to overturn the Committee's Determination to revoke the Respondent's License.
3. The ARB suspends the Respondent's License for two years, stays the suspension and places the Respondent on probation for five years, under the terms that appear as the Appendix to this Determination.

Peter S. Koenig, Sr.
Steven Grabiec, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Michael Steven Turano, M.D.

Linda Prescott Wilson, an ARB Member affirms that she participated in this case and that this Determination and Order constitutes the decision by the majority in the Matter of Dr. Turano.

Dated: 8 January, 2014

REDACTED

Linda Prescott Wilson

In the Matter of Michael Steven Turano, M.D.

Peter S. Koenig, Sr., an ARB Member affirms that he participated in this case and that this Determination and Order constitutes the decision by the majority in the Matter of Dr. Turano.

Dated: December 30, 2013

REDACTED

Peter S. Koenig, Sr.

In the Matter of Michael Steven Turano, M.D.

Steven Grabiec, M.D., an ARB Member affirms that he participated in this case and that this Determination and Order constitutes the decision by the majority in the Matter of Dr. Turano

Dated: 12/30, 2013

REDACTED

~~_____~~

Steven Grabiec, M.D.

In the Matter of Michael Steven Turano, M.D.

Richard D. Milone, an ARB Member affirms that he participated in this case and that this Determination and Order constitutes the decision by the majority in the Matter of Dr. Turano.

Dated: December 27, 2013

REDACTED

Richard D. Milone, M.D.

In the Matter of Michael Steven Turano, M.D.

John A. D'Anna, M.D., an ARB Member affirms that he participated in this case and that this Determination and Order constitutes the decision by the majority in the Matter of Dr. Turano.

Dated: 1-15-14, 2014

REDACTED

John A. D'Anna, M.D.

Appendix

Terms of Probation

1. The Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. The Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Menands, New York 12204; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. The Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which the Respondent is not engaged in the active practice of medicine in New York State. The Respondent shall notify the Director of OPMC, in writing, if the Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. The Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. The Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
6. The Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Within thirty (30) days of the effective date of the Order, the Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. The practice supervisor shall not be a family member or personal

friend, or be in a professional relationship which could pose a conflict with supervision responsibilities.

- a. The Respondent 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 Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection of records maintained by Respondent, including patient records, prescribing information and office records. The practice monitor shall also scrub and serve as the second attending physician for the first fifteen surgical procedures that the Respondent performs under this probation. The review and attendance at the fifteen procedures will determine whether the Respondent'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.
 - b. The Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. The Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d. The 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.
8. The Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

To: Michael G. Bass, Esq.
NYS Dept. of Health
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