



Department
of Health

Public

ANDREW M. CUOMO
Governor

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

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

March 18, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anna R. Lewis, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
90 Church Street – 4th Floor
New York, New York 10007

Richard S. Harrow, Esq.
O'Connell & Aronowitz
54 State Street
Albany, New York 12207-2501

Pavel Kulik, M.D.
2000 Kings Highway
Suite 1E
Brooklyn, New York 11229-1445

RE: In the Matter of Pavel Kulik, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-064) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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:cah
Enclosure

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

COPY

**IN THE MATTER
OF
PAVEL KULIK, M.D.**

**DETERMINATION
AND
ORDER**
BPMC #15-064

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("the Department"). A Notice of Hearing ("NOH") dated October 1, 2014 and Statement of Charges ("SOC") dated September 19, 2014 were served on Pavel Kulik, M.D. ("Respondent"), and a hearing was held pursuant to N.Y. Public Health Law ("PHL") §230 and New York State Admin. Proc. Act §§301-307 and 401 on November 12 and December 3, 2014 at the Department's offices at 90 Church Street, New York, New York. A copy of the NOH and SOC is attached to this Determination and Order as Appendix 1. Thea Graves Pellman, Chair, James R. Dickson, M.D., and Jerry Waisman, M.D., duly designated members of the State Board for Professional Medical Conduct ("Board"), served as the Hearing Committee ("Hearing Committee" "Committee" or "Panel") in this matter. Ann H. Gayle served as the Administrative Officer. The Department appeared by James E. Dering, General Counsel, by Anna R. Lewis, Associate Counsel. The Respondent appeared by Richard S. Harrow, Esq., of O'Connell & Aronowitz.

All Hearing Committee findings, conclusions, determinations, and orders are unanimous. The citations in brackets refer to transcript page numbers ["T"] and exhibits ["Ex"] that were accepted into evidence. Any testimony or exhibit not cited was considered and rejected by the Committee in favor of what was cited.

PROCEDURAL HISTORY

| | |
|---------------------------|--|
| Service of NOH and SOC: | Accepted by Respondent's Counsel |
| Answer Filed: | October 31, 2014 |
| Pre-Hearing Conference: | November 6, 2014 |
| Hearing Dates: | November 12 and December 3, 2014 |
| Witness for Petitioner: | April Soltren |
| Witnesses for Respondent: | Respondent, Y. Amitina, V. Belushin, G. Spektor, V. Goncharov, A. Borisou, and P. Irinskiy |
| Deliberations Date: | February 24, 2015 |

STATEMENT OF THE CASE

The Department charged the Respondent with fourteen specifications of professional misconduct under N.Y. Educ. Law §6530 for having been convicted of an act constituting a crime—§6530(9)(a)(i), violating terms of probation—§6530(29), fraudulent practice—§6530(2), willfully making or filing a false report—§6530(21), and moral unfitness—§6530(20). In response to the SOC's Factual Allegations, Respondent admitted that on or about September 20, 2012¹ Board Order #09-171 went into effect, and the Order speaks for itself; he admitted that he pled guilty to the crime in violation of VTL §1192.04; and he admitted that he did not inform the Director of the Office of Professional Medical Conduct ("OPMC") in writing within 30 days of his pleading guilty to VTL §1192.04 but denied that it was in violation of the terms of his probation. Respondent further admitted that he answered "no" to question 3 of the August 17, 2009 NYS Office of the Professions Registration Renewal form ("Registration Renewal"), "no" to question 1 of the August 10, 2011 Registration Renewal, "no" to question 8 of the May 27,

¹the Order went into effect on September 21, 2009

2010 Lutheran Medical Center Malpractice and Professional Misconduct Questionnaire ("Lutheran Questionnaire"), and "no" to question 8 of the March 5, 2012 Lutheran Questionnaire but denied all other allegations in the Paragraphs and subparagraphs in D, E, F, and G of the SOC including but not limited to that he acted knowingly or with intent to mislead. In response to the SOC's Specification of Charges Respondent denied all allegations made under all of the Specifications including the incorporated Factual Allegations thereunder. Respondent also asserted four affirmative defenses as follows: First: Respondent claimed that his belief and understanding of pleading guilty to a violation of VTL §1192.04 was similar to a traffic violation and did not know that it was a misdemeanor at the time, and upon learning that it was a misdemeanor and required to be reported, he did correct the incorrect statements on his applications and renewals. Second: Respondent claimed that Lutheran Hospital reinstated his privileges after he advised Lutheran Hospital that he had made an incorrect statement on his application. Third: Respondent asserted that he mistakenly thought that his pleading guilty to a violation of VTL §1192.04, which was disposed of on or about September 1, 2009, would not violate the yet-to-begin probation from the prior OPMC consent settlement (BPMC No.09-171) which became effective on or about September 21, 2009. Fourth: Respondent asserted that he did not act knowingly or with intent to mislead or defraud.

FINDINGS OF FACT

1. Respondent was authorized to practice medicine in New York State on May 31, 2002, by the issuance of license number 224945 by the New York State Education Department. [Ex 2]
2. On or about May 29, 2009, Respondent was arrested in Woodstock, Town of New Paltz, New York. He was handcuffed and brought to a cell, he then paid \$10,000 bail and was released. [Ex 4; T 103-105, 123, 126]

3. From on or about May 29, 2009, Respondent, who hoped it was not a "real charge" [T 107, 110] was aware that criminal charges were pending against him. [Ex 4; T 107]
4. On August 17, 2009, in his Registration Renewal form for the 1/01/2010 through 12/31/2011 renewal period ("2010-2011 Registration Renewal form"), Respondent answered "no" to question 3 which read, "Are criminal charges pending against you in any court?" [Ex 5]
5. Respondent provided false information on his 2010-2011 Registration Renewal form when he answered "no" to question 3 because charges of Driving While Ability Impaired by Drugs in violation of VTL 1192.04 were then pending against him in the State of New York, County of Ulster, Town Court of New Paltz. [Ex 4; Ex 5; T 135-137] [FOF # 2, 3, 4]
6. On August 24, 2009, Respondent signed a Consent Agreement with OMPC in which he *inter alia* asked that the Board adopt the Consent Agreement, and Respondent's then attorney, Anthony Z. Scher, Esq., signed it on that date as well. [Ex 3, p 5, 7, 8]
7. On September 1, 2009, in the State of New York, County of Ulster, Town Court of New Paltz, Respondent was convicted upon a guilty plea of the crime of Driving While Ability Impaired by Drugs, a misdemeanor, in violation of VTL 1192.04 ("the 2009 conviction"). [Ex 4; T 103-105]
8. On September 4, 2009 the Department's attorney signed the Consent Agreement, on September 10, 2009 the OMPC Director signed it, on September 11, 2009 the Board Chair signed the Consent Order, and Board Order BPMC #09-171 ("Board Order") went into effect on September 21, 2009. [Ex 3, p 1, 2, 8]
9. Respondent was represented by counsel and negotiating the Consent Agreement around the time when charges were pending and when he pled guilty, but Respondent, in an effort to try

to avoid further problems [T 260-261] did not disclose these events to his then attorney or to OPMC. [Ex G; T 152-154, 161-162, 253-254, 259-261]

10. Respondent voluntarily entered into the Consent Agreement on August 24, 2009, and asserted that he could not successfully defend against at least one act of misconduct against him in the accompanying Statement of Charges which charges included practicing the profession of medicine with negligence on more than one occasion, ordering excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient, and inadequate recordkeeping. Respondent agreed to a Censure and Reprimand, a \$20,000 fine, a course of retraining, and 36 months of probation. Respondent's term of probation concluded on September 20, 2012. [Ex 3, p 3-4, 7, 9-13; T 24-25]
11. Probation term #1 of the Board Order required that "Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law §230(19)." [Ex 3, p 11]
12. On May 27, 2010, Respondent answered "No" to question 8 of the Lutheran Questionnaire he filed in connection with an application for reappointment to the hospital staff (the "2010 Lutheran Questionnaire"), which asked, "Have you ever been convicted of any criminal offense (not including a minor traffic violation)?" [Ex 6, p 6; T 137-139]
13. Respondent provided false information on his 2010 Lutheran Questionnaire when he answered "no" to question 8 because on September 1, 2009, Respondent had been convicted in the 2009 conviction. [Ex 4; Ex 6, p 6; T 137-139] [FOF # 7, 12]

14. Respondent's conduct did not conform to moral and professional standards of conduct when he falsely answered "no" to question 8 on his 2010 Lutheran Questionnaire. [Ex 3, p 11; Ex 6, p 6] [FOF # 7, 11, 12, 13]
15. On August 10, 2011, Respondent answered "No" to question 1 of the Registration Renewal form for the 1/01/2012 through 12/31/2013 renewal period ("2012-2013 Registration Renewal form") which read, "Have you been found guilty after trial, or pleaded guilty, no contest, or nolo contendere to a crime (felony or misdemeanor) in any court?" [Ex 7; T 139-141]
16. Respondent provided false information on his 2012-2013 Registration Renewal form when he answered "no" to question 1 because he did plead guilty in the 2009 conviction. [Ex 4; Ex 7; T 139-141] [FOF # 7, 15]
17. Respondent's conduct did not conform to moral and professional standards of conduct when he falsely answered "no" to question 1 on his 2012-2013 Registration Renewal form. [Ex 3, p 11; Ex 4; Ex 7] [FOF # 7, 11, 15, 16]
18. On March 5, 2012, Respondent answered "No" to question 8 of the Lutheran Questionnaire he filed in connection with an application for reappointment to the hospital staff (the "2012 Lutheran Questionnaire") which asked, "Have you ever been convicted of any criminal offense (not including a minor traffic violation)?" [Ex 8, p 3; T 148-150]
19. Respondent provided false information on his 2012 Lutheran Questionnaire when he answered "no" to question 8 because he was convicted in the 2009 conviction. [Ex 4; Ex 8, p 3; T 148-150] [FOF # 7, 18]

20. Respondent's conduct did not conform to moral and professional standards of conduct when he falsely answered "no" to question 8 on his 2012 Lutheran Questionnaire. [Ex 3, p 11; Ex 4; Ex 8, p 3] [FOF # 7, 11, 18, 19]

FACTUAL ALLEGATION NOT SUSTAINED

The Department charged Respondent with a violation of the Board Order's terms of probation for failing to provide the Director of OPMC with information, in writing, within 30 days of his conviction (SOC Factual Allegation C). Because the Board Order (effective September 21, 2009) was not in effect until three weeks after the date of the conviction (September 1, 2009), the Committee did not sustain this allegation.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Respondent claimed that his belief and understanding of pleading guilty to a violation of VTL §1192.04 was similar to a traffic violation and did not know that it was a misdemeanor at the time, and upon learning that it was a misdemeanor and required to be reported, he did correct the incorrect statements on his applications and renewals. The Committee did not accept this claim by Respondent as the Committee cannot and does not believe that Respondent, under the circumstances of being handcuffed and put in a cell and required to pay \$10,000 bail, did not know he was being charged with a crime or that he believed his conviction was similar to a traffic violation and not a misdemeanor. Also, Respondent did not start reporting his conviction soon enough and when he did it was only after he was being investigated by OPMC. As such, the Committee rejects this affirmative defense.

Second Affirmative Defense

Respondent claimed that Lutheran Hospital reinstated his privileges after he advised

Lutheran Hospital that he had made an incorrect statement on his application. The Committee finds that Respondent proved this affirmative defense but gave it little weight in determining its findings, conclusions or penalty because this Board is not bound by what Lutheran did with what Lutheran had before it.

Third Affirmative Defense

Respondent asserted that he mistakenly thought that his pleading guilty to a violation of VTL §1192.04, which was disposed of on or about September 1, 2009, would not violate the yet-to-begin probation from the prior OPMC consent settlement (BPMC No.09-171) which became effective on or about September 21, 2009. Because the Committee did not sustain Factual Allegation C in the SOC, this affirmative defense is moot.

Fourth Affirmative Defense

Respondent asserted that he did not act knowingly or with intent to mislead or defraud. The Committee believes otherwise and finds that Respondent acted knowingly and with intent to mislead or defraud. This is addressed in the Conclusions of Law section, infra.

CONCLUSIONS OF LAW

Respondent is charged with fourteen Specifications of professional misconduct under Educ. Law §6530. The Committee concludes that all fourteen Specifications are sustained².

Convicted of a Crime – Educ. Law §6530(9)(a)(i)

The first specification charged Respondent with committing professional misconduct under N.Y. Educ. Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law. On September 1, 2009, in the State of New York,

² any reference to Factual Allegation C (i.e., in the Second and Fourteenth Specifications) was not considered and the Specification was then sustained.

County of Ulster, Town Court of New Paltz, Respondent was convicted upon a guilty plea of the crime of Driving While Ability Impaired by Drugs, a misdemeanor, in violation of VTL 1192.04.

The first specification is therefore sustained.

Violation of a Term of Probation – Educ. Law §6530(29)

The second through fifth specifications charged Respondent with committing professional misconduct under N.Y. Educ. Law §6530(29) by violating any term of probation imposed on the licensee pursuant to PHL §230.

The Committee dismissed Factual Allegation C in the SOC and sustained all other charges which included providing false information on his 2012-2013 Registration Renewal form and on his 2010 and 2012 Lutheran Questionnaires. Probation term #1 required that “Respondent’s conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law §230(19).”

The Committee finds that providing false information on the 2012-2013 Registration Renewal form and the 2010 and 2012 Lutheran Questionnaires constitutes conduct that did not conform to moral and professional standards of conduct, and as such is a violation of probation term #1.

The second through fifth specifications (with the reference to Allegation C not considered) are therefore sustained.

Fraudulent Practice

The sixth through ninth specifications charged Respondent with committing professional misconduct as defined in N.Y. Educ. Law § 6530(2) by practicing the profession of medicine

fraudulently with respect to the answers he gave on his 2010-2011 and 2012-2013 Registration Renewal forms and on his 2010 and 2012 Lutheran Questionnaires.

The intentional misrepresentation or concealment of a known fact, made in some connection with the practice of medicine, constitutes the fraudulent practice of medicine. Matter of Choudhry v. Sobol, 170 A.D.2d 893, 894, 566 N.Y.S.2d 723, 725 (3d Dept. 1991), citing Matter of Brestin v. Commissioner of Education, 116 A.D.2d 357, 359, 501 N.Y.S.2d 923, 925 (3d Dept. 1986). In order to sustain a charge that a licensee was engaged in the fraudulent practice of medicine, the hearing committee must find that (1) a false representation was made by the licensee, whether by words, conduct or concealment of that which should have been disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation. Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (3d Dept. 1966), aff'd 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). The licensee's knowledge and intent may properly be inferred from facts found by the hearing committee, but the committee must specifically state the inferences it is drawing regarding knowledge and intent. Choudhry, at 894, citing Brestin. See also, Adler v. Bureau of Professional Medical Conduct, 211 A.D.2d 990, 622 N.Y.S.2d 609 (3d Dept. 1995); Berger v. Board of Regents, 178 A.D.2d 748; 577 N.Y.S.2d 500 (3d Dept. 1991).

The Committee found that in Respondent's answers to question 3 of the 2010-2011 Registration Renewal form, question 1 of the 2012-2013 Registration Renewal form and question 8 of the 2010 and 2012 Lutheran Questionnaires, (1) a false representation was made, (2) Respondent knew the representation was false, and (3) he intended to mislead through the false representation. The Committee inferred Respondent's *intent to mislead* as follows: he was avoiding the predictable repercussions of answering truthfully. Had he answered truthfully, those

repercussions could have included a determination to not renew his registration or privileges, the commencement of an investigation, and/or the filing of a complaint with OPMC which would likely result in additional disciplinary action. Respondent intended to mislead the NYS Education Department and Lutheran Hospital into believing that he was not convicted of a crime. The Committee inferred Respondent's *knowledge that the representation was false* from Respondent's admission that in an effort to try to avoid further problems [T 260-261] he did not disclose the arrest or conviction to his then attorney or OPMC. To know that he should not disclose the arrest or conviction to his then attorney or OPMC, Respondent had to know the charges were criminal in nature and that he pled guilty to a crime. Respondent needed to conceal the criminal charge and his conviction around the time he was entering into a consent agreement for disciplinary action and he knew he needed to conceal the criminal charge and his conviction when he filled out the four forms, and to conceal that information he had to lie, which he did. The Committee therefore believes Respondent's *knowledge that the representation was false and intent to mislead through the false representations* on the four forms is quite clear.

The sixth through ninth specifications are therefore sustained.

Making False Reports

The tenth through thirteenth specifications charged Respondent with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department with respect to answers he gave on his 2010-2011 and 2012-2013 Registration Renewal forms and on his 2010 and 2012 Lutheran Questionnaires.

To make a finding of a Respondent willfully making or filing a false report, a committee must establish that a licensee made or filed a false statement willfully, which requires a knowing,

intentional or deliberate act, Matter of Brestin v. Commissioner of Education, 116 A.D.2d 357, 501 N.Y.S.2d 923 (Third Dept. 1986). Merely making or filing a false report, without intent or knowledge about the falsity fails to constitute professional misconduct, Brestin (supra). The law provides, however, that a committee may reject a licensee's explanation for erroneous reports (such as errors resulting from inadvertence or carelessness) and draw the inference that the licensee intended or was aware of the misrepresentation with other evidence as the basis. (See Brestin).

The Committee determined that Respondent's answers were a knowing, deliberate, intentional act because he intended to answer "no" to the questions on those four forms. He did not merely make or file a false report without knowledge about the falsity, and his answers were not errors of inadvertence or carelessness. The Committee did not accept Respondent's assertions that his belief and understanding of pleading guilty to a violation of VTL §1192.04 was similar to a traffic violation and that he did not know that it was a misdemeanor at the times he filled out these forms in 2010, 2011, and 2012 or that he did not know that criminal charges were pending against him when he filled out the form in August 2009.

The tenth through thirteenth specifications are therefore sustained.

Moral Unfitness – Educ. Law §6530(20)

The fourteenth specification charged Respondent with committing professional misconduct under N.Y. Educ. Law §6530(9)(a)(i) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice.

The Committee finds that providing false information on the 2010-2011 and 2012-2013 Registration Renewal forms and on the 2010 and 2012 Lutheran Questionnaires constitutes engaging in conduct in the practice of the profession of medicine that evidences moral unfitness

to practice. Morally fit physicians/licenses do not lie or provide false information on the very forms that enable them to be credentialed at hospitals of their choosing in this state or to maintain current registration of their license to practice medicine and treat patients in this state.

The fourteenth specification (with reference to Allegation C not considered) is therefore sustained.

DISCUSSION

The Department presented one witness, April Soltren, Senior Medical Conduct Investigator in OPMC's Physician Monitoring Unit. The Committee found Ms. Soltren to be credible but gave her testimony little weight because the documents speak for themselves.

Respondent testified in his own behalf and he called six witnesses to testify. The Committee found Dr. Amitina to be credible but not comprehensive and did not give her testimony much weight. It was clear to the Committee that Dr. Amitina, inasmuch as she got to know and respect Respondent, did not know about his conviction [T 205-206] which was pivotal to this case. The Committee found Mr. Belushin, Mr. Spektor, Mr. Borisou, and Mr. Irinskiy to be credible but their testimony did not add anything to the case, and the Committee found Dr. Goncharov generally credible but his testimony did not add anything to the case.

The Committee found Respondent to be redundant, incomplete, incredible, and in a state of denial. He skated around the issues, blamed others for what he did, showed no genuine signs of regret, remorse, or repentance³ and seemed to believe that what he did was nothing at all. The Committee found particularly offensive Respondent's insistence, despite having been placed in handcuffs, put in a cell, and required to pay bail, that he didn't know the charges were criminal or that his plea was to a crime. The Committee cannot believe that Respondent wanted to know if

³ However, the Panel believes one cannot repent if one does not admit, and Respondent did not admit. His regret or remorse was about getting caught.

the charges and plea were to a crime because when he asked his criminal attorney (literally or figuratively) "100 times ... a million times" [T 132] if it was a crime and his criminal attorney didn't know, he could have asked the plethora of attorneys he knew if it was a crime but didn't. Respondent's testimony demonstrates that either he didn't want to know so that he could lie on forms and feign ignorance or he knew but claims he didn't to exonerate himself.

HEARING COMMITTEE DETERMINATION AS TO PENALTY

Respondent asked that the penalty imposed would be one that would allow him to continue his life's work as a physician, and his attorney, in requesting that the discipline imposed be one that would allow Respondent to care for his patients, proposed a censure and reprimand, a \$10,000 fine, and community service of \$100,000 of free medical care to the community over a period of the next seven years. The Department argued that Respondent's professional misconduct no longer entitles him to the trust required of those physicians who are licensed to practice medicine in New York State, that he has not given the Committee any reason to believe that he would act in good faith to comply with any type of discipline imposed on him short of license revocation, and as such recommended a revocation of Respondent's license to practice medicine in New York State.

The Committee, having considered the full range of penalties available pursuant to PHL §230-a, determined that the appropriate penalty for Respondent's misconduct is revocation. The Committee is convinced that Respondent does not have remorse, he does not think he's guilty of anything, he does not think what he did is serious and he would like this Board to think it's not serious either. The Committee finds what Respondent did to be quite serious.

This is Respondent's second time before the Board, and this Committee of the Board finds that if Respondent were allowed to continue to practice he would make no modifications in

his behavior; this is based in large part on the fact that the current misconduct occurred when Respondent was negotiating his consent agreement with the Board and while he was on probation for his first disciplinary action. As such the Committee finds that this Respondent, who appeared before this Board claiming so incredibly that he did not know that he had been arrested for a crime and thought he was being handcuffed for a minor traffic violation, does not have the insight to benefit from anything less than revocation and the Public would not benefit from any other penalty.

ORDER

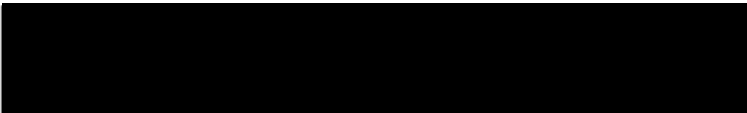
IT IS HEREBY ORDERED THAT:

1. The following charges of misconduct under Educ. Law §6530 are sustained:

- §6530(9)(a)(i) – convicted of a crime
- §6530(29) – violation of a term of probation
- §6530(2) – fraudulent practice
- §6530(21) – willfully making or filing a false report
- §6530(20) – moral unfitness

2. Pursuant to PHL §230-a(4) Respondent's license to practice medicine shall be revoked.
3. This order shall be effective upon service on the Respondent by personal service or by certified mail as required under PHL §230(10)(h)

DATED: New York, New York
March 16, 2015



THEA GRAVES PELLMAN, Chair
JAMES R. DICKSON, M.D.
JERRY WAISMAN, M.D.

APPENDIX 1

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

IN THE MATTER
OF
PAVEL KULIK, M.D.

NOTICE
OF
HEARING

TO: Richard S. Harrow, Esq.
O'Connell & Aronowitz
54 State Street
Albany, NY 12207-2501



PAVEL KULIK, M.D.
2000 Kings Highway
Suite 1E
Brooklyn, NY 11229-1445

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on November 12, 2014, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, NY 10007, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to

require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here [REDACTED]

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the

Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION
THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW
YORK STATE BE REVOKED OR SUSPENDED, AND/OR
THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS
SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a.
YOU ARE URGED TO OBTAIN AN ATTORNEY TO
REPRESENT YOU IN THIS MATTER.

DATE: October 1, 2014
New York, NY


Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be directed to:
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Bureau of Professional Medical Conduct
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IN THE MATTER
OF
PAVEL KULIK, M.D.

STATEMENT
OF
CHARGES

PAVEL KULIK, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 31, 2002 by the issuance of license number 224945 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 21, 2009, Order BPMC # 09-171, went into effect, imposing upon Respondent a penalty of a Censure and Reprimand, a \$20,000 fine, a course of retraining, as specified, and 36 months of probation, with various terms, as set forth in an attachment to the Order (Exhibit "B" of Order BPMC #09-171).

Respondent's term of probation concluded on September 20, 2012. These terms of probation included the following:

- 1. "Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law Sections 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub health Law Sec. 230(19). "
- 3. "Respondent shall provide the Director, Office of Professional Medical Conduct" . . . with the following information, in writing, and ensure that this information is kept current: . . . all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent

shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information."

B. On or about September 1, 2009, Respondent was convicted, upon a guilty plea, of the crime of Driving While Ability Impaired By Drugs, a misdemeanor, in violation of VTL 1192.04.

C. On or after September 21, 2009, Respondent, in violation of the terms of probation imposed upon him pursuant to Order BPMC # 09-171 (see A above), failed to provide the Director of OPMC with information, in writing, within 30 days of his criminal conviction of Driving While Under the Influence of Drugs on September 1, 2009 (see B above).

D. On or about August 17, 2009, Respondent knowingly, and with intent to mislead, falsely answered "no" to question 3 of the Registration Renewal form he filed with the New York State Education Department, Office of the Professions; i.e., "Are criminal charges pending against you in any court?" when, in fact, he knew that charges of "Driving While Ability Impaired by Drugs" in violation of VTL 1192.04 were then pending against him in the State of New York, County of Ulster, Town Court of New Paltz.

E. On or about May 27, 2010, Respondent knowingly answered "No" falsely to question 8 of the Lutheran Medical Center Malpractice and Professional Misconduct Questionnaire he filed in connection with an application for reappointment to the hospital staff, which asked, "Have you ever been convicted of any criminal offense (not including a minor traffic violation)?", when, in fact, he knew that on or about September 1, 2009, he had been convicted in the State of New York, County of Ulster, Town Court of New Paltz, of the crime of Driving While Ability Impaired by Drugs, a misdemeanor, in violation of VTL 1192.04.

1. Respondent did so with intent to mislead.

2. Respondent did so in violation of the terms of probation imposed upon him pursuant to Order BPMC # 09-171 (see A above).

F. On or about August 10, 2011, Respondent knowingly answered "No" falsely to question 1 of the Registration Renewal form for the Renewal Period 1/01/2012 through 12/31/2013 that he filed with the New York State Education Department, Office of the Professions; i.e., "Have you been found guilty after trial, or pleaded guilty, no contest, or nolo contendere to a crime (felony or misdemeanor) in any court?" when, in fact, he knew that on or about September 1, 2009, he had been convicted in the State of New York, County of Ulster, Town Court of New Paltz, of the crime of Driving While Ability Impaired by Drugs, a misdemeanor, in violation of VTL 1192.04.

1. Respondent did so with intent to mislead.
2. Respondent did so in violation of the terms of probation imposed upon him pursuant to Order BPMC # 09-171 (see A above).

G. On or about March 5, 2012, Respondent knowingly answered "No" falsely to question 8 of the Lutheran Medical Center Malpractice and Professional Misconduct Questionnaire he filed in connection with an application for reappointment to the hospital staff, which asked, "Have you ever been convicted of any criminal offense (not including a minor traffic violation)?", when, in fact, he knew that on or about September 1, 2009, he had been convicted in the State of New York, County of Ulster, Town Court of New Paltz, of the crime of Driving While Under the Influence of Drugs, a misdemeanor, in violation of VTL 1192.04.

1. Respondent did so with intent to mislead.
2. Respondent did so in violation of the terms of probation imposed upon him pursuant to Order BPMC # 09-171 (see A above).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

CRIMINAL CONVICTION (N.Y.S.)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law, as alleged in the facts of the following:

1. Paragraph B.

SECOND THROUGH FIFTH SPECIFICATION

VIOLATING ANY TERM OF PROBATION OR CONDITION OR LIMITATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(29) by violating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law, as alleged in the facts of the following:

2. Paragraphs A, B and C.
3. Paragraphs A, B, E and E.2.
4. Paragraphs A, B, F and F.2.
5. Paragraphs A, B, G and G.2

SIXTH THROUGH NINTH SPECIFICATION

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently, as alleged in the facts of the following:

6. Paragraph D.
7. Paragraphs B, E and E.1.
8. Paragraphs B, F and F.1.
9. Paragraphs B, G and G.1.

TENTH THROUGH THIRTEENTH SPECIFICATION

FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

10. Paragraph D.
11. Paragraphs B and E.
12. Paragraphs B and F.
13. Paragraphs B and G.

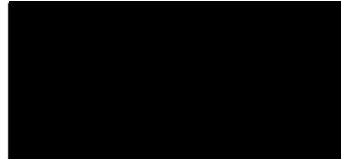
FOURTEENTH SPECIFICATION

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

14. Paragraphs A, B, C, D, E, E.1, E.2, F, F.1, F.2, G, G.1 and G.2.

DATE: September 19, 2014
New York, New York



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Bureau of Professional Medical Conduct

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