



Department of Health

ANDREW M. CUOMO
Governor

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

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

January 26, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marc S. Nash, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237-0032

Eugene DeSimone, M.D.
#66886-050 FCI Fort Dix
FCI Fort Dix Federal Correctional Institution
Joint Base MDL, New Jersey 08640

Eugene DeSimone, M.D.


Eugene DeSimone, M.D.
Hudson Primary Care
1265 Paterson Plank Road
Secaucus, New Jersey 07094

RE: In the Matter of Eugene DeSimone, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 16-022) 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.

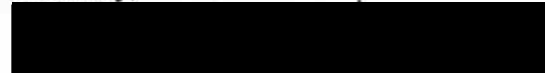
The notice of review served on the Administrative Review Board should be forwarded to:

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:cah
Enclosure

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

In the matter of

Eugene DeSimone, M.D.
NYS license # 151936

**Determination
and Order**

BPMC #16-022

COPY

A notice of referral proceeding and statement of charges, both dated August 31, 2015, were served on Respondent **Eugene DeSimone, M.D.** The statement of charges alleged professional misconduct in violation of New York State Education Law 6530. A hearing was held at offices of the New York State Department of Health, Albany, New York, on December 17, 2015.

Pursuant to Public Health Law 230(10)(e), **Mohammed-Reza Ghazi-Moghadam, M.D.**, Chairperson, **Arsenio G. Agopovich, M.D.**, and **Janet R. Axelrod, Esq.**, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee. **John Harris Terepka**, Administrative Law Judge, served as the administrative officer.

The Department of Health (the Petitioner) was represented by **Mark S. Nash, Esq.** **Eugene DeSimone, M.D.**, (the Respondent) did not appear, although duly served with notice of the hearing in conformity with the requirements of PHL 230(10)(d). (Exhibit 2.) Evidence was received and a transcript of the proceedings was made. After consideration of the entire record, the hearing committee issues this determination and order sustaining the charges and revoking the Respondent's license to practice medicine.

JURISDICTION

As is set forth in Public Health Law 230(1)&(7) and Education Law 6530, the legislature created the State Board for Professional Medical Conduct in the Department of Health and authorized it to conduct disciplinary proceedings in matters of professional medical conduct. In this case, the Respondent, a physician, has been charged with misconduct pursuant to Ed.L 6530(9)(a)(ii).

Pursuant to PHL 230(10)(p), a hearing on circumscribed issues, or "direct referral proceeding," is authorized when a licensee is charged solely with a violation of Ed.L 6530(9). Charges of misconduct under Ed.L 6530(9) are based upon a criminal conviction or an administrative violation, in New York State or another jurisdiction, establishing conduct that would constitute a crime or professional misconduct if committed in New York. The scope of the hearing is limited to whether there is a relevant conviction or administrative determination and if so, to a determination of the nature and severity of the penalty to be imposed. PHL 230(10)(p). Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51.

EVIDENCE

Witnesses for the Petitioner:	None
Petitioner exhibits:	1 - 4
Witnesses for the Respondent:	None
Respondent exhibits:	A - B
ALJ exhibit:	I

A transcript of the hearing was made. (Transcript, pages 1-21.)

FINDINGS OF FACT

An opportunity to be heard having been afforded the parties and evidence having been considered, it is hereby found:

1. Respondent Eugene DeSimone, M.D. was authorized to practice medicine in New York State on October 29, 1982 under license number 151936. (Exhibit 3.)
2. On May 5, 2015, in the United States District Court, District of New Jersey, the Respondent pleaded guilty to and was convicted of accepting bribes in violation of 18 U.S.C. 1952(a)(3) and 18 U.S.C. 2. Over a three year period, the Respondent accepted bribes from a medical laboratory in return for his referral of patient blood specimens for testing that was billed to Medicare and private payors. The Respondent was sentenced to 37 months incarceration, followed by supervised release for one year, with conditions, and a \$5,000 fine. (Exhibit 4.)

HEARING COMMITTEE DETERMINATION

After reviewing records obtained from the United States District Court, District of New Jersey (Exhibit 4), the hearing committee unanimously determined that, as alleged in the statement of charges, the Respondent violated Ed.L. 6530(9)(a)(ii) which defines professional misconduct, in pertinent part, as:

9. (a) Being convicted of committing an act constituting a crime under... (ii) federal law.

The Petitioner recommended revocation of the Respondent's license. (Transcript, pages 14-15.)

The Respondent was offered the opportunity to request participation in the hearing by telephone, but failed to make any such request. (Exhibit I; Transcript, pages 18-19.) The hearing committee did, however, consider the Respondent's written submissions (Exhibits A,

B), which admitted the bribery conviction but essentially attempted to deny any wrongdoing. His excuses for his actions amounted to an implausible claim that he thought he was receiving rent, not bribes, from a laboratory to which he referred blood specimens worth nearly \$1 million in claims over a three year period. He also blamed his attorneys for not fully investigating the circumstances and the law. His explanations are inconsistent with his guilty plea and sentence to more than three years of incarceration. The hearing committee agreed that the evidence, and the Respondent's continuing denial of responsibility for his criminal conduct, established the Respondent's license should be revoked.

The hearing committee's vote sustaining the charge and revoking the Respondent's license was unanimous (3-0).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in New York State is revoked.

This order shall be effective upon service on the Respondent by personal service or by registered or certified mail as required under PHL 230(10)(h).

Dated: Albany, New York

By:

Mohammed-Reza Ghazi-Moghadam, M.D., Chair

Arsenio G. Agopovich, M.D.

Janet R. Axelrod, Esq.

To: Marc S. Nash, Esq.
Bureau of Professional Medical Conduct
Corning Tower, Empire State Plaza
Albany, New York 12237-0032

Eugene DeSimone, M.D.

Eugene DeSimone, M.D.
Hudson Primary Care
1265 Paterson Plank Road
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#66886-050 FCI Fort Dix
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Joint Base MDL, New Jersey 08640

APPENDIX I

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

IN THE MATTER
OF
EUGENE DESIMONE, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: Eugene DeSimone, M.D.
[REDACTED]

Eugene DeSimone, M.D.
Hudson Primary Care
1265 Paterson Plank Road
Seacaucus, NJ 07094

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on November 19th, 2015, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.¹

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State

¹ For GPS purposes, enter "Menands", not "Albany".

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 (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not later 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. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated 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.

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 proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an

attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. 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.

DATED: Albany, New York
August 31, 2015


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Michael A. Hiser
Deputy Counsel
Bureau of Professional Medical Conduct
Corning Tower - Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

IN THE MATTER
OF
EUGENE DESIMONE, M.D.

AMENDED
STATEMENT
OF
CHARGES

Eugene DeSimone, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 29, 1982, by the issuance of license number 151936 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 5, 2015, in the United States District Court, District of New Jersey, Respondent was convicted of accepting bribes in violation of the Interstate and Foreign Travel or Transportation in Aid of Racketeering federal statute [18.U.S.C. §1952(a)(3) and 18 U.S.C. §2], a felony. Respondent was sentenced to a term of 37 months incarceration, followed by one year of supervised release with special conditions including mental health treatment, and \$5,000 fine.

SPECIFICATION OF MISCONDUCT

Respondent is charged with committing professional misconduct as defined in New York Education Law Section 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law, as alleged by the facts of the following:

1. The facts in Paragraph A.

DATED: December 8, 2015
Albany, New York



Michael A. Hiser, Esq.
Deputy Counsel
Bureau of Professional Medical Conduct