



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

April 7, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Craig E. Blum, M.D.

Redacted Address

Michael J. Roach, Esq.
Conners & Vilaro, LLP
1000 Liberty Building
424 Main Street
Buffalo, New York 14202

Robert Bogan, Esq.
NYS Department of Health
433 River Street – 4th Floor
Troy, New York 12180

RE: In the Matter of Craig E. Blum, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-62) 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

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., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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,
Redacted Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:nm
Enclosure

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

COPY

IN THE MATTER
OF
CRAIG E. BLUM, M.D.

DETERMINATION

AND

ORDER

BPMC-09-62

A hearing was held on March 17, 2009 at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated February 6, 2009, were served upon the Respondent, **CRAIG E. BLUM, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Andrew J. Merritt, M.D.**, Chair, **Arsenio G. Agopovich, M.D.** and **Gail S. Homick**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent, **CRAIG E. BLUM, M.D.**, did appear with counsel, **MICHAEL J. ROACH, Esq.** of **CONNORS & VILLARDO, LLP**, and was duly served. Evidence was received and transcripts of these proceedings were 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). The statute provides for an expedited hearing when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(i) – by being convicted of committing an act constituting a crime under New York Law. Specifically, the Respondent was convicted of driving while intoxicated, in violation of New York Vehicle and Traffic Law §1192(3), a misdemeanor. Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 2.

WITNESSES

For the Petitioner:

None

For the Respondent:

Dr. BLUM
Dr. GALPIN
Dr. FERRICK

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. CRAIG E. BLUM, M.D., the Respondent, did appear at the hearing and was duly served and notified of the hearing on February 6, 2009. (Petitioner's Exhibit 2.)
2. CRAIG E. BLUM, M.D., the Respondent, was authorized to practice medicine in New York State on July 9, 1976, by the issuance of license number 127609 by the New York State Education Department (Petitioner's Ex. 3).
3. On or about September 14, 2007, the Respondent was convicted of committing an act constituting a crime under New York Law. Specifically, the Respondent was convicted of driving while intoxicated, in violation of New York Vehicle and Traffic Law §1192(3), a misdemeanor. This conviction was in the West Seneca Town Court, Erie County, State of New York. (Petitioner's Ex. 4).
4. The above offense was committed in 2006 and it resulted in the aforesaid September 2007 conviction in violation of New York Penal Law §1192(3) a misdemeanor and it occasioned a sentence of a \$500 fine plus costs of \$190. (Petitioner's Ex. 4).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York State law, in that he was found guilty of the crime of Driving While Intoxicated in Erie County.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, with counsel. There was no dispute about jurisdiction. There was also no dispute about the basic facts of this case. The Respondent acknowledged on the record that he was convicted of Driving While Intoxicated and he admitted, on the record, that he was an alcoholic.

The record in this case (Exhibit 4) thus clearly establishes that Respondent was convicted of driving while intoxicated in the State of New York. The offense was committed in 2006 and it resulted in the September 2007 conviction in violation of New York Penal Law §1192(3) a misdemeanor and it occasioned a sentence of a \$500 fine plus costs of \$190.

The Respondent offered the testimony of two character witnesses, Doctors Robert Galpin and Michael Ferrick, both Orthopaedists from Buffalo. They both testified to the fine work the Respondent has done with a deprived population in the Buffalo area. They both indicated that the Respondent was never observed at work under the influence of alcohol.

They both indicated that the Respondent is an outstanding surgeon who is always professional, caring and competent. It was stressed by both of these doctors that the Respondent is an important and integral part of the University Orthopaedics faculty and program.

Respondent's Attorney made a motion, Respondent's Exhibit A, to have this matter dismissed in the interests of justice and for the Respondent to submit to a non-disciplinary order with conditions tantamount to probation. This application was rejected and the panel found that Respondent did commit professional misconduct by his drinking and driving and they, unanimously, voted for a disciplinary finding with a closely monitored probation.

It appears to his credit, however, that the Respondent sought treatment for his alcoholism and went into an extensive rehabilitation program after his conviction. The panel was impressed with the Respondent's candor and the efforts that he has made to rehabilitate himself and maintain his sobriety, especially his involvement with the Committee for Physician Health (CPH). The Hearing panel agreed with the Department's attorney that a revocation is not warranted in this case and that probation is an appropriate penalty. The panel was concerned, however, that the Respondent has had two proven instances of relapse since 2000 and that one of these relapses occurred while the Respondent was in treatment and under some supervision for his sobriety. Accordingly, the panel determined that his probation should be closely monitored by the Department of Health.

The panel considered the full range of penalties available in the case and determined that a five-year probation, under the supervision of the Department, would be appropriate along with a censure and reprimand.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**.
2. The Respondent is Censured and Reprimanded.
3. Respondent is placed on a term of probation of five years. The terms of the probation are attached hereto as Appendix I and are incorporated into this Order.
4. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

**DATED: Albany, New York
March 30, 2009**

Redacted Signature

Andrew J. Merritt, M.D., Chair
Arsenio G. Agopovich, M.D.
Gail S. Homick

To:
CRAIG E. BLUM, M.D., Respondent

Redacted Address

Michael J. Roach, Esq., Attorney for Respondent
 Conners & Vilardo, LLP
 1000 Liberty Building
 424 Main Street
 Buffalo, NY 14202

Robert Bogan, Esq., Attorney for Petitioner
 Associate Counsel
 NYS Department of Health
 Bureau of Professional Medical Conduct
 433 River Street, Suite 303
 Troy, New York 12180-2299

APPENDIX 1

Terms of Probation

1. 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. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; 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. 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. Respondent shall personally meet with a person designated as impairment monitor by the Director of OPMC as requested by the Director.
4. Throughout the period of probation, the Respondent's sobriety shall be observed by the impairment monitor at times and places as requested by the Director of OPMC. The impairment monitor shall be proposed by the Respondent and this appointment shall be subject to the written approval of the Director of OPMC. The impairment monitor shall not be a family member or personal friend, or be in a professional relationship, which could pose a conflict with supervision responsibilities. The costs and expenses of this monitor are solely the responsibility of the Respondent.
5. Respondent shall ensure that the impairment monitor is familiar with the Order and terms of probation, and be aware of the alcohol and substance abuse issues in this case, and be willing to report to OPMC. Respondent shall ensure that the impairment monitor is in a position to regularly observe and assess Respondent's sobriety. Respondent shall cause this monitor to report within 24 hours any suspected impairment, inappropriate behavior, or possible misconduct to OPMC.
6. Respondent shall submit, at the request of a monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol. This monitoring will be on a random, seven-days a week,

twenty-four hours a day basis. Respondent shall report for a drug screen within four (4) hours of being contacted by the monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by Respondent or a test is positive for any unauthorized substance.

7. Respondent shall meet with the impairment monitor on a regular basis who will submit quarterly reports to OPMC certifying Respondent's sobriety. These reports are to include a) forensically valid results of all drug/alcohol monitoring tests to be performed at a frequency of no less than weekly for the first 12 months of the period of probation, then at a frequency to be proposed by the sobriety monitor and approved by OPMC and b) an assessment of self-help group attendance (e.g., AAINA/Caduceus, etc.), 12 step progress, etc.

8. Respondent shall authorize the impairment monitor to submit quarterly written reports to the Director of OPMC, regarding Respondent's sobriety, general demeanor, and other such on-duty conduct as the impairment monitor deems appropriate to report.

9. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State, Respondent shall notify the Director of OPMC, in writing, if 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, 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.

10. 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.

11. Respondent shall continue to participate in the program for sobriety of the Committee for Physician Health, or similar program approved by OPMC, throughout the period of this probation and shall agree to full disclosure of his records at CPH to OPMC.

12. Respondent shall remain active in self help groups such as, but not limited to, Narcotics Anonymous, Alcoholics Anonymous and Caduceus.

13. Respondent shall notify all treating physicians of his/her history of alcohol/chemical dependency. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating physicians.

14. Respondent shall continue in counseling or other therapy with a therapist as long as the therapist determines is necessary, or for the period of time dictated in the Order. Respondent shall cause the therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. Respondent shall cause the therapist to report to OPMC within 24 hours if Respondent leaves treatment against medical advice, or displays any symptoms of a suspected or actual relapse.

15. Respondent shall comply with any request from OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of OPMC.

APPENDIX 2

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



IN THE MATTER

OF

CRAIG E. BLUM, M.D.
CO-08-04-2726-A

NOTICE OF

REFERRAL

PROCEEDING

TO: Craig E. Blum, M.D., c/o Michael J. Roach, Esq.
Conners & Vilaro, LLP
1000 Liberty Building
424 Main Street
Buffalo, New York 14202

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures 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 the 17th day of March, 2009, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

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 Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, 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 ten days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), 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. 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 New York State Administrative Procedure 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 ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here MGD

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.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

Feb. 6, 2009

Redacted Signature

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Michael G. Bass
Assistant Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building
Room 2512
Albany, New York 12237
(518) 473-4282

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

IN THE MATTER
OF
CRAIG E. BLUM, M.D.
CO-08-04-2726-A

STATEMENT
OF
CHARGES

CRAIG E. BLUM, M.D., the Respondent, was authorized to practice medicine in New York state on July 9, 1976, by the issuance of license number 127609 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 14, 2007, in the West Seneca Town Court, Criminal Part, Erie County, New York, Respondent was found guilty of Driving while intoxicated, in violation of New York Vehicle and Traffic Law, Section 1192(3), a misdemeanor, and was sentenced to a \$500.00 fine and a \$190.00 surcharge.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by being of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *Feb. 6*, 2009
Albany, New York

Redacted Signature

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct