

**DOH** STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.  
Commissioner

James W. Clyne, Jr.  
Executive Deputy Commissioner

Public

October 19, 2010

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Jude B. Mulvey, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

Andrew John Beistel, D.O.  
REDACTED

**RE: In the Matter of Andrew John Beistel, D.O.**

Dear Parties:

Enclosed please find the Determination and Order (No. 10-191) 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

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

-----X  
IN THE MATTER : DETERMINATION  
OF : AND  
ANDREW JOHN BEISTEL, D.O. : ORDER  
CO-09-08-4930-A :  
-----X

BPMC #10-191  
**COPY**

A Notice of Referral Proceeding and a Statement of Charges, both dated May 14, 2010, were served upon the Respondent, Andrew John Beistel, D.O. C. DEBORAH CROSS, M.D. (Chair), THERESE G. LYNCH, M.D., and PAUL J. LAMBIASE, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Robert Bogan, Esq., Associate Counsel. The Respondent appeared *pro se*. A hearing was held on September 22, 2010. Evidence was received and witnesses sworn and heard 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 where a licensee is charged solely with a violation of Education Law §6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(b), in that he was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York State, as well as Education Law §6530(d) by having his license revoked by the duly authorized professional disciplinary agency of another state, for conduct which would, if committed in New York State, constitute professional misconduct. A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. Andrew John Beistel, D.O. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on December 29 1997 by the issuance of license number 209239 by the New York State Education Department. (Ex. #4).

2. On or about June 10, 2009, the State Medical Board of Ohio, hereinafter the "Ohio Board"), by a findings, Order and Journal Entry (hereinafter the "Ohio Order"), revoked Respondent's osteopathic medical and surgery certificate, based on impairment due to alcohol and/or chemical dependency and answering falsely on his application for renewal of his osteopathic medical and surgery certificate. (Exhibit #5).

3. On or about August 12, 2010, Respondent entered into a Consent Agreement with the Ohio Board. Under the terms of this Agreement, the Ohio Board granted Respondent a new osteopathic medical and surgery certificate, subject to a number of probationary terms. Pursuant to the terms of the agreement,

Respondent agreed not to request termination of the Consent Agreement for a minimum of five years. (Exhibits B and C).

4. Respondent has entered into an aftercare contract with Glenbeigh, a rehabilitation program affiliated with the Cleveland Clinic. (Exhibit E).

5. Respondent is now employed by One Health Ohio, a community medical and dental center, as a family physician. (Exhibit D).

#### CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The evidence clearly established that the Ohio Board revoked Respondent's osteopathic medical and surgery certificate, following an administrative hearing. The Board found that Respondent was impaired for the practice of medicine due to alcohol and drug addiction. The Board further found that Respondent had made false statements on his renewal application regarding his impairment and a relapse from recovery. Respondent's conduct, had it occurred in New York State, would constitute violations of New York Education Law §6530(2) [practicing the profession fraudulently]; §6530(8) [being an habitual use of alcohol and/or drugs]; and §6530(21) [making or filing false reports].

Accordingly, he is guilty of professional misconduct in violation of New York Education Law §6530(9)(b) and §6530(9)d). Therefore, the First and Second Specifications of professional misconduct set forth in the Statement of Charges are sustained.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent shall be placed on probation for a period of five years from the effective date of this Determination and Order. The probation shall be held in abeyance until such time as Respondent determines to return to New York State to practice medicine. The complete terms of probation shall mirror those imposed by the Ohio Board, and are contained in Appendix II of this Determination and Order, and incorporated herein. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent came before the Hearing Committee and freely admitted his struggles with addiction. He gave very moving testimony regarding the impact that his addiction has had on his life and family, and the positive changes brought by his ongoing sobriety. He noted that he has been clean and sober since July

30, 2008. He is working with a sponsor through Alcoholics Anonymous, meeting with the sponsor 3-4 times a week. He attends two AA meetings, and a Caduceus meeting every week. In addition, Respondent has been registered with a 3<sup>rd</sup> party laboratory testing program for random drug and alcohol screens since August, 2008.

Respondent has just begun employment with a state sponsored primary care clinic in Youngstown, Ohio, with a practice monitor supervising his clinical work. Although Respondent has no current plans to return to New York State to practice, he doesn't wish to rule it out for the future. In addition, he expressed concern that a revocation or suspension of his New York medical license could adversely effect his ability to practice in Ohio.

The Hearing Committee unanimously determined that a five year period of probation, with monitoring requirements similar to those imposed by the Ohio Board, will adequately protect the public, while allowing Respondent the opportunity to continue and maintain his rehabilitation.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) are SUSTAINED;

2. Respondent's license to practice medicine in New York State be and hereby is placed on PROBATION for a period of FIVE (5) YEARS from the effective date of this Determination and Order. The complete terms of probation are set forth in Appendix II and incorporated herein;

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Elmsford, New York

*October 16*, 2010

REDACTED

C. DEBORAH CROSS, M.D. (CHAIR)

THERESE G. LYNCH, M.D.

PAUL J. LAMBIASE

TO: Jude B. Mulvey, Esq.  
Associate Counsel  
New York State Department of Health  
Corning Tower, Room 2512  
Albany, New York 12237

Andrew John Beistel, D.O.

REDACTED

APPENDIX I

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

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IN THE MATTER  
OF  
ANDREW JOHN BEISTEL, D.O.  
CO-09-08-4930-A

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STATEMENT  
OF  
CHARGES

ANDREW JOHN BEISTEL, D.O., Respondent, was authorized to practice medicine in New York state on December 29, 1997, by the issuance of license number 209239 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about June 10, 2009, the State Medical Board of Ohio, (hereinafter "Ohio Board"), by a Findings, Order and Journal Entry (hereinafter "Ohio Order"), REVOKED Respondent's osteopathic medical and surgery certificate, based on impairment due to alcohol and/or chemical dependency and answering falsely on his application for renewal of his osteopathic medical and surgery certificate.

B. The conduct resulting in the Ohio Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(2) (practicing the profession fraudulently);
2. New York Education Law §6530(8) (being a habitual abuser of alcohol, or being dependent on a or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects); and/or
3. New York Education Law §6530(21) (making or filing a false report required by the department of health or the education department).

SPECIFICATIONS  
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(d) by having his license to practice medicine revoked and/or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license revocation and/or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *May 14*, 2010  
Albany, New York

REDACTED

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

APPENDIX II

## Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her 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 by the Director of OPMC as requested by the Director.
4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. 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.
6. 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.
7. 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.

8. Within thirty (30) days of the effective date of the Order, 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.
  - a. 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 (no less than 12) of records maintained by Respondent, including patient records, prescribing information and office records. The review 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. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
  - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
  - d. 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
9. Respondent shall remain drug/alcohol free.
10. Respondent shall remain active in self help groups such as, but not limited to, Narcotics Anonymous, Alcoholics Anonymous and Caduceus.
11. 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.
12. Respondent shall practice only when monitored by qualified health care professionals ("sobriety monitor", "practice monitor" and "therapist") proposed by Respondent and approved, in writing, by the Director of OPMC. Monitors shall not be family members or personal friends, or be in professional relationships which would pose a conflict with monitoring responsibilities.
13. Respondent shall ensure that the monitors are familiar with Respondent's drug/alcohol dependency and with the terms of this Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.

14. 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.
15. Respondent shall meet with a sobriety 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 six (6) per month 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., AA/NA/Caduceus, etc.), 12 step progress, etc.
16. Respondent shall avoid all substances which may cause positive urines such as herbal tea, poppy seeds, mouthwash, cough medication. Any positive result will be considered a violation of this Order.
17. Respondent shall practice medicine only when supervised in his/her medical practice. The practice supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC. Respondent shall not practice medicine until a practice supervisor has been approved. Respondent shall ensure that the practice supervisor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the practice supervisor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.
18. Respondent shall cause the practice supervisor to review Respondent's practice regarding the prescribing, administering, dispensing, inventorying, and disposal of controlled substances.
19. Respondent shall cause the practice supervisor to submit quarterly reports to OPMC regarding the quality of Respondent's medical practice, including the evaluation and treatment of patients, physical and mental condition, time and attendance or any unexplained absences from work, prescribing practices, and compliance or failure to comply with any term of probation.
20. Respondent shall engage and continue in therapy with a therapist in accordance with a treatment plan approved by the Director, OPMC.
21. 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.
22. 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. Respondent shall bear all expenses of such evaluation.

23. Respondent shall cause the Ohio Board to forward to OPMC copies of all reports of compliance or non-compliance submitted to the Ohio Board .
24. 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.