

Public



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

July 13, 2009

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Thomas Plachy, Jr., M.D.  
a/k/a Robert T. Plachy, M.D.  
Redacted Address

Wilfred T. Friedman, Esq.  
60 East 42<sup>nd</sup> Street – 40<sup>th</sup> Floor  
New York, New York 10165

Robert Bogan, Esq.  
NYS Department of Health  
433 River Street 4<sup>th</sup> Floor  
Troy, New York 12180

**RE: In the Matter of Robert Thomas Plachy, Jr., M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 09-55) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt **or** seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct  
New York State Department of Health  
Hedley Park Place  
433 River Street-Fourth Floor  
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

Redacted Signature

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

In the Matter of

Robert Thomas Plachy, Jr., M.D. (Respondent)

Administrative Review Board (ARB)

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

Determination and Order No. 09-55

COPY

Before ARB Members Pellman, Wagle, Wilson and Milone<sup>1</sup>  
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Robert Bogan, Esq.  
For the Respondent: Wilfred Friedman, Esq.

In this proceeding pursuant to New York Public Health Law (PHL) § 230-c  
(4)(a)(McKinney 2009), the ARB considers whether to take disciplinary action against the  
Respondent's license to practice medicine in New York State (License) following the  
Respondent's criminal conviction for driving while intoxicated. After a hearing below, a BPMC  
Committee voted to take no disciplinary action against the Respondent because the Respondent  
has already surrendered his License temporarily due to alcoholism. The Petitioner requests  
review over the Committee's Determination and asks that the ARB revoke the Respondent's  
License. After considering the record below and the review briefs from the parties, the ARB  
votes 3-1 to censure and reprimand the Respondent.

Committee Determination on the Charges

The Committee conducted a hearing in this matter under the expedited hearing  
procedures (Direct Referral Hearing) in PHL § 230(10)(p). The Petitioner alleged that the

<sup>1</sup> ARB Member John A. D'Anna, M.D. did not participate in this case. The ARB proceeded to consider the case with  
a four-member quorum, Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

Respondent committed professional misconduct under the definition in New York Education Law (EL) §§ 6530(9)(a)(i) (McKinney 2009) by engaging in conduct that resulted in a criminal conviction under New York Law. In the Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence at the hearing demonstrated that the Respondent was convicted on December 12, 2007 in the Southampton Town Court, Criminal Part, Suffolk County, for driving while intoxicated, a misdemeanor under New York Vehicle and Traffic Law § 1192.03 (McKinney Supp. 2009). The Court sentenced the Respondent to pay a \$1000.00 fine and a \$190.00 surcharge. The evidence showed further that BPMC took disciplinary action against the Respondent prior to the Direct Referral Proceeding. The Respondent entered into a Temporary Surrender of License in 2001 because of incapacity to practice medicine due to alcoholism. In the Temporary Surrender, the Respondent acknowledged that he would regain his License only upon demonstrating to a restoration committee that the Respondent no longer suffers any incapacity to practice. The Respondent went before restoration committees in May 2003, July 2006, October 2006 and March 2007 and failed in each attempt to convince the restoration committee to return the Respondent's License. In October 2006, a drug screen indicated recent alcohol usage. At the Direct Referral Hearing, the Respondent admitted that he lied to a restoration committee about the circumstances surrounding that drug screen.

The Direct Referral Committee rejected the Petitioner's request that the Committee revoke the Respondent's License. The Committee noted that twenty months had passed from the Respondent's driving while intoxicated arrest until the Direct Referral Hearing and the

Committee found the evidence convincing that the Respondent had not had a drink since the arrest. The Committee pointed to testimony from several witnesses for the Respondent and results from "countless random urine screens" as proof that the Respondent has learned to control his alcoholism and that he no longer drinks. The Committee found that revocation would accomplish nothing because the Respondent is unable to practice until he can convince a restoration committee that the Respondent no longer suffers any impairment. The Direct Referral Committee chose to leave the decision on the Respondent's practice to a future restoration committee.

#### Review History and Issues

The Committee rendered their Determination on March 30, 2009. This proceeding commenced on April 3, 2009, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and the Respondent's reply brief. The record closed when the ARB received the reply brief on May 13, 2009.

The Petitioner argued that the Committee's Determination to impose no penalty in this case gives the Respondent a free pass on his alcohol related criminal conviction and on his admission in testimony at the Direct Referral hearing that the Respondent lied when he appeared before one of the restoration committees. The Petitioner asked the ARB to revoke the Respondent's License in order to increase the safety of the public.

The Respondent argues that he has finally found his way to sobriety and that the best protection for the public remains the future hearing before a restoration committee.

### ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL §230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3<sup>rd</sup> Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3<sup>rd</sup> Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only

pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

#### Determination

The ARB has considered the record and the parties' briefs. The ARB affirms the Committee's Determination that the Respondent's criminal conviction constituted professional misconduct. The ARB overturns the Committee and votes 3-1 to censure and reprimand the Respondent.

The ARB rejects the Petitioner's argument that public safety requires that the ARB revoke the Respondent's License. The Temporary Surrender Process has protected the public in this case and that Process will continue to protect the public because the Respondent is unable to return to practice until he can convince a restoration committee to return the Respondent's License. It appears from the evidence at the Direct Referral Hearing that the Respondent has turned around his life. The ARB concludes that a future restoration committee should decide if and when the Respondent should return to practice. The Petitioner has produced no evidence to demonstrate that a future restoration committee would be denied access to information about the 2007 DWI conviction or the false statement to the prior restoration committee. A restoration committee would also be in the best condition to decide what restrictions to place on the Respondent's License and what retraining to require that the Respondent undertake in view of the many years during which the Respondent has been away from practice.

ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the Committee's Determination to impose no penalty against the Respondent.
3. The ARB votes 3-1 to censure and reprimand the Respondent.

Thea Graves Pellman  
Datta G. Wagle, M.D.  
Linda Prescott Wilson  
Richard D. Milone, M.D.

In the Matter of Robert Thomas Plachy, Jr., M.D.

Linda Prescott Wilson, an ARB Member participated in the deliberations in this case. She affirms that this Determination and Order reflects the decision of the majority in the Matter of Dr. Plachy.

Dated: *15 July*, 2009

Redacted Signature

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Linda Prescott Wilson

In the Matter of Robert Thomas Plachy, Jr., M.D.

Thea Graves Pellman, an ARB Member participated in the deliberations in this case. She affirms that this Determination and Order reflects the decision of the majority in the Matter of Dr. Plachy.

Dated: July 6, 2009

Redacted Signature

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Thea Graves Pellman

In the Matter of Robert Thomas Plachy, Jr., M.D.

Datta G. Wagle, M.D., an ARB Member participated in the deliberations in this case. He affirms that this Determination and Order reflects in the decision of the majority in the Matter of

Dr. Plachy.

Dated: 7/8/, 2009

Redacted Signature

  
Datta G. Wagle, M.D.

In the Matter of Robert Thomas Plachy, Jr., M.D.

Richard D. Milone, an ARB Member participated in the deliberations in this case. He affirms that this Determination and Order reflects the decision of the majority in the Matter of Dr. Plachy.

Dated: July 6, 2009

Redacted Signature

Richard D. Milone, M.D.