

**These charges are only allegations which  
may be contested by the licensee in an  
Administrative hearing.**

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

IN THE MATTER  
OF  
MARK SMITH, M.D.

NOTICE OF  
REFERRAL  
PROCEEDING

TO: MARK SMITH, M.D.  
Comprehensive Behavioral Services  
9021 Shady Grove St  
Gaithersburg, MD 20877

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 June 12, 2019, 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.

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, 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 at least 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. You may also file a written brief and affidavits with the Committee. All such documents 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, at least ten days prior to the date of the hearing. Should the parties have objection(s) to proposed witnesses or documentary evidence, the party raising the objection(s) shall contact the Bureau of Adjudication at least three days prior to the hearing date to arrange for a pre-hearing conference with the Administrative Law Judge, prior to the hearing date.

Not later than ten days prior to the date of the hearing, you are required to file one copy of your proposed exhibits (if any) with the Bureau of Adjudication at the address indicated above, and a copy of all such documents/exhibits must be served on the same date on the Department of Health attorney indicated below. On the day of the hearing, you are also required to provide the original of such exhibits and three copies, for use by the Committee.

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                     

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  
April 29, 2019

  
TIMOTHY MAHAR  
Deputy Counsel  
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Pooja A. Rawal  
Senior Attorney  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, NY 12237  
(518) 473-4282

cc: Bruce M. Brady  
Koster, Brady, Nagler, LLP  
One Whitehall Street  
New York, NY 10004

IN THE MATTER  
OF  
MARK SMITH, M.D.

STATEMENT  
OF  
CHARGES

MARK SMITH, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 6, 1996, by the issuance of license number 202871 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about November 13, 2018, the Respondent entered into a Consent Order ("Order") with the Maryland State Board of Physicians ("MD Board"). The MD Board Order reprimanded the Respondent, placed him on probation for eighteen months, precluded the Respondent from prescribing Suboxone and medications containing buprenorphine, and required mandatory annual compliance verification of the preclusion. In addition, the Respondent was ordered to take a comprehensive course in controlled dangerous substances prescribing and ordered to be subject to supervision by a disciplinary panel-approved supervisor who is board certified in psychiatry and neurology. This order was based on eleven medical records which were found to have issues relating to standard of care violations and/or medical record keeping concerns.
- B. The conduct resulting in the MD Board's 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(3) (Practicing the profession of medicine with negligence on more than one occasion); and/or
2. N.Y. Educ. Law § 6530(32) (Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

SPECIFICATION OF CHARGES

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state as alleged in the facts of the following:

1. The facts in Paragraphs A, B, and/or B1 and/or B2.

DATE: April 27, 2019  
Albany, New York

  
TIMOTHY MAHAR  
Deputy Counsel  
Bureau of Professional Medical Conduct