

# PUBLIC

NEW YORK  
state department of  
**HEALTH**

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

July 19, 2013

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Joseph Sharkey, M.D.  
ADDRESS REDACTED

**RE: In the Matter of Joseph Sharkey, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 13-214) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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.

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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,

**SIGNATURE REDACTED**

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

COPY

-----X  
IN THE MATTER : DETERMINATION  
OF : AND  
JOSEPH SHARKEY, M.D. :  
CO-12-02-0799-A : ORDER  
-----X :  
BPMC #13-214

A Notice of Referral Proceeding and Statement of Charges, dated March 27, 2013, were served upon the Respondent, Joseph Sharkey, M.D. C. DEBORAH CROSS, M.D. (Chair), EDMUND A. EGAN, II, and JAY A. ZIMMERMAN, Ph.D., 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 Jude B. Mulvey, Esq., Associate Counsel. The Respondent failed to appear in person and was not represented by Counsel. A hearing was held on June 20, 2013. 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) [having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state], and §6530(9)(d) [having disciplinary action taken by said duly authorized professional disciplinary agency]. 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. Joseph Sharkey, M.D., (hereinafter "Respondent") was authorized to practice medicine in New York State on August 17, 1971 by the issuance of license number 110049 by the New York State Education Department. (Exhibit #3).

2. On or about February 13, 2013, the Colorado Medical Board, State of Colorado, (hereinafter "Colorado Board"), by a Second Stipulation and Final Agency Order ("Colorado Order"), *inter alia* placed Respondent on probation for a period of five years with treatment and practice monitoring terms and permanently restricted Respondent from prescribing any medication classified as Schedule I, II, III or IV medication for any member of his family, himself, or any other person who is not a bona fide patient. This action was based, in part, on Respondent's surrender of his DEA registration, his habitual and/or excessive use of alcohol and controlled prescription medications and his

mental or physical condition that rendered him unable to perform medical services with reasonable skill and safety to patients without treatment and monitoring. (Exhibits #4 and #5).

#### 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 established that Respondent was disciplined by the Colorado Board based upon his habitual abuse of alcohol and drugs. This would constitute professional misconduct in violation of New York Education Law §6530(8) [being an habitual abuser of alcohol and/or drugs]. Therefore, he is guilty of professional misconduct in violation of Education Law §6530(9)(b) and §6530(9)(d). As a result, the Hearing Committee voted to sustain the First and Second Specifications of professional misconduct set forth in the Statement of Charges.

#### DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine should be suspended for a period of five years. The suspension shall be stayed and Respondent placed on probation for a term of five

years. The terms of probation shall include both a practice monitor and a sobriety monitor. The complete terms of probation are set forth 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.

The Colorado Board records demonstrate that Respondent has suffered from a long-standing addiction to alcohol and prescription drugs. His addiction ultimately led to the Colorado Board action suspending Respondent's medical license in January, 2011. Following an evaluation, and a period of inpatient rehabilitation, the Colorado Board allowed Respondent to resume medical practice under close monitoring, pursuant to the terms of the Second Stipulation and Final Agency Order.

Although Respondent did not appear at the hearing, he did submit a number of documents, including two letters to the Board. (Exhibits A and B). In these letters, Respondent acknowledges his prior alcohol and drug use, and how the rehabilitation program, plus participation in twelve-step programs has helped him through the recovery process.

We do find Respondent to be sincere in his plans to maintain sobriety, and we take guidance from the fact that the

Colorado Board has allowed him to resume medical practice. However, we note that he has thus far maintained sobriety for a relatively brief period of time. In the event that Respondent chooses to return to practice in New York State, we believe that a significant period of monitoring is essential for him to demonstrate his long term commitment to sobriety.

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 SUSPENDED for a period of FIVE (5) YEARS. Said suspension shall be STAYED and Respondent shall be 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 which is attached to this Determination and Order 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

*July 15*, 2013

SIGNATURE REDACTED

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

EDMUND A. EGAN, II, M.D.

JAY A. ZIMMERMAN, Ph.D.

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

Joseph Sharkev. M.D.

ADDRESS REDACTED

APPENDIX I

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

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IN THE MATTER  
OF  
JOSEPH SHARKEY, M.D.  
CO-11-02-0799-A

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STATEMENT  
OF  
CHARGES

JOSEPH SHARKEY, M.D., Respondent, was authorized to practice medicine in New York state on August 17, 1971, by the issuance of license number 110049 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about February 13, 2013, the Colorado Medical Board, State of Colorado, (hereinafter "Colorado Board"), by Second Stipulation and Final Agency Order (hereinafter "Colorado Order"), inter alia, placed Respondent on probation for a period of five years with treatment and practice monitoring terms and permanently restricted Respondent from prescribing any medication classified as a Schedule I, II, III, or IV medication for any member of his family, himself, or any other person who is not a bona fide patient based on, among others, Respondent's surrender of his DEA registration, his habitual and/or excessive use of alcohol and controlled prescription medications and his mental or physical condition that rendered him unable to perform medical services with reasonable skill and safety to patients without treatment and monitoring.

B. The conduct resulting in the Colorado 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(8) (habitual abuse of alcohol and/or habitual use of drugs).

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(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 State Education Law §6530 (9)(d) by having his license other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the 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 *March 27* 2013  
Albany New York

SIGNATURE REDACTED

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

APPENDIX II

### **Joseph Sharkey, M.D. 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), Riverview Center, 150 Broadway, Menands, New York 12204-2719; 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 the 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 the 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. Before Respondent resumes the active practice of medicine pursuant to these Terms of Probation, he shall undergo a psychiatric evaluation by a board-certified psychiatrist, acceptable to the Director of the Office of Professional Medical Conduct, and shall be required to demonstrate that he is compliance with all treatment recommendations of said psychiatrist. The costs of the said evaluation and all compliance activities shall be the sole responsibility of Respondent.

10. Respondent shall remain drug/alcohol free.

- a. Respondent shall remain active in self-help groups such as, but not limited to, Narcotics Anonymous, Alcoholics Anonymous and Caduceus.
- b. Respondent shall notify all treating physicians of his history of alcohol/chemical dependency. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating physicians.
- c. Respondent shall practice only when monitored by qualified health care professionals ("sobriety monitor", "practice supervisor" and "therapist") proposed by Respondent and approved, in writing, by the Director of the OPMC. Monitors shall not be family members or personal friends, or be in professional relationships which would pose a conflict with monitoring responsibilities.

d. 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 deviations from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.

e. 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.

f. 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.

g. 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.

h. Respondent shall engage and continue in therapy with a therapist in accordance with a treatment plan approved by the Director, OPMC.

i. 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.

j. 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 expense of such evaluation.

10. 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.