Public

NEW YORK
state department of
HEALTH

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

Sue Kelly
Executive Deputy Commissioner

September 9, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Markman, M.D.
REDACTED

Robert Markman, M.D.
REDACTED

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

RE: In the Matter of Robert Markman, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-220) 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.

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 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
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

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.

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 licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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., 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,

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

IN THE MATTER

OF

ROBERT MARKMAN, M.D.
CO-12-04-1710A

DETERMINATION

AND

ORDER

BPMC #14-220

A hearing was held on July 24, 2014, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and Statement of Charges, both dated May 20, 2014, were served upon the Respondent, **ROBERT MARKMAN, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **William P. Dillon, M.D.**, Chair, **Gail S. Homick Herrling**, and **Trevor A. Litchmore, M.D.**, 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 **James E. Dering, Esq.**, General Counsel, by **Jude B. Mulvey, Esq.**, of Counsel. The Respondent, **Robert Markman, M.D.**, did not appear, although 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)(iii) – by having been convicted of committing an act constituting a crime under the law of another jurisdiction, which would, if committed in New York State, constitute a crime under the laws of New York State. The Respondent is also charged with professional misconduct pursuant to 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. Further, the Respondent was charged pursuant to Education Law §6530(9)(d) for having his license to practice medicine revoked or having other disciplinary action taken by the State of California 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.

Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: None

For the Respondent: None

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. **Robert Markman, M.D.** , the Respondent, did not appear at the hearing, although duly served by substituted service on May 31, 2014. (Petitioner's Exhibit 2)

2. **Robert Markman, M.D.**, the Respondent, was authorized to practice medicine in New York State on May 28, 1976, by the issuance of license number 127111 by the New York State Education Department. (Petitioner's Ex. 4)

3. On or about December 13, 2013, the Medical Board of California, (hereinafter "California Board"), by a Decision After Non-Adoption (hereinafter "California Order"') revoked Respondent's license to practice medicine, stayed the revocation and placed Respondent on probation for a period of seven (7) years, with terms including a prohibition

against his supervision of any Physician Assistants, a prohibition from practicing medicine in his or his patient's residence, practice monitor terms and continuing medical education in the areas of medical record keeping and professional boundaries, based upon his administration of Propofol to a patient outside a facility setting on over 500 occasions, his acts of inappropriate administering of a dangerous drug, gross negligence and inadequate medical records.

4. On or about August 31, 2012 in the Superior Court of California, County of Los Angeles, Respondent was convicted or Willfully and Unlawfully Resisting or Obstructing Arrest, a misdemeanor, in violation of California Penal Code Section 148 (a) (1).

5. For the above crime Respondent was sentenced, among others, to summary probation for a period of thirty-six (36) months, thirty (30) days Incarceration with credit for time served. The Respondent was, in addition, sentenced to attend anger management class and make restitution of $120 and costs of $70.

6. The above conviction constituted a violation of New York Education law §6530(9)(e)(iii) in that Respondent was convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law.

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York State 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...."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine revoked and/or suspended by a duly authorized professional disciplinary agency of another state where the conduct resulting in the revocation/suspension would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Respondent..."

VOTE: Sustained (3-0)

THIRD SPECIFICATION

"Respondent violated New York Education Law §6530 (9)(a)(iii) by having been convicted of committing an act constituting a crime under the laws of another jurisdiction and which, If committed within this state would have constituted a crime under New York State law...."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing, either in person or by counsel. The Administrative Officer, after considering the documentary evidence, which included evidence of the several attempts at contacting and serving the Respondent (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for due diligence in the service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed on the merits notwithstanding the Respondent's absence. It is noted that the affidavits of attempted service show deliberate attempts by the Respondent to thwart the efforts of the process server, by his attempts to shut the gate of his residence to the process server once it was clear that legal papers were being served. The process server noted that she dropped the papers over the gate after the Respondent closed the gate to her. The Administrative Officer noted that these efforts constituted due diligence and constituted good service of process albeit by substituted service.

The panel reviewed the extensive documentation from the California proceedings submitted by the Department. The panel noted Respondent's many decades of practice as an emergency room physician and anesthesiologist. The panel also noted that Dr. Markman, now retired, began his practice back in 1976. The record shows that his license has never once been disciplined and that Dr. Markman has never, apparently, been sued for malpractice, and has never been disciplined professionally before the events in this matter transpired. (See Exhibit 5, page 4).

As to the penalty, the Hearing Committee determined that the people of New York State would be protected by a Suspension until such time that the probation imposed by

the State of California is completed and the Respondent is restored to full and unencumbered practice in that State. The panel noted indications that the Respondent did what he did out of parental love and concern for his daughter. In reaching this decision, the panel examined the California documentation submitted by the Department and noted that the misconduct charges in this matter arose from the Respondent's treatment of his own daughter in his own home. The California documents show, at Exhibit 5, page 4, that the Respondent's daughter suffered from a painful genital condition for many years. The record goes on to show that she sought treatment, beginning in 1996, from many physicians.[1]

Recognizing the personal pain and anguish which the underlying circumstances must have caused Respondent, the panel did not wish to impose any additional penalty beyond that imposed by the State of California. The panel was satisfied that a continuation of the California probation will be more than adequate protection for the people of the State of New York.

ORDER

IT IS HEREBY ORDERED THAT:

1. The first, second and third specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**
2. The license of the Respondent to practice medicine in New York State is **SUSPENDED**, until such time that the Respondent demonstrates to OPMC, on

[1] The record is not clear on this point, but indicates "between 50 and 100 physicians." (Ex. 5, p.4)

application, that the probation imposed by the State of California is completed and the Respondent is restored to full and unencumbered practice in that State.

3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Buffalo, New York
September 8, 2014

REDACTED

William P. Dillon, M.D.

Gail S. Homick Herrling
Trevor A. Litchmore, M.D.

To: Robert Markman, M.D.
REDACTED

Robert Markman, M.D.
REDACTED

Jude B. Mulvey, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

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

IN THE MATTER

OF

ROBERT MARKMAN, M.D.
CO-12-04-1710A

NOTICE OF

REFERRAL

PROCEEDING

TO: Robert Markman, M.D.
REDACTED

Robert Markman, M.D.
REDACTED

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 24th of July, 2014, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that 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 and/or sworn testimony on your behalf. Such evidence and/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 that 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

EXHIBIT
1

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 F. HORAN, ACTING 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 (10) 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 (10) 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 (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) 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 demands, hereby, disclosure of the evidence that 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 and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) 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 (5) 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
MAY 20, 2014

REDACTED

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Jude B. Mulvey
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

STATE OF NEW YORK : DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER OF ROBERT MARKMAN, M.D. CO-12-04-1710A	STATEMENT OF CHARGES

ROBERT MARKMAN, M.D., Respondent, was authorized to practice medicine in New York State on May 28, 1976, by the issuance of license number 127111 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Effective December 13, 2013, the Medical Board of California, (hereinafter "California Board"), by Decision After Non-Adoption (hereinafter "California Order") revoked Respondent's license to practice medicine, stayed the revocation and placed Respondent on probation for a period of seven (7) years, with terms including a prohibition against his supervision of any Physician Assistants, a prohibition from practicing medicine in his or his patient's residence, practice monitor terms and continuing medical education in the areas of medical record keeping and professional boundaries, based upon his administration of propofol to a patient outside a facility setting on over 500 occasions, his acts of inappropriate administering of a dangerous drug, gross negligence and inadequate medical records.

B. The conduct resulting in the California 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 (3) (negligence on more than one occasion); and/or

2. New York Education Law §6530 (4) (gross negligence); and/or

3. New York Education Law §6530 (32) (failure to maintain adequate records)

C. On or about August 31, 2012 in the Superior Court of California, County of Los Angeles, Respondent was convicted of Willfully and Unlawfully Resisting or Obstructing Arrest, a misdemeanor, in violation of California Penal Code Section 148 (a) (1). Respondent was sentenced, among others, to summary probation for a period of thirty-six (36) months, thirty (30) days incarceration with credit for time served, attend anger management class, restitution of $120 and costs of $70.

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York State 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 B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine revoked or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation 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 B.

THIRD SPECIFICATION

Respondent violated New York Education Law §6530 (9)(a)(iii) by having been convicted of committing an act constituting a crime under the laws of another jurisdiction and which, if

committed within this state, would have constituted a crime under New York State law, in that Petitioner charges:

3. The facts in Paragraph C.

DATED: May 20, 2014
Albany, New York

REDACTED

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct