



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Executive Deputy Commissioner

May 10, 2024

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David Chisholm, M.D.
[REDACTED]

Ian Silverman, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of David Chisholm, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 24-094) 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. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "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.

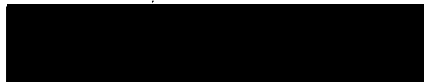
The notice of review served on the Administrative Review Board should be forwarded to:

Jean T. Carney, 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 Ms. Carney 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,

A solid black rectangular box redacting the signature of the Chief Administrative Law Judge.

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

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

COPY

IN THE MATTER
OF
DAVID CHISHOLM, M.D.

DETERMINATION
AND
ORDER

BPMC-24-094

A Notice of Referral Proceeding and Statement of Charges dated April 2, 2024, were duly served upon David Chisholm, M.D. (Respondent) pursuant to Public Health Law (PHL) § 230(10)(d)(i). (Exhibits 1, 2, 6, 7.) A hearing was held on May 8, 2024, via WebEx videoconference. Pursuant to PHL § 230(10)(e), **JEFFREY PERRY, D.O.**, Chairperson, **RICHARD F. KASULKE, M.D.**, and **DAVID F. IRVINE, DHSq, P.A.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee. **NATALIE BORDEAUX**, Administrative Law Judge (ALJ), served as the administrative officer.

The Department appeared by Ian H. Silverman, Esq. The Respondent did not appear. The Hearing Committee received and examined documents from the Department. (Exhibits 1-7.) A transcript of the proceeding was made. After consideration of the entire hearing record, the Hearing Committee hereby issues this Determination and Order, revoking the Respondent's license to practice medicine. All findings, conclusions, and determinations are unanimous.

BACKGROUND

The Department brought the case pursuant to PHL § 230(10)(p); which provides for a hearing when a licensee is charged solely with a violation of Education Law § 6530(9). The Respondent is charged with professional misconduct for being convicted of committing an act

constituting a crime under federal law in violation of Education Law § 6530(9)(a)(ii). Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York on July 1, 1985, under license number 162699. (Exhibit 4.)

2. On January 24, 2022, in the United States District Court, District of Alaska, the Respondent was convicted, following a plea of guilty, of one felony count of Unlawful Dispensing and Distribution of a Controlled Substance in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C). The Respondent was sentenced to 34 months' imprisonment, followed by three years of supervised release including, as a condition of release, the completion of 240 hours of community work service. In addition, the Respondent was ordered to pay a criminal monetary penalty of \$25,000, along with a \$100 assessment. (Exhibit 5.)

DISCUSSION

Although duly notified of the date, time and place of the hearing, the Respondent did not appear on his own behalf or by representative. After due diligence as certified under oath, the Department was unable to personally serve the Respondent with the Notice of Referral Proceeding and Statement of Charges because his last known address is a post office box. On April 2, 2024, the Department sent the Notice of Referral Proceeding and Statement of Charges to the last known address associated with the Respondent via certified mail. However, the United States Postal Service returned the mail to the Department after ascertaining that the post office box identified in the Respondent's New York State Education Department professional license file does not exist. (Exhibits 1-3, 6, 7.) Service was properly effectuated pursuant to PHL § 230(10)(d). Upon the

Department having established jurisdiction and proper notice, the ALJ determined that the hearing could proceed on the merits despite the Respondent's absence.

The Hearing Committee reviewed the Department's evidence showing the Respondent's 2022 conviction in a United States District Court of one count of Unlawful Dispensing and Distribution of a Controlled Substance, a federal crime. Based on this conviction, the Hearing Committee determined that the Respondent violated Education Law § 6530(9)(a)(ii) and sustained the charge.

After determining to sustain the charge, the Hearing Committee considered all possible penalties authorized by PHL § 230-a, and agreed with the Department's recommendation that the Respondent's medical license be revoked.

Beginning on an unknown date and continuing until on or about October 28, 2020, the Respondent knowingly and intentionally dispensed and distributed controlled substances, including oxycodone, methadone, Hydrocodone, morphine, tramadol, fentanyl, hydromorphone, and buprenorphine to patients outside the usual course of professional practice and without a legitimate medical purpose. His prescriptions of these controlled substances was a significant contributing factor in the accidental deaths of five patients. (Exhibit 5.)


The Respondent's conduct was egregious and unacceptable. He abused the privileges of his medical license without regard for patient safety, and which resulted in dire consequences for those he purported to serve. For these reasons, revocation of the Respondent's license is the only appropriate penalty.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is sustained.
2. The Respondent's license to practice medicine in the state of New York is hereby revoked, PHL § 230-a(4).
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

DATED: 7-9, 2024
Suffolk, New York.


Jeffrey Perry, D.O., Chairperson
Richard F. Kasulke, M.D.
David F. Irvine, DHSc, P.A.

To: David Chisholm, M.D.


Ian H. Silverman, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

IN THE MATTER

OF

DAVID CHISHOLM, M.D.

STATEMENT
OF
CHARGES

DAVID CHISHOLM, M.D. the Respondent, was authorized to practice medicine in New York State on or about July 1, 1985, by the issuance of license number 162699 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about on January 24, 2022, in the US District Court, District of Alaska, the Respondent was convicted of one count of Unlawful Dispensing and Distribution of a Controlled Substance, in violation of Title 21, United States Code, Sections 841 (a) (1) (b) (1) (c). Respondent was sentenced to thirty-four months' imprisonment, three years post release supervision, 240 hours of community service, a \$100 assessment fee and a \$25,000 fine. The Respondent's beginning on a date unknown and continuing on or about October 28, 2020 knowingly and intentionally dispensed and distributed controlled substances (Oxycodone, Methadone, Hydrocodone, Morphine, Tramadol, Fentanyl, Hydromorphone and Buprenorphine), outside the course of professional practice and without legitimate medical purposes.

SPECIFICATION OF CHARGES

CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. The facts in paragraph A.

DATE: April, 2, 2024
Albany, New York


Jeffrey J. Conklin
Deputy Counsel
Bureau of Professional Medical Conduct