



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

February 6, 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Arnold Berkowitz, M.D.


Ian H. Silverman, Esq.
NYS Department of Health
Corning Tower Building - Room 2512
Empire State Plaza
Albany, NY 12237

RE: In the Matter of Arnold Berkowitz, M.D.

Dear Parties:

Enclosed please find the Determination and Order (18-028) 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:

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,


James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cac
Enclosure

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

-----X
: **IN THE MATTER** :
: **OF** :
: **ARNOLD BERKOWITZ, M.D.** :
: :
: :
-----X

DETERMINATION
AND
ORDER
BPMC-18-028

A hearing was held on December 19, 2017, at the offices of the New York State Department of Health (Department).¹ Pursuant to § 230(10)(e) of the Public Health Law (PHL), **DENNIS P. ZIMMERMAN, M.S., CRC**, Chairperson, **TREVOR A. LITCHMORE, M.D.** and **LYON M. GREENBERG, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **DAWN MacKILLOP-SOLLER, ADMINISTRATIVE LAW JUDGE (ALJ)**, served as the Administrative Officer.

The Department appeared by Ian H. Silverman, Associate Counsel. A Notice of Referral Proceeding and Statement of Charges dated October 23, 2017, were served upon Arnold Berkowitz, M.D. (Respondent), who did not appear at the hearing.² The Hearing Committee received and examined documents from the Department (Exhibits 1-5) and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charges that the Respondent committed professional misconduct as defined in Education (Educ.) Law §§ 6530(9)(a)(iii), 6530(9)(b) and 6530(9)(d) and unanimously votes to revoke the Respondent's license to practice medicine in the state of New York.

¹ The location of the hearing was 150 Broadway, Suite 510, Menands, New York.

² The Notice of Referral Proceeding and Statement of Charges were personally served on the Respondent pursuant to PHL § 230(10)(d)(i). As such, the ALJ determined that jurisdiction was established and the hearing could continue despite the Respondent's absence. [Appendix I; Exhibit 2].

BACKGROUND

This case began with an Order by the Commissioner of Health, Howard A. Zucker, M.D., J.D., summarily suspending the Respondent's medical license pursuant to PHL § 230(12)(b). The Department brought the case pursuant to PHL § 230(10)(p), which provides for a hearing when a registered provider or licensee is charged solely with a violation of Educ. Law § 6530(9). In such cases, the charge of misconduct is based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York.

The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(a)(iii) in his plea of guilty to a crime under the laws of another jurisdiction, "and which, if committed within this state, would have constituted" a crime. The Respondent is also charged with professional misconduct pursuant to Educ. Law § 6530(9)(b), "having been found guilty of professional misconduct by a duly authorized professional disciplinary agency of another state," and Educ. Law § 6530(d), "having (his) license to practice medicine revoked, suspended or having other disciplinary action taken..." where the conduct upon which the finding resulting in disciplinary action against his medical license would, if committed in New York, constitute professional misconduct under the laws of the state of New York.

FINDINGS OF FACT

These Findings of Fact were made by the Hearing Committee after a review of the record in this matter. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence. The references in brackets refer to exhibits [Ex.]. The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. On May 31, 1990, the Respondent was authorized to practice medicine in New York

by the Education Department and was issued license number 182181. [Ex. 3].

2. On or about February 21, 2017, in the Court of Common Pleas of Bucks County, Pennsylvania, the Respondent pled guilty to, among other crimes, Manufacture, Delivery or Possession with Intent to Manufacture or Deliver, in violation of 35 P.S. § 780-113(a)(30), a felony under the Drug Act pursuant to 35 P.S. §780-113(f)(2) and 780-113(f)(3). The Respondent's sentence included six to 23 months incarceration, 36 months of probation and costs. [Ex. 4].

3. In a Notice and Order of Automatic Suspension dated May 31, 2017, the Pennsylvania State Board of Medicine (Pennsylvania Board) suspended the Respondent's medical license "for at least 10 years from the date of conviction." [Ex. 5].

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

The Hearing Committee determined that the evidence supports sustaining the charge of having committed misconduct under Educ. Law § 6530(9)(a)(iii).

VOTE: Sustained (3-0)

SECOND SPECIFICATION

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law § 6530(9)(b).

VOTE: Sustained (3-0)

THIRD SPECIFICATION

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law § 6530(9)(d).

VOTE: Sustained (3-0)

CONCLUSIONS OF LAW

The Department presented evidence to show that based on the Respondent's felony conviction of Manufacture, Deliver, or Possession with Intent to Manufacture or Deliver a controlled substance, a felony under Pennsylvania's Drug Act, 35 P.S. § 780-113(a)(30), the Respondent committed professional misconduct, as defined in Educ. Law §§ 6530(9)(a)(iii). Like Pennsylvania, New York deems it a felony crime for a practitioner to knowingly and unlawfully sell a controlled substance. *See* New York Penal Law § 220.65(2). Since these two laws are substantially the same, the Respondent's conduct in Pennsylvania would have been a crime under New York state law, had it been committed in New York. This conduct would have also constituted "(b)being convicted of committing an act constituting a crime" under "New York state law," as defined in Educ. Law § 6530(9)(a)(i). As such, the Respondent, who was subject to professional discipline in Pennsylvania based on his criminal convictions, committed professional misconduct under Educ. Law §§ 6530(9)(b) and 6530(9)(d).

The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties and found the sustained specifications indicate the Respondent's use of his medical license to direct an unlicensed staff member to issue prescriptions for Oxycodone and Phentermine, controlled substances, to fictitious patients so he could sell the drugs to existing patients. As such, the Hearing Committee unanimously concluded that the evidence supports the penalty of revocation of the Respondent's New York medical license.

ORDER

IT IS HEREBY ORDERED THAT:


1. The specifications of professional misconduct, as set forth in the Statement of Charges, are

SUSTAINED;

2. The Respondent's license to practice medicine in New York State is **REVOKED**; and


3. This Determination and Order shall be effective upon service on the Respondent. Service shall be either by certified mail or upon the Respondent at his 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: Albany, New York
January 30, 2018


Dennis P. Zimmerman, M.S., CRC
Chairperson

Trevor A. Litchmore, M.D.
Lyon M. Greenberg, M.D.

TO: Arnold Berkowitz, M.D.


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

APPENDIX I

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

IN THE MATTER
OF
ARNOLD BERKOWITZ, M.D.

COMMISSIONER'S
ORDER OF
SUMMARY
ACTION

TO: ARNOLD BERKOWITZ, M.D.
[REDACTED]

The undersigned, Howard A. Zucker, M.D., J.D., Commissioner of Health, pursuant to N.Y. Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that ARNOLD BERKOWITZ, M.D. (henceforth "Respondent"), New York license number 182181 has pleaded or been found guilty or convicted of committing an act constituting a felony under New York State law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a felony under New York State law, as is more fully set forth in the Statement of Charges attached to the Notice of Referral Proceeding or Notice of Hearing and made a part hereof.

It is therefore:

ORDERED, pursuant to N.Y. Public Health Law §230(12)(b), that effective immediately, Respondent shall not practice medicine in the State of New York, or practice in any setting under the authority of Respondent's New York license.

Any practice of medicine in violation of this Order shall constitute Professional Misconduct within the meaning of N.Y. Educ. Law §6530(29) and may constitute unauthorized medical practice, a Felony defined by N.Y. Educ. Law §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within ninety days of the service of this order and shall end within ninety days thereafter. The hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted

EXHIBIT

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before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Hearing or Notice of Referral Proceeding provided to the Respondent contemporaneously with this Order.

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 FORTH 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
October 23, 2017



Howard A. Zucker, M.D., J.D.
Commissioner of Health
New York State Department of Health

Inquiries should be directed to:
Ian H. Silverman
Associate Counsel
Bureau of Professional Medical Conduct
Division of Legal Affairs
N.Y.S. Department of Health
Corning Tower – Room 2512
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

IN THE MATTER
OF
ARNOLD BERKOWITZ, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: ARNOLD BERKOWITZ, M.D.


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 Adm'n. 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 December 20, 2017, 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 12204-2719.¹

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

¹ For GPS purposes, enter "Menands", not "Albany".

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. Should the parties have objection to proposed witnesses or documentary evidence, the party raising the objection shall contact the Bureau of Adjudication to arrange for a pre-hearing conference with the Administrative Law Judge, prior to the hearing date.

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 not later than 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. 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 copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen 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 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 [REDACTED]

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
October 23, 2017



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

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

IN THE MATTER
OF
ARNOLD BERKOWITZ, M.D.

STATEMENT
OF
CHARGES

ARNOLD BERKOWITZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 31, 1990 by the issuance of license number 182181 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about February 21, 2017 Respondent entered a guilty plea in the Court of Common Pleas of Bucks County, Pennsylvania to among other things, one count of the felony Manufacture, Delivery or Possession with Intent to Manufacture or Deliver in violation of the Drug Act, 35 P.S. §§ 780-113(f)(2) and 780-113(f)(3). Respondent was sentenced on May 1, 2017 to six to twenty-three months incarceration, 36 months probation, costs of prosecution and to not seek reinstatement of his medical license during his supervision period.
- B. Respondent's crime as described above in Pennsylvania would, if committed in New York State, have constituted a crime under New York State law, specifically Penal Law §220.65(2) Criminal sale of a prescription for a controlled substance or of a controlled substance by a practitioner or pharmacist, a class C felony.

C. On or about May 31, 2017, the Pennsylvania Board issued a Notice and Order of Automatic Suspension in response to Respondent's guilty plea. He cannot petition for reinstatement for at least 10 years from his conviction date.

SPECIFICATION OF CHARGES

CRIMINAL CONVICTION (Other Jurisdiction)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(iii) by having been 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 (namely Penal Law §220.65(2)) as alleged in the facts of the following:

1. The facts in Paragraph A and B.

SECOND SPECIFICATION

HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. 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 (namely N.Y. Educ. Law §§ 9 (a) (i) as alleged in the facts of the following:

2. The facts in Paragraph A, B and C.

THIRD SPECIFICATION

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 (namely N.Y. Educ. Law § 6530(9) (a) (i) as alleged in the facts of the following:

3. The facts in Paragraph A, B and C.

DATE: October 23, 2017
New York, New York



Michael A. Hiser
Deputy Counsel
Bureau of Professional Medical Conduct