



Department of Health

ANDREW M. CUOMO
Governor

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

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

July 31, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mark Boles, M.D.

[REDACTED]

Louis W. Emmi, Esq.
201 Lebanon Shops
300 Mt. Lebanon Blvd.
Pittsburgh, PA 15235

Pooja A. Rawal, Esq.
Senior Attorney
Bureau of Professional Medical Conduct
Corning Tower- Room 2596
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Mark Boles

Dear Parties:

Enclosed please find the Determination and Order (No. 17- 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.

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., 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

JH 

Enclosure

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



-----X
IN THE MATTER
OF
MARK BOLES, M.D.
-----X

DETERMINATION
AND
ORDER

A hearing was held on July 20, 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"), **JILL M. RABIN, M.D.**, Chairperson, **GAIL HOMICK-HERRLING** and **RONALD UVA, 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 Pooja A. Rawal, Senior Attorney. A Notice of Referral Proceeding and Statement of Charges dated May 1, 2017, were served upon Mark Boles, M.D. ("Respondent").² At the hearing, the Respondent was represented by Louis W. Emmi, Esq. and testified on his own behalf. There were no other witnesses. The Hearing Committee received and examined documents from the Department (Exhibits 1-5(a) and (b) and the Respondent (Exhibits A-E and G-H)), and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charge that the Respondent committed professional misconduct as defined in Education ("Educ.") Law § 6530(9)(a)(iii) 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 Copies of the Notice of Referral Proceeding and Statement of Charges are attached to this Determination and Order as Appendix I and were personally served on the Respondent on May 8, 2017, at 1704 James Street, Monroeville, PA, establishing jurisdiction. [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) by having been convicted of a crime, Corrupt Organization, under the laws of another jurisdiction, "and which, if committed within this state, would have constituted" the crime of Enterprise Corruption under New York Penal Law § 460.20(1)(a).

FINDINGS OF FACT

The Committee makes the following Findings of Fact after a review of the entire record in this matter. Under PHL § 230(10), the Department had the burden to prove 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. The Respondent was authorized to practice medicine in New York on February 12, 1998, by the issuance of license number 209588 by the Education Department. [Ex. 3].
2. Between approximately April of 2007 and December of 2010, the Respondent was employed as a physician at Pittsburgh Healthworx, P.C. and engaged in illegal activities, including improper business dealings and inappropriate prescriptions for controlled substances to patients. [Ex. 4].

3. Based on this conduct, on September 12, 2016, in the Criminal Court of Common Pleas of Westmoreland County, Pennsylvania, the Respondent was convicted following his nolo contendere plea to the felony crime of Corrupt Organization, in violation of 18 Pa.C.S. § 911(b)(3). The Respondent was sentenced on December 12, 2016, to five years of supervision with one year of electronic monitoring, 100 hours of community service, education on drug programs, fines in the amount of \$7,236.75 and restitution in the amount of \$12,567.40. [Ex. 4].

VOTE OF THE HEARING COMMITTEE

The Respondent violated New York 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.

VOTE: Sustained (3-0)

CONCLUSIONS OF LAW

Under Pennsylvania statute 18 Pa.C.S. § 911(b)(3), a person is guilty of Corrupt Organization when, if “employed by or associated with any enterprise...conduct(s) or participate(s), directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity.” Enterprise Corruption in New York is defined in Penal Law § 460.20(1)(a), as “when, having knowledge of the existence of a criminal enterprise and the nature of its activities, and being employed by or associated with such enterprise, he: (a) intentionally conducts or participates in the affairs of an enterprise by participating in a pattern of criminal activity.” Since the Pennsylvania statute and the New York Penal Law are substantially the same, the Hearing Committee found that the Respondent committed professional misconduct as defined in Educ. Law § 6530(9)(a)(iii) by having committed

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.

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 that the sustained specification shows the Respondent's use of his medical license in Pennsylvania to participate in a pattern of corrupt medical practices. The Hearing Committee found that based on the Respondent's inability to recognize how his continued employment at the clinic contributed to patients receiving improper medical care and unlawful prescriptions for drugs, his attempts to distance himself from the wrongdoings committed by the staff working there were not credible. Contributing to this determination was the Respondent's failure to include his tenure at the clinic on his curriculum vitae, suggesting his lack of candor. While the Hearing Committee took note of the Respondent's recent volunteer work as part of his criminal sentence involving educating youth about drugs, they concluded that his conduct in Pennsylvania shows his willingness to choose participation in improper medical practices over the proper and safe care of patients. As such, the Hearing Committee concluded that the evidence supported that the Respondent's license to practice medicine in the state of New York be revoked.

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 as a physician in New York state is hereby **REVOKED;**

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
July 28th, 2017


J. M. Rabin, M.D.
Chairperson

Gail Homick-Herrling
Ronald Uva, M.D.

TO: Mark Boles, M.D.


Louis W. Emmi, Esq.
201 Lebanon Shops
300 Mt. Lebanon Blvd.
Pittsburgh, PA 15235

Pooja A. Rawal, Esq.
Senior Attorney
Bureau of Professional Medical Conduct
Corning Tower – Room 2596
Empire State Plaza
Albany, New York 12237

APPENDIX I

IN THE MATTER
OF
MARK BOLES, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: MARK BOLES, 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 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 July 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 Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150

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

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 [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
May / ,2017



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

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

**cc: Louis Emmi, Esq.
201 Lebanon Shops
300 Mt. Lebanon Blvd.
Pittsburgh, PA 15234**

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

IN THE MATTER
OF
MARK BOLES, M.D.

STATEMENT
OF
CHARGES

MARK BOLES, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 12, 1998, by the issuance of license number 209588 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about September 12, 2016, in the Court of Common Pleas of Westmoreland County, Pennsylvania Criminal, the Respondent pled nolo contendere to one first degree felony count of Corrupt Organization 18 Pa.C.S. § 911(b)(3). The Respondent was convicted and sentenced on December 12, 2016 to five years supervision, with one year of electronic monitoring, 100 hours community service education on drug programs, \$7,236.75 in fines and \$12,567.40 in restitution.
- B. The Conduct resulting in the Pennsylvania action against Respondent would constitute misconduct under the laws of New York State pursuant to the following section of New York State Law:
1. New York Penal Law § 460.20(1)(a) which states, "A person is guilty of enterprise corruption when, having knowledge of the existence of a criminal enterprise and the nature of its activities, and being employed by or associated with

such enterprise, he: (a) intentionally conducts or participates in the affairs of an enterprise by participating in a pattern of criminal activity."

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 N.Y. Penal Law § 460.20(1)(a)) as alleged in the facts of the following:

1. The facts in Paragraph A and B and B1.

DATE: May 1, 2017
Albany, New York



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct