



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

November 3, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Pooja, A. Rawal, Esq.
Bureau of Professional Medical Conduct
Corning Tower, Empire State Plaza
Albany, New York 12237-0032

Robert Charlap, M.D.


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

Dear Parties:

Enclosed please find the Determination and Order (No. 17- 322) 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:ISM
Enclosure

JURISDICTION

As is set forth in Public Health Law 230(1)&(7) and Education Law 6530, the legislature created the State Board for Professional Medical Conduct in the Department of Health and authorized it to conduct disciplinary proceedings in matters of professional medical conduct. In this case, the Respondent, a physician, has been charged with misconduct pursuant to Ed.L 6530(9)(b)&(d).

Pursuant to PHL 230(10)(p), a hearing on circumscribed issues, or "direct referral proceeding," is authorized when a licensee is charged solely with a violation of Ed.L 6530(9). Charges of misconduct under Ed.L 6530(9) are based upon a criminal conviction or an administrative violation, in New York State or another jurisdiction, establishing conduct that would constitute a crime or professional misconduct if committed in New York. The scope of the hearing is limited to whether there is a relevant conviction or administrative determination and if so, to a determination of the nature and severity of the penalty to be imposed. PHL 230(10)(p). Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51.

EVIDENCE

Witnesses for the Petitioner: None
Petitioner exhibits: 1-4

Witnesses for the Respondent: None
Respondent exhibits: None

A transcript of the hearing was made. (Transcript, pages 1-22.)

FINDINGS OF FACT

An opportunity to be heard having been afforded the parties and evidence having been considered, it is hereby found:

1. Respondent Robert Charlap, M.D. was authorized to practice medicine in New York State on May 14, 2004 under license number 232405. (Exhibit 2.)
2. On April 15, 2016, Respondent signed a stipulated surrender of license and order with the Medical Board of California. The order stipulated that the Respondent admitted the truth of every charge and allegation contained in a January 20, 2015 "accusation" brought against the Respondent by the California Board. The order further stipulated that the surrender of the Respondent's license and the acceptance of the surrendered license by the California Board constituted the imposition of discipline against the Respondent. The surrender of license and order was adopted as a decision and order of the California Board on December 9, 2016, effective December 16, 2016. (Exhibit 4.)
3. The allegations made by the California Board included that the Respondent engaged in unprofessional conduct in violation of California law, specifically 1) that he was unable to practice safely due to a mental disorder; 2) gross negligence; 3) repeated negligent acts; 4) prescribing without medical indication; 5) excessive prescribing; and 6) general unprofessional conduct. (Exhibit 4, pages 15-27.) The allegations involved his treatment and prescription of narcotics for his patients, and findings that he had a mental disorder that impaired his ability to practice safely.

HEARING COMMITTEE DETERMINATION

Records from the Medical Board of California indicate that Respondent deviated from the standard of care by providing ongoing narcotic treatment excessively, negligently, and without appropriate evaluation or medical indication. The Respondent had become involved with a pain clinic for whose patients he provided "pain management" in the form of prescriptions for narcotics with little concern for or attention paid to their medical need for

these drugs. A mental evaluation ordered by the California Board, and conducted in December, 2014, concluded that the Respondent "has psychological conditions which interfere with his ability to safely practice medicine; he is not able to safely practice medicine and represents a danger to the public and his patients," and that his "practice of medicine creates an immediate clear danger to the safety of the community." (Exhibit 4, pages 16-17.) In agreeing to surrender his California license, the Respondent admitted the truth of all charges and allegations made by the California Board. (Exhibit 4, page 5.)

The Petitioner charged that the California Board's findings would establish misconduct in New York pursuant to Ed.L 6530(2) (practicing fraudulently); 6530(3) (practicing with negligence on more than one occasion); 6530(4) (practicing with gross negligence on a particular occasion); 6530(8) (being a habitual user of narcotics or other drugs having similar effects, or having a psychiatric condition which impairs ability to practice); and 6530(35) (ordering of excessive tests, treatment or use of treatment facilities not warranted by the condition of the patient.)

The hearing committee unanimously agreed (3-0) that the findings to which the Respondent stipulated in the California order would, if committed in New York, constitute misconduct pursuant to Ed.L 6530(3), (4), (8) and (35). The committee determined by a vote of 2-1 that the charges would constitute misconduct pursuant to Ed.L 6530(2), practicing fraudulently. One committee member did not find the evidence established the requisite intent to sustain a charge of fraud.

The hearing committee unanimously determined (3-0) that, as alleged in the statement of charges, the Respondent violated Ed.L 6530(9)(b), which defines professional misconduct, in pertinent part, as:

9. (b) Having been found guilty of improper 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.

The hearing committee also unanimously determined (3-0) that the Respondent's surrender of his California license in the face of the California Board's charges established that the Respondent violated Ed.L 6530(9)(d) which defines professional misconduct, in pertinent part, as:

9. (d) Having his or her license to practice medicine revoked, suspended or having other disciplinary action taken... 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... or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state.

The Petitioner recommended revocation of the Respondent's license. The hearing committee agreed that the evidence established the Respondent should not possess a license to practice medicine in New York. Although duly served with notice of the hearing in conformity with PHL 230(10)(d) (Exhibit 3), the Respondent failed to appear and failed to offer any evidence or argument to persuade the committee to a different conclusion. The hearing committee unanimously (3-0) determined that revocation of the Respondent's license pursuant to PHL 230-a(4) is an appropriate penalty.

ORDER

IT IS HEREBY ORDERED THAT:

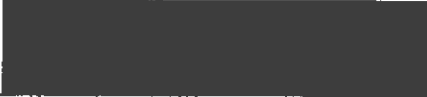
1. The Respondent's license to practice medicine in New York State is **REVOKED**.

This order shall be effective upon service on the Respondent by personal service or by registered or certified mail as required under PHL 230(10)(h).

Dated: Albany, New York

Oct. 31 2017

By:

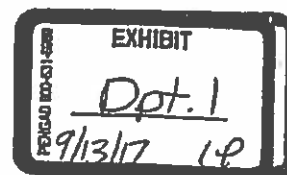

Jagdish M. Trivedi, M.D., Chair
James G. Egnatchik, M.D.
Georgia K. Millor, Ph.D., R.N.

To: Pooja, A. Rawal, Esq.
Bureau of Professional Medical Conduct
Corning Tower, Empire State Plaza
Albany, New York 12237-0032

Robert Charlap, M.D.


APPENDIX I

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



IN THE MATTER
OF
ROBERT CHARLAP, M.D.

COMMISSIONER'S
ORDER OF
SUMMARY
ACTION

TO: ROBERT CHARLAP, M.D.



The undersigned, Howard A. Zucker, M.D., J.D., Commissioner of Health, after an investigation, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, that the duly authorized professional disciplinary agency of another jurisdiction, Medical Board of California, Department of Consumer Affairs, State of California, has made a finding substantially equivalent to a finding that the practice of medicine by ROBERT CHARLAP, M.D. (the Respondent) in that jurisdiction constitutes an imminent danger to the health of its people.

It is therefore:

ORDERED, pursuant to N.Y. Pub. 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 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

June 20, 2017


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

Inquiries should be directed to:

Pooja A. Rawal
Senior Attorney
2512 Corning Tower
N.Y.S. Department of Health
Division of Legal Affairs
Albany, New York 12237

IN THE MATTER
OF
ROBERT CHARLAP, M.D.

STATEMENT
OF
CHARGES

ROBERT CHARLAP, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 14, 2004, by the issuance of license number 232405 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 15, 2016, the Respondent signed a Stipulated Surrender of License and Order with the Medical Board of California, Department of Consumer Affairs, State of California ("CMB") relating to a January 22, 2015 Interim Order of Suspension. The Order stated the Respondent admitted the truth of every charge and allegation and that cause existed for discipline. The Order was based on allegations of the Respondent being unable to practice safely due to mental disorder, gross negligence, repeated negligent actions, prescribing without medical indication, excessive prescribing and general unprofessional conduct in connection with the Respondent's involvement in a purported pill mill. The Order was also based on an investigation by the CMB for impairment due to a review of his own prescription medication records that indicated he had filled prescriptions for Xanax, Vicodin, Klonopin, and Ritalin. [REDACTED]

[REDACTED]

[REDACTED] It was determined that he was not able to

practice medicine safely and that he represented a danger to the public and his patients.

B. The conduct resulting in the CMB's disciplinary action against the Respondent would constitute misconduct under the laws of New York State pursuant to the following section of New York State Law:

1. New York State Education Law § 6530(2) (Practicing the profession fraudulently or beyond its authorized scope).
2. New York State Education Law § 6530(3) (Practicing the profession with negligence on more than one occasion).
3. New York State Education Law § 6530(4) (Practicing the profession with gross negligence on a particular occasion).
4. New York State Education Law § 6530(8) (Being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, except for a licensee who is maintained on an approved therapeutic regimen which does not impair the ability to practice, or having a psychiatric condition which impairs the licensee's ability to practice).
5. New York State Education Law § 6530(35) (Ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient).

SPECIFICATION OF CHARGES

FIRST 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 as alleged in the facts of the following:

1. The facts in Paragraphs A and B and B1; and/or Paragraphs A and B and B2; and/or Paragraphs A and B and B3; and/or Paragraphs A and B and B4; and/or Paragraphs A and B and B5.

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 as alleged in the facts of the following:

2. The facts in Paragraphs A and B and B1; and/or Paragraphs A and B and B2; and/or Paragraphs A and B and B3; and/or Paragraphs A and B and B4; and/or Paragraphs A and B and B5.

DATE: June 20, 2017
Albany, New York



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct