



# Department of Health

**ANDREW M. CUOMO**  
Governor

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

**LISA J. PINO, M.A., J.D.**  
Executive Deputy Commissioner

May 28, 2021

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Colin Pemberton, M.D.  


Marc Nash, Esq.  
Bureau of Professional Medical Conduct  
Corning Tower Building, Room 2512  
Empire State Plaza  
Albany, New York 12237

**RE: In the Matter of Colin Pemberton, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 21-111) 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.

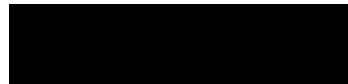
The notice of review served on the Administrative Review Board should be forwarded to:

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 James F. Horan.

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cmg  
Enclosure

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

COPY

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IN THE MATTER  
OF  
COLIN PEMBERTON, M.D.

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DETERMINATION  
AND  
ORDER  
BPMC-21-111

A hearing was held on May 13, 2021, via WebEx videoconference. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **LYON M. GREENBERG, M.D.**, Chairperson, **ANTHONY MARINELLO, M.D.** and **GAIL S. HOMICK HERRLING**, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee in this matter. **NATALIE BORDEAUX, ADMINISTRATIVE LAW JUDGE (ALJ)**, served as the administrative officer.

The Department appeared by Marc Nash, Associate Counsel. A Notice of Referral Proceeding and Statement of Charges dated January 26, 2021<sup>1</sup>, were duly served upon Colin Pemberton, MD. (Respondent) pursuant to PHL § 230(10)(d)(i), who testified on his own behalf. (Exhibit 1 and Appendix I.) There were no other witnesses. The Hearing Committee received and examined documents from the Department (Exhibits 1-5). A transcript of the proceeding was made. The Hearing Committee votes 3-0 to sustain the charge that the Respondent committed professional misconduct in violation of Education Law (Educ. Law) § 6530(9)(d), and to revoke the Respondent's medical license.

<sup>1</sup> This hearing was originally scheduled for March 18, 2021. However, it was adjourned at the Respondent's request and rescheduled for May 13, 2021.

## **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 Educ. Law 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law 6530(9)(d), by having disciplinary action taken against his license to practice medicine in New Jersey where the conduct resulting in the disciplinary action taken would, if committed in New York state, constitute professional misconduct under the laws of New York state. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence.

## **FINDINGS OF FACT**

The Hearing Committee, by unanimous vote, hereby makes the following findings of fact:

1. The Respondent was authorized to practice medicine in New York on June 12, 2019 under license number 299558. (Exhibit 3.)
2. Effective January 29, 2018, the Respondent entered into a Consent Order of Reinstatement with the New Jersey State Board of Medical Examiners (NJ Board), whereby he agreed to abstain completely from using all psychoactive substances including alcohol and inhalants, unless prescribed by a treating physician for a documented medical condition. (Exhibit 5.)
3. On October 8, 2019, the NJ Board ordered the indefinite suspension of the Respondent's New Jersey medical license after he tested positive for cocaine and THC (the active ingredient in cannabis), in violation of the January 29, 2018 Consent Order. (Exhibit 4.)

## **CONCLUSIONS OF LAW**

The Respondent was personally served with a Notice of Referral Proceeding and Statement of Charges on February 8, 2021. The notice advised him that a hearing was scheduled for March 18, 2021. At the Respondent's request, the hearing was adjourned to May 13, 2021. On May 11, 2021,

the Respondent contacted the Department's attorney to request another adjournment. Mr. Nash relayed the Respondent's request to the ALJ via email. The ALJ denied the request and advised that the hearing would proceed as scheduled and the request addressed on the record. At the hearing, the Respondent asserted that an adjournment was necessary because he was awaiting a new determination from the NJ Board regarding his medical licensure in New Jersey, based upon a hearing he had in February 2021. The ALJ denied the Respondent's request for postponement, given his inability to provide a timeframe within which he would receive a determination by the NJ Board. The ALJ advised the Respondent to notify the Department of any changes regarding the status of his New Jersey medical licensure. The Department then presented its case.

The Department's January 26, 2021 Statement of Charges alleges that the Respondent's misconduct in New Jersey described in the October 8, 2019 order would, if committed in New York, constitute professional misconduct as defined in Educ. Law § 6530(29), violating any term of probation or condition or limitation imposed on the licensee pursuant to section 230 of the public health law. (Exhibit 1.)

On October 8, 2019, the NJ Board ordered the indefinite suspension of the Respondent's New Jersey medical license after determining that the Respondent violated the terms of a January 29, 2018 Consent Order. (Exhibit 4.) Based upon the October 8, 2019 order, the Hearing Committee determined that the Respondent violated Educ. Law 6530(9)(d), as his conduct would, if committed in New York state, constitute professional misconduct pursuant to Educ. Law § 6530(29).

In consideration of the full spectrum of penalties under PHL 230-a, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, the Hearing Committee concluded that the revocation of the Respondent's medical license was the most appropriate penalty, as a lesser penalty would not adequately protect the public. The Committee

found that the Respondent lacked insight regarding the gravity of the violations that prompted the indefinite suspension of his New Jersey medical license. The Hearing Committee determined that the Respondent refused to take personal responsibility for his actions, as he made no acknowledgement of a need to adjust his behavior or habits, despite an evident, persistent addiction to psychoactive substances. Instead, the Respondent repeatedly insisted that the October 8, 2019 NJ Board determination was not final and falsely suggested that his most recent hearing before that disciplinary agency might change the status of his licensure. When Mr. Nash presented (with the Respondent's permission) a page from the February 10, 2021 hearing transcript in which the NJ Board verbally informed the Respondent that his license would remain suspended, the Respondent resorted to baseless claims of racism against the Hearing Committee, injustice, and a lack of due process. The Respondent offered no information that would mitigate the severity of his actions. For these reasons, the Hearing Committee concluded that the appropriate penalty in this case is the revocation of his medical license.

**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 is hereby revoked under PHL § 230-a(4).
3. This Order shall be effective upon service on the Respondent in compliance with PHL § 230(10)(h).

**DATED: Menands, New York**

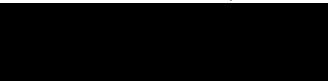
*May 24*

, 2021

  
**Lyon M. Greenberg, M.D.**  
**Chairperson**

**Anthony Marinello, M.D.**  
**Gail S. Homick Herrling**

To: Colin Pemberton, M.D.



Marc Nash, Associate Counsel  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, NY 12237

# APPENDIX I



IN THE MATTER  
OF  
COLIN PEMBERTON, M.D.

STATEMENT  
OF  
CHARGES

COLIN PEMBERTON, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 12, 2019, by the issuance of license number 299558 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about October 8, 2019, the New Jersey Board of Medical Examiners (hereinafter, "New Jersey Board") filed an Order of Automatic Suspension of License which indefinitely suspended Respondent's license to practice medicine and surgery. This disciplinary action was based on Respondent's violation of a January 29, 2018 Consent Order of Reinstatement in which Respondent had agreed to maintain absolute abstinence from all psychoactive substances. Respondent violated this Consent Order when, following hair testing conducted in mid-September 2019, Respondent tested positive for cocaine and THC (active ingredient in cannabis).

B. The Conduct resulting in the New Jersey Board's disciplinary 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 Education Law § 6530(29) (Violating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law).


**SPECIFICATION OF CHARGES**

**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(29)) as alleged in the facts of the following:

1. The facts in Paragraphs A and B and B.1.

DATE: January 26, 2021  
Albany, New York

  
TIMOTHY J. MAHAR  
Deputy Counsel  
Bureau of Professional Medical Conduct