



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

November 16, 2001

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
& Robert Maher, Esq.  
NYS Department of Health  
Hedley Park Place – 4<sup>th</sup> Floor  
Troy, New York 12180

Mark Andrew Schenkler, M.D.  
1779 Dartmoor Circle  
Charleston, SC 29407

Mark Andrew Schenkler, M.D.  
4 Carriage Lane #204  
Charleston, SC 29407

**RE: In the Matter of Mark Andrew Schenkler, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-276) 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "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.

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  
Hedley Park Place  
433 River Street, Fifth Floor  
Troy, New York 12180

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,



Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

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

IN THE MATTER

OF

**MARK ANDREW SCHENKLER, M.D.**

DETERMINATION

AND

ORDER

BPMC #01-276

**COPY**

A Notice of Referral Proceeding and Statement of Charges, both dated September 26, 2001, were served upon the Respondent, **MARK ANDREW SCHENKLER, M.D.** **FRED LEVINSON, M.D.**, Chairperson, **ERNST A. KOPP, M.D.** and **FRANCES TARLTON**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on October 26, 2001, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared pro se.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

## STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(ii), based upon a criminal conviction, and is also charged under Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (2), (16), and (20). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

## WITNESSES

For the Petitioner:

None

For the Respondent:

Respondent

## FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous unless otherwise specified.

1. **MARK ANDREW SCHENKLER, M.D.**, the Respondent, was authorized to practice medicine in New York State on May 3, 1994, by the issuance of license number 195594 by the New York State Education Department (Ex. 4).
2. On December 7, 2000, in the Court of General Sessions, County of Charleston, State of South Carolina, Respondent was sentenced pursuant to a guilty plea to violation of South Carolina Code of Laws §44-53-370(b)(3), Unlawful Distribution of a Controlled Substance, a misdemeanor, and was sentenced to three (3) years confinement, suspended, with three (3) years probation, \$25,000.00 restitution, and a \$100.00 surcharge (Ex. 6).
3. On or about June 18, 2001, the South Carolina State Board of Medical Examiners, (hereinafter "South Carolina Board"), by a Final Order, (hereinafter "South Carolina Order"), publicly reprimanded Respondent and fined him \$1,000.00, based on his having written prescriptions for 120 Adderall 30 mg., a psychoactive controlled substance, on two occasions for a patient, having had the patient fill the prescriptions

and bill the costs to the Medicaid program, and having had the patient return half of each prescription to him. The Order (Ex. 5) was also predicated upon Respondent's criminal conviction, described in Fact-Finding #2, above.

### **HEARING COMMITTEE CONCLUSIONS**

The hearing Committee concludes that the conduct resulting in the South Carolina Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(2);
- New York Education Law §6530(16); and
- New York Education Law §6530(20);

The criminal conviction constitutes misconduct pursuant to New York Education Law §6530(9)(a)(ii).

### **VOTE OF THE HEARING COMMITTEE**

#### **SPECIFICATIONS**

#### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(iii) by being convicted of an act constituting a crime under the laws of another jurisdiction and which, if committed in New York State, would have constituted a crime under New York State law.

**VOTE: SUSTAINED (3-0)**

## **SECOND SPECIFICATION**

Respondent violated New York Education 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.

**VOTE: SUSTAINED (3-0)**

## **THIRD SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state.

**VOTE: SUSTAINED (3-0)**

## **HEARING COMMITTEE DETERMINATION**

The record in this case indicates that Respondent was convicted in South Carolina of the misdemeanor offense of Unlawful Distribution of a Controlled Substance, and was disciplined by the South Carolina Board, as set forth in Fact-Findings 2 & 3, above. These actions stemmed from the uncovering of two instances when Respondent wrote prescriptions for 120 Adderall 30 mg., a psychoactive controlled substance, had the patient fill the prescriptions and bill the costs to the Medicaid program, and had the patient return half of each prescription to him.

There is no question that Respondent's actions constituted violations of a number of legal provisions, detailed in the South Carolina Order. The Respondent's actions constituted misconduct in New York State pursuant to the provisions of New York Law cited above, and the Hearing Committee concludes that the charges in this case, which were not disputed by Respondent, were substantiated.

The question remaining to be addressed is the appropriate penalty to be imposed for Respondent's New York professional misconduct. The Hearing Committee concludes that several factors mitigate against revocation or suspension of Respondent's New York license. First, the Hearing Committee concludes that the actions that led to the criminal and administrative sanctions resulted from Respondent's ill-advised attempt to control the psychoactive drugs being prescribed for one of his patients. According to Respondent's testimony (see also Ex. A), the drugs that were returned to him by the patient were being stockpiled by Respondent for later dispensing to the patient because the patient had taken two serious overdoses of medications, because he had a long history of substance abuse and because the patient's family members had also been taking his medications (Ex. A), and Respondent felt that limiting the patient to smaller supplies of the drug was the best way to try to achieve reliable and effective administration. Respondent also testified that he prescribed multiple months' worth of medications because he was trying to deal with a South Carolina Medicaid limitation on prescriptions recipients could get filled to a maximum of 4 per month, whereas this patient needed to take 10 medications.

The Hearing Committee concludes that Respondent's explanation for these prescribing practices was credible, as evidenced by the facts that the criminal charges against him were reduced to one misdemeanor and that the South Carolina Board imposed a relatively light penalty against him. As far as this record reveals, Respondent's



prescribing practices were not part of some plan to illegally dispense drugs to anyone other than the patient himself, nor was any evidence adduced during the investigation of this matter that suggested Respondent was taking the drugs himself.

The Hearing Committee was impressed with the testimonial letters provided for consideration at this hearing by other physicians, Respondent's attorney and other professionals. These testimonials lend support to the conclusion reached herein that Respondent can be expected to practice high-quality psychiatry within the confines of applicable laws governing such practice in the future, should he (as he should) be aware of such laws.

The Hearing Committee determines that the appropriate sanction in this case is censure and reprimand, in accordance with §230-a(1) of the Public Health Law. This sanction is essentially consistent with the sanction imposed by the State of South Carolina. Respondent is also warned that he should continue to take steps to make himself aware of the laws, rules and regulations governing medical practice and prescribing, in particular, in every jurisdiction in which he chooses to practice, including New York.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. A **CENSURE AND REPRIMAND** should be issued covering the findings of misconduct upheld herein.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

**DATED: Middletown, New York**

*Nov. 14, 2001*

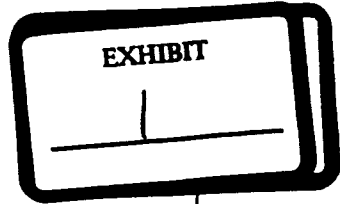
  
**FRED LEVINSON, M.D.**

**Chairperson**

**ERNST A. KOPP, M.D.**

**FRANCES TARLTON**

# APPENDIX 1



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

**IN THE MATTER**  
**OF**  
**MARK ANDREW SCHENKLER, M.D.**  
**CO-01-01-0136-A**

**NOTICE OF**  
**REFERRAL**  
**PROCEEDING**

**TO:** MARK ANDREW SCHENKLER, M.D. MARK ANDREW SCHENKLER, M.D.  
1779 Dartmoor Circle 4 Carriage Lane #204  
Charleston, SC 29407 Charleston, SC 29407

**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 Sections 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 the 26<sup>th</sup> day of October 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180.

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. 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 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, Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON. TYRONE

BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before October 16, 2001.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before October 16, 2001, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 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.

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.

**SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.**

DATED: Albany, New York

*September 26*, 2001



PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan  
Associate Counsel  
Office of Professional Medical Conduct  
433 River Street – Suite 303  
Troy, New York 12180  
(518) 402-0828

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

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IN THE MATTER  
OF  
MARK ANDREW SCHENKLER, M.D.  
CO-01-01-0136-A

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STATEMENT  
OF  
CHARGES

MARK ANDREW SCHENKLER, M.D., the Respondent, was authorized to practice medicine in New York state on May 3, 1994, by the issuance of license number 195594 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about December 7, 2000, in the Court of General Sessions, County of Charleston, State of South Carolina, Respondent was found guilty of South Carolina Code of Laws §44-53-370(b)(3), Unlawful Distribution of a Controlled Substance in Schedule IV, and was sentenced to three (3) years confinement, suspended, with three (3) years probation, \$25,000.00 restitution, and a \$100.00 surcharge.

B. On or about June 18, 2001, the South Carolina State Board of Medical Examiners, (hereinafter "South Carolina Board"), by a Final Order, (hereinafter "South Carolina Order"), publicly reprimanded Respondent and fined him \$1,000.00, based on his writing prescriptions for 120 Adderall 30 mg., a Schedule II controlled substance, on two occasions to a patient, having the patient fill the prescriptions and bill the costs to the patient's Medicaid card, and return half of each prescription to him, and his conviction described in Paragraph A above.

C. The conduct resulting in the South Carolina Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(2) (practicing the profession fraudulently);
2. New York Education Law §6530(9)(a)(i) (being convicted of committing an act constituting a crime under state law);
3. New York Education Law §6530(16) (willful failure to comply with federal, state, or local laws, rules or regulations governing the practice of medicine); and/or
4. New York Education Law §6530(20) (moral unfitness).

### **SPECIFICATIONS**

#### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(iii) by being convicted of 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, in that Petitioner charges:

1. The facts in Paragraphs A.

#### **SECOND SPECIFICATION**

Respondent violated New York Education 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 findings was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that the Petitioner charges:

2. The facts in Paragraphs A, B, and/or C.

#### **THIRD SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:



3. The facts in paragraphs A, B, and/or C.

DATED: *Sept. 26*, 2001  
Albany, New York

  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical Conduct