



Department of Health

ANDREW M. CUOMO
Governor

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

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

August 3, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Jesse B. Baldwin, Esq.
Addelman Cross & Baldwin, PC
5680 Main Street
Buffalo, New York 14221

Eugene Gosy, M.D.

████████████████████
McKean FCI
6975 Route 59
Lewis Run, Pennsylvania 16738

RE: In the Matter of Eugene Gosy, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 21-154) 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,



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

-----X
IN THE MATTER
OF
EUGENE GOSY, M.D.
-----X

DETERMINATION
AND
ORDER
BPMC-21-154

A hearing was held on July 15, 2021, remotely by videoconference. Pursuant to Public Health Law (PHL) § 230(10)(e), Ravinder Mamtani, M.D., Chairperson, James Leonardo, M.D., and Elena Cottone, P.A., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Tina M. Champion, Administrative Law Judge (ALJ), served as the Administrative Officer.

The Department appeared by Marc Nash, Associate Counsel. A Commissioner's Order of Summary Action dated November 4, 2020, Notice of Referral Proceeding dated November 19, 2020, and Statement of Charges dated November 4, 2020, were duly served upon Eugene Gosy, M.D. (Respondent), whose attorney, Jesse Baldwin, Esq., appeared at the hearing on the Respondent's behalf.

The Hearing Committee received and examined documents from the Department and the Respondent. (Dept. Exs. 1-6; Resp. Exs. A-B.) The Hearing Committee heard testimony from two witnesses for the Respondent: Paul Updike, M.D. and Nancy Nielsen, M.D. A stenographic reporter prepared a transcript of the proceeding.

BACKGROUND

The Department brought this 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 one specification of professional misconduct pursuant to Educ. Law § 6530(9)(a)(ii) for having been convicted of an act constituting a crime under federal law. Pursuant to PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence. Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 "shall be subject to penalties as prescribed in [PHL § 230-a] except that the charges may be dismissed in the interest of justice."

FINDINGS OF FACT

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. The Respondent was licensed to practice medicine in New York State on July 31, 1990 by issuance of license number 183330. (Dept. Ex. 3.)
2. The Respondent previously maintained a medical office in Western New York in which he specialized in pain management. (Dept. Ex. 5; Testimony [T.] Updike, Nielson.)
3. On or about October 27, 2020, in the U.S. District Court, Western District of New York, the Respondent was convicted of two felonies: Health Care Fraud (18 U.S.C. § 1347) and Conspiracy to Unlawfully Distribute Controlled Substances (21 U.S.C. §§ 841, 846). (Dept. Ex. 4 & 5.)
4. Pursuant to the conviction, the Respondent was sentenced to 70 months incarceration followed by three years of supervised release, directed to pay \$344,562.65 in restitution, and directed to forfeit his interest in certain property. (Dept. Ex. 4.)

VOTE OF THE HEARING COMMITTEE

The Hearing Committee, by a vote of 3-0, sustains the charge that the Respondent committed professional misconduct as defined in Educ. Law § 6530(9)(a)(ii).

HEARING COMMITTEE DETERMINATIONS

There is no dispute that the Respondent has committed professional misconduct as defined in Educ. Law § 6530(9)(a)(ii). The Hearing Committee has thoroughly considered the evidence in this matter to determine the appropriate penalty for the professional misconduct. This evidence included, among other things, a victim impact statement submitted by the Department and letters of support from patients submitted by the Respondent. The Hearing Committee also thoroughly considered the mitigation testimony offered by the Respondent's witnesses, Paul Updike, M.D. and Nancy Nielsen, M.D.

The Department's presentation made clear to the Hearing Committee the gravity of the Respondent's conduct, particularly given the volume of patients to whom the Respondent rendered care and the inherent risks associated with prescribing controlled substances.

Dr. Updike is experienced in pain management and addiction medicine, and practices in Western New York. Dr. Updike testified that for approximately half of a day between the years of 2007 and 2014 he observed the Respondent and mid-level providers rendering legitimate medical care to patients in the Respondent's office. Dr. Updike believes that the local public health system in Western New York would be better served with the Respondent returning to the practice of medicine after release from his incarceration.

Dr. Nielsen testified that prior to the Respondent's indictment she knew only of his reputation. However, in order to assist with a local public health crisis that followed the Respondent's indictment, Dr. Nielsen volunteered 75 days of her time to oversee the Respondent's practice so that the Respondent's patients could continue to receive prescriptions for medications. Dr. Nielsen testified that, among other things, she was surprised to discover how well the Respondent knew his patients, the low incidence of drug-seeking patients, and the competency of the Respondent and the mid-level providers in his practice.

The Hearing Committee appreciated the testimony of Drs. Updike and Nielson as it aided them in understanding the totality of the situation and the community impact in Western New York

that surrounded the Respondent's indictment. The Hearing Committee also found their observations of the Respondent's practice had significant limitations. Specifically, Dr. Updike only observed the Respondent and his practice for half of one day sometime between 2007 and 2014. Dr. Nielson's observations and involvement was lengthier and more immersive; however, it was subsequent to the Respondent's indictment.

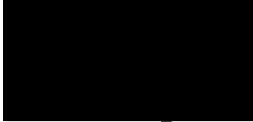
The Department has recommended revocation of the Respondent's license. The Respondent seeks, at most, a penalty of suspension to run concurrent to the Respondent's incarceration, followed by probation. The Hearing Committee finds that the only appropriate penalty to protect the people of the State of New York is revocation of the Respondent's license to practice medicine.

ORDER

Now, after reviewing the evidence from the hearing, 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 in the State of New York is revoked; and
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

Dated: Albany, New York
August _____, 2021


Ravinder Mantani, M.D., Chairperson
James Leonardo, M.D.
Elena Cottone, P.A.

Aug 3, 2021

Marc S. Nash
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237



Jesse B. Baldwin
Partner
Addelman Cross & Baldwin, PC
5680 Main Street
Buffalo, NY 14221
jbaldwin@acbfirm.com

Eugene Gosy, M.D.



McKean FCI
6975 Route 59
Lewis Run, PA 16738

APPENDIX I

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

IN THE MATTER
OF
EUGENE GOSY, M.D.

COMMISSIONER'S
ORDER OF
SUMMARY
ACTION

TO: EUGENE GOSY, M.D.
[REDACTED]

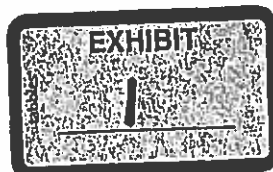
The undersigned, Howard A. Zucker, M.D., J.D., Commissioner of Health, pursuant to N.Y. Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that EUGENE GOSY, M.D. (henceforth "Respondent"), has been convicted of committing an act constituting a felony under federal law as is more fully set forth in the Statement of Charges attached to the Notice of Referral Proceeding 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 §8530(29) and may constitute unauthorized medical practice, a Felony defined by N.Y. Educ. Law §8512.

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 Adm. 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
November 4, 2020


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

Inquiries should be directed to:

Marc S. Nash
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-1706

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

IN THE MATTER
OF
EUGENE GOSY, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: EUGENE GOSY, M.D.

McKean FCI
6975 Route 59
Lewis Run, PA 16738

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 January 14, 2021, 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 or by video conference as directed by the Administrative Law Judge, and at such other adjourned dates, times and places as the committee may direct.

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, or by video conference if directed by the Administrative Law Judge, 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

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

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 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
November 19, 2020

[REDACTED]
TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Marc S. Nash
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-1706

cc: Jessie B. Baldwin, Esq.
Kenney Shelton Liptak Nowak LLP
The Calumet Building
233 Franklin Street
Buffalo, New York 14202

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

IN THE MATTER
OF
EUGENE GOSY, M.D.

STATEMENT
OF
CHARGES

EUGENE GOSY, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 31, 1990, by the issuance of license number 183330 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 15, 2020, in the U.S. District Court, Western District of New York, Respondent was convicted of two felonies, Health Care Fraud [18 U.S.C. § 1347] and Conspiracy to Distribute Controlled Substances [21 U.S.C. § 846]. Pursuant to this conviction, Respondent was sentenced to 70 months incarceration followed by three years' supervised release, directed to pay \$344,563 in restitution and forfeit \$345,064 in possessions.

SPECIFICATION OF CHARGES

Respondent violated Education Law § 6530(9)(a)(ii) by having been convicted of an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in Paragraph A

DATE: November 7, 2020
Albany, New York



TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct