



## Department of Health

ANDREW M. CUOMO  
Governor

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

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

February 3, 2017

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ian H. Silverman, Esq.  
NYS Department of Health  
Corning Tower Room 2412  
Empire State Plaza  
Albany, New York 12237

Patrick McLaughlin, Esq.  
35 Koenig Road, Suite 101  
Tonawanda, New York 14150

William A. Swagler, III, M.D.  
[REDACTED]

**RE: In the Matter of William A. Swagler, III, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No.17- 35) 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), (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 Respondent 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., 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,

A solid black rectangular redaction box covering the signature of James F. Horan.

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:nm

Enclosure

COPY

**IN THE MATTER**  
**OF**  
**WILLIAM A. SWAGLER, III, D.O.**

**DETERMINATION**

**AND**

**ORDER**

**BPMC#17-35**

A hearing was held on January 18, 2017, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and Statement of Charges dated October 12, 2016, were served upon WILLIAM A. SWAGLER, III, D.O., the Respondent. Pursuant to § 230(10)(e) of the Public Health Law, James M. Leonardo, M.D., Chairperson, Reid T. Muller, M.D., and David F. Irvine, DHSc, P.A., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. William J. Lynch, Esq., Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by Richard J. Zahnleuter, Esq., General Counsel, by Ian H. Silverman, Esq., of Counsel. The Respondent appeared at the hearing and was represented by Patrick McLaughlin, Esq. Evidence was received and a transcript of the proceedings was made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

**BACKGROUND**

This case was brought pursuant to Public Health Law § 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of New York Education Law § 6530(9). In such cases, a licensee is charged with misconduct based upon a

prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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.

In the instant case, the Respondent is charged with professional misconduct pursuant to New York Education Law § 6530(9)(a)(iii). Copies of the Notice of Referral Proceeding and the Statement of Charges are 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.

1. William A. Swagler, III, D.O., the Respondent, was authorized to practice medicine in New York State on December 19, 2012, by the New York State Education Department's issuance of license number 268068. (Petitioner's Ex. 3).

2. On February 4, 2014, in the Court of Common Pleas of Erie County, Pennsylvania, the Respondent was convicted of Driving Under the Influence of Alcohol or

Controlled Substance: Highest Rate of Alcohol, in violation of a Pennsylvania statute, Title 75 Pa. C.S.A. Vehicles § 3802(c). (Petitioner's Ex. 4).

3. The Respondent was sentenced, inter alia, to a restrictive intermediate punishment for a period of 24 months to begin with electronic monitoring for 90 days, a fine of \$1,500, and costs of \$2,685.50. (Petitioner's Ex. 4).

### HEARING COMMITTEE CONCLUSIONS

The Petitioner offered into evidence copies of the documents from the Court of Common Pleas of Erie County, Pennsylvania, related to the Respondent's conviction. These documents establish that the Respondent operated a motor vehicle with a blood alcohol concentration of 0.18%. This conduct would have constituted a crime under New York State law if committed within New York State. Therefore, the Hearing Committee concluded that the Respondent has committed misconduct as defined in New York Education Law § 6530(9)(a)(iii).

### VOTE OF THE HEARING COMMITTEE

#### FIRST SPECIFICATION

Respondent violated New York State Education 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: (3-0) Sustained

### HEARING COMMITTEE DETERMINATION

The Pennsylvania court documents admitted into evidence show that in July 2013, the Respondent drove his car off the roadway and struck a tree. His blood alcohol concentration

was subsequently measured at 0.18%. The Respondent admitted that he had consumed alcohol to the point of blacking out and that he had no memory of getting into his car and driving. The Respondent also acknowledged that he had previously been arrested in New York State for driving while intoxicated in March 2013, which was pleaded down to a conviction for driving while ability impaired.

The Respondent claimed that stress due to familial difficulties caused his misuse of alcohol. The Respondent submitted a document dated September 2014, from the alcohol counselor who began treating him in August 2013, which indicates that the Respondent's therapeutic involvement had been good and that the Respondent was no longer using or abusing alcohol.

The Respondent testified that he did not have any alcohol during the two years of probation, but he acknowledged that he now consumes an occasional glass of wine. He submitted no evidence of any professional treatment beyond September 2014, and no evidence that a health care professional has evaluated the risk associated with his return to alcohol use.

In regard to his employment, the Respondent submitted a letter from a physician who has worked regularly with him and has acted as his supervisor in a hospital emergency department for the past three years. That letter indicates that the Respondent has a strong work ethic, is highly regarded by his colleagues and patients, and that there has been no evidence of the Respondent in an altered mental state during that time.

The Hearing Committee considered the full spectrum of penalties available pursuant to statute, including revocation, suspension, probation, censure, and the imposition of civil penalties. The Petitioner recommended that a censure and reprimand, a \$3,000 fine, and a

probation term of five years with an Impairment monitor be imposed. The Hearing Committee concurred with the recommendation for a censure and reprimand and a five-year monitored probation. The Hearing Committee, however, is gravely concerned that the Respondent has resumed the consumption of alcohol and has not continued with treatment for his alcohol abuse. In lieu of imposing a civil penalty, the Hearing Committee therefore concluded that additional terms of probation shall require that, within 90 days, the Respondent must undergo an evaluation by the Committee on Physician Health or a similar program approved by the Director of the OPMC, that the Respondent must follow the treatment recommendations of that evaluation, and that the Respondent's sobriety shall be monitored.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

The Respondent is Censured and Reprimanded.

The Respondent is placed on probation for five years during which he shall comply with the terms of probation annexed as Attachment A.

This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Albany, New York  
18 JANUARY, 2017



James M. Leonardo, M.D.  
Chairperson

Reid T. Muller, M.D.  
David F. Irvine, DHSc, P.A.

## ATTACHMENT A

### Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of his employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of his compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. Within 90 days of the effective date of the underlying Determination and Order, Respondent shall undergo an evaluation by the Committee on Physician Health or a similar program approved by the Director of OPMC, and Respondent shall comply with the treatment recommendations of that evaluation.
6. Respondent shall abstain from the use of alcohol during the probationary period and shall be monitored by a qualified health care professional proposed by Respondent and approved in writing by the Director of OPMC ("sobriety monitor").
7. The sobriety monitor shall oversee Respondent's compliance with the terms and conditions imposed herein and shall cause



to be performed forensically valid, random, supervised, unannounced blood, breathalyzer and/or urine tests for the presence of alcohol. The sobriety monitor shall notify the Director of OPMC immediately if Respondent refuses such a test or if a test reveals Respondent is not alcohol free.

8. Every three months, the sobriety monitor shall submit a report to OPMC certifying compliance with these terms or describing any failure to comply.
9. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if he is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in the Determination and Order or as are necessary to protect the public health.
10. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
11. Respondent shall comply with these probationary terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.

# APPENDIX I

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

IN THE MATTER  
OF  
WILLIAM A. SWAGLER, III, M.D.

NOTICE OF  
REFERRAL  
PROCEEDING

TO: WILLIAM A. SWAGLER, III, M.D.  
[REDACTED]

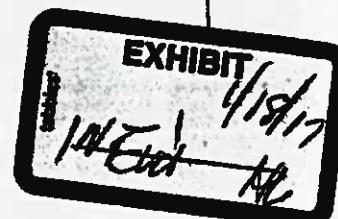
PLEASE TAKE NOTICE THAT:

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 December 15, 2016 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.<sup>1</sup>

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

<sup>1</sup> For GPS purposes, enter "Menands", not "Albany".



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 

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  
October 7, 2016



MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Ian H. Silverman, Esq.  
Associate Counsel  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, NY 12237  
(518) 473-4282

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

IN THE MATTER  
OF  
WILLIAM A. SWAGLER, III, M.D.

STATEMENT  
OF  
CHARGES

WILLIAM A. SWAGLER, III, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 19, 2012 by the issuance of license number 268068 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about February 4, 2014 Respondent was convicted of the misdemeanor Driving Under the Influence-Highest Rate in the Court of Common Pleas of Erie County, Pennsylvania. Respondent was sentenced to a restrictive intermediate punishment for a period of 24 months beginning with electronic monitoring for a period of 90 days, and fined \$1,500 and costs of \$2,685.50.
- B. Respondent's crime as described above in Pennsylvania would, if committed in New York State, have constituted a crime under New York State law, specifically N.Y. Vehicle and Traffic Law §1192 (3) (Driving While Intoxicated, an unclassified misdemeanor).

**SPECIFICATION**

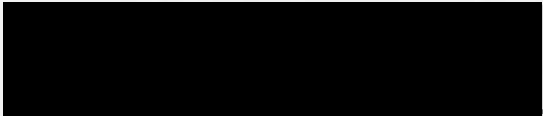
**CRIMINAL CONVICTION (Other Jurisdiction)**

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. Vehicle and Traffic Law § 1192 (3) ) as alleged in the facts of the following:

1. The facts in Paragraph A and B.

DATE: October 12, 2016  
Albany, New York

  
Michael A. Hiser, Esq.  
Deputy Counsel  
Bureau of Professional Medical Conduct