



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

January 5, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Edmund Kaplan, M.D.
[REDACTED]
Taft Correctional Institution
P.O. Box 7001
Taft, California 93268

Lee Davis, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Edmund Kaplan, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 17-011) 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:cah
Enclosure

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

COPY

**IN THE MATTER
OF
EDMUND S. KAPLAN, M.D.**

**DETERMINATION
AND
ORDER**

BPMC #17-011

A hearing was held on December 13, 2016, at the offices of the New York State Department of Health ("Department").¹ Pursuant to § 230(10)(e) of the Public Health Law ("PHL"), **WILLIAM A. TEDESCO, M.D.**, Chairperson, **DENNIS P. ZIMMERMAN, M.S., CRC**, and **MARY E. RAPPAZZO, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **DAWN MacKILLOP-SOLLER, ADMINISTRATIVE LAW JUDGE ("ALP")**, served as the administrative officer.

The Department appeared by Lee Davis, Associate Counsel. A Notice of Referral Proceeding and Statement of Charges dated October 24, 2016, were served upon Edmund S. Kaplan, M.D. ("Respondent"), who did not appear at the hearing.² There were no witnesses at the hearing. The Hearing Committee received and examined documents from the Department and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charge that the Respondent committed professional misconduct, in violation of Education Law ("Educ. Law") § 6530(9)(a)(ii), by having been convicted of committing acts constituting crimes under federal law in his plea of guilty to the felony counts of Conspiracy to

¹ The location of the hearing was 150 Broadway, Suite 510, Menands, New York.

² Copies of the Notice of Referral Proceeding and Statement of Charges are attached to this Determination and Order as Appendix I. The Department presented evidence to show that on November 3, 2016, the Respondent was personally served at Taft Correctional Institution, located in Taft, CA, with the Notice of Hearing and Statement of Charges, establishing jurisdiction pursuant to PHL 230(10)(d)(i). [Exhibit 2].

Dispense a Controlled Substance by Internet, in violation of 21 United States Code ("U.S.C.") 846, Dispensing a Controlled Substance by Internet, in violation of 21 U.S.C. 841(b)(1)(E) and (h)(1)(A-B), Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. 1956(h) and Money Laundering, in violation of 18 U.S.C. 1956(a)(2)(A). The Hearing Committee also based its determination on the Respondent's misdemeanor convictions for Conspiracy to Misbrand Prescription Drugs, in violation of 18 U.S.C. 371, and Misbranding Prescription Drugs, in violation of 21 U.S.C. 331(a) and (a)(1). The Hearing Committee unanimously votes 3-0 to revoke the Respondent's license to practice medicine in New York.

BACKGROUND

This case began with an Order by the Commissioner of Health, Howard A. Zucker, M.D., J.D., summarily suspending the Respondent's medical license pursuant to PHL § 230(12)(b). The Department brought the case pursuant to PHL § 230(10)(p), which provides for a hearing when a registered provider or licensee is charged solely with a violation of Educ. Law § 6530(9). In such cases, the charge of misconduct is 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 Respondent is charged with one specification of professional misconduct pursuant to Educ. Law § 6530(9)(a)(ii) by having been convicted of committing acts constituting crimes under federal law, in violation of 21 U.S.C. 331(a) and (a)(1), 846, 841(b)(1)(E) and 841(h)(1)(A-B), 18 U.S.C. 371, 1956(h) and 1956(a)(2)(A).

FINDINGS OF FACT

These Findings of Fact were made by the Hearing Committee after a review of the record in this matter. Under PHL § 230(10), the Department had the burden of proving its case by a

preponderance of the evidence. The references in brackets refer to exhibits ["Ex."]. The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. On March 24, 1993, the Respondent was authorized to practice medicine in New York by the Education Department and was issued license number 191780. [Ex. 3].

2. On or about December 8, 2015, in the United States District Court, Southern District of New York, the Respondent pled guilty to the felony crimes of Conspiracy to Dispense a Controlled Substance by Internet, in violation of 21 U.S.C. 846, Dispensing a Controlled Substance by Internet, in violation of 21 U.S.C. 841(b)(1)(E) and (h)(1)(A)-(B), Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. 1956(h), and Money Laundering, in violation of 18 U.S.C. 1956(a)(2)(A). The Respondent also pled guilty to the misdemeanor crimes of Conspiracy to Misbrand Prescription Drugs, in violation of 18 U.S.C. 371, and Misbranding Prescription Drugs, in violation of 21 U.S.C. 331(a) and (a)(1). The Respondent was sentenced to two years of imprisonment followed by two years of supervised release, payment of an assessment in the amount of \$600.00 and forfeiture of \$106,586.00. [Ex. 1, 4].

VOTE OF THE HEARING COMMITTEE

The Respondent violated New York Educ. Law § 6530(9)(a)(ii) by having been convicted of committing acts constituting crimes under federal law.

VOTE: Sustained (3-0)

CONCLUSIONS OF LAW

In the United States District Court, Southern District of New York, a federal court, the Respondent was adjudicated guilty, following his plea of guilty, to the felony crimes of Conspiracy to Dispense a Controlled Substance by Internet, in violation of 21 U.S.C. 846, Dispensing a Controlled Substance by Internet, in violation of 21 U.S.C. 841(b)(1)(E) and (h)(1)(A-B), Conspiracy

to Commit Money Laundering, in violation of 18 U.S.C. 1956(h) and Money Laundering, in violation of 18 U.S.C. 1956(a)(2)(A). The Respondent was also adjudicated guilty, following his plea of guilty, to the misdemeanor crimes of Conspiracy to Misbrand Prescription Drugs, in violation of 18 U.S.C. 371, and Misbranding Prescription Drugs, in violation of 21 U.S.C. 331(a) and (a)(1). The conduct that is the subject of the Statement of Charges constitutes crimes under federal law. Therefore, the specification of misconduct contained in the Statement of Charges of this proceeding is sustained.³

The Department's evidence demonstrated that the numerous crimes that the Respondent was convicted of involved his use of his medical license to distribute illegal drugs over the internet, dispense controlled and non-controlled substances without valid prescriptions, and issue prescriptions for non-patients, for which he received reimbursement via wire transfer from a bank account located in Hong Kong. This conduct represented to the Hearing Committee the Respondent's willingness to misuse his medical license to the detriment of the public in order to profit from the unauthorized sale and distribution of controlled substances and other drugs. [Ex. 4, 5].

The Hearing Committee also considered that the Respondent has a history of professional misconduct in New York State, which involves a Consent Agreement and Order that he signed on November 19, 2010. The Hearing Committee found this history troubling because the Respondent's conduct that is the subject of the Statement of Charges here occurred within a short period after he signed the 2010 Consent Order, which imposed three years of probation and a practice limitation to preclude the practice of obstetrics, surgical gynecology and all post-surgical care. [Ex. 10]. As such, in considering the full spectrum of penalties available by statute, including revocation, suspension,

³ The Department also made a motion at the hearing to have the charge and allegations deemed admitted pursuant to PHL § 230(10)(p) based on the Respondent's failure to file a written answer, which was granted after the ALJ confirmed this and determined that the Respondent was served pursuant to PHL § 230(10)(p). The ALJ also determined that based on this evidence, which showed that jurisdiction had been established over the Respondent, the hearing could proceed on the merits despite the Respondent's absence. [Ex. 1, 2].

censure and reprimand, probation and the imposition of a fine, the Hearing Committee unanimously concluded that the evidence supports the penalty of revocation of the Respondent's New York medical license.

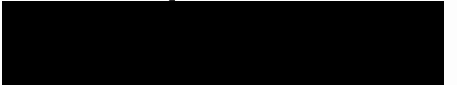
ORDER

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 in New York State is **REVOKED**; and
3. This Determination and Order shall be effective upon service on the Respondent. Service shall be either by certified mail or upon the Respondent at his last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York

1/3, ~~2016~~
2017



William A. Tedesco, M.D.
Chairperson

Dennis P. Zimmerman, M.S., CRC
Mary E. Rappazzo, M.D.

TO: Edmund Kaplan, M.D.

Taft Correctional Institution
P.O. Box 7001
Taft, CA 93268

Lee Davis, Esq.
Associate Counsel
Bureau of Professional Medical Conduct
Coming Tower Building - Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

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

IN THE MATTER
OF
EDMUND S. KAPLAN, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: EDMUND S. KAPLAN, M.D. - [REDACTED]
Taft Correctional Institute
P.O. Box 7001
Taft, CA 93268

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 14, 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 12204-2719.¹

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

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

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
October 24, 2016**


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

Inquiries should be directed to:

**Lee A. Davis
Associate Counsel
N.Y.S. Department of Health
Division of Legal Affairs**

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 24 2016



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Lee A. Davis
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
EDMUND S. KAPLAN, M.D.

STATEMENT
OF
CHARGES

EDMUND S. KAPLAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 24, 1993, by the issuance of license number 191780 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 8, 2015 in the United States District Court, Southern District of New York, Respondent was convicted of: conspiracy to dispense a controlled substance by internet, in violation of 21 U.S.C. §846, a felony; dispensing a controlled substance by internet, in violation of 21 U.S.C. §§841 (b)(1)(E) and (b)(1)(A-B), both felonies; conspiracy to commit money laundering, in violation of 18 U.S.C. §1956 (h) a felony; and money laundering, in violation of 18 U.S.C. §1956 (a)(2)(A); a felony; conspiracy to misbrand prescription drugs, in violation of 18 U.S.C. §371, a misdemeanor; misbranding prescription drugs, in violation of 21 U.S.C. §§331 (a) and (a)(1), misdemeanors. Respondent was sentenced to two years' incarceration, followed by two years' of supervised release, forfeiture of \$106,586.00 and a \$600 assessment fee.

FIRST SPECIFICATION

CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. The facts in paragraph A.

DATE: October 24, 2016
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct