



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

November 16, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hannah E.C. Moore, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

Michael Rapp, M.D., Inmate [REDACTED]
Arizona State Prison
Kingman Huachuca Unit
4626 West English Drive
Golden Valley, Arizona 86414

RE: In the Matter of Michael Rapp, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 20-285) 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: cmg
Enclosure

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

COPY

IN THE MATTER
OF
MICHAEL RAPP, M.D.

DETERMINATION
AND
ORDER
BPMC-20-285

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct (“the Department”). A Notice of Referral Proceeding (“NORP”) and Statement of Charges (“SOC”), both dated September 1, 2020, were served upon Michael Rapp, M.D. (“Respondent”) and are attached to this Determination and Order as Appendix 1. A hearing, pursuant to N.Y. Public Health Law (“PHL”) §230 and New York State Admin. Proc. Act §§301-307 and 401, was held via Cisco Webex on October 21, 2020.

Steven I. Sherman, D.O., Chair, Amit M. Shelat, D.O., and Richard S. Goldberg, Esq., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (“Committee”) in this matter. Ann Gayle, Administrative Law Judge (“ALJ”), served as the administrative officer. The Department appeared by Hannah E.C. Moore, Assistant Counsel. Respondent, having been duly served with the NORP and SOC in conformity with the requirements of PHL §230.10(d), did not appear¹ (Exhibit 2). Evidence was received and a transcript of this hearing was made and is part of the record.

¹ The NORP stated that the hearing would be held at the Department’s offices at 90 Church Street, New York, New York (“Department’s offices”) or by videoconference. The ALJ sent Respondent a letter dated September 30, 2020. The letter informed him that due to COVID-19 restrictions, the hearing would be held remotely via Webex and directed him to contact the Bureau of Adjudication (“Adjudication”) to provide an email address to receive an invitation to join the remote hearing if he wished to participate (ALJ Ex I). Respondent did not contact Adjudication nor did he or anyone on his behalf appear at the Department’s offices on the day of the hearing.

After consideration of the entire record, the Committee issues this Determination and Order; all findings, conclusions, and determinations are unanimous.

STATEMENT OF CASE

This case was brought pursuant to PHL §230(10)(p) which provides for a hearing with circumscribed issues when a licensee is charged with misconduct based upon a criminal conviction under federal or state law and/or upon an administrative adjudication in another state regarding conduct that would amount to a crime and/or professional misconduct if committed in New York. N.Y. Education Law (“Educ. Law”) §6530(9). In the instant case, Respondent is charged with professional misconduct pursuant to Educ. Law §6530(9)(a)(iii) for having been convicted of an act constituting a crime under Arizona law. The scope of the hearing is limited to a determination of the penalty, if any, to be imposed upon the licensee.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the full record in this matter. Citations in parentheses, which refer to transcript page numbers (“T”) and exhibits (“Ex”) that were accepted into evidence, represent evidence found persuasive by the Committee in arriving at a particular finding.

1. On March 22, 2005, Respondent, Michael Rapp, M.D., was authorized, by the issuance of license number 235518, by the New York State Education Department, to practice medicine in New York State. (Ex 3)

2. On August 29, 2019, in the Maricopa County Superior Court of Arizona, Respondent pled guilty to three counts of Attempted Sexual Exploitation of a Minor, a class 3 Felony and dangerous crime against children. On October 18, 2019, Respondent was sentenced to a term of imprisonment of a less than presumptive term of 7 years. Additionally, Respondent was placed on supervised probation with sex offender and computer usage conditions for a life term upon his release from prison. (Ex 4)

CONCLUSIONS OF LAW

The Department charged Respondent with one Specification of professional misconduct pursuant to Educ. Law §6530(9)(a)(iii) for having been convicted of an act constituting a crime under the law of another jurisdiction and which, if committed in this state would have constituted a crime under New York state law, namely New York Penal Law §263.11 (possessing an obscene sexual performance by a child, a class E Felony). This Specification is sustained based on Respondent's August 29, 2019 conviction.

DISCUSSION and DETERMINATION AS TO PENALTY


The Department recommended a revocation of Respondent's license. The Committee, in considering the full range of penalties available pursuant to PHL Law §230-a, concludes that the appropriate penalty for Respondent's misconduct is a revocation of his New York license. The Committee believes that Respondent poses a risk to patients based on these dangerous sex offense crimes.

ORDER

IT IS HEREBY ORDERED THAT:

1. The charge of misconduct under Educ. Law §6530(9)(a)(iii) for having been convicted of an act constituting a crime under the law of another jurisdiction is sustained.
2. Pursuant to PHL §230-a(4) Respondent's license to practice medicine shall be revoked.
3. This order shall be effective upon service on the Respondent by personal service or by certified mail as required under PHL §230(10)(h).

DATED: Woodmere, New York
November 13, 2020


STEVEN I. SHERMAN, D.O., Chair
AMIT M. SHELAT, D.O.
RICHARD S. GOLDBERG, ESQ.

To: Hannah E.C. Moore, Assistant Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237-0032

MICHAEL RAPP, M.D., INMATE [REDACTED]
Arizona State Prison - Kingman Huachuca Unit
4626 West English Drive
Golden Valley, Arizona 86414

APPENDIX 1

EXHIBIT

Dept. 1 10/21/20 slk

exhibitsticker.com

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

**IN THE MATTER
OF
MICHAEL RAPP, M.D.**

NOTICE OF
REFERRAL
PROCEEDING

TO: MICHAEL RAPP, M.D.
Inmate # [REDACTED]
Arizona State Prison – Kingman
Huachuca Unit.
4626 W English Dr
Golden Valley, AZ 86414

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 October 21, 2020 at 10:30 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor New York, NY 10007 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

EXHIBIT

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tabbler

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 

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
September 1, 2020



TIMOTHY J. MAHAR
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

IN THE MATTER
OF
MICHAEL RAPP, M.D.

STATEMENT
OF
CHARGES

MICHAEL RAPP, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 22, 2005 by the issuance of license number 235518 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about August 29, 2019 Respondent pled guilty to three counts of Attempted Sexual Exploitation of a Minor, a class 3 Felony and dangerous crime against children in the Maricopa County Superior Court of Arizona. Respondent was sentenced on October 18, 2019 on one count for a less than presumptive term of seven years, Respondent was placed on a supervised probation for a life term, upon his release from prison, with sex offender and computer usage conditions.
- B. Respondent's crime as described above in Arizona would, if committed in New York State, have constituted a crime under New York State law, specifically New York Penal Law §263.11 Possessing an Obscene Sexual Performance by a Child, a class E Felony.

SPECIFICATION OF CHARGES


FIRST 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 New York Penal Law §263.11 Possessing an Obscene Sexual Performance by a Child, a class E Felony) as alleged in the facts of the following:

1. The facts in Paragraph A and B.

DATE: September 1, 2020
Albany, New York



TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct