



Department of Health

ANDREW M. CUOMO
Governor

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

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

February 5, 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Howard Zvei Arian, M.D.
[REDACTED]

David Quist, Esq.
NYS Department of Health
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Howard Zvei Arian, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 18-026) 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: nm
Enclosure

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

-----X
IN THE MATTER

OF

HOWARD ZVEI ARIAN, M.D.

:
DETERMINATION

:
AND

:
ORDER

:
BPMC-18-026
-----X

A hearing was held on January 17, 2018, at the offices of the New York State Department of Health (Department) at 150 Broadway, Suite 510, Menands, New York. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **MARY E. RAPPAZZO, M.D.**, Chairperson, **GREGORY ALLEN THREATTE, M.D.** and **GAIL S. HOMICK HERRLING**, 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 (ALJ)**, served as the Administrative Officer.

The Department appeared by David W. Quist, Associate Attorney. A Notice of Referral Proceeding and Statement of Charges dated November 15, 2017, were served upon Howard Zvei Arian, M.D. (Respondent), who did not appear at the hearing.¹ 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)(d), and unanimously votes 3-0 to revoke the Respondent's license to practice medicine in New York.

¹ After attempts at personal service at two addresses on file with the Department, the Department sent the Notice of Hearing and Statement of Charges by certified mail, demonstrating service pursuant to PHL § 230(10)(d)(i). As such, the ALJ determined that jurisdiction was established and the hearing could proceed despite the Respondent's absence. [Appendix I; Exhibit 2].

BACKGROUND

The Department brought the 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 professional misconduct pursuant to Educ. Law § 6530(9)(d), "having (his) license to practice medicine revoked, suspended or having other disciplinary action taken..." where the conduct resulting in such disciplinary action taken against his license to practice medicine would, if committed in the state of New York, constitute professional misconduct under the laws of the state of New York. This case involves an Order of the Delaware Board of Medical Licensure and Discipline (Delaware Board) revoking the Respondent's medical license based on his unethical conduct toward patients and staff, inadequate medical recordkeeping and improper prescription and billing practices.

FINDINGS OF FACT

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

1. Howard Zvei Arian, M.D., the Respondent, was licensed to practice medicine in New York on April 2, 1984, by the issuance of license number 157770 by the Education Department. [Ex. 3].

2. In an Order dated October 31, 2016, the Delaware Board revoked the Respondent's medical license based on his inappropriate sexual comments to patients and staff, in violation of a November 2012 consent agreement prohibiting such conduct, and the improper touching of one patient during a spine injection procedure at his medical office. The Delaware Board also based its determination on the Respondent's billing for comprehensive patient assessments he never

performed, his failure to examine and monitor patients prescribed controlled substances and his inadequate medical recordkeeping. [Ex. 4].

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law § 6530(9)(d).

VOTE: Sustained (3-0)

CONCLUSIONS OF LAW

The Hearing Committee considered the Respondent's sexually inappropriate behavior toward staff and patients despite the Delaware Board's directive in 2012 to "permanently refrain" from such conduct, excessive billing practices and prescriptions for controlled substances without treatment plans, physical examinations or monitoring, to be a breach of the standard of care. The Hearing Committee also found the Respondent inaccurately documented patients' medical records to substantiate complex physical examinations he never performed and submitted fictitious bills based on those exams for payment. Most troubling to the Hearing Committee was the Respondent's instruction to one patient to take an excessive amount of Ativan – a drug with potential side effects of confusion and sleepiness – to inappropriately touch the patient while performing an injection procedure at his office. [Ex. 4].

Like New York, Delaware requires physicians entrusted with the care of patients to exhibit morally appropriate behavior. Both states also obligate physicians prescribing controlled substances to maintain treatment plans and perform and document physical examinations and drug monitoring. The Respondent failed to adhere to these requirements. The Respondent's failures, had they occurred in New York, would have constituted practicing the profession fraudulently and with negligence on

more than one occasion, a failure to comply with a board order, conduct evidencing moral unfitnes, abusing a patient and failing to maintain accurate medical records, in violation of Educ. Law §§ 6530(2), 6530(3), 6530(15), 6530(20), 6530(31) and 6530(32), respectively.

The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties and determined that the sustained specification indicates the Respondent's disregard of Board directives and his use of his medical license to inflict harm on his staff and patients. The Hearing Committee also noted the Respondent's prior history of professional discipline in New York, specifically the Administrative Review Board's Order dated April 14, 2000 (No. 00-34), sustaining a moral unfitnes charge based on his taunting statements intended to distract a surgeon performing a delicate surgery. Also considered by the Hearing Committee was a letter submitted by the Respondent in response to the Department's allegations in which he failed to take responsibility for his conduct, casting blame on his accusers. As such, the Hearing Committee determined that the only remedy to protect the public is revocation of the Respondent's New York State medical license. [Ex. A, 5].

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 as a physician in New York is **REVOKED**;
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
Jan 29, 2018

[REDACTED]
Mary E. Rappazzo, M.D., Chairperson
Gregory Allen Threatte, M.D.
and
Gail S. Homick Herrling

To: Howard Zvei Arian, M.D.

[REDACTED]
David Quist, Esq.
Associate Attorney
New York State Department of Health
Bureau of Professional Medical Conduct
Corning 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
HOWARD ZVEI ARIAN, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: HOWARD ZVEI ARIAN, M.D.
[REDACTED]

And

HOWARD ZVEI ARIAN, 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 January 17, 2018, 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

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

EXHIBIT

EVD

tabb

1/17/18 JKS

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 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
November 15, 2017


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

David W. Quist
Associate Attorney
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

HOWARD ZVEI ARIAN, M.D.

STATEMENT

OF

CHARGES

HOWARD ZVEI ARIAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 2, 1984, by the issuance of license number 157770 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 31, 2016, the Delaware Board of Medical Licensure and Discipline ("Board") issued an Order. The Board reiterated the findings of the hearing officer, in relevant part, to which it was bound by law, that Respondent had engaged in a pattern of misconduct and sexually inappropriate behavior towards patients and the employees of his practice, that he had violated the terms of a prior Board order which addressed prior inappropriate sexual comments to employees, and that Respondent had engaged in improper documentation, fraudulent billing for medical services, and a pattern of negligence.

B. The Board disciplined Respondent by revoking his license.

C. The conduct resulting in the Board's Order would constitute misconduct under the laws of New York State pursuant to New York Education Law sections 6530(2) (practicing the profession fraudulently), (3) (negligence), (15) (failure to comply with a

board order), (20) (conduct evidencing moral unfitness), (31) (abusing a patient), and/or (32) (failing to maintain an accurate record).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION
HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §§ 6530(2), (3), (15), (20), (31) and/or (32)) as alleged in the facts of the following:

1. The facts in Paragraphs A, B and C.

DATE: November 15, 2017
Albany, New York


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