



## Department of Health

ANDREW M. CUOMO  
Governor

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

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

July 18, 2018

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Arthur Mercado, M.D.  


**RE: In the Matter of Arthur Mercado, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No.18-162) 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.

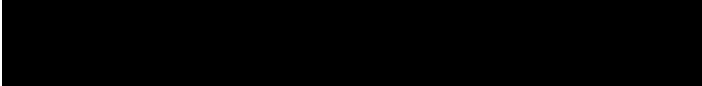
The notice of review served on the Administrative Review Board should be forwarded to:

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,



James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cac  
Enclosure

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

COPY

IN THE MATTER

OF

ARTHUR MERCADO, M.D.

DETERMINATION

AND

ORDER

18-162

A hearing was held on June 14, 2018, at the offices of the New York State Department of Health (Department), 150 Broadway, Menands, New York. Pursuant to §230(10)(e) of the Public Health Law (PHL), **LYON M. GREENBERG, M.D.**, Chairperson, **VIRGINIA R. MARTY**, and **JOSEPH S. BALER, M.D.**, duly designated members of the State Board for Professional Medical Conduct (Board), served as the Hearing Committee in this matter. **JEAN T. CARNEY, ADMINISTRATIVE LAW JUDGE (ALJ)**, served as the Administrative Officer.

The Department appeared by Senior Attorney Marc S. Nash. A Commissioner's Order of Summary Action, Notice of Referral Proceeding and Statement of Charges, dated April 23, 2018, were duly served pursuant to PHL §230(10)(d)(i) upon Arthur Mercado, M.D. (Respondent), who appeared by telephone. The Hearing Committee received and examined documents from the Department (Exhibits 1-6) 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 §6530(9)(a)(i), and that pursuant to PHL §230-a, the penalties of whole suspension and license limitations are appropriate.

**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 Education Law §6530(9). The Respondent is

charged with professional misconduct pursuant to Education Law §6530(9)(a)(i), by having been convicted of an act constituting a crime under New York State law, specifically criminal sale of prescription drugs (Penal Law §220.65). Under PHL §230(10), the Department has the burden of proving its case by a preponderance of the evidence.

### **FINDINGS OF FACT**

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

1. The Respondent was authorized to practice medicine in New York State on June 15, 1998, by the issuance of license number 210640 (Exhibit 3).

2. On November 22, 2017, in Oneida County Court, the Respondent was convicted upon a guilty plea to one count of criminal sale of prescription drugs. On January 19, 2018, the Respondent was sentenced to five years of probation, his driver's license was suspended for six months, and he waived his right to appeal (Exhibit 4).

3. In a Consent Agreement and Order effective November 1, 2007, the Board found the Respondent guilty of professional misconduct based on his admission to having sexual intercourse with a patient in his medical office. Based on this conduct, the Board imposed penalties including a nine-month suspension of his medical license, probation for five years, payment of a fine, and he was required to have a chaperone present when examining and/or treating female patients (Exhibit 6).

### **VOTE OF THE HEARING COMMITTEE**

The Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York State law.

VOTE: Sustained (3-0)

### CONCLUSIONS OF LAW

The Hearing Committee reviewed the Department's evidence showing that the Respondent was convicted after entering a guilty plea to one felony count of criminal sale of prescription drugs (Penal Law §220.65). Based on this conviction, the Hearing Committee determined that the Respondent violated Education Law §6530(9)(a)(i), which states that professional misconduct includes "being convicted of committing an act constituting a crime under...New York State law."

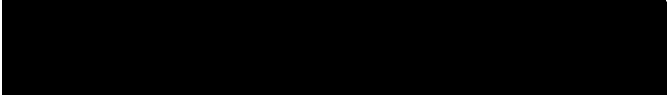
In considering the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties; the Hearing Committee noted the Respondent's failure to accept responsibility for his conviction, and considered his oral statements to be generally self-serving and lacking repentance. Although the Hearing Committee deliberated at length on revocation as the only sanction to protect the public, they ultimately decided that mitigating circumstances warranted a lesser sanction. Specifically, the evidence showed that the Respondent pled guilty to one count, and therefore the incident appeared to be an isolated event, rather than a pattern of behavior. Further, the evidence introduced at the hearing pertaining to the Respondent's prior disciplinary matter was unrelated to the current matter, it was remote in time, and the Respondent had complied with the conditions of that prior proceeding.

The Hearing Committee has determined that the Respondent's New York medical license be subject to the penalty of whole suspension until such time as he successfully completes a medical competency review. The Hearing Committee also found appropriate license limitations of prohibiting prescriptions for controlled substances, and practicing in a supervised setting in a facility such as a hospital or nursing home.

**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 the State of New York is subject to a permanent limitation of license under PHL 230-a(3) to prohibit issuing prescriptions in any form for controlled substances.
3. Pursuant to PHL §230-a(3), the Respondent's practice is limited to a supervised setting in a facility as defined in PHL §2801, such as a hospital or nursing home.
4. The Respondent's license to practice medicine in the State of New York is hereby wholly **SUSPENDED** under PHL § 230-a(2)(e), until such time as the Respondent completes the following:
  - (a) submits to and cooperates with a medical competency evaluation by a physician, physicians or facility proposed by the Respondent, but subject to the prior written approval by the Director of the OPMC; and
  - (b) causes the evaluator to confirm in a written report to the Director of the OPMC that the Respondent is fit to practice medicine.
5. The period of whole suspension ends only after the completion of steps (a) and (b) in paragraph 4 above.
6. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL §230(10)(h).

DATED: Albany, New York  
*July 16<sup>th</sup>*, 2018

  
Lyon M. Greenberg, M.D.  
Chairperson

# **APPENDIX I**

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

IN THE MATTER  
OF  
ARTHUR MERCADO, M.D.

STATEMENT  
OF  
CHARGES

ARTHUR MERCADO, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 15, 1998, by the issuance of license number 210640 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about November 22, 2017, in the State of New York, Oneida County Court, Respondent plead guilty and was convicted of Criminal Sale of Prescription Drugs [New York Penal Law Section 220.65], a Class C felony. On January 19, 2018, Respondent was sentenced to five years' probation, his drivers' license was suspended for six months, and he was assessed a fee of \$375.00.

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

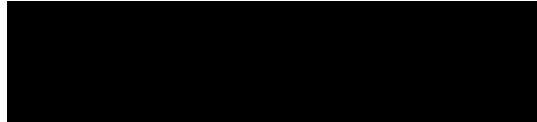
**CRIMINAL CONVICTION (N.Y.S.)**

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



1. The facts in Paragraph A.

DATE: April 23, 2018  
Albany, New York



MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduct