



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

November 27, 2018

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

David Newman, M.D.  


John Thomas Viti  
Associate Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Division of Legal Affairs  
90 Church Street, 4<sup>th</sup> Floor  
New York, New York 10007

**RE: In the Matter of David Newman, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No.18-263) 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**

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:  
**IN THE MATTER** :  
:  
**OF** :  
:  
**DAVID NEWMAN, M.D.** :  
:  
-----X

**DETERMINATION**  
  
**AND**  
  
**ORDER**  
**18-263**

A hearing was held on October 24, 2018, at the offices of the New York State Department of Health (Department), 90 Church Street, New York, New York. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **JILL M. RABIN, M.D.**, Chairperson, **ELISA J. WU, M.D.**, and **JACQUELINE H. GROGAN, Ed.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **NATALIE J. BORDEAUX, ADMINISTRATIVE LAW JUDGE (ALJ)**, served as the Administrative Officer.

The Department appeared by John Thomas Viti, Associate Counsel. A Notice of Referral Proceeding and Statement of Charges dated August 1, 2018, were duly served upon David Newman, M.D. (Respondent). (Exhibit 2.) The Respondent appeared at the hearing and testified on his own behalf. There were no other witnesses at the hearing. The Hearing Committee received and examined documents from the Department (Exhibits 1-7) 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)(i), and that pursuant to PHL § 230-a, the penalty of revocation of the Respondent's medical license is 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 Educ. Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(a)(i), by having been convicted of an act constituting a crime under state law, specifically N.Y. Penal Law § 130.65 and N.Y. Penal Law § 130.55. Under PHL §230(10), the Department had 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. On or about May 13, 2002, the Respondent was authorized to practice medicine in New York by the Education Department and was issued license number 224749. (Exhibit 3.)
2. On or about January 23, 2017, in New York County Supreme Court, the Respondent was adjudicated guilty, following his plea of guilty, to one count of Sexual Abuse in the First Degree, a Class D felony pursuant to N.Y. Penal Law § 130.65, and four counts of Sexual Abuse in the Third Degree, a Class B misdemeanor in violation of N.Y. Penal Law § 130.55. The Respondent was sentenced to two years in prison and three years of post-release supervision for his conviction of one count of Sexual Abuse in the First Degree. In addition, the Respondent was required to serve concurrent 90-day jail terms for his conviction of four counts of Sexual Abuse in the Third Degree. (Exhibits 4 and 5.)

## VOTE OF THE HEARING COMMITTEE

The Respondent violated New York Educ. 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

In New York County Supreme Court, a New York state court, the Respondent was adjudicated guilty, following his plea of guilty, to the crimes of Sexual Abuse in the First Degree, a Class D felony, in violation of N.Y. Penal Law § 130.65, and four counts of Sexual Abuse in the Third Degree, a Class B misdemeanor, in violation of N.Y. Penal Law § 130.55. Based on this conviction, the Hearing Committee determined the Respondent violated Educ. Law § 6530(9)(a)(i), which defines professional misconduct to include:

9. (a) Being convicted of committing an act constituting a crime under:
  - (i) New York state law.

In consideration of the full spectrum of penalties under PHL 230-a, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, the Hearing Committee agrees with the Department's recommendation of revocation of the Respondent's medical license. The Hearing Committee has considered the Respondent's conduct resulting in the criminal convictions, including unnecessarily touching four patients' breasts when performing medical examinations and administering an unnecessary dose of Propofol to a patient without her consent, causing her to be unable to speak or respond and then subjecting her to unwanted sexual contact. The Hearing Committee appreciates the Respondent's frankness when questioned at the hearing and applauds his acceptance of responsibility for his prior actions. However, despite the Respondent's resolve to remain vigilant for warning signs pertaining to his mental health diagnosis, the Committee is concerned that the Respondent's inability to access psychiatric care during his prison term (which ended two weeks before the date of this proceeding) leaves the Respondent and the public vulnerable to future episodes of inappropriate or dangerous behavior. In furtherance of the

Hearing Committee's foremost responsibility to protect the public, revocation of the Respondent's medical license is the only reasonable penalty.

**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 is REVOKED; and
3. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL § 230(10)(h).


**DATED:** New York, New York

*November 21, 2018*

  
**Jill M. Rabin, M.D.**  
Chairperson

**Elisa J. Wu, M.D.**  
**Jacqueline H. Grogan, Ed.D.**

**To:** David Newman, M.D.

  
  
John Thomas Viti  
Associate Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Division of Legal Affairs  
90 Church Street, 4<sup>th</sup> Floor  
New York, New York 10007

# APPENDIX I

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

IN THE MATTER  
OF  
DAVID NEWMAN, M.D.

STATEMENT  
OF  
CHARGES

DAVID NEWMAN. was authorized to practice medicine in New York State on or about May 13, 2002, by the issuance of license number 224749 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 13, 2016, in the Supreme Court of the State of New York, County of New York, Respondent was convicted, upon a plea of guilty, of Sexual Abuse in the First Degree, a Class D Felony, in violation of N.Y. Penal Law §130.65, by subjecting Patient A on or about January 12, 2016, to sexual contact when she was incapable of consent by being physically helpless, and four counts of Sexual Abuse in the Third Degree, a Class B Misdemeanor, in violation of N.Y. Penal Law §130.55, by subjecting Patients A-D to sexual contact without their consent, on or about August 27, 2015; September 22, 2015; and January 12, 2016. The conduct resulting in the guilty plea was that Respondent physically abused, at Mount Sinai Hospital in New York, Patient A by sedating her without any medical justification, masturbating at her bedside and then ejaculating onto her, and physically abused Patients A-D by touching their breasts without any medical justification and for his own sexual gratification. On January 23, 2017, Respondent was sentenced to two years' incarceration to be followed by three years' post-release supervision on the felony charge, concurrent 90-day sentences on the misdemeanor charges, and was adjudicated a sex offender.



SPECIFICATION OF CHARGES  
BEING CONVICTED OF COMMITTING AN ACT CONSTITUING A CRIME

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(i) Being convicted of committing an act constituting a crime under New York state law namely N.Y. Penal Law §130.65 and N.Y. Penal Law §130.55 as alleged in the facts of the following:

1. The facts in Paragraph A.

DATE: August 1, 2018  
New York, New York

  
Henry Weintraub  
Chief Counsel  
Bureau of Professional Medical Conduct