



Department of Health

ANDREW M. CUOMO
Governor

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

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

March 19, 2020

BY EMAIL

Hannah E.C. Moore, Esq.
NYS Department of Health
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237

Bruce Kaye, Esq.
Barasch McGarry Salzman & Penson
11 Park Place, Suite 1801
New York, New York 10007

RE: In the Matter of Kurt Silverstein, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 20-073) 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	:	DETERMINATION
	:	
OF	:	AND
	:	
KURT SILVERSTEIN, D.O.	:	ORDER
-----X	:	
		BPMC-20-073

A hearing was held on February 19, 2020, at the offices of the New York State Department of Health (Department), 150 Broadway, Menands, New York. Pursuant to Public Health Law (PHL) § 230(10)(e), James M. Leonardo, M.D., Ph.D., Chairperson, Gregory Allen Threatte, M.D., and David F. Irvine, DHSc, P.A., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Tina M. Champion, Administrative Law Judge (ALJ), served as the Administrative Officer.

The Department appeared by Hannah E.C. Moore, Assistant Counsel. A Commissioner's Order of Summary Action, Notice of Referral Proceeding and Statement of Charges, all dated May 23, 2019, were duly served upon Kurt Silverstein, D.O., (Respondent), who appeared at the hearing by Bruce K. Kaye, Esq.¹

The Hearing Committee received and examined documents from the Department (Exhibits 1-4) and from the Respondent (A-F) and heard testimony from a witness on the Respondent's behalf. A stenographic reporter prepared a transcript of the proceeding.

After consideration of the entire record, the Hearing Committee sustains the charges that the Respondent committed professional misconduct in violation of Education Law (Educ. Law) § 6530(9), and votes that the penalty of revocation of his medical license is appropriate.

¹ This matter was initially scheduled for a hearing on July 17, 2019 and was adjourned at the request of the Respondent.

BACKGROUND

The Department brought this 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) for being convicted of committing an act constituting a crime under New York state law. Pursuant to PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence. Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 "shall be subject to penalties as prescribed in [PHL § 230-a] except that the charges may be dismissed in the interest of justice."

FINDINGS OF FACT

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

1. Kurt Silverstein, D.O., the Respondent, was authorized to practice medicine in New York State on September 28, 1994 by the issuance of license number 197289 by the New York State Education Department. (Dept. Ex. 4.)
2. On January 26, 2017, in the State of New York, Suffolk County Court, the Respondent was convicted, following a jury trial, of six counts of Criminal Sale of a Prescription for a Controlled Substance, three counts of Falsifying Business Records in the First Degree, and five counts of Unauthorized Practice. (Dept. Ex. 3.)
3. On June 27, 2017, the Respondent was sentenced to concurrent one-year terms of imprisonment for each of the fourteen counts. (Dept. Ex. 3.)

VOTE OF THE HEARING COMMITTEE

The Hearing Committee decides, by a vote of 3-0, that the evidence supports sustaining the charges of the Respondent having committed professional misconduct as defined in Educ. Law § 6530(9)(a)(i).

HEARING COMMITTEE DETERMINATIONS

The Department charged the Respondent with professional misconduct pursuant to Educ. Law § 6530(9)(a)(i). The charge contains one specification pertaining to the Respondent's being convicted of committing an act constituting a crime under New York state law. It is undisputed that the Respondent was convicted of multiple felonies and that such convictions constitute professional misconduct under the laws of New York State as defined in Educ. Law § 6530(9)(a)(i) and the Department recommends that the Respondent's license to practice medicine be revoked.

The Respondent did not testify at the hearing due to his attorney's assertion that an appeal is pending² and, through his attorney, maintained that he was innocent of the charges of which he was convicted. While the Respondent is entitled to maintain his innocence, it is undisputed that the Respondent was convicted of multiple charges. Therefore, pursuant to PHL § 230(10)(p), the hearing was limited to evidence and testimony relating to the nature and severity of the penalty to be imposed.

The Respondent presented Art. C. Cody, Esq., the Deputy Director of the New York State Veterans Defense Program, to testify as an expert witness. Mr. Cody testified about the Respondent's military background and the traumatic situations the Respondent experienced during his service. Mr. Cody opined that there is a basis for leniency in this matter because "people like Dr. Silverstein the arduous conditions that they serve in, not merely the ...risk of life, risk to their own lives, but just...the conditions in terms of isolation, heat, cold, fear, et cetera" . . . "that really comes down

² Ms. Moore and Mr. Kaye disagreed about the existence and/or status of an appeal; however, it is irrelevant to this determination.

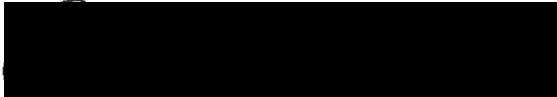
to...two different instances. One merely recognition of their service for the...merits they've given to the country" and "the trauma they went through, how that affected them in...later life once they've been removed from....the service." While interesting, Mr. Cody's testimony did not aid the Hearing Committee in determining the appropriate penalty for the Respondent given the Hearing Committee's obligation to assess a penalty that provides for the protection of the public. The Hearing Committee commends the Respondent for his service and recognizes that he experienced traumatic events beyond which it cannot fully understand without having experienced the same conditions. However, having received uncontroverted evidence of multiple felony convictions without any expression of remorse by the Respondent or evidence of efforts such as counseling being made by the Respondent to counter behaviors leading to those convictions, the Hearing Committee unanimously agrees with the Department's recommendation that the Respondent's license to practice medicine in New York State be revoked.

ORDER

Now, after reviewing the evidence from the hearing, 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 revoked; and
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

Dated: March 19, 2020
Cooperstown, New York


James M. Leonardo, M.D., Ph.D., Chairperson
Gregory Allen Threatte, M.D.
David F. Irvine, DHSc, P.A.

APPENDIX I

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

IN THE MATTER
OF
KURT SILVERSTEIN, D.O.

COMMISSIONER'S
ORDER OF
SUMMARY ACTION

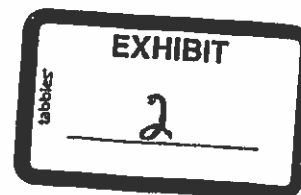
TO: Kurt Silverstein
[REDACTED]
Suffolk County Sheriff's Office Yaphank Correctional Facility
202 Glover Drive
Yaphank, New York 11980

The undersigned, Sally Dreslin, M.S., R.N., Executive Deputy Commissioner, pursuant to N.Y. Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that Kurt Silverstein, D.O. (henceforth "Respondent"), New York license number 197289, has pleaded or been found guilty or convicted of committing an act constituting a felony under New York State law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a felony under New York State law, as is more fully set forth in the Statement of Charges attached hereto and made a part hereof.

It is therefore:

ORDERED, pursuant to N.Y. Public Health Law §230(12)(b), that effective immediately, Respondent shall not practice medicine in the State of New York, or practice in any setting under the authority of Respondent's New York license.

Any practice of medicine, in violation of this
Order shall constitute Professional Misconduct
within the meaning of N.Y. Educ. Law §6530(29)
and may constitute unauthorized medical




practice, a Felony defined by N.Y. Educ. Law §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within ninety days of the service of this order and shall end within ninety days 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 to be provided to the Respondent either contemporaneously with this Order or subsequently.

THE NEW YORK 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
May 13, 2019


Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner
New York State Department of Health

Inquiries should be directed to:

Hannah E.C. Moore
Assistant Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Division of Legal Affairs
2512 Corning Tower
Empire State Plaza
Albany, New York 12237-0032
518.473.4282

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

IN THE MATTER
OF
KURT SILVERSTEIN, D.O.

STATEMENT
OF
CHARGES

KURT SILVERSTEIN, D.O., the Respondent, was authorized to practice medicine in New York State on or about September 28, 1994, by the issuance of license number 197289 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 26, 2017, in the State of New York, Suffolk County Court, Respondent was convicted, following a jury trial, of six counts of Criminal Sale of a Prescription for a Controlled Substance (Penal Law § 220.65), a class C felony; three counts of Falsifying Business Records in the First Degree (Penal Law § 175.10), a class E felony; and five counts of Unauthorized Practice (Education Law § 6512), a class E felony. Respondent was sentenced, on June 27, 2017, to concurrent one-year terms of imprisonment for each count.

SPECIFICATION OF CHARGES

CRIMINAL CONVICTION (N.Y.S)

1. 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: May 23, 2019
Albany, New York


TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct