



## Department of Health

ANDREW M. CUOMO  
Governor

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

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

June 10, 2019

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Deborah Beth Meadows  
Senior Attorney  
New York State Department of Health  
Bureau of Professional Medical Conduct  
90 Church Street, 4<sup>th</sup> Floor  
New York, New York 10007

Marion Olander, RPA  
[REDACTED]

**RE: In the Matter of Marion Olander, P.A.**

Dear Parties:

Enclosed please find the Determination and Order (No. 19-143) 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**

**IN THE MATTER  
OF  
MARION OLANDER, P.A.**

**DETERMINATION  
AND  
ORDER  
19-143**

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("the Department"). A February 14, 2019 Notice of Referral Proceeding ("NORP") and February 15, 2019 Statement of Charges ("SOC") were served upon Marion Olander, P.A. ("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 on April 15, 2019, at the Department's offices at 90 Church Street, New York, New York.

Airlie A.C. Cameron, M.D., Chair, Linda A. Brady, M.D., and Richard S. Goldberg, Esq., duly designated members of the State Board for Professional Medical Conduct ("Board"), served as the Hearing Committee ("Committee") in this matter. Ann H. Gayle, Administrative Law Judge, served as the administrative officer. The Department appeared by Deborah Beth Meadows, Senior Attorney. The Respondent, having been duly served with the NORP and SOC in conformity with the requirements of PHL §230.10(d), did not appear (Exhibit 2). Evidence was received and a transcript (pages 1-25) of this hearing was made.

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)(i) for having been convicted of an act constituting a crime under New York law. Due to Respondent's failure to file a written answer to the SOC at least ten days prior to the first day of hearing, the charges and allegations were deemed admitted (PHL §230.10(p)). 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 brackets, 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 December 21, 1990, Respondent, Marion Olander<sup>1</sup>, P.A., was authorized, by the issuance of license number 004170 by the New York State Education Department ("NYSED"), to practice as a physician assistant in New York State. Respondent's license is not currently registered with NYSED, and she has not practiced as a physician assistant in New York since approximately 2008. [Ex 3; T 20-22]
2. On December 20, 2016, Respondent was convicted of Driving While Intoxicated-1<sup>st</sup>.

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<sup>1</sup> also known as Marion Elizabeth Hershberger (Ex 5; T 17)

Offense under New York Vehicle and Traffic Law ("VTL") §1192.03. Respondent was sentenced to probation and fined one thousand (\$1,000) dollars and a four-hundred (\$400) dollar surcharge. [Ex 4]

3. On June 9, 2003, this Board issued a Consent Order in the Matter of Marion Elizabeth Hershberger, P.A., License Number 004170, imposing the penalty of a stayed suspension of Respondent's license with probation to run concurrent with probation imposed by the City Court of Rochester, County of Monroe, New York, on April 25, 2002 ("Monroe probation"). The Monroe probation stemmed from Respondent's conviction of two counts of aggravated harassment, 2<sup>nd</sup> degree. Respondent agreed in the Board's Consent Order "that in the event that I am charged with professional misconduct in the future, the agreement and order shall be admitted into evidence in that proceeding." [Ex 5, T 15-17]

#### **CONCLUSIONS OF LAW**

The Department charged Respondent with one Specification of professional misconduct pursuant to Educ. Law §6530(9)(a)(i) for having been convicted of an act constituting a crime under New York law (Finding of Fact #2). This Specification is sustained based on Respondent's December 20, 2016 conviction and on the charges having been deemed admitted pursuant to PHL §230.10(p).

#### **DISCUSSION and DETERMINATION AS TO PENALTY**

The Department is seeking a revocation of Respondent's license "to protect the public safety" (T 18). The Committee, in reviewing the full range of penalties available pursuant to PIIL §230-a, considered Respondent's recent conviction for DWI, her failure to appear at the hearing to present evidence and to submit to inquiries the Committee might have had to ascertain her ability to safely treat patients, her prior disciplinary action by this Board, and the amount of

time (more than ten years) that Respondent has not been practicing as a physician assistant in New York. The Committee concludes that revocation of Respondent's license is the only appropriate penalty.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The charge of misconduct under Educ. Law §6530(9)(a)(i) for having been convicted of an act constituting a crime under New York law is sustained.
2. Pursuant to PIIL §230-a(4) Respondent's license to practice as a physician assistant 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: New York, New York

May 31, 2019

  
AIRLIE A.C. CAMERON, M.D., Chair  
LINDA A. BRADY, M.D.  
RICHARD S. GOLDBERG, ESQ, ESQ.

## APPENDIX 1



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

IN THE MATTER  
OF  
MARION OLANDER, RPA

NOTICE OF  
REFERRAL  
PROCEEDING

Ms. Marion Olander, RPA  
[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. Proo. 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 April 15, 2019, at 10:30 a.m., at 90 Church Street, 4th Floor, New York, NY 10007, in Hearing Room 1, 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 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

Dept. Ex-1



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 610, 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: New York, New York  
February 14, 2019

  
HENRY WEINTRAUB  
Chief Counsel  
Bureau of Professional Medical Conduct

Inquiries should be addressed to:


Deborah Beth Meadows  
Senior Attorney  
Bureau of Professional Medical Conduct  
90 Church Street, 4th Floor  
New York, NY 10007  


EXHIBIT "A"

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

IN THE MATTER  
OF  
MARION OLANDER, PA

STATEMENT  
OF  
CHARGES

MARION OLANDER, PA, the Respondent, was authorized to perform medical services in New York State on or about December 21, 1990, by the issuance of license number 004170 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about December 20, 2016, in Penfield Town Court, in Monroe County, New York, Respondent was convicted of Driving While Intoxicated 1<sup>st</sup> Offense, a misdemeanor under § 1192.03 of the New York State Vehicle and Traffic Law. Respondent was fined a thousand dollars (\$1,000) and a four hundred-dollar (\$400) surcharge, and issued probation.

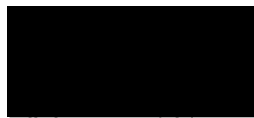
SPECIFICATION OF CHARGE

BEING CONVICTED OF AN ACT CONSTITUTING A CRIME

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9) (a) (i) by pleading guilty to an act constituting a crime under New York State law, specifically New York State Vehicle and Traffic Law § 1192.03 (driving while intoxicated), DWI-1<sup>st</sup> Offense, a misdemeanor, as alleged in the facts of the following:

1. The facts in Paragraph A.

DATE: February 15, 2019  
New York, New York



Henry Weintraub  
Chief Counsel  
Bureau of Professional Medical Conduct

To: Deborah Beth Meadows  
Senior Attorney  
New York State Department of Health  
Bureau of Professional Medical Conduct  
90 Church Street, 4<sup>th</sup> Floor  
New York, New York 10007

Marion Olander, RPA  
