

IN THE MATTER
OF
ANDREW BERKOWITZ, M.D.

COMMISSIONER'S
ORDER OF
SUMMARY
ACTION

TO: ANDREW BERKOWITZ, M.D.


The undersigned, Sally Dreslin, M.S., R.N., Executive Deputy Commissioner of Health, 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 the duly authorized professional disciplinary agency of another jurisdiction, the Commonwealth of Pennsylvania, State Board of Medicine, following a petition by the State Board of Medicine, has made a finding substantially equivalent to a finding that the practice of medicine by Andrew Berkowitz, M.D. (the Respondent), New York license number 205712, in that jurisdiction constitutes an imminent danger to the health of its people, as is more fully set forth in the Order of Temporary Suspension and Notice of Hearing (henceforth: "predicate action"), attached hereto as Appendix "A" 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 thirty days after the final conclusion of the disciplinary proceeding in the predicate action. 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 after the final conclusion of the proceeding in the predicate action. Said written notice may be provided in person, by mail, or by other means. If Respondent wishes to be provided said written notice at an address other than that set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth in this Order, and the Director of the Office of Professional Medical Conduct, at the addresses set forth below.

Respondent shall notify the Director of the Office of Professional Medical Conduct, New York State Department of Health, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719 via Certified Mail, Return Receipt Requested, of the final conclusion of the proceeding in the predicate action, immediately upon such conclusion.

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
October 24, 2019


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

Inquiries should be directed to:

Anna R. Lewis, Associate Counsel
N.Y.S. Department of Health
Division of Legal Affairs
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, NY 10007
(212) 417-4450

Appendix A

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

2019 JUL -1 PM 2:45
Department of State

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs
vs.

Case No. 19-49-000434

Andrew Mark Berkowitz, M.D.
Respondent

ORDER OF TEMPORARY SUSPENSION AND NOTICE OF HEARING

AND NOW, this 15th day of July, 2019, upon review of the Petition for Temporary Suspension of the license to practice as a medical physician and surgeon held by Andrew Mark Berkowitz, M.D. (*hereinafter* "Respondent"), license number MD036462E, filed by the Prosecuting Attorney for the Commonwealth of Pennsylvania, the State Board of Medicine (*hereinafter* "Board") makes the following findings and enters the following Order:

SUSPENSION ORDER

The Board finds the Prosecuting Attorney has alleged facts in the Petition, which, if taken as true, establish at each and every count that the Respondent's continued practice as a medical physician and surgeon within the Commonwealth of Pennsylvania, along with the exercise of any other licenses, registrations, certificates, approvals, authorizations, or permits (*hereinafter referred to collectively as* "authorizations to practice the profession") issued by the Board, makes Respondent an immediate and clear danger to the public health and safety. Therefore in accordance with Section 40(a) of the Medical Practice Act of 1985, act of December 20, 1985, P.L. 457, No. 112, ("Act"), 63 P.S. § 422.40(a), the Board **ORDERS** that the license to practice as a medical physician and surgeon issued to the Respondent, license number MD036462E, along with any other authorizations to practice the profession issued by the Board to Respondent, are

TEMPORARILY SUSPENDED upon the service of this Order, Respondent shall surrender his wall certificate(s), biennial renewal certificate(s) and wallet card(s) (or notarized affidavit of their loss or destruction) to representatives of the Bureau of Enforcement and Investigation or the Bureau of Professional and Occupational Affairs, immediately upon service of this Order in accordance with Section 44 of the Act, 63 P.S. § 422.44.

PRELIMINARY HEARING

A preliminary hearing shall be scheduled and conducted by the Board or Office of Hearing Examiners to be convened within thirty (30) days from the date of issuance of this Order. The preliminary hearing shall be limited to evidence on the issue of whether there is a *prima facie* case to support the temporary suspension of the Respondent's license and other authorizations to practice the profession issued by the Board. The preliminary hearing will be held at a location designated by the Board or a hearing examiner for the Board.

The Respondent is entitled to be present at the preliminary hearing and may be represented by an attorney, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings.

If the Board or hearing examiner finds a *prima facie* case is not established, Respondent's license and other authorizations to practice the profession issued by the Board will be immediately restored. If a *prima facie* case is established, the temporary suspension shall remain in effect until vacated by the Board, but in no event longer than 180 days, unless otherwise ordered or agreed to by the participants.

ADDITIONAL FORMAL ACTION

In addition to this temporary suspension proceeding, the prosecuting attorney will commence a separate action to suspend, revoke or otherwise restrict Respondent's license and

other authorizations to practice the profession issued by the Board through the filing of a charging document, an Order to Show Cause. The Order to Show Cause may include, but not be limited to, the facts which were alleged in the Petition for Immediate Temporary Suspension. Any Order to Show Cause filed by the prosecuting attorney will be served upon the Respondent and the Order will direct Respondent to reply to the charges in a written answer within twenty (20) days of the issuance of the Order to Show Cause. A formal hearing on that Order to Show Cause will then be scheduled and conducted by the Board or the Hearing Examiner for the Board.

PROCEDURES

Continuances will be granted for good cause only. A request for a continuance must be filed with the Prothonotary, in writing, at least one (1) week prior to the date of the hearing. The requirement of the one (1) week advance filing of a request for continuance will be waived only upon a showing of good cause. The failure to have an attorney present and a request for continuance to retain an attorney will not be considered a valid reason for the granting of a continuance on the day of the hearing. A request by the Respondent for an extension of time or a continuance which will delay the preliminary hearing or the formal hearing must be accompanied by the agreement of the Respondent that the 180-day temporary suspension will continue during whatever additional time is necessary to conclude the proceedings.

All proceedings are conducted in accordance with the Administrative Agency Law, 2 Pa.C.S. §§ 501-508, 701-704; Act of July 2, 1993, P.L. 345, No. 48 ("ACT 48"), 63 P.S. §§ 2201-2207, *as amended*; and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1-35.251. A record of the hearing will be stenographically prepared by an official

reporting service. A copy of the transcript may be secured by personally making arrangements with the reporting service at the time of the hearing.

Any document submitted in this matter must be filed with:


Prothonotary
Pennsylvania Department of State
2601 North Third Street
P.O. Box 2649
Harrisburg, PA 17105
717-772-2686

Also, you must send a separate copy of any documents submitted in this matter to the prosecuting attorney named below at:

Keith E. Bashore, Prosecuting Attorney
Pennsylvania Department of State
P.O. Box 69521
Harrisburg, PA 17106-9521

**BY ORDER:
BEFORE THE STATE BOARD OF
MEDICINE PROBABLE CAUSE
SCREENING PANEL**

**Paul Joseph
Vallgorsky, II,
MD
Committee Member**



*APPROVE Immediate Temporary
Suspension* *DENY Immediate Temporary
Suspension* *RECUSE FROM DECISION*

**John M. Mitchell,
L.P., C.C.P.
Committee Member**

*APPROVE Immediate Temporary
Suspension* *DENY Immediate Temporary
Suspension* *RECUSE FROM DECISION*

Board Counsel:

Kerry Maloney (A-L) or Peter D. Kovach (M-Z)

For the Commonwealth:

**Keith E. Dashore, Prosecuting Attorney
Pennsylvania Department of State
P.O. Box 69521
Harrisburg, PA, 17106-9521**

Respondent:

Andrew Mark Berkowitz, M.D.


Case No.

19-49-000434

Date:

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Board Counsel:

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For the Commonwealth:

Keith E. Bashore, Prosecuting Attorney
Pennsylvania Department of State
P.O. Box 69521
Harrisburg, PA 17106-9521

Respondent:

Andrew Mark Berkowitz, M.D.


Case No.

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Date:

7/1/19