



Department of Health

ANDREW M. CUOMO
Governor

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

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

September 29, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ian H. Silverman, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

Arthur Smith, MD


RE: In the Matter of Arthur Smith, MD

Dear Parties:

Enclosed please find the Determination and Order (No. 20-249) 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.

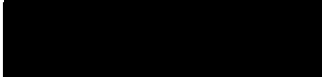
The notice of review served on the Administrative Review Board should be forwarded to:

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

COPY

In the matter of

Arthur Smith, MD
NYS license # 246243

Determination
and Order

██████████
BPMC-20-249

A. Commissioner's order of summary action, notice of referral proceeding and statement of charges, all dated August 5, 2020, were served on Respondent **Arthur Smith, MD**. (Exhibit 1.) The statement of charges alleged professional misconduct in violation of New York State Education Law (Ed.L) 6530. A hearing was held at offices of the New York State Department of Health on September 9, 2020 by videoconference.

Pursuant to Public Health Law (PHL) 230(10)(e), **Jagdish M. Trivedi, MD**, Chair, **Richard F. Kasulke, MD**, and **Gail S. Homick-Herrling**, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee. **John Harris Terepka**, Administrative Law Judge, served as the administrative officer.

The Department of Health (the Petitioner) was represented by **Ian H. Silverman, Esq.** **Arthur Smith, MD** (the Respondent) appeared *pro se*. The Petitioner submitted documents. (Exhibits 1-4.) The Respondent testified. A transcript of the hearing was made. After consideration of the entire record, the hearing committee issues this determination and order sustaining the charges and revoking the Respondent's license to practice medicine.

JURISDICTION

The Respondent, a physician, has been charged with misconduct pursuant to Ed.L 6530(9)(a)(ii). Pursuant to PHL 230(10)(p), a hearing on limited issues, or "direct referral

proceeding,” is authorized when a licensee is charged solely with a violation of Ed.L 6530(9). Charges of misconduct under Ed.L 6530(9) are based upon a criminal conviction or an administrative violation, in New York State or another jurisdiction, establishing conduct that would constitute a crime or professional misconduct if committed in New York. The scope of the hearing is limited to whether there is a relevant conviction or administrative determination and if so, to a determination of the nature and severity of the penalty to be imposed. PHL 230(10)(p). Penalties which may be imposed are set forth at PHL 230-a. Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51.

FINDINGS OF FACT

1. Respondent Arthur Smith, MD was authorized to practice medicine in New York State on September 21, 2007 under license number 246243. (Exhibit 3.)
2. On January 21, 2020, in the United States District Court, Northern District of Ohio, the Respondent pleaded guilty to and was convicted of one count of Dispensing of a Controlled Substance, a felony in violation of 21 U.S.C. 841(a)(1) and (b)(1). He was sentenced to two years of probation and a \$5,000 fine. (Exhibit 4.)

HEARING COMMITTEE DETERMINATION

After reviewing records obtained from the United States District Court in Ohio (Exhibit 4), the hearing committee agreed that, as alleged in the statement of charges, the Respondent violated Ed.L 6530(9)(a)(ii) which defines professional misconduct, in pertinent part, as:

9. (a) Being convicted of committing an act constituting a crime under... (ii) federal law.

The Petitioner recommended revocation of the Respondent's license.

The Respondent was a medical director of clinics operated in Austintown, Ohio, by Braking Point, a substance abuse treatment center. A lengthy indictment was brought against six persons associated with Braking Point, including the Respondent and another physician who were providing treatment in the Austintown clinics. The indictment contained multiple charges involving massive health care fraud in billings to the Medicaid Program. The Respondent claimed he was unaware of the extent of this fraud as he was involved in medical care, not billing. The indictment also, however, charged the Respondent with conspiracy to distribute controlled substances, and his conviction resulted from a guilty plea to one such count.

According to the Respondent's testimony and the federal indictment, the Respondent possessed a "DEA DATA" waiver that authorized him to administer, dispense and prescribe certain narcotic controlled substances for use in Braking Point maintenance and detoxification treatment. The other physician involved in the clinics did not have such a waiver. According to the Respondent, the other physician used the Respondent's DEA DATA waiver license number in order to improperly dispense Suboxone, a Schedule III controlled substance, without the Respondent's knowledge or approval. According to the Respondent, this is primarily what led to his indictment along with the other persons involved in the operation of Braking Point. The Respondent pleaded guilty to and was convicted of one count of dispensing controlled substances in violation of federal law. He was sentenced to two years of probation and a \$5,000 fine.

The federal crime of which the Respondent was convicted was a felony directly related to his practice of medicine. The hearing committee unanimously agreed (3-0) that the

evidence and the circumstances under which the conviction was secured warranted a penalty of revocation of the Respondent's New York license.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in New York State is **revoked**.

This order shall be effective upon service on the Respondent by personal service or by registered or certified mail as required under PHL 230(10)(h).

Dated: Albany, New York

9.23.2020

By:

[REDACTED]
Jagdish M. Trivedi, MD, Chair

Richard F. Kasulke, MD
Gail S. Homick-Herrling

To: Ian H. Silverman, Esq.
Bureau of Professional Medical Conduct
Corning Tower, Empire State Plaza
Albany, New York 12237

Arthur Smith, MD
[REDACTED]

APPENDIX I

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

IN THE MATTER
OF
ARTHUR SMITH, M.D.

STATEMENT
OF
CHARGES

Arthur Smith, M.D. the Respondent, was authorized to practice medicine in New York State on or about September 21, 2007 by the issuance of license number 246243 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 21, 2020 in the United States District Court, Northern District of Ohio, the Respondent was convicted of 1 count of the felony of Dispensing of a Controlled Substance, in violation of 21 U.S.C. § 841 (a) (1) and (b) (1) (E) and was sentenced to two years of probation and a \$5,000 fine.

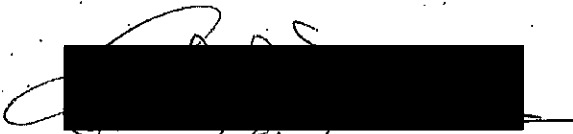
SPECIFICATION OF CHARGES

CRIMINAL CONVICTION (Federal)

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

1. The facts in Paragraph A.

DATE: August 5, 2020
Albany, New York



Timothy J. Mahar
Deputy Counsel
Bureau of Professional Medical Conduct