



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

April 7, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nathaniel White, Esq.
NYS Department of Health
Corning Tower - Room 2512
Empire State Plaza
Albany, New York 12237

Eric Kanefsky, Esq.
Calcagni Kanefsky LLP
One Newark Center
1085 Raymond Blvd. 14th floor
Newark, New Jersey 07102

Samuel A. Preschel, MD


RE: In the Matter of Samuel A. Preschel, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 21-070) 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.

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 Respondent or the Department may seek a review of a committee determination.

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 Judge 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

COPY

In the matter of

Samuel A. Preschel, MD
NYS license # 159182

**Determination
and Order**

BPMC-21-070

A notice of referral proceeding and statement of charges dated December 30, 2020 were served on Respondent **Samuel A. Preschel, MD**. 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 March 18, 2021, by videoconference.

Pursuant to Public Health Law (PHL) 230(10)(e), **Jagdish M. Trivedi, MD**, Chair, **Sanford H. Levy, MD**, and **Elena M. Cottone, PA-C**, 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 **Nathaniel White, Esq.** **Samuel A. Preschel, MD** (the Respondent) was represented by **Eric Kanefsky, Esq.** After consideration of the entire record, the hearing committee issues this determination and order dismissing the charges in the interest of justice as authorized by Ed.L 6530.

JURISDICTION

The Respondent, a physician, has been charged with misconduct pursuant to Ed.L 6530(9)(d). 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.

EVIDENCE

Witnesses for the Petitioner:	None
Petitioner exhibits:	1-4
Witnesses for the Respondent:	Samuel A. Preschel, MD
Respondent exhibits:	A-F

A transcript of the hearing was made.

FINDINGS OF FACT

1. Respondent Samuel A. Preschel, MD was authorized to practice medicine in New York State on July 16, 1984 under license number 159182. (Exhibit 3.)
2. By consent order filed on November 18, 2019, the New Jersey State Board of Medical Examiners determined that the Respondent engaged in repeated acts of negligence, malpractice or incompetence; professional and/or occupational misconduct; and a failure to comply with New Jersey rules and regulations regarding policies and procedures for infection control, waste management and medical equipment maintenance, and monitoring medication inventory. (Exhibit 4.)
3. The New Jersey Board imposed a formal reprimand; ordered the Respondent to retain an Infection Control Preventionist to assess and monitor his infection control policies and practices for one year; required the Respondent to complete a course in infection prevention;

imposed a civil penalty of \$10,000; and required reimbursement in the amount of \$19,260. (Exhibit 4, pages 2-5.)

HEARING COMMITTEE DETERMINATION

The New Jersey Board opened its administrative action in order to investigate a complaint that the Respondent was operating a medical office he owned in an unsanitary and unsafe manner. In order to resolve the action, the Respondent agreed to discipline including a reprimand, civil penalty, restitution, and monitoring by an Infection Control Preventionist. While in his consent agreement the Respondent neither admitted to nor denied the New Jersey Board's findings, he agreed to these disciplinary measures in order to resolve the matter without a hearing before the Board. At the hearing, he accepted responsibility for and admitted he was "ashamed" of the circumstances, specifically the condition of his medical offices, that led to the New Jersey investigation and disciplinary action.

The hearing committee agreed that the Respondent's consent to a disciplinary order was based on findings by the New Jersey Board of conduct that, if committed in New York, would constitute misconduct pursuant to Ed.L 6530(3), practicing the profession with negligence on more than one occasion; 6530(5), practicing the profession with incompetence on more than one occasion; and 6530(47), failure to use infection control practices as established by the Department of Health.

The hearing committee also agreed that, as alleged in the statement of charges, the New Jersey Board's order imposing a reprimand, civil penalties and other discipline established that the Respondent violated Ed.L 6530(9)(d) which defines professional misconduct, in pertinent part, as:

9. (d) Having his or her license to practice medicine revoked, suspended or having other disciplinary action taken... after a disciplinary action was instituted by a

duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action... would, if committed in New York state, constitute professional misconduct under the laws of New York state.

The Petitioner recommended a censure and reprimand, a three-year period of probation with a practice monitor, and a "substantial" fine in an amount it did not specify. Petitioner argued that discipline imposed in New Jersey to correct conditions of the Respondent's offices and practice in New Jersey was not adequate to protect the citizens of New York, who the Respondent occasionally treats in connection with a summer camp residency.

While the hearing committee agreed that the findings of the New Jersey Board were cause for concern, it was also persuaded that the Respondent has fully complied with the New Jersey disciplinary order and taken significant steps to improve the manner in which his offices are maintained. (Exhibits A3-9, B, C, D.) The hearing committee agreed the imposition of additional disciplinary penalties in New York is not necessary.

Two hearing committee members voted for dismissal of the charges in the interest of justice, as is authorized by PHL 6530. The third member of the hearing committee agreed that no disciplinary penalty should be imposed, but voted that the charges should be sustained on the grounds that misconduct was established pursuant to Ed.L 6530(9)(d). Education Law 6530 specifically provides that "the charges may be dismissed in the interest of justice." On the hearing committee's determination by vote of 2-1, the charges are dismissed for that reason.

ORDER

IT IS HEREBY ORDERED THAT:


The charges are **dismissed**.

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


3.30.2021


By:


Jagdish M. Trivedi, MD, Chair

Sanford H. Levy, MD
Elena M. Cottone, PA-C

To: Nathaniel White, Esq.
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Albany, New York 12237


Eric Kanefsky, Esq.
Calcagni Kanefsky LLP
One Newark Center
1085 Raymond Blvd. 14th floor
Newark, New Jersey 07102


Samuel A. Preschel, MD


APPENDIX I

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

IN THE MATTER

OF

SAMUEL A. PRESCHEL, M.D.

STATEMENT

OF

CHARGES

SAMUEL A. PRESCHEL, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 16, 1984, by the issuance of license number 159182 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 18, 2019, the New Jersey State Board of Medical Examiners ("New Jersey Board") entered a Consent Order with the Respondent where the New Jersey Board made a finding that the Respondent did not maintain his office in a safe and sanitary condition to the extent that he failed to develop and implement adequate infection control, waste management, and/or medical equipment maintenance protocols, and that he failed to adequately monitor and manage his inventory of medications and medical supplies. The New Jersey Board found that Respondent's conduct constituted repeated acts of negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(d); professional and/or occupational misconduct in violation of N.J.S.A. 45:1-21(e); and a failure to comply with the provisions of any act or regulation administered by the Board in violation of N.J.S.A. 45:1-21(h), with specific reference to the regulations contained in N.J.A.C. 13:35-6.16(b) (a lack of, and/or inadequate, policies and procedures for infection control, waste management, and/or medical equipment maintenance, and N.J.A.C. 13:35-7.5(b) (inadequate monitoring of medication inventory). The Consent Order imposed the following penalties and/or conditions: a reprimand, a requirement that the

Respondent retain an infection control "preventionist" for no less than one year, a requirement that Respondent complete a course in infection prevention, a civil penalty of \$10,000.00, and a requirement to reimburse the New Jersey Board in the amount of \$19,260.00, among other conditions.

B. The conduct resulting in the New Jersey disciplinary action against the Respondent would constitute misconduct under the laws of New York State pursuant to the following section of New York State law:

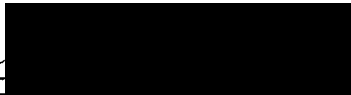
1. New York Education Law section 6530(3) (practicing the profession with negligence on more than one occasion); and/or
2. New York Education Law section 6530(5) (practicing the profession with incompetence on more than one occasion); and/or
3. New York Education Law section 6530(47) (failure to use infection control practices as established by the department of health pursuant to section two hundred thirty-a of the public health law).

SPECIFICATION OF CHARGES

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §§ 6530[3], [5] and/or [47]) as alleged in the facts of the following:

1. Paragraphs A, B and B.1, B.2 and/or B.3.

DATE: December 30, 2020
Albany, New York


TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct