



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Acting Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 21, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Andrew S. Holland, Esq.
Wilson Elser Moskowitz Edelman & Dicker LLP
200 Great Oaks Boulevard, Suite 228
Albany, New York 12203

John Viti, Esq.
New York State Health Department
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007

RE: In the Matter of Brian S. Kahan, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 21-264) 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:

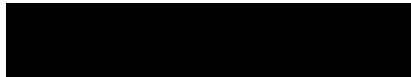
Jean T. Carney, Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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 Carney 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,

A solid black rectangular box redacting the signature of Dawn MacKillop-Soller.

Dawn MacKillop-Soller
Acting Chief Administrative Law Judge
Bureau of Adjudication

DXM: cmg
Enclosure

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

COPY

IN THE MATTER

OF

BRIAN S. KAHAN, D.O.

DETERMINATION

AND

ORDER

BPMC-21-264

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("Department"). A Notice of Referral Proceeding ("NORP") and Statement of Charges ("SOC"), both dated June 7, 2021, were served on Brian S. Kahan, D.O. ("Respondent"). Respondent filed an Answer dated August 20, 2021. A hearing, pursuant to N.Y. Public Health Law ("PHL") §230 and New York State Admin. Proc. Act §§301-307 and 401, was held via Cisco Webex on October 21, 2021.

C. Deborah Cross, M.D., Chair, Henry T. Spector, M.D., and Ruth Horowitz, Ph.D., duly designated members of the State Board for Professional Medical Conduct ("Board"), served as the Hearing Committee ("Committee") in this matter. Ann Gayle, Administrative Law Judge ("ALJ"), served as the administrative officer. The Department appeared by John Thomas Viti, Associate Counsel. Respondent appeared by Andrew S. Holland, Esq.

The Department charged Respondent with one specification of professional misconduct under N.Y. Education ("Educ.") Law §6530. Evidence was received and a transcript of this hearing was made and is part of the record. After consideration of the entire record, the Committee issues this Determination and Order; all findings, conclusions, and determinations are unanimous.

STATEMENT OF CASE

PHL §230(10)(p) 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. In the instant case, Respondent is charged with professional misconduct pursuant to Educ. Law §6530(9)(d) for having had disciplinary action taken in another state. The scope of the hearing is limited to a determination of the penalty, if any, to be imposed upon the licensee.

FINDINGS OF FACT

Citations in parentheses, 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 March 30, 1993, Respondent, Brian S. Kahan, D.O., was authorized by the issuance of license number 191804 by the New York State Education Department to practice medicine in New York State. Respondent's license status is "not registered." (Ex 5)
2. On July 9, 2020, a Disciplinary Panel of the Maryland State Board of Physicians ("Maryland Board") charged Respondent with failure to meet appropriate standards for the delivery of quality medical care regarding two patients by, *inter alia*, failing to properly manage these patients with periodic review of CRISP (Chesapeake Regional Information System) and PDMP (Prescription Drug Monitoring Program) and more frequent follow-up visits and drug urine screens. Thereafter, Respondent agreed to enter into a consent agreement with the Maryland Board. On December 9, 2020, the Maryland Board issued its Consent Order reprimanding Respondent and ordering him to take a CME (continuing medical education) course in controlled dangerous substances prescribing and to pay a civil fine of \$2,000. (Ex 3)

3. On January 6, 2021, the Maryland Board issued an Order keeping the reprimand in effect, and finding that Respondent satisfied the Maryland Board's aforesaid December 9, 2020 Order to complete the required CME and pay the \$2,000 fine. (Ex B; Ex C; T 39-40)

CONCLUSIONS OF LAW

The Department charged Respondent with one specification of professional misconduct under N.Y. Educ. Law §6530.9(d) for having his license to practice medicine revoked, suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state. Respondent's misconduct in Maryland for his failure to meet the standard of care for the delivery of quality medical care to two patients would constitute misconduct in New York pursuant to N.Y. Educ. Law §6530(3), practicing the profession with negligence on more than one occasion.

This Specification is sustained.

DISCUSSION and DETERMINATION AS TO PENALTY

The Department is seeking a censure and reprimand, a fine, and probation due to Respondent's negligent treatment of two of his patients in Maryland (T 13, 72). Respondent argues that a dismissal of the charges in the interest of justice or no penalty if the charge is sustained is warranted because there is no risk of harm; Respondent already successfully completed the Maryland Board's required CME; and Respondent made changes in his practice following the Maryland Board's disciplinary action and orders (T 67-68).

The Committee, in weighing the full range of penalties available pursuant to PHL §230-a, imposes the penalty of censure and reprimand. The Committee does not find a dismissal in the

interest of justice or no penalty appropriate. While the Committee agrees with the Department that negligence of two patients is significant, it does not believe a fine or any other additional penalty is warranted to protect the public. A fine does not address Respondent's wrongdoing. Respondent does not intend to return to New York; even if he did, the Committee is convinced that Respondent has taken adequate steps to address his wrongdoing in Maryland so that additional penalties, such as probation, are not necessary to protect the public in New York. The Committee finds censure and reprimand to be an appropriate penalty even in light of Maryland's 2009 action against Respondent upon which this Board took disciplinary action against Respondent in 2011¹.

ORDER

IT IS HEREBY ORDERED THAT:

1. The charge of misconduct under Educ. Law §6530(9)(d) is sustained.
2. Pursuant to PHL §230-a(1) Respondent is censured and reprimanded.
3. This order shall be effective upon service on the Respondent as required under PHL §230.10(h).

DATED: Westchester, New York
December 20, 2021


C. DEBORAH CROSS, M.D., Chair
HENRY T. SPECTOR, M.D.
RUTH HOROWITZ, Ph.D.

¹ Pursuant to a pre-hearing conference ruling, the Committee was made aware of the 2011 New York Board action after it sustained the charge against Respondent in this current action.

NEWYORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

Exhibit "A"

IN THE MATTER
OF
BRIAN S. KAHAN, D.O.

STATEMENT
OF
CHARGES

BRIAN S. KAHAN, D.O., the Respondent, was authorized to practice medicine in New York State on or about March 30, 1993, by the issuance of license number 191804 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 4, 2020, the Maryland State Board of Physicians entered into a Consent Order which reprimanded Respondent, and required that Respondent successfully complete a course in controlled dangerous substances prescribing and pay a monetary penalty of \$2,000.00. The Consent Order resolved allegations that Respondent failed to meet the standard of care for two patients. As to Patient A, it was alleged the patient was maintained on high dose opioid medications for a prolonged period of time without documented medical justifications. For Patients A and B, it was further alleged that the Respondent failed to monitor the patients through more frequent follow-up visits than once every two months, more frequent drug screens, and through the Chesapeake Regional Information System and the Prescription Drug Monitoring Program.

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

1. New York Education Law § 6530(3) (practicing the profession with negligence on more than one occasion)

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)).

1. Paragraphs A and B.

DATE: June 7, 2021
Albany, New York


Jeffrey J. Conklin
Acting Deputy Counsel
Bureau of Professional Medical Conduct