



## Department of Health

KATHY HOCHUL  
Governor

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

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

January 11, 2022

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

David Lifschutz, M.D.  
[REDACTED]

Nathan Dembin, Esq.  
148 Cannon Circle  
Woodstock, New York 12498

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

**RE: In the Matter of David Lifschutz, MD**

Dear Parties:

Enclosed please find the Determination and Order (No. 22-005) 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:

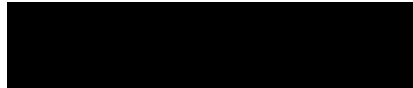
Jean T. Carney, Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Riverview Center  
150 Broadway – Suite 510  
Albany, New York 12204

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 used to redact 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**

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**IN THE MATTER** :  
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**OF** :  
:  
**DAVID LIFSCHUTZ, MD** :  
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**DETERMINATION**  
  
**AND**  
  
**ORDER**  
BPMC-22-005

A Notice of Referral Proceeding and Statement of Charges dated October 19, 2021 were duly served upon David Lifschutz, MD (Respondent). (Exhibits 1-2.) A hearing was held on December 16, 2021 via WebEx videoconference. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **JAMES M. LEONARDO, MD**, Chairperson, **JOSEPH S. BALER, MD**, and **EILEEN PASQUINI, BS, AAS**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **NATALIE BORDEAUX, ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer.

The Department appeared by Ian Silverman, Esq. The Respondent was represented by Nathan Dembin, Esq., and testified at the hearing on his own behalf. The Hearing Committee received and examined documents from the Department (Exhibits 1-4). A transcript of the proceeding was made.

After considering the entire hearing record, the Hearing Committee hereby issues this Determination and Order. All findings, conclusions, and determinations are unanimous.

**JURISDICTION**

The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(a)(i), by having been convicted of committing an act constituting a crime under New York state law. A licensee charged solely with a violation of Educ. Law § 6530(9) is entitled to a hearing,

the scope of which is limited to whether there is a relevant conviction or administrative determination and if so, the nature and severity of the penalty to be imposed. PHL § 230(10)(p). Hearing procedures are set forth in Department regulations at 10 NYCRR Part 51. The Department had the burden of proving its case by a preponderance of the evidence. PHL § 230(10)(f).

### **FINDINGS OF FACT**

1. On May 14, 2004, the Respondent was authorized to practice medicine in New York by the Education Department and was issued license number 232380. (Exhibit 3.)

2. On March 2, 2020, in New York County Supreme Court, the Respondent was convicted, following his guilty plea, of one count of Criminal Diversion of Prescription Medications in the 4<sup>th</sup> Degree, in violation of New York Penal Law § 178.10, an “A” misdemeanor. That same day, he was sentenced to a one-year conditional discharge. (Exhibit 4.)

### **CONCLUSIONS OF LAW AND DETERMINATION AS TO PENALTY**

The Respondent was convicted in New York County Supreme Court of Criminal Diversion of Prescription Medications in the 4<sup>th</sup> Degree, a crime pursuant to New York Penal Law § 178.10. (Exhibit 4.) Based upon the Respondent’s criminal conviction under New York law, the Hearing Committee determined that the Respondent violated Educ. Law § 6530(9)(a)(i), which defines professional misconduct to include:

9. (a) Being convicted of committing an act constituting a crime under...(i) New York state law.

The Hearing Committee concludes that this specification is sustained.

At the hearing, the Department recommended the imposition of a three-year stayed suspension, followed by three years of probation during which time the Respondent would be required to practice medicine under the supervision of a practice monitor and would be prohibited

from prescribing controlled substances. In addition, the Department sought the imposition of a \$10,000 fine. The Respondent requested the dismissal of the charge in the interest of justice, asserting that he has already been punished enough.

The Hearing Committee carefully considered the parties' recommendations, as well as the penalties delineated in PHL § 230-a. The Hearing Committee found that a fine would serve no purpose in this matter, noting that the Respondent has already expended considerable sums to defend himself in the criminal matter that precipitated this proceeding, which spanned four years. However, the Hearing Committee did not agree that dismissing the charge would best serve the public. Despite the Respondent's repeated assertions at the hearing that he should not have been arrested and charged, the fact of the matter remains that the Respondent pled guilty to, and was convicted of, a crime directly related to his medical practice. For this reason, the Hearing Committee determined to impose a two-year period of probation, during which time the Respondent will be allowed to practice medicine only under the supervision of a practice monitor, board-certified in pain management. The Respondent is also restricted from prescribing controlled substances during the probationary period. The Hearing Committee concluded that two years of probation with professional supervision was necessary, given the amount of time between the date of the crime (February 4, 2016) and his conviction (March 2, 2020), and noting that the Respondent provided no information regarding changes in his medical practice implemented after the incident.

### **ORDER**

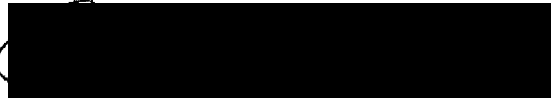
#### **IT IS HEREBY ORDERED THAT:**

1. The specification of professional misconduct, as set forth in the Statement of Charges, is sustained.
2. The Respondent is placed on probation for a period of two years. PHL § 230-a(9). The Respondent must comply with the terms of probation set forth in Appendix I.

3. During the period of probation, the Respondent is barred from prescribing controlled substances and shall practice medicine in New York only under the supervision of a Board-approved practice monitor as detailed in paragraph seven of Appendix I.

4. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

DATED: *January 10*, 2022  
*Cooperstown*, New York

  
James M. Leonardo, MD  
Chairperson

Joseph S. Baler, MD  
Eileen Pasquini, BS, AAS

To: David Lifschutz, MD  


Nathan Dembin, Esq.  
148 Cannon Circle  
Woodstock, NY 12498

Ian H. Silverman, Associate Counsel  
Bureau of Professional Medical Conduct  
New York State Department of Health  
Corning Tower, Room 2512  
Empire State Plaza  
Albany, NY 12237



**IN THE MATTER  
OF  
DAVID LIFSCHUTZ, M.D.**

**STATEMENT  
OF  
CHARGES**

DAVID LIFSCHUTZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 14, 2004 by the issuance of license number 232380 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

On or about on March 2, 2020 in New York County Supreme Court, the Respondent plead guilty to one count of Criminal Diversion of Prescription Medications and Prescription in the 4<sup>th</sup> Degree, in violation of New York Penal Law Section 178.10. Respondent was sentenced on March 2, 2020 to a conditional discharge for one year.

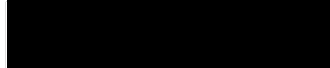
**SPECIFICATION OF CHARGES**

**CRIMINAL CONVICTION (N.Y.S.)**

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

1. The facts in paragraph A.

DATE: October 19, 2021  
Albany, New York



Jeffrey Conklin  
Acting Deputy Counsel  
Bureau of Professional Medical Conduct



# APPENDIX I

### **Terms of Probation**

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by Educ. Law § 6530 or § 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to PHL § 230(19).
2. Respondent shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of his employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of his compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if he is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30-day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in the Determination and Order or as are necessary to protect the public health.
6. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
7. The Respondent shall practice medicine in New York State only when monitored by a licensed physician, board certified in pain management (practice monitor), who is proposed by Respondent and subject to the written approval of the Director of the OPMC.
  - a. The Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit the Respondent's medical practice at each and every location, on a

random, unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by the Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to the OPMC.

- b. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of the OPMC.
  - c. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
  - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with § 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent commencing practice within the State of New York.
8. Respondent is prohibited from prescribing controlled substances during the probation term.
9. The terms set forth in the paragraphs above are the minimum probation terms to be imposed on the Respondent, and other terms may be added by the Director of the OMPC. All compliance costs, including expenses and fees associated with the practice monitor, shall be the Respondent's responsibility.
10. Respondent shall comply with these probationary terms and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.