



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Acting Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

February 1, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Charles Avetian, D.O.
[REDACTED]

FMC Devens
42 Patton Road
Ayer, MA 01432

Marc S. Nash, Associate Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower – Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Charles Avetian, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 23-017) 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 (l), (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:

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 Ms. 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 the sender.

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

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

COPY

-----X
IN THE MATTER :
OF :
CHARLES AVETIAN, D.O. :
-----X

DETERMINATION
AND
ORDER
BPMC-23-017

A Notice of Referral Proceeding and Statement of Charges dated November 17, 2022, were duly served upon Charles Avetian, D.O. (Respondent). (Exhibits 1-2.) A hearing was held on January 12, 2023 via WebEx videoconference. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **MARY E. RAPPAZZO, M.D.**, Chairperson, **LYON M. GREENBERG, M.D.**, and **JANET AXELROD, ESQ.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee. **NATALIE BORDEAUX** served as the Administrative Officer.

The Department appeared by Marc S. Nash, Esq. The Respondent participated by telephone. The Hearing Committee received and examined documents from the Department (Exhibits 1-6). A transcript of the proceeding was made.

After considering the entire hearing record, the Hearing Committee hereby determines to sustain the charge and revoke the Respondent's medical license. All findings, conclusions, and determinations are unanimous.

JURISDICTION

The Department brought the case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Education Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Education Law § 6530(9)(a)(ii), by having been convicted of committing an act constituting a crime under federal law. Hearing procedures are set

forth in Department regulations at 10 NYCRR Part 51. Under PHL §230(10), the Department had the burden of proving its case by a preponderance of the evidence.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York by the Education Department on March 17, 2015 and was issued license number 278884. (Exhibit 3.)

2. On July 28, 2022, the Respondent was convicted in the United States District Court for the Eastern District of Pennsylvania, following his guilty plea, to 13 counts of Distribution of a Controlled Substance and Aiding and Abetting the Distribution of a Controlled Substance in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(E) and 18 U.S.C. §2, respectively. He was also convicted of three counts of Making and Subscribing False Federal Income Tax Returns in violation of 26 U.S.C. § 7206(1). From April 2015 through September 2017, the Respondent issued 13 prescriptions for a total of nearly 2,000 pills of Fioricet (a combination of butalbital, a Schedule III controlled substance which is a barbiturate, acetaminophen and caffeine) outside the course of professional practice and not for a legitimate medical purpose, to customers who were only required to complete an online questionnaire and were not examined by the Respondent or any other physician in connection with their orders. During the tax years 2012 through 2014, the Respondent failed to report approximately \$363,830 of income earned from practicing internal medicine, working as a weight control physician, covering for another physician, and issuing prescriptions for online customers of Internet pharmacies. He was sentenced to prison for one year and one day, followed by three years of supervised release. The Respondent was also ordered to pay an assessment of \$1,600. (Exhibits 4, 5.)

DISCUSSION

The Hearing Committee reviewed the Department's evidence showing the Respondent's conviction in a United States District Court of 16 federal crimes, including distribution of controlled

substances and tax fraud. Based on this conviction, the Hearing Committee determined that the Respondent violated Education Law § 6530(9)(a)(ii) and sustained the charge.

At the hearing, the Department recommended revocation of the Respondent's license, while the Respondent sought leniency. In consideration of the full spectrum of penalties under PHL § 230-a, the Hearing Committee agreed with the Department's recommendation that revocation of the Respondent's medical license was warranted.

The Hearing Committee considered that the Respondent's conduct that led to his criminal conviction involved the use of his medical license. As stated by the US Attorney in the criminal complaint against the Respondent, a physician who prescribes a controlled substance for an individual based solely on that person's responses to a questionnaire completed online, without ever having examined that individual, is acting outside the usual course of his professional practice, and the prescription is not for a legitimate medical purpose. The Respondent was also convicted of intentionally failing to include approximately \$102,896 of income on his 2012 tax return, \$124,494 of additional income on his 2013 tax return, and \$136,440 of income on his 2014 tax return. The unreported income was earned, at least in part, through his work for entities that sold prescription drugs to customers who completed an online questionnaire but were never physically examined. (Exhibit 5.)

The Respondent was previously disciplined for his prescribing practices. More than two years before the federal criminal charges were filed against him, the Respondent was notified by the Pennsylvania Board of Osteopathic Medicine (Pennsylvania Board) of charges regarding his issuance of 452 prescriptions for butalbital, a component of Fioricet, between June 2009 and October 2009 based solely upon responses to Internet questionnaires. (Exhibit 6.) On June 22, 2017, the Respondent entered into a Consent Agreement and Order with the Pennsylvania Board to resolve the

charges, resulting in the suspension of his license for two years, with all but one month stayed, and probation for the remainder of the original two-year term, during which he was prohibited from prescribing medication by phone or through the Internet. (Exhibit 6.)

Even after being notified of the charges by the Pennsylvania Board, the Respondent issued 10 more prescriptions for Fioricet. Three of those prescriptions were issued after the Consent Agreement and Order was effectuated. (Exhibit 5.) The New York State Board for Professional Medical Conduct (BPMC) then charged the Respondent with professional misconduct under Education Law § 6530(9)(d) because of the disciplinary action taken by the Pennsylvania Board. By Consent Order dated March 28, 2018, the Respondent agreed not to contest the allegations made by BPMC in full satisfaction of the charge and agreed to the imposition of a censure and reprimand, as well as a probation period of two years, as penalties. (Exhibit 6.)

The Respondent asserted that he pled guilty to the federal charges on advice of a tax attorney (notwithstanding the fact that his plea of guilty involved 13 counts of Distribution of a Controlled Substance and Aiding and Abetting the Distribution of a Controlled Substance). He contended that he was wrongfully convicted because Fioricet is not recognized as a controlled substance by the Drug Enforcement Administration (DEA). The Respondent explained that he worked for telemedicine companies, who researched and confirmed that Fioricet is not a controlled substance. He stated that he was careful not to prescribe Fioricet in states where the medication was deemed a controlled substance. The Respondent emphasized his intention to continue to challenge his criminal conviction because of his belief that Fioricet was incorrectly deemed to be a controlled substance by the US Attorney's Office.

Regarding his conviction for three counts of Making and Subscribing False Federal Income Tax Returns, the Respondent blamed any tax reporting errors on the telemedicine companies that he

worked for, alleging that they had not distributed his 1099 forms. He has sought to obtain a dismissal of those charges because he does not believe he was responsible for any reporting errors.

Although the Respondent made his position abundantly clear at the hearing that the federal criminal charges, all of which he pled guilty to, are wrong, the Hearing Committee cannot relitigate those charges or his conviction. The hearing record reflects the Respondent's continued, improper use of his medical license for personal gain, and lack of respect for applicable law, without any acceptance of responsibility for his own actions. Despite concerns raised and penalties imposed by the medical boards of both Pennsylvania and New York (before federal criminal charges were filed) that the Respondent's prescribing of butalbital without an examination was improper and constituted professional misconduct, the Respondent continued to prescribe the medication for individuals submitting online questionnaires. He offered no assurances at the hearing that he would make any changes to his professional conduct if given the opportunity to resume practicing medicine upon his release from imprisonment.

For these reasons, the Hearing Committee concluded that revocation of the Respondent's medical license was the only appropriate penalty to protect patients in the State of New York.

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's license to practice medicine in the state of New York is revoked pursuant to PHL § 230-a(4).
3. This Order shall be effective upon service on the Respondent in compliance with PHL § 230(10)(h).

DATED: 01/29/2023, 2023
ALBANY, New York

[REDACTED]
Mary E. Rappazzo, M.D., Chairperson
Lyon M. Greenberg, M.D.
Janet Axelrod, Esq.

To: Charles Avetian, D.O.

[REDACTED]
FMC Devens
42 Patton Road
Ayer, MA 01432

Marc S. Nash, Associate Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower – Room 2512
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Albany, NY 12237

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

IN THE MATTER
OF
CHARLES AVETIAN, D.O.

STATEMENT
OF
CHARGES

CHARLES AVETIAN, D.O., the Respondent, was authorized to practice medicine in New York State on or about March 17, 2015, by the issuance of license number 278884 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 28, 2022, in the United States District Court, Eastern District of Pennsylvania, Respondent was convicted of thirteen counts of Distribution of a Controlled Substance and Aiding and Abetting [21 U.S.C. §§ 841(a)(1), (b)(1)(E) and 18 U.S.C. § 2] and three counts of Making and Subscribing False Federal Income Tax Returns [26 U.S.C. § 7206(1)]. Respondent was sentenced to 1 year and 1 day imprisonment followed by three years' supervised release and assessed \$1,600.

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. Paragraph A.

DATE: November 17, 2022
Albany, New York



JEFFREY J. CONKLIN
Deputy Director
Bureau of Professional Medical Conduct