



Department of Health

KATHY HOCHUL
Governor

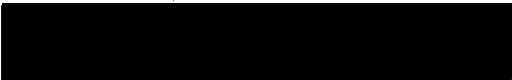
JAMES V. McDONALD, M.D., M.P.H.
Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

June 16, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Allan Zacher, M.D.


RE: In the Matter of Allan Zacher, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 23-130) 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.

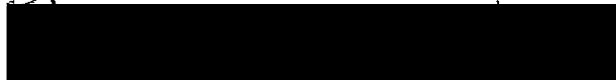
The notice of review served on the Administrative Review Board should be forwarded to:

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 redaction box covering the signature of the Chief Administrative Law Judge.

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: nm
Enclosure

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

COPY

-----X
IN THE MATTER
OF
ALLAN ZACHER, M.D.
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DETERMINATION
AND
ORDER
BPMC-23-130

A Notice of Referral Proceeding and Statement of Charges dated April 10, 2023, were duly served upon Allan Zacher, M.D. (Respondent) pursuant to Public Health Law (PHL) § 230(10)(d)(i). (Exhibits 1, 2.) A hearing was held on June 8, 2023, via WebEx videoconference. Pursuant to PHL § 230(10)(e), **RAVINDER MAMTANI, M.D.**, Chairperson, **NOLAN J. KAGETSU, M.D.**, and **JANET AXELROD, ESQ.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee. **NATALIE BORDEAUX**, Administrative Law Judge (ALJ), served as the administrative officer.

The Department appeared by Ian H. Silverman, Associate Counsel. The Respondent did not appear. The Hearing Committee received and examined documents from the Department (Exhibits 1-4) and from the Respondent, who submitted a written statement in lieu of appearance (Exhibit A). A transcript of the proceeding was made. After consideration of the entire hearing record, the Hearing Committee hereby issues this Determination and Order, revoking the Respondent's medical license. All findings, conclusions, and determinations are unanimous.

BACKGROUND

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)(d), having his license

to practice medicine revoked, or having voluntarily surrendered his medical license in North Carolina after a disciplinary action was instituted by a duly authorized professional agency of that state, where the conduct resulting in the revocation or the surrender of his license would, if committed in New York state, constitute professional misconduct under the laws of New York. 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 on October 9, 1986, under license number 168076. (Exhibit 4.)
2. On September 7, 2021, the Respondent voluntarily surrendered his license to practice in North Carolina, amidst an investigation by the North Carolina Medical Board regarding the Respondent having engaged in sexual intercourse with a patient (Patient A) in his home, immediately after performing cosmetic procedures at a medical spa and eating and consuming alcohol at two restaurants. (Exhibit 3.)
3. By Consent Order dated November 29, 2021, the Respondent waived his right to a hearing regarding the North Carolina Medical Board's investigation, and acknowledged that he engaged in unprofessional conduct pursuant to North Carolina General Statute § 90-14(a)(6), departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of the physician's practice or otherwise. The Respondent also consented to the revocation of his North Carolina medical license. (Exhibit 3.)

DISCUSSION

Although the Respondent was personally served with notice of the hearing (which explicitly states that the proceedings may result in a determination to revoke or suspend his medical license), he elected not to appear at the hearing. The Respondent instead offered a written statement to explain his version of the events that resulted in the revocation of his North Carolina medical license. The ALJ determined, upon the Department having established jurisdiction and proper notice, that the hearing could proceed on the merits despite the Respondent's absence.

On November 29, 2021, the Respondent entered into a Consent Order with the North Carolina Medical Board, whereby he agreed that his behavior towards Patient A constituted unprofessional conduct pursuant to North Carolina General Statute § 90-14(a)(6), which includes, but is not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of the physician's practice or otherwise. Pursuant to the Consent Order, the Respondent, who had already surrendered his North Carolina medical license on September 7, 2021, agreed to the revocation of his license.

The Hearing Committee agreed that the Respondent's conduct resulting in the North Carolina Medical Board's disciplinary action would, if committed in New York, constitute misconduct pursuant to Education Law § 6530(20), conduct in the practice of medicine which evidences moral unfitness to practice medicine. The Hearing Committee thus determined that the Respondent violated Education Law § 6530(9)(d).

After determining to sustain the charge, the Hearing Committee considered all possible penalties authorized by PHL § 230-a. The Department recommended revocation of the

Respondent's medical license. In his written statement, the Respondent explained that he had no desire to maintain his New York license, and that the Hearing Committee was "free, without [the Respondent's] objection, to permanently suspend or revoke" his license. (Exhibit A.)

In reviewing the facts cited by the North Carolina Medical Board in the November 29, 2021 Consent Order, the Hearing Committee determined that the Respondent clearly crossed the line by imbibing alcohol and engaging in sexual intercourse with a patient. Regardless of the Respondent's characterization of the events as consensual, the Respondent abused his status as a physician, as this patient was not known to him outside of his professional practice. The Respondent did not dispute that his actions were inappropriate, either with the North Carolina Medical Board (Exhibit 3) or in his explanation to this Hearing Committee (Exhibit A).

The Hearing Committee appreciated the Respondent's candor and his acceptance of penalties for his professional misconduct, and was offered no information whatsoever to show or even suggest that the Respondent would not engage in similar inappropriate behaviors if permitted to keep his New York medical license. Therefore, the Hearing Committee concluded that revocation was the only appropriate penalty to protect patients in the state of New York.


ORDER

IT IS HEREBY ORDERED THAT:

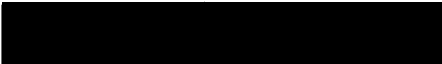
1. The charge of professional misconduct, as set forth in the Statement of Charges, is sustained.
2. The Respondent's license to practice medicine in the state of New York is hereby revoked. PHL § 230-a(4).
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(b).

DATED: 6/14, 2023

Hopewell JCL, New York


Ravinder Mamfani, M.D., Chairperson
Nolan J. Kagetsu, M.D.
Janet Axelrod, Esq.

To: Allan Zacher, M.D.


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

IN THE MATTER

OF

ALLAN ZACHER, M.D.

AMENDED
STATEMENT
OF
CHARGES

ALLAN ZACHER, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 9, 1986, by the issuance of license number 168076 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 23, 2021, the North Carolina Medical Board (North Carolina Board) issued a Consent Order in which the Respondent's license was revoked. The North Carolina Board imposed discipline upon Respondent for his care and treatment of one patient. Respondent performed cosmetic procedures on Patient A on April 14, 2018. Following her medical appointment Dr. Zacher and Patient A went to a restaurant in the same building as Respondent's medical practice, ate and each consumed at least one alcoholic drink. Respondent then drove Patient A to his home. After spending some time at Respondent's home, Respondent and Patient A drove to a local restaurant near his home, ate dinner and each consumed at least one alcoholic dinner. After dinner, they returned to Respondent's home. Upon returning to Respondent's home, Respondent and Patient A continued to drink alcohol. Respondent and Patient A then had sexual intercourse. The North Carolina Board alleged Respondent engaged in unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or the committing of any act contrary to honesty, justice, or good morals, whether the same is committed in the course of the physician's practice or otherwise, and whether committed within or without North Carolina.

B. Respondent's conduct as described above would, if committed in New York State, constitute professional misconduct under the laws of the State of New York as follows:

1. New York Education Law §6530 (20) (conduct in the practice of medicine which evidences moral unfitness to practice medicine).

SPECIFICATION OF CHARGES
HAVING HAD DISCIPLINARY ACTION TAKEN

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 § (20)) as alleged in the facts of the following:

1. The facts in Paragraph A and B and its subparagraph.

DATE: June 20, 2023
New York, New York


Jeffrey Conklin
Deputy Director
Bureau of Professional Medical Conduct