



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

Public

July 30, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Alexander G. Bateman, Jr., Esq.
Ruskin, Moscou, Faltischek, P.C.
East Tower – 15th Floor
1425 RXR Plaza
Uniondale, New York 11556-1425

Robert Bogan, Esq.
NYS Department of Health
ESP – Corning Tower – Room 2512
Troy, New York 12237-0032

Gary A. Levine, R.P.A.

REDACTED

RE: In the Matter of Gary A. Levine, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 10-138) 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. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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 Mr. 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,
REDACTED

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

JURISDICTION

As is set forth in Public Health Law 230(1)&(7) and Education Law 6532, the legislature created the State Board for Professional Medical Conduct in the Department of Health (the Department), and authorized it to conduct disciplinary proceedings in matters of professional medical conduct.

Definitions of professional misconduct applicable to physicians, physician assistants and specialist assistants are set forth in Ed.L 6530 and 6531. In this case, the Respondent, a physician assistant, has been charged with misconduct pursuant to Ed.L 6530(9)(a)(i).

Pursuant to PHL 230(10)(p), a "direct referral procedure" 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). Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51.

EVIDENCE

Witnesses for the Petitioner:	None
Petitioner exhibits:	Department Exhibits 1-6.
Witnesses for the Respondent:	Gary A. Levine, R.P.A.
Respondent exhibits:	Respondent Exhibits A-F.

A transcript of the proceedings was made. (Prehearing conference transcript, pages 1-19; Hearing transcript, pages 1-57.)

FINDINGS OF FACT

An opportunity to be heard having been afforded the parties and evidence having been considered, it is hereby found:

1. Respondent Gary A. Levine, R.P.A. was authorized to practice medicine in New York State as a physician assistant on September 30, 2005 under license number 010854. (Department Exhibit 4.)
2. On March 9, 2007, in the District Court of Nassau County – Hempstead, New York, the Respondent was found guilty, based upon a plea of guilty, of operating a motor vehicle while under the influence of alcohol, a misdemeanor in violation of New York Vehicle & Traffic Law 1192.3. On May 21, 2007, the Respondent was sentenced to pay a \$1,000 fine, and a total of \$185 in fees and surcharges. His driver's license was revoked, and a three year period of probation was imposed. (Department Exhibit 5; Hearing transcript, pages 18-19.)

HEARING COMMITTEE DETERMINATION

The Petitioner presented records obtained from the District Court of Nassau County – Hempstead. (Department Exhibit 5.) The Respondent acknowledged that the records were accurate and that he had pleaded guilty to a misdemeanor charge of driving while intoxicated. (Hearing transcript, page 18.) The hearing committee unanimously concluded that, as alleged in the statement of charges, the Respondent violated Ed.L 6530(9)(a)(i) which defines professional misconduct, in pertinent part, as "Being convicted of committing an act constituting a crime under... New York State law."

The Petitioner argued, with some support in the record (Hearing transcript, pages 22, 31, 37-39), that the Respondent does not completely accept responsibility for the consequences of his conduct. (Hearing transcript, pages 52-54.) For this reason, the

Petitioner recommended that the hearing committee impose a censure and reprimand, and a \$5,000 fine. (Hearing transcript, page 55.) The hearing committee determined, however, that disciplinary action is not indicated.

The hearing committee chairperson noted, as an initial matter, that the committee's primary duty is to protect the citizens of this state, not to punish licensees. In the hearing committee's view, the Respondent has demonstrated awareness of his responsibility for the consequences of his substance abuse problems. The committee was particularly impressed that after his March 2006 arrest, but before his March 2007 plea of guilty (Department Exhibit 5), the Respondent voluntarily entered a 30 day residential treatment program, at his own substantial expense. (Respondent Exhibit C; Hearing transcript, pages 24-25.) He was, at the time, under no obligation to do so.

After the Respondent's May 2007 sentencing, conditions of his probation included an alcohol testing device installed in his car, and both regular and random drug and alcohol tests. The testing did not detect alcohol use, and the Respondent was released from probation when he first became eligible, which was after 18 months instead of the three years originally imposed. (Hearing transcript, pages 20, 22-23.) The hearing committee credited the Respondent's testimony and evidence that he has now been abstinent for nearly four years. (Hearing transcript, pages 27, 35; Respondent Exhibit F.)

The committee considered whether the imposition of some sort of supervision might be helpful to the Respondent. The committee found no evidence, however, that the Respondent's misconduct had any impact on his professional work as an R.P.A. The Petitioner conceded that the Respondent does not now appear to have an alcohol problem that would interfere with his work. (Hearing transcript, pages 29, 52, 54.) The committee

concluded that the need is not so much for supervision of the Respondent's professional work as it is simply to maintain his sobriety. The committee decided to leave this responsibility in the Respondent's hands.

With regard to the requested fine, the hearing committee took notice that the Respondent has already paid substantial amounts in fines and for the cost of his residential treatment program. (Hearing transcript, pages 19, 21, 25, 37; Department Exhibit 5; Respondent Exhibit C.) The committee concluded that additional monetary penalties would serve no good purpose.

The hearing committee determined not to impose further penalty or disciplinary action in this proceeding. The hearing committee's vote was unanimous (3-0).

ORDER

IT IS HEREBY ORDERED THAT:

1. No penalty or sanction will be imposed.
2. 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
7/28
, 2010

By:

REDACTED

PETER B. KANE, M.D. (CHAIR)

BERTON SHAYEVITZ, M.D.
IRVING S. CAPLAN

To: Robert Bogan, Esq., Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower, Empire State Plaza
Albany, New York 12237-0032

Alexander G. Bateman, Jr., Esq.
Ruskin Moscou Faltischek, P.C.
East Tower, 15th Floor
1425 RXR Plaza
Uniondale, New York 11556-1425

Gary A. Levine, R.P.A.

REDACTED

APPENDIX I

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



IN THE MATTER
OF
GARY A. LEVINE, RPA
CO-08-08-4834-A

NOTICE OF
REFERRAL
PROCEEDING

TO: GARY A. LEVINE, RPA
REDACTED

GARY A. LEVINE, RPA
REDACTED

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 23rd day of April, 2009, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.


At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here 

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
March 5, 2009

REDACTED
PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
GARY A. LEVINE, RPA
CO-08-08-4834-A

STATEMENT
OF
CHARGES

GARY A. LEVINE, RPA, Respondent, was authorized to practice medicine in New York state as a Physician Assistant on September 30, 2005, by the issuance of license number 010854 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 9, 2007, in the District Court of Nassau County- Hempstead, New York, Respondent was found guilty, based on a plea of guilty, of operating a motor vehicle while under the influence of alcohol – driving while intoxicated, in violation of New York Vehicle Traffic Law §1192.3, a misdemeanor, and on or about May 21, 2007, was sentenced to pay a \$1,000.00 fine, a \$20.00 CVAF, and a \$165.00 surcharge.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(i) by being convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *March 5*, 2009
Albany, New York

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct