



*Public*

**STATE OF NEW YORK  
DEPARTMENT OF HEALTH**

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

February 1, 2011

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robyn Marie Emery, P.A.

REDACTED

Michael G. Bass, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

**RE: In the Matter of Robyn Marie Emery, P.A.**

Dear Parties:

Enclosed please find the Determination and Order (No. 11-26) 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  
Hedley Park Place  
433 River Street - Fourth Floor  
Troy, New York 12180

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. 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 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:

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

IN THE MATTER  
OF  
ROBYN MARIE EMERY, P.A.

DETERMINATION  
AND  
ORDER

BPMC#11-26

A hearing was held on January 20, 2011, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding, dated October 21, 2009, and an Amended Statement of Charges, dated November 10, 2010, were served upon the Respondent, **ROBYN MARIE EMERY, P.A.**

Pursuant to Section 230(10)(e) of the Public Health Law, **John B. Waldman, M.D.**, Chair, **Arsenio G. Agopovich, M.D.**, and **Frances E. Tarlton**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **James E. Dering, Esq.**, General Counsel, by **Michael G. Bass, Esq.**, of Counsel. The Respondent, **Robyn Marie Emery, P.A.**, did not appear, although duly served. Evidence was received and transcripts of these proceedings were made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

**STATEMENT OF CASE**

This case was brought pursuant to Public Health Law Section 230(10) (p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(i) – being convicted of committing an act constituting a crime under New York State law.

Copies of the Notice of Referral Proceeding and the Amended Statement of Charges are attached to this Determination and Order as Appendix 1.

**WITNESSES**

For the Petitioner:	None
For the Respondent:	None

**FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving

at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. **Robyn Marie Emery, P.A.**, the Respondent, did not appear at the hearing, although she was duly served and notified of the hearing on November 17, 2009. (Petitioner's Exhibit 2.)
2. **Robyn Marie Emery, P.A.**, the Respondent, was authorized to perform medical services as a physician assistant in New York State on November 21, 2003, by the issuance of license number 009740 by the New York State Education Department (Petitioner's Ex. 4).
3. On or about May 19, 2009, in the Newfane Town Court, Criminal Part, Niagara County, State of New York, Respondent was found guilty, based on a plea of guilty, to the charge of Unlicensed driver, in violation of New York Vehicle and Traffic Law, §509(1), a violation, and Attempted criminal possession of a controlled substance in the seventh degree, in violation of New York Penal Law, §§ 110 and 220.03, a class B misdemeanor, The Respondent was sentenced for the former offense to a \$40.00 fine and a \$140.00 surcharge, and was sentenced for the latter offense to a \$200.00 fine, a \$205.00 surcharge, one (1) year probation, and one hundred fifty (150) hours of community service. (Petitioner's Ex. 5).
4. On or about April 20, 2010, Respondent pled guilty to a violation of probation. The Respondent was released from probation and was sentenced to 90 days incarceration, based on Respondent's continued illegal drug use, involving cocaine, suboxone, oxycontin, oxymorphone, and morphine. (Petitioner's Ex. 7).

## **VOTE OF THE HEARING COMMITTEE**

### **SPECIFICATION**

"Respondent violated New York Education Law Section 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York State law..."

VOTE: Sustained (3-0)

### **HEARING COMMITTEE DETERMINATION**

The Respondent did not appear at the hearing, either in person or by counsel. The Administrative Law Judge, after considering the documentary evidence, which included an Affidavit of Personal Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed on the merits notwithstanding the Respondent's absence. The record in this case indicates that Respondent had been found guilty, based on a plea of guilty, to the charge of Unlicensed driver, in violation of New York Vehicle and Traffic Law, §509(1), a violation, and Attempted criminal possession of a controlled substance in the seventh degree, in violation of New York Penal Law, §§ 110 and 220.03, a class B misdemeanor, The record goes on to show that the Respondent was sentenced for the former offense to a \$40.00 fine and a \$140.00 surcharge, and was sentenced for the latter offense to a \$200.00 fine, a \$205.00 surcharge, one (1) year probation, and one hundred fifty (150) hours of community service. (Petitioner's Ex. 5).

It also appears that there was a violation of this probation and, on or about April 20, 2010, Respondent pled guilty to a violation of probation. The Respondent was released from probation and was sentenced to 90 days incarceration, based on Respondent's continued illegal drug use, involving cocaine, suboxone, oxycontin, oxymorphone, and morphine.

Respondent did not appear at the hearing but did submit letters from her parents and herself in an attempt to explain her conduct. The Department's attorney did not oppose the admission of these documents, Respondent's Exhibits # A and #B, and they were admitted and the panel had the opportunity to read them. These letters purport that the Respondent has been clean and sober for several months now and they state that the Respondent made the bad decisions that brought about her incarceration because she was manipulated by her husband who is still a drug addict and is presently incarcerated.

The Respondent, in her letter, indicated that she is now divorced and is attempting to reconstruct her life and believes that she will come out of this entire process a better and stronger person if she is given a second chance. The panel read and considered the request of the Respondent and found that she has already been given a second chance after her 2009 conviction for drug possession, which resulted in a sentence of probation. In April of 2010, the Respondent was found in violation of probation and incarcerated for her continued use of cocaine, suboxone, oxycontin, oxymorphone, and morphine.

As to the penalty, the Hearing Committee determined that the people of New York State would be protected by a revocation of the Respondent's license and thus the unanimous determination of the panel was that license of the Respondent to practice, as a Physician's Assistant in New York State should be revoked.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are SUSTAINED
2. The license of the Respondent to practice as a Physician's Assistant in New York State is revoked.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Albany, New York  
February 1, 2011

REDACTED

John B. Waldman, M.D., Chair

Arsenio G. Agopovich, M.D.,  
Frances E. Tarlton

To: Robyn Marie Emery, P.A.  
REDACTED

Michael G. Bass, Esq.  
Attorney for Petitioner  
Associate Counsel  
NYS Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower Building, Room 2512  
Albany, New York 12237



APPENDIX I

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



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IN THE MATTER  
OF  
ROBYN MARIE EMERY, P.A.  
CO-09-02-0878-A

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NOTICE OF  
REFERRAL  
PROCEEDING

TO: ROBYN MARIE EMERY, P.A.  
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 17<sup>th</sup> day of December, 2009, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that 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 and/or sworn testimony on your behalf. Such evidence and/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 that 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. JAMES F. HORAN, ACTING 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 (10) 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 (10) 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 (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) 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 demands, hereby, disclosure of the evidence that 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 and/or other evidence that cannot be photocopied.

**YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) 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 (5) 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

*Oct. 21*, 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



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IN THE MATTER  
OF  
ROBYN MARIE EMERY, P.A.  
CO-09-02-0878-A

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AMENDED  
STATEMENT OF  
CHARGES

ROBYN MARIE EMERY, P.A., Respondent, was authorized to perform medical services as a physician assistant in New York State on November 21, 2003, by the issuance of certificate number 009740 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about May 19, 2009, in the Newfane Town Court, Criminal Part, Niagara County, New York, Respondent was found guilty, based on a plea of guilty, of Unlicensed driver, in violation of New York Vehicle and Traffic Law, §509(1), a violation, and Attempted criminal possession of a controlled substance in the seventh degree, in violation of New York Penal Law, §§ 110 and 220.03, a class B misdemeanor, and was sentenced for the former offense to a \$40.00 fine and a \$140.00 surcharge, and was sentenced for the latter offense to a \$200.00 fine, a \$205.00 surcharge, one (1) year probation, and one hundred fifty (150) hours of community service.

B. On or about April 20, 2010, Respondent pled guilty to a violation of probation, released from probation and was sentenced to 90 days incarceration, based on Respondent's continued illegal drug use, involving cocaine, suboxone, oxycontin, oxymorphone, and morphine.

**SPECIFICATION**

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

1. The facts in Paragraphs A and/or B.

DATED: *November 10*, 2010  
Albany, New York

REDACTED

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