

NEW YORK  
state department of  
**HEALTH**

Public

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

September 8, 2014

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Magdy Elamir, M.D.  
REDACTED

Magdy Elamir, M.D.  
REDACTED

Stuart Polkowitz, Esq.  
Brach, Eichler, LLC  
101 Eisenhower Parkway  
Roseland, New Jersey 07068

Joel E. Ablove, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

**RE: In the Matter of Magdy Elamir, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 14-216) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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., Chief 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 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  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah  
Enclosure

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

IN THE MATTER  
OF  
MAGDY ELAMIR, M.D.

DETERMINATION  
AND  
ORDER

BPMC #14-216

COPY

A hearing was held on July 24, 2014, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and Statement of Charges, both dated May 8, 2014, were served upon the Respondent, **MAGDY ELAMIR, M.D.** The Statement of Charges was amended at the hearing.

Pursuant to Section 230(10)(e) of the Public Health Law, **William P. Dillon, M.D.**, Chair, **Gail S. Homick Herrling**, and **Trevor A. Litchmore, M.D.**, 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 **Joel E. Abelove, Esq.**, of Counsel. The Respondent, **Magdy Elamir, M.D.**, did appear, with counsel, **Stuart Polkowitz, Esq.** of the firm of Brach, Eichler, LLC. of Roseland, New Jersey. 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) – by having been convicted of committing an act constituting a crime under the law of another jurisdiction, which would, if committed in New York state, constitute a crime under the laws of New York state.

Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1. A Copy of the Statement of Charges, as amended, is attached to this Determination and Order as Appendix 2.

**WITNESSES**

For the Petitioner:

None

For the Respondent:

Magdy Elamir, M.D.

## 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. **Magdy Elamir, M.D.** , the Respondent, did appear at the hearing, with counsel, and was duly served and notified of the hearing on May 14, 2014. (Petitioner's Exhibit 2)
2. **Magdy Elamir, M.D.**, the Respondent, was authorized to practice medicine in New York State on July 30, 1984, by the issuance of license number 159434 by the New York State Education Department. (Petitioner's Exhibit 3)
3. On or about May 30, 2013, in Superior Court of New Jersey, Hudson County, Respondent was found guilty, based on a plea of Guilty, of the crime of Dispensing Prescription Legend Drugs Not in Original Container, as the Accomplice of Another, in violation of N.J.S.A. 2C:2-6C and 2C:35-10.5, a fourth degree felony, and was sentenced to a \$10,000.00 fine, and penalties and fees of \$155.00. (Petitioner's Exhibit 4)
4. The above conviction constituted a violation of New York Education law §6530(9)(e)(i) in that Respondent was convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law.

**VOTE OF THE HEARING COMMITTEE**

**SPECIFICATION**

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

VOTE: Sustained (3-0)

**HEARING COMMITTEE DETERMINATION**

The Respondent did appear at the hearing, with 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. There was no dispute about jurisdiction.

The record herein also shows that on or about May 30, 2013, in the Superior Court of the State of New Jersey, Hudson County, Respondent was found guilty, based on a plea of Guilty, of the crime of Dispensing a Prescription Legend Drug Not in the Original Container, as the Accomplice of Another, in violation of N.J.S.A. 2C:2-6C and 2C:35-10.5, a fourth degree felony, and was sentenced to a \$10,000.00 fine, and penalties and fees of \$155.00.

It is noted that the Statement of Charges herein was amended at the hearing to reflect the Final Charges after the plea agreement, which the Respondent actually pled guilty to. The Amended Statement of Charges is attached hereto as Appendix 2. The panel noted that the final plea was still to a felony, albeit of a lesser degree than the crimes originally charged in the Notice of Hearing. (Petitioner's Exhibit 3) The panel was concerned not only about the appropriate penalty for the New Jersey misconduct, but also about Doctor Elamir's fitness to practice medicine in New York.

As for the penalty, the hearing committee noted that the State of New Jersey is presently pursuing a Medical Misconduct proceeding based on the underlying criminal acts noted in the Hudson County plea cited above. Since the New Jersey medical board has yet to complete the misconduct proceeding for this Doctor, the panel determined that the Respondent's license to practice medicine in New York should be suspended until the New Jersey matter is finalized. Furthermore, the panel determined that if the finding of misconduct is sustained in New Jersey and a penalty is imposed by New Jersey, the New York suspension should continue until the New Jersey penalty is complete and satisfied.

As for the Respondent's competency to practice medicine, the panel noted that Doctor Elamir has not practiced medicine in over five years and has not kept current with Continuing Medical Education and is not Board certified. (See T. 37) The panel determined that the Respondent may, on completion of any New Jersey penalty, apply for a lifting of the New York Suspension upon a showing to the New York Board that he is fit and competent to practice medicine.

The panel insisted on this last provision because of their concern that this physician has not practiced in five years and has not kept current with medical education.

Accordingly, as to the penalty, the Hearing Committee determined, unanimously, that the people of New York State would be protected by a suspension of the Respondent's license until such time as he is fully reinstated to practice medicine in New Jersey and has demonstrated to the New York Board that he is fit and competent to practice medicine.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**
2. The license of the Respondent to practice medicine in New York State is **SUSPENDED** until such time as the New Jersey disciplinary proceedings are complete and the Respondent is restored to full and unrestricted practice in the State of New Jersey and has demonstrated to the New York board that he is fit and competent to practice medicine.
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: Buffalo, New York**

**September 5, 2014**

REDACTED

**William P. Dillon, M.D.**

**Gail S. Homick Herring  
Trevor A. Litchmore, M.D.**



To: **Magdy Elamir, M.D.**  
REDACTED

**Magdy Elamir, M.D.**  
REDACTED

**Stuart Polkowitz, Esq.**  
Attorney for Respondent  
Brach, Eichler, LLC.  
101 Eisenhower Parkway  
Roseland, New Jersey 07068

**Joel E. Abelove, Esq.**  
Attorney for Petitioner, Associate Counsel  
NYS Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower, Room 2512, Empire State Plaza  
Albany, New York 12237

APPENDIX 1

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

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|                    |            |
|--------------------|------------|
| IN THE MATTER      | NOTICE OF  |
| OF                 | REFERRAL   |
| MAGDY ELAMIR, M.D. | PROCEEDING |
| CO-13-07-3437-A    |            |

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TO: Magdy Elamir, M.D.  
REDACTEDMagdy Elamir, M.D.  
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 24<sup>th</sup> day of July, 2014, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719.

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, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719, 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  
May 8, 2014

REDACTED

MICHAEL A. HISER  
Acting Deputy Counsel  
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Joel E. Ablove  
Associate Counsel  
Bureau of Professional Medical Conduct  
Corning Tower - Room 2512  
Empire State Plaza  
Albany, NY 12237  
(518) 473-4282

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

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IN THE MATTER  
OF  
MAGDY ELAMIR, M.D.  
CO-13-07-3437-A

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STATEMENT  
OF  
CHARGES

MAGDY ELAMIR, M.D., Respondent, was authorized to practice medicine in New York State on July 30, 1984, by the issuance of license number 159434 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about May 30, 2013, in Superior Court of New Jersey, Hudson County, Respondent was found guilty, based on a plea of Guilty, of Dispensing a Controlled Dangerous Substance, Accomplice of Another, in violation of N.J.S.A. 2C:2-6C and 2C:35-10.5, a fourth degree felony, and was sentenced to a \$10,000.00 fine, and penalties and fees of \$155.00.

**SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(i) by being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law, in that Petitioner charges:

1. The facts in paragraph A.

DATED: *MAY 2*, 2014  
Albany, New York

REDACTED

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MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduct

## APPENDIX 2

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

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IN THE MATTER  
OF  
MAGDY ELAMIR, M.D.  
CO-13-07-3437-A

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STATEMENT  
OF  
CHARGES

MAGDY ELAMIR, M.D., Respondent, was authorized to practice medicine in New York State on July 30, 1984, by the issuance of license number 159434 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about May 30, 2013, in Superior Court of New Jersey, Hudson County, Respondent was found guilty, based on a plea of Guilty, of Dispensing a Controlled Dangerous Substance, Accomplice of Another, in violation of N.J.S.A. 2C:2-6C and 2C:35-10.5, a fourth degree felony, and was sentenced to a \$10,000.00 fine, and penalties and fees of \$155.00. \*

**SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(i) by being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law, in that Petitioner charges:

1. The facts in paragraph A.

DATED: May 8, 2014  
Albany, New York

REDACTED

MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduct

\* AMENDED TO : LEGEND DRUG  
NOT IN ORIGINAL CONTAINER