



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

December 8, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel O'Hern, M.D.
#96241-038
FCI Fort Dix
Federal Correctional Facility
5756 Hartford & Pointville Road
Fort Dix, New Jersey 08640

Paul Tsui, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Daniel O'Hern, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-291) 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.

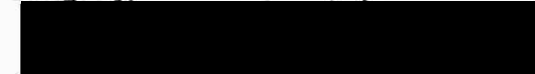
The notice of review served on the Administrative Review Board should be forwarded to:

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,



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
DANIEL O'HERN, M.D.,
Respondent

COPY

DETERMINATION

AND

ORDER

BPMC #15-291

A hearing was held on November 18, 2015, at the offices of the New York State Department of Health ("Department"). Pursuant to Section 230(10)(e) of the Public Health Law, Steven I. Sherman, D.O., M.S., Chairperson, Elisa J. Wu, M.D., and David F. Irvine, DHSc, P.A., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Dawn MacKillop-Soller, Esq., Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by Richard Zahnleuter, Esq., Acting General Counsel, by Paul Tsui, Esq., of counsel. The brackets refer to exhibits ["Ex."] that were accepted into evidence. A Notice of Referral Proceeding and Statement of Charges dated August 22, 2015, were served upon Daniel O'Hern, M.D. ("Respondent").¹ Respondent did not appear at the hearing. There were no witnesses. After consideration of the entire record, the Hearing Committee issues this Determination and Order, finding that revocation of Respondent's medical license in New York State is appropriate.

¹ Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix I and were personally served on Respondent on October 6, 2015, at FCI Fort Dix, Federal Correction Facility, located at 5756 Hartford & Pointville Rd., Fort Dix, NJ. [Ex. 2]

BACKGROUND

The Department brought the case pursuant to PHL § 230(10)(p), which provides for a hearing on circumscribed issues when a licensee is charged solely with a violation of Education Law § 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 Respondent is charged here with professional misconduct pursuant to Education Law § 6530(9)(a)(ii) by having been convicted of committing acts constituting crimes under federal law, in violation of 18 U.S.C. § 2252A(a)(2)(A) and 18 U.S.C. § 2252A(a)(5)(B).

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter:

1. Daniel O'Hern, M.D., the Respondent, was licensed as a physician on July 1, 1983, by the issuance of license number 154808 by the New York State Education Department. [Ex. 3]
2. On or about April 15, 2015, in the United State District Court, District of Massachusetts, Respondent pled guilty to the felonies of Distribution and Possession of Child Pornography in violation of 18 U.S.C. § 2252A(a)(2) and 18 U.S.C. § 2252A(a)(5). The Respondent was sentenced on July 21, 2015, to 63 months in prison, five years of supervised release, a \$12,500.00 fine, a \$200.00 special assessment, forfeiture of computer equipment, participation in the Residential Drug Abuse Program, sex offender treatment, and registration as a sex offender. [Ex. 1,4]

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

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

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent is currently incarcerated and did not appear at the hearing in person or by counsel. After considering the documentary evidence concerning service of the Notice of Referral Proceeding and the Statement of Charges, the Administrative Law Judge 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 despite Respondent's absence.

In the United States District Court of Massachusetts, the Respondent pled guilty to Distribution and Possession of Child Pornography. [Ex. 1,4] These were federal crimes. The specification of misconduct in the Statement of Charges in this proceeding is sustained. In determination of the penalty, the Committee considered that Respondent's immoral conduct undoubtedly contributed to the exploitation of many children. As a pediatrician of thirty-two years, Respondent should have known better than to place children in harm's way. Respondent's willingness to place children in danger in order to gratify his own needs is shocking, at best. The Respondent's license must be revoked.

ORDER

IT IS HEREBY ORDERED THAT:

1. The factual allegations and specification contained in the Statement of Charges (Appendix I) are SUSTAINED; and
2. Respondent's license to practice medicine in the State of New York is revoked; and
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
December 4, 2015


Steven I. Sherman, D.O., M.S., Chairperson

David F. Irvine, DHSc, P.A. and
Elisa J. Wu, M.D.

TO: Daniel O'Hern, M.D.
#96241-038
FCI Fort Dix
Federal Correctional Facility
5756 Hartford & Pointville Road
Fort Dix, NJ 08640

Paul Tsui, Esq.
Attorney for Petitioner
New York State Department of Health
Bureau of Professional Medical Conduct
Coming Tower Building - Room 2512
Empire State Plaza
Albany, New York 12237

Daniel O'Hern, M.D. - Direct Referral

APPENDIX I

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

IN THE MATTER
OF
DANIEL O'HERN, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: Daniel O'Hern, M.D.
[REDACTED]

Robert Sheketoff, Esq.
One McKinley Square
Boston, MA 02109

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. 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 November 18, 2015, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.¹

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

¹ For GPS purposes, enter "Menands", not "Albany".



Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, 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 twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not later 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 N.Y. State Admin. Proc. 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 HEREBY ADVISED 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.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED
TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN
THIS MATTER.

DATED: Albany, New York
August 22, 2015


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Paul Tsui
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

IN THE MATTER
OF
DANIEL O'HERN, M.D.
CO-14-06-3718-A

STATEMENT
OF
CHARGES

DANIEL O'HERN, M.D., Respondent, was authorized to practice medicine in New York State on July 1, 1983, by the issuance of license number 154808 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 15, 2015, in the United States District Court, District of Massachusetts, Respondent was found guilty, based on a plea of guilty, to the felonies of Distribution and Possession of Child Pornography in violation of 18 U.S.C. § 2252A(a)(2)(A) and 18 U.S.C. § 2252A(a)(5)(B), and was sentenced on July 21, 2015, to 63 months in prison, five years of supervised release, a \$12,500.00 fine, a \$200.00 special assessment, forfeiture of computer equipment, participation in the Residential Drug Abuse Program (RDAP) and sex offender treatment, and registration as a sex offender.


SPECIFICATIONS

FIRST SPECIFICATION

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

1. The facts in Paragraph A.

DATED: *Aug. 22*, 2015
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct