



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

February 4, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mark H. Novak, R.P.A.

Mark H. Novak, R.P.A.

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

RE: In the Matter of Mark H. Novak, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No.16-035) 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 (l), (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

COPY

IN THE MATTER

OF

MARK H. NOVAK, R.P.A.

DETERMINATION

AND

ORDER

BPMC #16-035

A hearing was held on January 13, 2016, at the offices of the New York State Department of Health ("Department").¹ Pursuant to § 230(10)(e) of the Public Health Law ("PHL"), **MARY E. RAPPAZZO, M.D.**, Chairperson, **DAVID F. IRVINE, DHSc, P.A.**, and **SAMUEL F. BOSCO, M.D.**, 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 ("ALJ")**, served as the Administrative Officer.

The Department appeared by David Quist, Esq. A Notice of Referral Proceeding and Statement of Charges dated November 10, 2015, were served upon Mark H. Novak, R.P.A. ("Respondent"), who did not appear at the hearing.² There were no witnesses at the hearing. The Hearing Committee received and examined documents from the Department and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charges that Respondent committed professional misconduct, in violation of Education Law ("Educ. Law") § 6530(9)(a)(i), by having been convicted of committing an act constituting a crime under New York state law in his two separate pleas of guilty to Aggravated

¹ The location of the hearing was 150 Broadway, Suite 510, Albany, New York.

² At the Department's request at the hearing, the Statement of Charges was amended to redact from paragraph "A" the sentencing term from Auburn City Court, Cayuga County, which states "one year's incarceration." [Ex. 1].

Driving While Intoxicated ("DWI"), in violation of Vehicle and Traffic Law ("VTL") § 1192(2-a)(a), misdemeanors. The Hearing Committee unanimously votes 3-0 to revoke Respondent's registration to practice as a physician assistant in New York.

BACKGROUND

The Department brought the case pursuant to PHL § 230(10)(p), which provides for an expedited hearing when a registered provider or licensee is charged solely with a violation of Educ. Law § 6530(9). In such cases, the charge of misconduct is 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 two specifications of professional misconduct pursuant to Educ. Law § 6530(9)(a)(i) by having been convicted, on June 4, 2010, and September 8, 2010, respectively, of committing an act constituting a crime under New York state law, in violation of VTL § 1192(2-a)(a). A copy of the Notice of Hearing and Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

These Findings of Fact were made by the Hearing Committee after a review of the record in this matter. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence. The references in brackets refer to exhibits ["Ex."]. The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. Mark H. Novak, R.P.A., the Respondent, was registered to practice as a physician assistant on September 22, 1989, by the issuance of license number 003852 by the Education Department. [Ex.1, 3].

2. On September 8, 2010, Respondent was convicted, in Camillus Town Court, Criminal Part, Onondaga County, following his plea of guilty to DWI, a misdemeanor, in violation of VTL § 1192(2-a)(a). Sentencing on the misdemeanor charge included a three-year probationary term, \$1,000.00 fine, a six-month driver's license revocation, and installation of an ignition interlock device into Respondent's vehicle. On a separate charge, Respondent was convicted on June 4, 2010, in Auburn City Court, County of Cayuga, following his plea of guilty, to DWI, a misdemeanor, in violation of VTL § 1192(2-a)(a). The sentence included a three-year probationary term, \$1,000.00 fine, a one-year driver's license revocation, and installation of an ignition interlock device into Respondent's vehicle. [Ex. 4, 5].

3. Under a Bureau of Professional Misconduct ("BPMC") Consent Order dated May 30, 2000, Respondent did not contest one specification of misconduct, which alleged an alcohol abuse diagnosis resulting from an alcohol evaluation, and he agreed to the penalty of a five-year period of stayed suspension and probation, with terms and conditions. As part of a separate BPMC Consent Order dated April 4, 2002, Respondent admitted to violating terms of his probation, including that he remain "drug/alcohol free" and that he undergo and complete an "independent psychiatric/chemical dependency evaluation by a health-care professional..." approved by the Office of Professional Medical Conduct ("OPMC"), and he agreed to the penalty of an indefinite license suspension for a period of no less than 12 months, with conditions. [Ex. 6, 7].

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Educ. Law § 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law.

VOTE: Sustained (3-0)

SECOND SPECIFICATION

Respondent violated New York Educ. Law § 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law.

VOTE: Sustained (3-0)

CONCLUSIONS OF LAW

The Respondent did not appear at the hearing in person or by counsel. The Department submitted the Affidavit of Service, which states that on November 13, 2015, the Respondent was personally served with the Notice of Referral Proceeding and Statement of Charges at his last known address in Auburn, New York, establishing service pursuant to PHL § 230(10)(d)(i). After considering the documentary evidence concerning service of the Notice of Referral Proceeding and the Statement of Charges, the ALJ ruled that all requirements for proper notice were satisfied and the Board obtained jurisdiction over Respondent. [Ex. 2, 3].

Respondent's conduct involved the inappropriate and excessive use of alcohol while driving, which resulted in two DWI misdemeanor convictions. Because Respondent was convicted of committing acts constituting crimes under New York state law, he has committed professional misconduct as defined in New York Educ. Law § 6530(9)(a)(i). As such, the specifications of misconduct contained in the Statement of Charges of this proceeding are sustained. [Ex. 1, 4, 5].

The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, and found that the sustained specifications indicate Respondent's long-standing problem of abusing alcohol, as evidenced by his plea of guilty to two DWI crimes and his failure to comply with alcohol-related terms and conditions under separate Consent Orders. By this failure,

Respondent's inability to complete the conditions imposed on him under those orders has persisted for over ten years, and indeed his physician assistant registration remains in indefinite suspension status.

Concerning to the Hearing Committee was Respondent's apparent unresolved problem with alcohol, despite being provided with opportunities for rehabilitation through the criminal courts and the OPMC. On this front, Respondent's non-appearance at the hearing left the Hearing Committee without the ability to evaluate any defenses in mitigation of his conduct or to assess any rehabilitation efforts. As such, the Hearing Committee concluded that Respondent's registration to practice as a physician's assistant must 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. Respondent's registration to practice as a physician assistant in the State of New York is hereby **REVOKED;**

3. This Determination and Order shall be effective upon service on the Respondent. Service shall be either by certified mail or upon the Respondent at his last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.


DATED: Albany, New York
Jan 30, 2016


Mary E. Rappazzo, M.D.
Chairperson

David F. Irvine, DHSc, P.A.
Samuel F. Bosco, M.D.

TO: Mark H. Novak, R.P.A..


Mark H. Novak, R.P.A.


David Quist, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building – Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

**IN THE MATTER
OF
MARK H. NOVAK, R.P.A.**

NOTICE OF
REFERRAL
PROCEEDING

TO: Mark H. Novak, R.P.A.

Mark H. Novak, R.P.A.



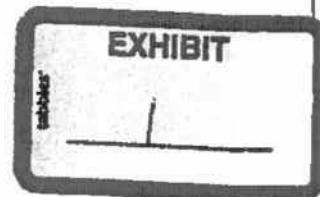
PLEASE TAKE NOTICE THAT:

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 January 13, 2016 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.

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



①

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 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 

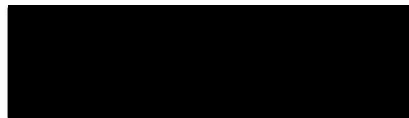
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days 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
November 10, 2015



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

David W. Quist
Associate Attorney
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

IN THE MATTER

OF

MARK H. NOVAK, R.P.A.

STATEMENT
OF
CHARGES

MARK H. NOVAK, R.P.A., the Respondent, was authorized to practice as a physician assistant in New York State on or about September 22, 1989, by the issuance of license number 003852 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 4, 2010 in Auburn City Court, Cayuga County, New York, Respondent was convicted, pursuant to a guilty plea, of aggravated driving while intoxicated, a misdemeanor, in violation of section 1192(2-a)(a) of the New York State Vehicle and Traffic Law. Respondent was sentenced to ~~one year's incarceration~~, three years' probation with an interlock device, his driver's license was revoked for a period of one year, and he was made to pay \$1,000 as a fine and/or fee.

B. On or about September 8, 2010 in Camillus Town Court, Onondaga County, New York, Respondent was convicted, pursuant to a guilty plea, of aggravated driving while intoxicated, a misdemeanor, in violation of section 1192(2-a)(a) of the New York State Vehicle and Traffic Law. Respondent was sentenced to three years' probation with an interlock device, his driver's license was revoked for a period of six months, and he was made to pay \$1,000 as a fine and/or fee.

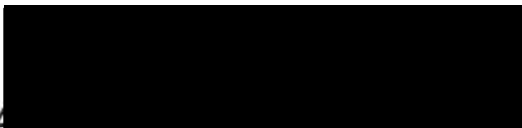
FIRST AND SECOND SPECIFICATIONS

CRIMINAL CONVICTION (N.Y.S.)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law as alleged in the facts of the following:

1. The facts in Paragraph A.
2. The facts in Paragraph B.

DATE: November 10, 2015
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct