



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 21, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John Thomas Viti, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

Anthony Z. Scher, Esq.
Attorney at Law
800 Westchester Avenue, Suite N641
Rye Brook, New York 10573

Eric Braverman, M.D.


RE: In the Matter of Eric Braverman, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.17-359) 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. 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 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.

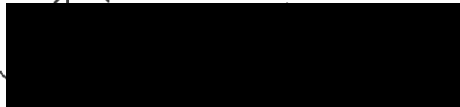
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., 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,

A large black rectangular redaction box covers the signature of James F. Horan.

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:nm

Enclosure

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

**IN THE MATTER
OF
ERIC BRAVERMAN, M.D.**

**DETERMINATION
AND
ORDER
BPMC-17-359**

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("the Department"). A February 16, 2017 Notice of Referral Proceeding with Statement of Charges ("NORP and SOC") was served upon Eric Braverman, M.D. ("Respondent"). The February 16, 2017 NORP and October 6, 2017 Amended SOC is attached to this Determination and Order as Appendix 1. A hearing, pursuant to N.Y. Public Health Law ("PHL") §230 and New York State Admin. Proc. Act §§301-307 and 401, was held on October 18, 2017 at the Department's offices at 90 Church Street, New York, New York.

David A. Sherris, M.D., Theodore J. Strange, M.D., FACP, and Elena M. Cottone, P.A.-C, duly designated members of the State Board for Professional Medical Conduct ("Board"), served as the Hearing Committee ("Committee") in this matter. Administrative Law Judge Ann H. Gayle served as the administrative officer. The Department appeared by John Thomas Viti, Associate Counsel. The Respondent appeared by Anthony Z. Scher, Esq., of Wood & Scher. Evidence was received and a transcript (pages 1-83) of this hearing was made.

After consideration of the entire record, the Committee issues this Determination and Order; all findings, conclusions, determinations and orders are unanimous.

STATEMENT OF CASE

This case was brought pursuant to PHL §230(10)(p) which provides for a hearing with

circumscribed issues when a licensee is charged with misconduct based upon a criminal conviction under federal or state law and/or upon an administrative adjudication in another state regarding conduct that would amount to a crime and/or professional misconduct if committed in New York. N.Y. Education Law (“Educ. Law”) §6530(9). The scope of the hearing is limited to a determination of the penalty, if any, to be imposed upon the licensee. In the instant case, Respondent is charged with professional misconduct pursuant to Educ. Law §6530(9)(a)(i) for having been convicted of an act constituting a crime under New York law.

FINDINGS OF FACT

Citations in brackets refer to transcript page numbers [“T”] and exhibits [“Ex”] found persuasive by the Committee in arriving at the following Findings of Fact. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Respondent was authorized to practice medicine in New York State on July 23, 1984, by the issuance of license number 159238, by the New York State Education Department. [Ex 4]
2. On December 4, 2015, Respondent was convicted, upon being found guilty after a bench trial in Criminal Court of the City of New York, County of New York, of Attempted Petit Larceny (N.Y. Penal Law §155.25 – a Class B misdemeanor), and sentenced to 15 days incarceration. [Ex 5]
3. Respondent admitted that he was convicted of this Class B misdemeanor. [Ex A1]
4. Respondent has appealed the December 4, 2015 criminal conviction. As of the hearing date, October 18, 2017, the appeal had not been decided, and there was no date for oral argument for the appeal before the Appellate Term, Second Department. [Ex E]

CONCLUSIONS OF LAW

Respondent was charged with professional misconduct under Educ. Law §6530(9)(a)(i) for having been convicted of an act constituting a crime under New York law, specifically N.Y. Penal Law §155.25 – a Class B misdemeanor, and Respondent admitted that he was convicted of a Class B misdemeanor.

The Specification of Charges is sustained.

DETERMINATION AS TO PENALTY

The Department represented to the Committee that based on Respondent's conviction and incarceration, this Board should impose a censure and reprimand and \$5,000 fine. [T 21-22].

Respondent proposed either a dismissal in the interest of justice, imposing no disciplinary action, or holding any determination by the Board in abeyance until the pending appeal of the criminal conviction is decided; Respondent alleges that the "relatively minor nature of the criminal conviction" does not place the public at risk, and Respondent and his criminal attorney expect the conviction to be overturned in the pending appeal. [Ex A1; T 70, 72-74].

The Committee does not see a reason to hold its determination in abeyance while Respondent pursues his criminal appeal. There is no date or timeframe when Respondent's appeal will be decided. Respondent's and his criminal attorney's expectation that the conviction will be overturned is mere conjecture.

Respondent testified on his own behalf and he presented character evidence through written statements and testimony. The Committee finds that Respondent's character is "far from perfect" despite the attempts of the testimony and statements to portray otherwise. In fact, at least one character witness' testimony mentioned some "poor" or "impaired" judgment. Dr.

Cancro testified as follows:

Q: Doctor, are you aware that he has a criminal conviction of attempted petty [sic] larceny, a Class B misdemeanor? Are you aware of that?

A: Yes, sir.

Q: Does that change your opinion about his integrity?

A: No, it confirms my opinion about a little bit of poor judgement.

Q: I don't want to know what the criminal matter is about, that's not for this Panel. But did that change your opinion in terms of his integrity?

A: No. No. Judgement, I always knew he could have impaired judgement. Not judgement in a clinical sense in making bad decisions, but doing dumb things; saying what he thinks, being critical, not listening, that kind of thing.

Q: So is it fair to say he is not always politic; would that be accurate?

A: That would be a generous statement. [T 41-42]

The Committee, in considering the full range of penalties available pursuant to PHL Law §230-a, including: (1) censure and reprimand; (2) suspension of the license, wholly or partially; (3) limitation on practice; (4) revocation of the license; (5) annulment of the license or registration; (6) limitation on registration or further licensure; (7) a fine up to \$10,000 per specification sustained; (8) a course of education or training; (9) performance of public service; and, (10) probation, concludes that the appropriate penalty for Respondent's wrongdoing is a censure and reprimand.

The Committee was not persuaded by Respondent's concern that disciplinary action by this Board would trigger the Medical Boards of Florida, New Jersey, Pennsylvania, Utah, and Arizona to take disciplinary action against him, a process Respondent believes could professionally "kill" him [T68-69]. Maintaining and defending licensure in several other states is Respondent's choice; his criminal conviction in this state warrants disciplinary action by this Board now.

ORDER

IT IS HEREBY ORDERED THAT:

1. The charge of misconduct under Educ. Law §6530(9)(a)(i) for having been convicted of a crime under New York state law is sustained.
2. Pursuant to PHL §230-a (1), Respondent's license to practice medicine shall be subject to a censure and reprimand.
3. This order shall be effective upon Respondent as required under PHL §230(10)(h).

DATED: Buffalo, New York
December 18, 2017


DAVID A. SHERRIS, M.D., Chair
THEODORE J. STRANGE, M.D., FACP
ELENA M. COTTONE, P.A.-C

To: John Thomas Viti
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007

Anthony Z. Scher, Esq.
Attorney at Law
800 Westchester Avenue, Suite N641
Rye Brook, New York 10573

Eric Braverman, M.D.



APPENDIX 1

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

**IN THE MATTER
OF
ERIC BRAVERMAN, M.D.**

**NOTICE OF
REFERRAL
PROCEEDING**

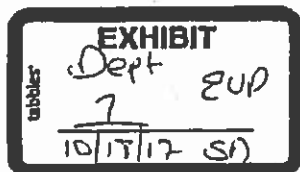
TO: ERIC BRAVERMAN, M.D.

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 April 20, 2017, at 10:30 a.m., at the offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, NY 10007. 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, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau



Dept: Ex: 1

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 at least 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. You may also file a written brief and affidavits with the Committee. All such documents 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, at least ten days prior to the date of the hearing. Should the parties have objection(s) to proposed witnesses or documentary evidence, the party raising the objection(s) shall contact the Bureau of Adjudication at least three days prior to the hearing date to arrange for a pre-hearing conference with the Administrative Law Judge, prior to the hearing date.

Not later than ten days prior to the date of the hearing, you are required to file one copy of your proposed exhibits (if any) with the Bureau of Adjudication at the address indicated above, and a copy of all such documents/exhibits must be served on the same date on the Department of Health attorney indicated below. On the day of the hearing, you are also required to provide the original of such exhibits and three copies, for use by the Committee.

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 

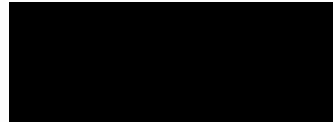
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name

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: New York, New York
February 16, 2017



ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

JOHN THOMAS VITI
Associate Counsel, Bureau of Professional Medical Conduct
N.Y.S. Department of Health – Division of Legal Affairs
90 Church Street, 4th Floor
New York, NY 10007
212-417-4450

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

IN THE MATTER
OF
ERIC BRAVERMAN, M.D.

AMENDED
STATEMENT
OF
CHARGES

ERIC BRAVERMAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 23, 1984, by the issuance of license number 159238 by the New York State Education Department.

FACTUAL ALLEGATIONS

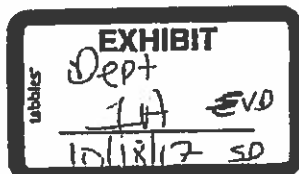
A. On or about December 4, 2015, Respondent was convicted, upon being found guilty of Petit Larceny (N.Y. Penal Law §155.25 - a Class B misdemeanor) after a bench trial in Criminal Court of the City of New York, County of New York. Respondent was sentenced to incarceration for 15 days.

SPECIFICATION OF CHARGES

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. Paragraph A.



1

Dept.
Exhibit 1A

DATE: October 6, 2017
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct