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**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE**

2016 APR 26 AM 9:47

Department of State

Commonwealth of Pennsylvania,	:		
Bureau of Professional and	:	File No.	15-49-08083
Occupational Affairs	:		
v.	:	Docket No.	1494-49-15
Alexander Kanevsky, M.D.	:		
Respondent	:		

FINAL ORDER

AND NOW, this 26th day of April 2016, noting that neither party filed an application for review and that the State Board of Medicine (Board) did not issue a Notice of Intent to Review, in accordance with 1 Pa. Code § 35.226(a)(3) and 49 Pa. Code § 16.57, the hearing examiner's Adjudication and Order dated April 1, 2016, appended to this order as **Attachment "A"**, is now the **FINAL ORDER** of the Board in this proceeding.

This order shall be effective immediately.

BY ORDER OF:

**BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS**

STATE BOARD OF MEDICINE



**IAN J. HARLOW
COMMISSIONER**



**MARILYN J. HEINE, M.D.
CHAIR**

Respondent's address:

Robert Bond, Esquire
Law Offices of Robert Bond, LLC
11880 Bustleton Avenue
Suite 206
Philadelphia, PA 19116

Prosecuting Attorney:

Keith E. Bashore, Esquire

Board Counsel:

Wesley J. Rish, Esquire

Date of Mailing:

April 26, 2016

Attachment A

RECEIVED
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**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE**

**Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs**

v.

**Alexander Kanevsky, M.D.,
Respondent**

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**Docket No. 1494-49-15
File No. 15-49-08083**

ADJUDICATION AND ORDER

**Jackie Wiest Lutz
Chief Hearing Examiner**

**Commonwealth of Pennsylvania
Governor's Office of General Counsel
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649**

DATE DISTRIBUTED 4/1/16
PROSECUTION _____
COUNSEL _____
HEARING EXAMINER _____
OTHER _____

HISTORY

This matter was initiated on August 21, 2015, when the Commonwealth of Pennsylvania (Commonwealth) filed a *Notice and Order to Show Cause* (OTSC) against Alexander Kanevsky, M.D. (Respondent), directing that Respondent show cause why the State Board of Medicine (Board) should not suspend, revoke or otherwise restrict Respondent's license in the Commonwealth of Pennsylvania or impose a civil penalty or costs of investigation against him under the authority of Sections 422.1 – 422.53(4) of the Medical Practice Act,¹ (Act); Sections 1303.101 – 1303.910 of the Medical Care Availability and Reduction of Error Act (MCARE Act);² and Sections 2201 – 2207 of the Act of July 2, 1993, P.L. 345, No. 48 (“Act 48”).³

The OTSC is based upon allegations that on or about July 14, 2015, the New Jersey State Board of Medical Examiners (“New Jersey Board”) approved a Consent Order *In the Matter of an Inquiry into the Professional Practice of Alexander Kanevsky, M.D., License No. 25MA08398200 to Practice Medicine and Surgery in the State of New Jersey*, in which Respondent was, among other things, ordered to immediately cease engaging in the private practice of medicine and surgery in the State of New Jersey until he procures the level of medical malpractice insurance coverage required by state law; ordered to pay a civil penalty of \$500.00 for misrepresenting completion of continuing medical education (“CME”) requirements on his 2013 biennial registration; and ordered to pay a civil penalty of \$5,000.00 for failing to complete one hundred CME credits for the 2011-2013 biennial licensure renewal period.⁴

¹ Act of December 20, 1985, P.L. 457, *as amended*, 63 P.S. §§ 422.1 *et seq.*

² Act of March 20, 2002, P.L. 154, *as amended*, 40 P.S. §§ 1303.101- 1303.910.

³ 63 P.S. §§ 2201-2207, *as amended*.

⁴ For reasons unknown, the Commonwealth failed to reference the fact that the New Jersey Consent Order also ordered the Respondent to pay a civil penalty of \$2,500 for failure to procure the required level of malpractice

On October 27, 2015, Respondent, through counsel, filed a *Response to Petition for Order to Show Cause* (Answer) in which he admitted all of the pertinent allegations of the OTSC. In his Answer, Respondent averred that he has fully complied with the requirements, terms and conditions set forth in the New Jersey Consent Order; and that the Board should not impose further disciplinary or corrective actions against him.

On November 2, 2015, the Department of State Prothonotary issued a *Notice of Hearing*, which scheduled the hearing for January 13, 2016, commencing at 9:00 a.m. at 2601 N. Third Street, One Penn Center, Harrisburg, PA.

The hearing proceeded as scheduled on January 13, 2016, at the designated time and place before Hearing Examiner Suzanne Rauer, Esquire. The Commonwealth was represented by Keith E. Bashore, Esquire, who presented the Commonwealth's case through documentary evidence. Respondent attended the hearing and was represented by Robert Bond, Esquire, who presented Respondent's case through documentary evidence.

At the conclusion of the evidentiary portion of the hearing, the record was left open for 30 days for Respondent to submit an Order from the New Jersey Board lifting all the restrictions from his medical license in New Jersey. Both parties waived the opportunity to file a post-hearing brief, opting, instead to make closing statements for the record.

The hearing transcript was filed on January 27, 2016. Respondent did not submit an Order from the New Jersey Board within 30 days of the date of the hearing, or at any time thereafter, and, as a result, the record officially closed on February 13, 2016. Due to Hearing Examiner Rauer's retirement on March 11, 2016, this matter has been reassigned to Chief

insurance for the years 2010 through 2013 (representing a total civil penalty of \$8,000); to refund \$13,500 to an elderly patient; and, to cease and desist in the preparation and sale of natural herbal medications.

Hearing Examiner Jackie Wiest Lutz, Esquire for the preparation and issuance of an adjudication and order.

FINDINGS OF FACT

1. Respondent holds a license to practice medicine and surgery in the Commonwealth of Pennsylvania, License No. MD430063, which was originally issued on August 29, 2006. (Exhibits C-1 and C-2, ¶ 1; Exhibit C-3)
2. Respondent's license is active through December 31, 2016, and may be renewed thereafter upon the filing of the appropriate documentation and payment of the necessary fees. (Exhibits C-1 and C-2, ¶ 2; Exhibit C-3)
3. At all times pertinent to the factual allegations, Respondent held a license to practice medicine and surgery in the Commonwealth of Pennsylvania. (Exhibits C-1 and C-2, ¶ 3)
4. Respondent's last known address on file with the Board is 115 Federal Court, Apt. 8, Princeton, NJ 08540. (Exhibits C-1 and C-2, ¶ 4)
5. On July 14, 2015, the New Jersey Board approved a Consent Order *In the Matter of an Inquiry into the Professional Practice of Alexander Kanevsky, M.D., License No. 25MA08398200, to Practice Medicine and Surgery in the State of New Jersey.* (Exhibits C-1 and C-2, ¶ 6)
6. Exhibit A attached to the Commonwealth's OTSC (Exhibit C-1) is a true and correct copy of the New Jersey Consent Order. (Exhibits C-1 and C-2, ¶ 7)
7. The New Jersey Consent Order provided the following background information:

This matter was opened to the State Board of Medical Examiners ("Board") by John J. Hoffman, Acting Attorney General of New Jersey, by Christopher Salloum, Deputy Attorney General, appearing, upon receipt of a consumer complaint alleging that the Respondent, Alexander Kanevsky, M.D., had not complied with the statutes and regulations governing the conduct of licensed physicians in the State of New Jersey. Specifically, the consumer complaint alleged that the Respondent, a psychiatrist, had engaged in improper behavior by selling at least six personal paintings and books of artwork ("works"), and non-therapeutic herbal supplements to his patient B.C., an eighty-nine year old woman. In

addition, the consumer complaint expressed concern regarding the Respondent's overall care and treatment of B.C.

Respondent appeared and testified before the Preliminary Evaluation Committee ("Committee") of the Board on October 1, 2014. After Respondent's appearance, the Committee further inquired into Respondent's continuing medical education ("CME") compliance, his procurement of medical malpractice insurance, and representations made on Respondent's website.

(Exhibit C-1, ¶ 7, and attached Exhibit A; Exhibit C-2, ¶ 7)

8. Pursuant to the agreed upon terms of the New Jersey Consent Order, it was ordered, among other things, that:

- Respondent shall immediately cease engaging in the private practice of medicine and surgery in the State of New Jersey until he procures the level of medical malpractice insurance coverage required by state law;
- Respondent shall immediately cease and desist the preparation and sale of natural herbal medications;
- Respondent shall refund his former patient, B.C., all monies she paid to him for his works, totaling \$13,500.00, and Respondent shall accept the return of all works from B.C.;
- Respondent is assessed a total civil penalty of \$8,000.00, comprised of \$500.00 for misrepresenting completion of CME requirements on his 2013 biennial registration; \$5,000.00 for failure to complete 100 CME credits for the 2011-2013 biennial renewal period; and \$2,500.00 for failure to procure the statutorily-required levels of medical malpractice insurance for the years 2010 through 2013.⁵

(Exhibit C-1, ¶ 7, and attached Exhibit A; Exhibit C-2, ¶ 7)

9. Respondent has complied with the New Jersey Consent Order, and is in compliance with his payment arrangement for the \$8,000.00 total civil penalty imposed against him.

(Exhibits C-2, R-1 and R-2)

⁵ Pursuant to the agreed upon terms of the New Jersey Consent Order, Respondent was required to pay the civil penalty of \$8,000.00, in 12 monthly installments on the fifteenth (15th) day of each month, beginning on August 15, 2015. (Exhibit C-1, ¶ 7, and attached Exhibit A; Exhibit C-2, ¶ 7)

10. Respondent received the OTSC and all subsequent notices, documents and pleadings filed in this matter, appeared at the hearing, and was represented by counsel. (Docket No. 1494-49-15; Transcript, *passim*)

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact Nos. 1-3)
2. Respondent has been afforded reasonable notice of the charges against him and an opportunity to be heard in this proceeding, in accordance with the Administrative Agency Law, 2 Pa. C.S. § 504. (Finding of Fact No. 10)
3. Respondent is subject to disciplinary action under Section 41(4) of the Act, 63 P.S. §422.41(4), in that Respondent had disciplinary action taken against him by a proper licensing authority of another state, New Jersey. (Findings of Fact Nos. 1-3 and 5-8)

DISCUSSION

The Board's authority to impose disciplinary or other corrective actions against Respondent's license as charged in the Commonwealth's OTSC is set forth in Section 41(4) of the Act, 63 P.S. §422.41(4), which provides, as follows:

§ 422.41. Reasons for refusal, revocation, suspension or other corrective actions against a licensee or certificate holder

The board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

* * *

(4) Having a license or other authorization to practice the profession revoked or suspended or having other disciplinary action taken, or an application for a license or other authorization refused, revoked or suspended by a proper licensing authority of another state, territory, possession or country, or a branch of the Federal Government.

* * *

63 P.S. § 422.41(4).

At the commencement of the hearing, the Commonwealth introduced into evidence the OTSC (Exhibit C-1), Respondent's Answer (Exhibit C-2), and Respondent's licensure information on file with the Board. (Exhibit C-3) The admitted facts conclusively establish that on July 14, 2015, the New Jersey Board approved a Consent Order in which Respondent was ordered, among other things, to immediately cease engaging in the private practice of medicine and surgery in the State of New Jersey until he procures the level of medical malpractice coverage required by state law; Respondent was ordered to immediately cease and desist the preparation and sale of natural herbal medications; Respondent was ordered to refund his former patient, B.C., all monies she paid to him for his works, totaling \$13,500.00, and to accept the return of all works from B.C.; and Respondent was assessed a total civil penalty of \$8,000.00,

comprised of \$500.00 for misrepresenting completion of CME requirements on his 2013 biennial registration, \$5,000.00 for failing to complete 100 CME credits for the 2011-2013 biennial renewal period, and \$2,500.00 for failure to procure the statutorily-required levels of medical malpractice insurance for the years 2010 through 2013. The Commonwealth has therefore proven its case against Respondent by a preponderance of the evidence.⁶

The only issue remaining is the penalty to be imposed for Respondent's violation of the Act. Under its enabling legislation, a licensing board is charged with the responsibility and authority to oversee the profession and to regulate and license professionals to protect the public health and safety. *Barran v. State Board of Medicine*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996), *appeal denied*, 679 A.2d 230 (Pa. 1996). A disciplinary sanction against a licensed professional for wrongful professional conduct serves to protect the public from further breaches of trust, *Sweeny v. State Board of Funeral Directors*, 666 A. 2d 1137, 1140 (Pa. Cmwlth. 1995), and to maintain the integrity of the profession, *Nicoletti v. State Board of Vehicle Manufacturers, Dealers and Salespersons*, 706 A. 2d 891, 895 (Pa. Cmwlth. 1998). Disciplinary sanctions also serve as a deterrent to prevent similar unauthorized or unprofessional practices in the future, *Herberg v. Com., State Board of Medical Education and Licensure*, 442 A. 2d 411, 412 (Pa. Cmwlth. 1982), while instilling confidence in the public that the board is carrying out its duty to regulate and license professionals in such a manner as to protect the public interest. *Keeley v. State Real Estate Commission*, 501 A. 2d 1155, 1157 (Pa. Cmwlth. 1985).

⁶The degree of proof required to establish a case before an administrative tribunal in an action of this nature is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Commonwealth's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1949). The Commonwealth therefore has the burden of proving the charges against Respondent with evidence that is substantial and legally credible, not by mere "suspicion" or by only a "scintilla" of evidence. *Lansberry*, 578 A.2d at 602.

The type of disciplinary or corrective measures that may be imposed by the Board for violations of the Act is set forth at Section 42 of the Act, 63 P.S. § 422.42. Section 42 provides, as follows:

§ 422.42. Types of corrective action

(a) Authorized actions.—When the board is empowered to take disciplinary or corrective action against a board-regulated practitioner under the provisions of this act or pursuant to other statutory authority, the board may:

* * *

- (2) Administer a public reprimand with or without probation.
- (3) Revoke, suspend, limit or otherwise restrict a license or certificate.
- (4) Require the board-regulated practitioner to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.
- (5) Require the board-regulated practitioner to take refresher educational courses.
- (6) Stay enforcement of any suspension, other than that imposed in accordance with section 40 [footnote omitted], and place a board-regulated practitioner on probation with the right to vacate the probationary order for noncompliance.
- (7) Impose a monetary penalty in accordance with this act.

63 P.S. § 422.42.⁷

Similarly, the MCARE Act, 40 P.S. §1303.908, authorizes civil penalties of up to \$10,000.00 on any current licensee who violates any provision of the Act or the MCARE Act. Section 908 of the MCARE Act provides, in pertinent part:

⁷ A maximum civil penalty of up to \$1,000.00 for each violation of the Act is also authorized under Section 39(b) of the Act, 63 P.S. § 422.39(b).

§ 1303.908. Licensure board-imposed civil penalty

In addition to any other civil remedy or criminal penalty provided for in this act, the act of December 20, 1985 (P.L. 457, No. 112), known as the Medical Practice Act of 1985, . . . the State Board of Medicine . . . by a vote of the majority of the maximum number of the authorized membership of each board as provided by law or by a vote of the majority of the duly qualified and confirmed membership or a minimum of five members, whichever is greater, may levy a civil penalty of up to \$10,000 on any current licensee who violates any provision of this act, the Medical Practice Act of 1985. . . The boards shall levy this penalty only after affording the accused party the opportunity for a hearing as provided in 2 Pa.C.S. (relating to administrative law and procedure).

40 P.S. §1303.908.

Generally, when determining an appropriate sanction, the Board considers the number and seriousness of the violations and any mitigating or aggravating evidence. In mitigation of a sanction, Respondent presented evidence that he has complied with the New Jersey Consent Order. Specifically, Respondent provided the New Jersey Board with proof of the statutorily required level of medical malpractice insurance; he provided the New Jersey Board with proof of his reimbursement to his former patient; he completed the CME requirements; and, he is in compliance with his payment arrangement for the \$8,000.00 civil penalty.

At the conclusion of the hearing, the Commonwealth recommended that a \$4,000.00 civil penalty be imposed against Respondent. (N.T. 14-15) Respondent's counsel recommended that no action be taken against Respondent's license.⁸ (N.T. 13)

Balancing the seriousness of Respondent's conduct in New Jersey against his mitigating evidence, the Hearing Examiner believes that both a public reprimand and a \$4,000.00 civil penalty are necessary to protect the public health and safety. A public reprimand will serve to

⁸ Respondent did not testify at the hearing. In his closing argument, Respondent's counsel stated that Respondent has an active and large psychiatric practice where he helps mostly elderly people in and around the Philadelphia area. (N.T. 13) However, statements by counsel made at a hearing do not constitute evidence. *Grover v. Dep't of Transp., Bureau of Driver Licensing*, 734 A.2d 941, 944 (Pa. Cmwlth. 1999), citing *Commonwealth v. LaCava*, 666 A.2d 221 (Pa. 1995).

alert the citizens of Pennsylvania that Respondent's license to practice medicine in New Jersey was disciplined in that state, and allow individuals to make an informed decision based upon the public information available. Additionally, a \$4,000.00 civil penalty will serve to deter Respondent and other licensees from committing the same types of infractions in Pennsylvania that Respondent committed in New Jersey.

Accordingly, based upon the foregoing findings of fact, conclusions of law and discussion, the following order shall issue:

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE**

Commonwealth of Pennsylvania,	:	
Bureau of Professional and	:	
Occupational Affairs	:	
	:	Docket No. 1494-49-15
v.	:	File No. 15-49-08083
	:	
Alexander Kanevsky, M.D.,	:	
Respondent	:	

ORDER

NOW, this 1st day of **April 2016**, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is **ORDERED** that a **PUBLIC REPRIMAND** shall be imposed against Respondent, Alexander Kanevsky, M.D. license no. MD430063.

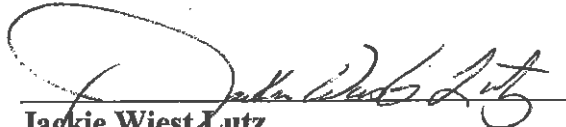
Additionally, Respondent shall pay a **CIVIL PENALTY OF \$4,000.00** WITHIN 30 DAYS of the date of this Order. The civil penalty shall be paid by certified check, attorney's check or U.S. Postal Service money order, made payable to "Commonwealth of Pennsylvania," and shall be mailed to:

Board Counsel
State Board of Medicine
P.O. Box 69523
Harrisburg, PA 17106-9523

Should Respondent fail to pay the civil penalty of \$4,000.00 within 30 days of the date of this Order, his license to practice medicine and surgery, license no. MD430063, shall be **INDEFINITELY SUSPENDED** without the need for any further action by any prosecuting attorney for the Commonwealth and will remain suspended until such time as Resondent pays the civil penalty in full.

This Order shall take effect twenty (20) days from the date of mailing shown below, unless otherwise ordered by the State Board of Medicine.

BY ORDER:


Jackie Wiest Lutz
Chief Hearing Examiner

For the Respondent: Robert Bond, Esquire
LAW OFFICES OF ROBERT BOND, LLC
11880 Bustleton Avenue
Suite 206
Philadelphia, PA 19116

Prosecuting Attorney: Keith E. Bashore, Esquire
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE OFFICE OF CHIEF COUNSEL
PROSECUTION DIVISION
P.O. Box 69521
Harrisburg, PA 17106-9521

Date of Mailing: April 1, 2016

NOTICE

REHEARING AND/OR RECONSIDERATION

A party may file an application for rehearing or reconsideration **within 15 days of the mailing date** of this adjudication and order. The application must be captioned "*Application for Rehearing*", "*Application for Reconsideration*", or "*Application for Rehearing or Reconsideration*". It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking rehearing or reconsideration, including any alleged error in the adjudication. If the adjudication is sought to be vacated, reversed, or modified by reason of matters that have arisen since the hearing and decision, the matters relied upon by the petitioner must be set forth in the application.

APPEAL TO BOARD

An application to the State Board of Medicine for review of the hearing examiner's adjudication and order must be filed by a party **within 20 days of the date of mailing** of this adjudication and order. The application must be captioned "*Application for Review*". It must state specifically and concisely, in numbered paragraphs, the grounds relied upon in seeking the Board's review of the hearing examiner's decision, including any alleged error in the adjudication. Within an application for review a party may request that the Board hear additional argument and take additional evidence.

An application to the Board to review the hearing examiner's decision may be filed irrespective of whether an application for rehearing or reconsideration is filed. However, the filing of an application for rehearing and/or reconsideration does not extend, or in any other manner affect, the time period in which an application for review may be filed.

STAY OF HEARING EXAMINER'S ORDER

Neither the filing of an application for rehearing and/or reconsideration nor the filing of an application for review operates as a stay of the hearing examiner's order. To seek a stay of the hearing examiner's order, the party must file an application for stay directed to the Board.

FILING AND SERVICE

An original and three (3) copies of all applications shall be filed with:

Prothonotary
P.O. Box 2649
Harrisburg, PA 17105-2649

A copy of all applications must also be served on all parties.

Applications must be received for filing by the Prothonotary within the time limits specified. The date of receipt at the office of Prothonotary, and not the date of deposit in the mail, is determinative.

NOTICE

The attached Final Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel
P.O. Box 69523
Harrisburg, PA 17106-9523

The name of the individual Board Counsel is identified on the Final Order.