

**COPY**

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

PROTHONOTARY

2017 MAY 25 AM 9:20

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

**v.**

**Mohamed I. Elyan, M.D.  
Respondent**

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**File No. 16-49-09184  
Docket No. 1775-49-16**

Department of State

**FINAL ORDER ADOPTING  
HEARING EXAMINER'S ADJUDICATION AND ORDER**

AND NOW, this 25th day of May 2017, the State Board of Medicine (Board), having reviewed the entire record of this case established before the hearing examiner and noting that although the Board filed a Notice of Intent to Review neither party filed a brief on exceptions **ADOPTS** the hearing examiner's Adjudication and Order as the Final Order in this case. A copy of the Adjudication and Order is attached as Attachment A.

This order is effective immediately.

**BUREAU OF PROFESSIONAL &  
OCCUPATIONAL AFFAIRS**



**IAN J. HARLOW  
COMMISSIONER**

**BY ORDER:  
STATE BOARD OF MEDICINE**



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

For Respondent:

Mohamed I. Elyan, M.D.  
368 East Glenn Road  
Hershey, PA 17033

For the Commonwealth:

Keith E. Bashore, Esquire, Esquire

Board Counsel:

Wesley J. Rish, Esquire

Date of mailing:

May 25, 2017

# Attachment A

**RECEIVED**  
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Department of State  
Prothonotary

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

**Commonwealth of Pennsylvania,** :  
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**v.** :

**Mohamed I. Elyan, M.D.,** :  
**Respondent** :

**Docket No. 1775-49-16**  
**File No. 16-49-09184**

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**ADJUDICATION AND ORDER**

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**Maria Battista**  
**Hearing Examiner**

**COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL  
DEPARTMENT OF STATE  
OFFICE OF HEARING EXAMINERS  
P.O. Box 2649  
Harrisburg, PA 17105-2649  
(717) 772-2686**

**DATE DISTRIBUTED** 4/13/17  
**PROSECUTION** \_\_\_\_\_  
**COUNSEL** \_\_\_\_\_  
**HEARING EXAMINER** \_\_\_\_\_  
**OTHER** \_\_\_\_\_

## HISTORY

This matter comes before a hearing examiner for the State Board of Medicine (“Board”) on the Commonwealth’s filing of a one-count *Order to Show Cause* (“OTSC”) on September 26, 2016, against Mohamed I. Elyan, M.D. (“Respondent”), who holds a license to practice medicine and surgery in the Commonwealth of Pennsylvania, license number MD032267E. The Commonwealth charged in its one-count *OTSC* that Respondent is subject to disciplinary action under the Medical Practice Act of 1985 (“MPA”),<sup>1</sup> at section 41(4), 63 P.S. § 422.41(4), because Respondent had his license to practice medicine and surgery disciplined in the State of Arizona by way of an *Order for Letter of Reprimand and Probation; and Consent to the Same*.

On September 27, 2016, the *OTSC* was sent to Respondent via certified mail, return receipt requested and first class mail, postage prepaid, at 1253 W. Paintbrush Place, Tucson, AZ 85704, Respondent’s mailing address on file with the Board. On November 14, 2016, Respondent filed an *Answer* to the *OTSC*.

Thereafter, on November 29, 2016, the Prothonotary for the Department of State issued a *Notice of Hearing*, scheduling the matter for an administrative hearing on January 17, 2017. The hearing proceeded as scheduled before Hearing Examiner Maria Battista. Keith E. Bashore, Esquire, was present on behalf of the Commonwealth. Respondent appeared at the hearing unrepresented and presented his case through his testimony and documentary evidence. The record closed with the filing of the hearing transcript (“N.T.”<sup>2</sup>) on January 21, 2017.

This matter is now ripe for disposition.

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<sup>1</sup>Act of December 20, 1985, P.L. 457, No. 112, *as amended*, 63 P.S. §§ 422.1-422.53.

<sup>2</sup>N.T. refers to the notes of testimony of the administrative hearing held on January 17, 2017.

## FINDINGS OF FACT

1. Respondent holds a license to practice medicine and surgery in the Commonwealth of Pennsylvania, license number MD032267E. (Official Notice-Board Records<sup>3</sup>; Exhibit R-3)
2. Respondent's license was originally issued on September 4, 1984, expired on December 31, 2014, and absent further Board action, may be renewed, reactivated or reinstated upon the filing of the appropriate documentation and payment of the necessary fees. (Board Records; Exhibit R-3; N.T. 24, Respondent)
3. At all pertinent times, Respondent held a license to practice medicine and surgery in the Commonwealth of Pennsylvania. (Board Records; Exhibit R-3)

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<sup>3</sup>Official notice of such matters as might be judicially noticed by courts is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1 *et. seq.*, at § 35.173, which provides, in pertinent part, as follows:

**§ 35.173. Official notice of facts.**

Official notice may be taken by the agency head or the presiding officer of such matters as might be judicially noticed by the courts of this Commonwealth, or any matters as to which the agency by reason of its functions is an expert. . . .

1 Pa. Code § 35.173.

Official notice is also permitted under case law. *See, for example, Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A. 2d 991 (Pa. Cmwlth. 1987), in which the Commonwealth Court explained:

“Official notice” is the administrative counterpart of judicial notice and is the most significant exception to the exclusiveness of the record principle. The doctrine allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files, in addition to those facts which are obvious and notorious to the average person. Thus, official notice is a broader doctrine than is judicial notice and recognizes the special competence of the administrative agency in its particular field and also recognizes that the agency is a storehouse of information on that field consisting of reports, case files, statistics and other data relevant to its work.

521 A. 2d at 994, n. 6.

All subsequent such references will be cited as “Board Records.”

4. Respondent's address of record with the Board is: 1253 W. Paintbrush Place, Tucson, AZ 85704. (Board Records; Exhibit R-3)
5. Respondent is currently residing at 368 East Glenn Road, Hershey, PA 17033. (N.T. 14, Respondent)

**Arizona Disciplinary Matter**

6. At all pertinent times, Respondent was authorized to practice as a physician and surgeon in the State of Arizona, license number 44396. (Exhibit C-1; Exhibit R-3)
7. On June 3, 2016, *In the Matter of Mohamed I. Elyan, M.D., Holder of License No. 44396 for the Practice of Allopathic Medicine in the State of Arizona* ("Arizona disciplinary matter"), the Arizona Medical Board ("Arizona Board"), by way of *Order For Letter of Reprimand and Probation; and Consent to the Same* ("Order of Reprimand and Probation"), found that Respondent's prescribing of controlled substances to a family member, i.e., his wife, without proper documentation while providing care sparingly care from 2013 and 2014, was conduct constituting unprofessional conduct pursuant to A.R.S. 32-1401(27)(d) ("Failing or refusing to maintain adequate records on a patient.") and conduct constituting unprofessional conduct pursuant to A.R.S. 32-1401(27)(h) ("Prescribing or dispensing controlled substances to members of the physicians' immediate family.") (Exhibit C-1; Exhibit R-3)
8. As outlined in the *Order of Reprimand and Probation*, the Arizona Board issued to Respondent a *Letter of Reprimand* and Respondent was placed on probation for a period of six (6) months subject to terms and conditions, including completing no less than four (4) hours of continuing medication education in recognizing emergency prescription situations. (Exhibit C-1; Exhibit R-3; Exhibit R-4)

9. On October 3, 2016, Respondent received a letter from the Investigations Office of the Arizona Board informing him that he completed the terms and conditions of his probation and it was terminated. (Exhibit R-1; Exhibit R-4; N.T. 16, Respondent)

**No prior disciplinary action in Pennsylvania**

10. Respondent has had no disciplinary action taken against his medical license in the Commonwealth of Pennsylvania prior to this action. (Board Records; N.T. 18, Respondent)

**Notice and Due Process**

11. Respondent was served with the *OTSC*, filed an *Answer* and appeared at the hearing unrepresented and presented his case through his testimony and documentary evidence. (Docket No. 1775-49-16)

### CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Findings of Fact 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.A. § 504. (Finding of Fact 11)
3. Respondent is subject to disciplinary action under section 41(4) of the MPA, 63 P.S. § 422.41(4), in that disciplinary action was taken against his license to practice medicine and surgery by the proper licensing authority of Arizona. (Findings of Fact 6-10)
4. The Board is authorized to impose disciplinary or corrective measures under section 42(a) of the MPA, 63 P.S. § 422.42(a), and the Board is also authorized to impose a civil penalty under section 39(b) of the MPA, 63 P.S. § 422.39(b), and under section 908 of MCARE, 40 P.S. § 1303.908.



## DISCUSSION

### **Violation**

The Commonwealth's case against Respondent is based upon the fact that Respondent had disciplinary action taken against his medical license by the proper licensing authority of Arizona. A board-regulated practitioner in Pennsylvania who is disciplined by a proper licensing authority of another jurisdiction is subject to disciplinary action in Pennsylvania under section 41(4) of the MPA as follows:

**Section 41. Reasons for refusal, revocation, suspension or other corrective measures 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).

The Commonwealth's evidence considered of the *Order of Reprimand and Probation* issued by the Arizona Board against Respondent in that state. The Arizona Board found that Respondent committed unprofessional conduct by prescribing controlled substances to a person in Respondent's immediate family, i.e., his wife, between 2013 and 2014, without adequate documentation related to those prescriptions and with sparingly care.

In the Arizona disciplinary matter, the Arizona Board, based on Respondent's conduct, issued a letter of reprimand, placed Respondent on probation for six (6) months and required him

to take four (4) hours of continuing education. Therefore, the Commonwealth has proven the allegations in the *OTSC* by a preponderance of the evidence.<sup>4</sup>

### **Sanction**

The Supreme Court of Pennsylvania has recognized that “[r]eciprocal discipline prevents licensed professionals from violating ethical rules, being disciplined, and then transferring to a new jurisdiction to continue to practice with an unblemished record of ethical conduct.” *Khan v. State Bd. of Auctioneer Examiners*, 842 A.2d 936, 944 (Pa. 2004). In fashioning an appropriate sanction, the Board generally considers the number and seriousness of the violations and any mitigating or aggravating evidence presented. The Board is also mindful of its duty to protect the health and safety of the public. *Barran v. State Bd. of Medicine*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996), *appeal denied*, 679 A.2d 230 (Pa. 1996); *Galena v. Department of State*, 551 A.2d 676, 679-680 (Pa. Cmwlth. 1988)(the primary focus of disciplinary sanctions is not punishment but, rather, public protection). *See also, Sklar v. Dept. of Health*, 798 A.2d 268, 275 (Pa. Cmwlth. Ct. 2002), *appeal denied*, 845 A.2d 819 (2004).

Section 42 of the MPA, 63 P.S. § 422.42, sets forth the type of disciplinary or corrective measures that may be imposed for violations, including Respondent’s violation of section 41(4) of the MPA. Specifically, section 42 of the MPA provides as follows:

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<sup>4</sup>The 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.

## Section 42. Types of Corrective Actions

- (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:
- (1) Deny the application for a license, certificate or any other privilege granted by the board.
  - (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.

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63 P.S. § 422.42.

Additionally, a maximum civil penalty of up to one thousand dollars (\$1,000.00) for each violation of the MPA is authorized under section 39(b) of the MPA, 63 P.S. § 422.39(b). Moreover, a maximum civil penalty of up to ten thousand dollars (\$10,000.00) for each violation of the MPA is authorized under section 908 of the Medical Care Availability and Reduction of Error Act (“MCARE”),<sup>5</sup> 40 P.S. § 1303.908.

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<sup>5</sup>Act of March 20, 2002, P.L. 154, No. 13, 40 P.S. §§ 1303.101-1303.910.

In this case, Respondent appeared at the hearing and offered mitigating evidence. First, Respondent successfully completed the terms and conditions of his probation against his Arizona license. Additionally, Respondent was forthright with the Pennsylvania Board with the Arizona disciplinary matter. (N.T., *passim*, Respondent)

Given that Respondent had completed his probation in the Arizona disciplinary matter at the time of the hearing in this matter, the Commonwealth recommended a public reprimand against Respondent's license in this state (N.T. 38). The Hearing Examiner agrees that a public reprimand against Respondent's license in the Commonwealth is sufficient notice to alert citizens in this state that Respondent was subject to discipline in Arizona.

Accordingly, based upon the foregoing, the following order shall issue:

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DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF MEDICINE**

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v.

**Mohamed I. Elyan, M.D.,  
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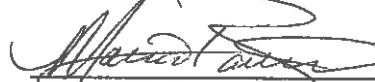
**Docket No. 1775-49-16  
File No. 16-49-09184**

**ORDER**

AND NOW, this 13<sup>th</sup> day of April, 2017, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ORDERED** that a **PUBLIC REPRIMAND** shall be imposed against Respondent, **Mohamed I. Elyan, M.D., license no. MD032267E.**

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

**BY ORDER:**



**Maria Battista  
Hearing Examiner**

**For the Respondent:** Mohamed I. Elyan, M.D.  
368 East Glenn Road  
Hershey, PA 17033

**For the Commonwealth:** Keith E. Bashore, Esquire  
Prosecuting Attorney  
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 13, 2017

## 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.