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

PROTHONOTARY  
2020 FEB -4 AM 9:38  
Department of State

Commonwealth of Pennsylvania,  
Bureau of Professional and  
Occupational Affairs

v.

Alexander R. Babayants, M.D.  
Respondent

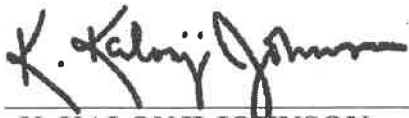
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: Case No. 19-49-002215  
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**FINAL ORDER**

AND NOW, this 4<sup>th</sup> day of February 2020, the State Board of Medicine (Board), noting that neither party filed an application for review and noting that although the State Board of Medicine (Board) issued a Notice of Intent to Review, neither party filed a brief on exceptions, the Board the hearing Examiner's Adjudication and Order dated July 16, 2019, appended hereto as Attachment A, is now the **FINAL ORDER** of the Board in this proceeding, effective Wednesday August 5, 2019, 20 days after its date of issuance.

**BY ORDER:**

**BUREAU OF PROFESSIONAL AND  
OCCUPATIONAL AFFAIRS**



K. KALONJI JOHNSON  
ACTING COMMISSIONER

**STATE BOARD OF MEDICINE**



KEITH E. LOISELLE  
CHAIR

Respondent's Address:

9171 9690 0935 0226 5756 17

For the Commonwealth:

Board Counsel:

Date of Mailing:

Alexander R. Babayants, M.D.  
184 S. Livingston Ave., #9-272  
Livingston, NJ 07039

Keith E. Bashore, Esquire

Shana M. Walter, Esquire

February 4, 2020

## ATTACHMENT A

**COPY**

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

**RECEIVED**

**JUL 16 2019**

Department of State  
Prothonotary

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

**v.**

**Alexander R. Babayants, MD,  
Respondent**

**Case No. 19-49-002215**

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**ADJUDICATION AND ORDER**

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**Thomas A. Blackburn  
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**

Date Distributed 7/16/19  
Prosecution \_\_\_\_\_  
Counsel ✓  
BFO \_\_\_\_\_  
Hearing Examiner \_\_\_\_\_  
Other \_\_\_\_\_

## **HISTORY**

This case comes before the hearing examiner for the State Board of Medicine ("Board") on an order to show cause filed March 8, 2019, against Alexander R. Babayants, MD ("Respondent"), charging that he is subject to disciplinary action under the Medical Practice Act of 1985<sup>1</sup> ("Act") his license or other authorization to practice the profession in another state (New Jersey) was disciplined by the proper licensing authority in that state. Respondent filed an answer on March 25, 2019, admitting that his license to practice medicine in New Jersey had been suspended for three years. On April 9, 2019, the Commonwealth filed an amended order to show cause to reflect a subsequent amended final order in Respondent's New Jersey disciplinary action.

By Notice of Hearing dated March 26, 2019, the hearing was scheduled for June 24, 2019, commencing at 9:00 a.m. at 2601 N. Third Street, One Penn Center, Harrisburg, Pennsylvania before the undersigned hearing examiner. On April 22, 2019, Respondent requested to participate in the hearing by telephone. By order dated April 23, 2019, Respondent's request to participate by telephone was granted, and he was given instructions on how to do so.

The hearing was held as scheduled. Respondent appeared at the hearing via telephone, waived his right to counsel and represented himself. The Commonwealth was represented by prosecuting attorney Keith E. Bashore, Esquire, who presented its case through documentary evidence. Respondent testified on his own behalf. The parties waived the filing of post-hearing briefs. The hearing transcript ("N.T.") was filed on July 15, 2019, closing the record.

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<sup>1</sup> Act of December 20, 1985 (P.L. 457, No. 112), *as amended*, 63 P.S. §§ 422.1-422.51a.



### **FINDINGS OF FACT**

1. Respondent holds a license to practice medicine and surgery in the Commonwealth of Pennsylvania, license no. MD457245. (Official notice of Board records)<sup>2</sup>
2. Respondent's license was originally issued on March 1, 2016, is current through December 31, 2020, and may be renewed or reactivated thereafter upon the filing of the appropriate documentation and payment of the necessary fees. (Board records)
3. At all relevant times, Respondent held a license to practice medicine and surgery in the Commonwealth of Pennsylvania. (Board records)
4. Based upon Respondent's deviations from the standard of care in prescribing controlled substances without properly diagnosing or treating his patients' underlying medical conditions and without properly documenting any diagnosis or treatment in violation of New Jersey professional licensure law, by amended final consent order filed March 27, 2019, the New Jersey State Board of Medical Examiners suspended for three years retroactive to February 10, 2018, Respondent's license to practice medicine and surgery and required him as conditions of reinstatement to complete: a course in record keeping, an 8-hour recertification course on the prescribing of suboxone (if he chooses to practice addiction medicine) and a reeducation program in general psychiatry (with a specific focus on addiction medicine if he chooses to practice that specialty) and then participate in an assessment including an evaluation of his knowledge base and ability to safely and competently engage in the general practice of psychiatry (and a focus on addiction medicine if he chooses to practice in that specialty). (Exhibit C-1 at 3-4)
5. Based upon similar disciplinary action taken against his license to practice in New

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<sup>2</sup> Official notice of the Board's records may be taken pursuant to § 35.173 of the General Rules of Administrative Practice and Procedure (GRAPP), 1 Pa. Code §§ 31.1-35.251, which permits the presiding officer to take official notice of the Board's own records. *See Gleeson v. State Bd. of Medicine*, 900 A.2d 430, 440 (Pa. Cmwlth. 2006), *appeal denied*, 917 A.2d 316 (Pa. 2007). All citations to "Board records" are based on this taking of official notice.

Jersey on January 12, 2018, by final memorandum order adopting hearing examiner's adjudication and substituting Board order on September 19, 2018, the Board placed Respondent's license on probation and restricted him from prescribing, dispensing and/or administering any controlled substances or directing any other health care professional to do so. (Board records)

6. Given the restriction in the prior matter, Respondent is not currently practicing medicine in Pennsylvania. (N.T. 16)

7. On March 8, 2019, the Commonwealth served the order to show cause by mailing it certified mail return receipt requested and first-class mail postage pre-paid to Respondent at: 184 Livingston Avenue, Apt #9272, Livingston, NJ 07039. (Order to show cause at certificate of service).

8. Respondent received the order to show cause, as shown by his filing of an answer thereto. (*See*, answer filed March 25, 2019)

9. On April 9, 2019, the Commonwealth served the amended order to show cause by mailing it certified mail return receipt requested and first-class mail postage pre-paid to Respondent at: 184 Livingston Avenue, Apt #9272, Livingston, NJ 07039. (Amended order to show cause at certificate of service).

10. Notice of hearing in this matter for June 24, 2019, at 9:00 a.m. was sent to Respondent at: 184 Livingston Avenue, Apt #9272, Livingston, NJ 07039. (*See*, notice of hearing dated March 26, 2019).

11. Respondent received notice of the hearing on June 24, 2019, as shown by his letter dated April 16, 2019, acknowledging receipt of notice of hearing and requesting to participate in the hearing by telephone. (*See*, letter filed April 22, 2019)

12. Respondent received notice of the hearing on June 24, 2019, as shown by his

attendance via telephone. (N.T. 5)

13. Respondent knowingly and voluntarily waived legal counsel and represented himself. (N.T. 6-7)

14. Respondent testified on his own behalf. (N.T. 14-16)

### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction in this matter. (Findings of Fact Nos. 1-3)
2. Respondent received reasonable notice of the charge against him and was given an opportunity to be heard in accordance with the Administrative Agency Law, 2 Pa.C.S. §504. (Findings of Fact Nos. 7-14)
3. Respondent is subject to discipline under section 41(4) of the Act, 63 P.S. § 422.41(4), because that the New Jersey State Board of Medical Examiners – the proper licensing authority of New Jersey – disciplined Respondent's license to practice medicine and surgery in that state. (Findings of Fact Nos. 1-4)

## DISCUSSION

This action is brought under section 41(4) of the Act, 63 P.S. § 422.41(4), which provides in pertinent part as follows:

**Section 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 ... by a proper licensing authority of another state, territory or country, or a branch of the Federal Government.

63 P.S. § 422.41(4). The statutory authorization to take disciplinary action against a Pennsylvania licensee on the basis of reciprocal discipline has been repeatedly upheld by the Commonwealth Court consistently concluding that the fact of discipline in another state is the only evidence required by statute to support a corresponding disciplinary action by a Pennsylvania licensing board. *Khan v. State Bd. of Auctioneer Examiners*, 842 A.2d 936, 950 (Pa. 2004).

As established by the findings of fact,<sup>3</sup> by amended final consent order filed March 27, 2019, the New Jersey Board suspended for three years retroactive to February 10, 2018, Respondent's license to practice medicine and surgery in that state. This disciplinary action was based upon Respondent's deviations from the standard of care in prescribing controlled substances without properly diagnosing or treating his patients' underlying medical conditions and without properly documenting any diagnosis or treatment in violation of New Jersey professional licensure

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<sup>3</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.

law. The New Jersey Board required Respondent as conditions of reinstatement to complete: a course in record keeping, an 8-hour recertification course on the prescribing of suboxone (if he chooses to practice addiction medicine) and a reeducation program in general psychiatry (with a specific focus on addiction medicine if he chooses to practice that specialty) and then participate in an assessment including an evaluation of his knowledge base and ability to safely and competently engage in the general practice of psychiatry (and a focus on addiction medicine if he chooses to practice in that specialty).

The New Jersey Board is the proper licensing authority for physicians in the State of New Jersey. The New Jersey Board suspended Respondent's license to practice medicine and surgery in that state. Action taken against one's professional license upon being found in violation of the licensure law constitutes disciplinary action. *See, Khan*, 842 A.2d at 950-51 (even without suspension or revocation of license or other action traditionally recognized as discipline, admission or finding of violation of licensing law in other jurisdiction by disciplinary authority establishes that licensee had reciprocal discipline). Because his license to practice medicine in New Jersey was disciplined by the proper licensing authority in that state, Respondent is subject to disciplinary action under section 41(4) of the Act, as charged in the order to show cause.

The Commonwealth has proved its case, and an appropriate sanction must be determined for Respondent's violations. For a violation of the Act, the Board is authorized to impose disciplinary or corrective measures or a civil penalty pursuant to section 42(a) of the Act, 63 P.S. § 422.42(a), which provides as follows:

**Section 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:

- (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, 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(a).

Additionally, the Board is authorized under section 39(b) of the Act, 63 P.S. § 422.39(b), to impose a civil penalty upon a licensee who violates any provision of the Act. Because the Board is authorized by the Act to impose a civil penalty for a licensee's violation of the Act, the Board may levy a civil penalty of up to \$10,000.00 per violation of the Act. Section 5(b)(4) of Act 48,<sup>4</sup> 63 P.S. § 2205(b)(4).

The Board has a duty to protect the health and safety of the public. Under professional licensing statutes such as the Act, the 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). The purpose of reciprocal discipline is to determine whether a licensee who has failed to comply with the rules in another jurisdiction is able to safely practice in this

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<sup>4</sup> Act of July 2, 1993 (P.L. 345, No. 48), *as amended*, 63 P.S. §§ 2201-2207.

Commonwealth. *See, Khan*, 842 A.2d at 944-48 (reciprocal 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; a licensee who is disciplined in one state is not suddenly rehabilitated after crossing state lines).

In determining an appropriate sanction, the Board weighs the seriousness of the violations against any mitigating evidence. Based upon a prior disciplinary action in New Jersey that imposed similar restrictions, Respondent's Pennsylvania license is currently on probation and he is restricted from prescribing controlled substances. Subsequently, Respondent was found by the New Jersey Board to have deviated from the standard of care in prescribing controlled substances without properly diagnosing or treating his patients' underlying medical condition and without properly documenting any diagnosis or treatment in violation of licensure law. This is an extremely serious violation. The New Jersey Board actively suspended Respondent's New Jersey license for three years and set forth retraining and competence requirements for him to meet as a condition of reinstatement. The citizens of Pennsylvania deserve similar protection.

In mitigation of a sanction to be imposed, Respondent presented only his acknowledgment that he is not currently practicing in Pennsylvania given the restrictions from the previous disciplinary action.

At the conclusion of the hearing, the prosecuting attorney recommended that Respondent's license be actively suspended concurrent with the suspension of his license in New Jersey. (N.T. 18). Weighing the seriousness of Respondent's violation with the very limited mitigating evidence he presented, the hearing examiner readily agrees with the prosecuting attorney and concludes that protection of the public requires that Respondent not be permitted to practice medicine in Pennsylvania until he meets the New Jersey conditions, has his New Jersey license reinstated to



active unrestricted status, and is again competent to practice with reasonable skill and safety to patients.

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

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

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

**v.**

**Alexander R. Babayants, MD,  
Respondent**

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**Case No. 19-49-002215**

**ORDER**

**AND NOW**, this 16<sup>th</sup> day of **July, 2019**, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby ordered that the license to practice medicine and surgery of **Alexander R. Babayants, MD**, license no. MD457245, is **SUSPENDED indefinitely**.

Respondent shall return to the State Board of Medicine all licensure documents including wallet card and wall certificate. No later than 30 days after the effective date of suspension as ordered by the Board, Respondent return the licensure documents to:

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

At any time after February 10, 2021, Respondent may petition for reinstatement of his license to practice medicine and surgery in this Commonwealth upon providing the following documentation: successful completion of the courses and reeducation program required by the New Jersey Board, successful completion of the assessment program and evaluation of Respondent's knowledge base and ability to safely and competently engage in the general practice of psychiatry, and status of Respondent's license to practice medicine in New Jersey and every

other jurisdiction in which he is licensed. Unless waived by the Board in its discretion based upon review of this documentation and Respondent having a current and unrestricted license to practice medicine and surgery in New Jersey, Respondent shall appear at a hearing before the Board or its designee and demonstrate that he is fit and competent to resume the practice of medicine and surgery – including in an appropriate specialty – with reasonable skill and safety to patients. As a condition for reinstatement, the Board may impose appropriate restrictions or otherwise place Respondent's license on probation.

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

**BY ORDER:**



**Thomas A. Blackburn**  
**Hearing Examiner**

**For the Commonwealth:** Keith E. Bashore, 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

**Respondent:** Alexander R. Babayants, MD  
184 South Livingston Ave., #9-272  
Livingston, NJ 07039

**Date of mailing:** July 16, 2019

## NOTICE

Medicine)

### 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 Adjudication and 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 Order page of the Adjudication and Order.