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| <b>Matter of Goldman v New York State Dept. of Health</b>                                                                                                                                                                  |
| 2012 NY Slip Op 30645(U)                                                                                                                                                                                                   |
| March 13, 2012                                                                                                                                                                                                             |
| Supreme Court, New York County                                                                                                                                                                                             |
| Docket Number: 101847/12                                                                                                                                                                                                   |
| Judge: Donna M. Mills                                                                                                                                                                                                      |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                     |

SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS  
*Justice*

PART 58

*In the Matter of the Application of*  
ARON GOLDMAN, M.D.,

INDEX No. 101847/12

Petitioner,

MOTION DATE \_\_\_\_\_

-v-

MOTION SEQ. NO. 001

NEW YORK STATE DEPARTMENT OF HEALTH,  
et al.,

Respondents.

MOTION CAL NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for Article 78 relief.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.....

Answering Affidavits - Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

CROSS-MOTION: \_\_\_\_\_

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served until it is entered. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).  
YES \_\_\_\_\_ NO

Upon the foregoing papers, it is ordered that this motion is decided as follows:

DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM  
DECISION.

Dated:

3/13/12

*Donna M. Mills*

**DONNA M. MILLS, J.S.C.**

Check one:

FINAL DISPOSITION

NON-FINAL DISPOSITION

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 58**

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**In the Matter of the Application of ARON  
GOLDMAN, M.D.,**

**Petitioner,**

**- against -**

**INDEX NO.  
101847/12**

**DECISION/ORDER**

**NEW YORK STATE DEPARTMENT OF HEALTH,  
NIRAV R. SHAH, M.D., in his Official Capacity  
as Commissioner of Health, et al.,  
Respondents.**

**For a Judgment Pursuant to Article 78 of  
the Civil Practice Law and Rules**

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**DONNA MILLS, J.:**

Dr. Aron Goldman ("Petitioner") seeks, by order to show cause to compel respondent New York State Department of Health ("DOH"), to modify an order it issued, dated January 4, 2012, which suspended petitioner's medical license based on his felony convictions. The DOH opposes the petition and argues that this proceeding should be dismissed for lack of personal jurisdiction and also because the petition fails to state a cause of action and lacks merit.

**BACKGROUND**

On January 4, 2012, pursuant to New York Public Health Law § 230(12)(b), the Commissioner of Health issued an Order which directed petitioner to refrain from the practice of medicine in the State of New York "effective immediately." The action was taken upon recommendation of a committee on Professional Medical Conduct of the Board.

Petitioner was convicted by a jury of the following felony crimes on December 13, 2010: enterprise corruption (Penal Law § 460.20); first degree scheme to defraud (Penal Law § 190.65); first degree grand larceny (two counts) (Penal Law § 155.42); first and

second degree money laundering (Penal Law §§ 470.15, 470.20); third degree insurance fraud (five counts) Penal Law § 176.20); fourth degree insurance fraud (three counts) (Penal Law § 176.15); and first degree falsifying business records (Penal Law § 175.10). Petitioner was sentenced on April 8, 2011 to 30 - 90 months imprisonment and ordered to pay a fine of \$800,000.00. Petitioner has appealed his conviction and was released on bail pending the determination of his appeal.

Petitioner has maintained a full-time private practice specializing in Internal Medicine, Hematology and Oncology since 1988. Beginning in 2002, Petitioner became affiliated with the Saint Nicholas Avenue Medical Care P.C. ("Clinic"), which was managed and run by Gregory Vinarsky. Petitioner claims to have seen patients at the Clinic two to three days a week for periods of three to four hours each and received a flat salary. It was the work at the clinic that resulted in petitioner's criminal conviction. The government was able to prove a systematic defrauding of several insurance companies by petitioner and others, including a no-fault insurance scheme and the receipt of kickbacks from vendors.

Pursuant to PHL § 230(12)(b), petitioner's hearing on the professional misconduct charges brought against him by DOH is scheduled to begin March 21, 2012. The charges include petitioner's felony convictions and also his subsequent guilty plea to the misdemeanor crime of unlawful disposition of assets (Penal Law § 215.80), which resulted in a concurrent sentence of 6 months imprisonment.

Petitioner maintains that this court should grant his application for a preliminary injunction on the grounds that the felony convictions which led to his suspension are currently being appealed, and which he maintains have a substantial likelihood of success. Petitioner also demands an Order pursuant to Article 78 that the suspension be modified to permit him to continue to practice medicine for his preexisting patients.

The DOH opposes on both procedural and substantive grounds. Initially DOH,

contends that petitioner failed to obtain jurisdiction over respondents because petitioner failed to effect proper service. Additionally, DOH argues that petitioner failed to notify the respondents that an application would be made for the temporary injunctive relief sought in the Order to Show Cause. DOH argues on substantive grounds that the petition fails to state a cause of action and lacks merit.

#### DISCUSSION

An Article 78 proceeding is a special proceeding. It may be summarily determined upon the pleadings, papers, and admissions to the extent that no triable issues of fact are raised. (CPLR 409 [b]; 7801, 7804 [h].) Thus, much like a motion for summary judgment, the court should decide the issues raised on the papers presented and grant judgment for the prevailing party, unless there is an issue of fact requiring a trial. (CPLR 7804 [h]; Matter of York v McGuire, 99 AD2d 1023 [1984], *affd* 63 NY2d 760 [1984]).

The applicable standard of review is whether the administrative decision was: (1) made in violation of lawful procedure; (2) affected by an error of law; or (3) arbitrary or capricious or an abuse of discretion, including whether the penalty imposed was an abuse of discretion (CPLR 7803 [3]). An agency abuses its exercise of discretion if its administrative orders lack a rational basis. “[T]he proper test is whether there is a rational basis for the administrative orders, the review not being of determinations made after quasi-judicial hearings required by statute or law” (Matter of Pell v Board of Educ. Of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231 [1974]).

It is undisputed that petitioner violated New York Education Law section 6530(9)(a) (l) by being convicted of committing an act constituting a crime under New York State Law. Upon review of this record, this Court is unpersuaded that suspension of petitioner’s license was made in violation of lawful procedure; affected by an error of law; or arbitrary

or capricious or an abuse of discretion. In my view, even taking into consideration petitioner's self-proclaimed modest lifestyle, dedication to elderly and vulnerable patients, I am unable to conclude that the penalty of suspension was unlawful.

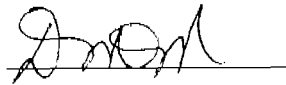
Petitioner's arguments pertaining to lack of personal jurisdiction are now moot, in light of this Court's opinion that the respondent's decision to suspend Petitioner was not arbitrary and capricious.

Accordingly it is

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed.

Dated:

ENTER:



J.S.C.

**UNFILED JUDGMENT**  
This judgment was filed with the County Clerk  
and notice of entry was given to the County Clerk  
obtain entry. Clerk's Office: 141B  
appear in person at the County Clerk's Desk (Room  
141B).  
DONNA M. TOLLS, 1994