



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

June 4, 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marc S. Nash, Esq.
Bureau of Professional Medical Conduct
Corning Tower building – Room 2512
Empire State Plaza
Albany, New York 12237

Avelino Rosales, M.D.


RE: In the Matter of Avelino Rosales, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 18-129) 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,



James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cac
Enclosure

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

-----X
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IN THE MATTER :
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OF :
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AVELINO ROSALES, M.D. :
:
-----X

DETERMINATION ,
AND
ORDER

BPMC 18-129

A hearing was held on May 17, 2018, at the offices of the New York State Department of Health (Department), 150 Broadway, Menands, New York. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **KENDRICK A. SEARS, M.D.**, Chairperson, **AMIT M. SHELAT, D.O., FACP** and **DENNIS P. ZIMMERMAN, M.S., CRC**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **DAWN MacKILLOP-SOLLER, ADMINISTRATIVE LAW JUDGE (ALJ)**, served as the Administrative Officer.

The Department appeared by Marc S. Nash, Senior Attorney. A Notice of Referral Proceeding and Statement of Charges dated March 6, 2018 and March 7, 2018, respectively, were duly served pursuant to PHL 230(10)(d)(i) upon Avelino Rosales, M.D. (Respondent), who did not appear at the hearing. (Exhibits 2-4.) The Hearing Committee received and examined documents from the Department (Exhibits 1-6) and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee unanimously votes 3-0 to sustain the charge that the Respondent committed professional misconduct in violation of Education Law (Educ. Law) 6530(9)(a)(i), and that pursuant to PHL 230-a, the penalties of censure and reprimand and a fine are appropriate.

BACKGROUND

The Department brought the case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Educ. Law 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law 6530(9)(a)(i), by having been convicted of an act constituting a crime under New York state law, specifically criminal tax fraud in the fifth degree, a class A misdemeanor, under NY Tax Law 1801. Under PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence.

FINDINGS OF FACT

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. Avelino Rosales, M.D., the Respondent, was licensed to practice medicine in New York on October 23, 1975, by the issuance of license number 125730 by the Education Department. (Exhibit 5.)

2. On or about August 1, 2017, in the Nassau District Court, Hempstead, New York, the Respondent was adjudicated guilty, following his plea of guilty, to the misdemeanor crime of criminal tax fraud in the fifth degree, in violation of NY Tax Law 1801 A. The Respondent was sentenced to a one year conditional discharge and ordered to pay a \$1,000 fine. (Exhibit 6.)

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law 6530(9)(a)(i).

VOTE: Sustained (3-0).

CONCLUSIONS OF LAW

The Hearing Committee reviewed the Department's evidence showing the Respondent's plea of guilty in Nassau District Court, Hempstead, New York, to criminal tax fraud in the fifth degree, a class A misdemeanor under NY Tax Law 1801. Based on this conviction, the Hearing Committee determined the Respondent violated Educ. Law 6530(9)(a)(i), which defines professional misconduct to include:

9. (a) Being convicted of committing an act constituting a crime under... (i) New York state law.

The Respondent was served by substituted service with the notice of the hearing in conformity with the requirements of PHL 230(10)(d), yet failed to appear or respond to the charges. Although the Hearing Committee considered the Respondent's willful failure to file taxes a serious breach of his civic responsibilities, they noted this evasion, while representing unsound moral principles, did not involve patient care or medical decision making. As such, the Hearing Committee agreed with the Department's recommendation, pursuant to PHL 230-a, that the Respondent's New York medical license be subject to the penalty of censure and reprimand. The Hearing Committee also imposed a \$2,000 fine to deter similar future conduct inconsistent with the integrity of the medical profession.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is sustained;
2. The Respondent's license to practice medicine in New York State is subject to a censure and reprimand;
3. A civil penalty of \$2,000 is assessed, which is payable within sixty (60) days of the

effective date of this order;

4. A civil penalty not paid by that date shall be subject to all penalties of law related to debt collection by the State of New York. This includes, but is not limited to, the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses (Tax Law 171(27)); State Finance Law 18; CPLR 5001; Executive Law 32. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza - Corning Tower, Room 1717
Albany, New York 12237; and

5. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL § 230(10)(h).

DATED: Albany, New York
6/11, 2018


Kendrick A. Sears, M.D., Chairperson

Amit M. Shelat, D.O., FACP
Dennis P. Zimmerman, M.S., CRC

TO: Avelino Rosales, M.D.


Marc S. Nash, Esq.
Senior Attorney
Bureau of Professional Medical Conduct
Corning Tower Building – Room 2512
Empire State Plaza
Albany, New York 12237

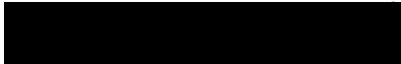
APPENDIX I

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

IN THE MATTER
OF
AVELINO ROSALES, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: AVELINO ROSALES, 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 May 17, 2018, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719,¹ and at such other adjourned dates, times and places as the committee may direct.

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.

¹ For GPS purposes, enter "Menands", not "Albany".

EXHIBIT
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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 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: Albany, New York
March 6, 2018


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Marc S. Nash
Senior Attorney
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER

OF

AVELINO ROSALES, M.D.

STATEMENT

OF

CHARGES

AVELINO ROSALES, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 23, 1975, by the issuance of license number 125730 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On January 3, 2011, in Nassau District Court, Respondent was convicted of Tax Fraud [Tax Law § 1801(a)], a class A misdemeanor, and was sentenced to a one-year conditional discharge and fined Ten Thousand Dollars (\$10,000.00).

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. The facts in Paragraph A.

DATE: March 7, 2018
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct