

Public

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

May 10, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joel E. Ablove, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Linda Theresa McAlister, M.D.
REDACTED

Linda Theresa McAlister, M.D.
REDACTED

RE: In the Matter of Linda Theresa McAlister, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-106) 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.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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,

REDACTED

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah
Enclosure

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

IN THE MATTER
OF
LINDA THERESA MCALISTER, M.D.

DETERMINATION
AND
ORDER

BPMC #11-106

COPY

A hearing was held on April 20, 2011, at the offices of the New York State Department of Health ("the Petitioner and/or Department"). A Notice of Referral Proceeding dated February 17, 2011, and a Statement of Charges, dated February 17, 2011, were served upon the Respondent, Linda Theresa McAlister, M.D. Pursuant to Section 230(10)(e) of the Public Health Law, Calvin J. Simons M.D., Chairperson, William A. Tedesco, M.D. and Gail S. Homick Herrling, duly designated members of the State Board for Professional Medical Conduct ("Board"), served as the Hearing Committee in this matter. Christine C. Traskos, Esq., Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by James E. Dering, Esq., General Counsel, by Joel E. Ablove, Esq., of Counsel. The Respondent did not appear in person and was not represented by counsel.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d) and Education Law Section 6530 (29). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:	None
For the Respondent:	None

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." or transcript pages "T". These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Linda Theresa McAlister, M.D., the Respondent, was authorized to practice medicine in New York State on February 1, 1980, by the issuance of license number 141151 by the New York State Education Department (Department's Ex. 4).

2. From on or about August 3, 2009, to the present, Respondent, was and is subject to Consent Order BPMC No. 09-142 (hereinafter "New York Order") with the New York State, Department of Health, State Board for Professional Medical Conduct (hereinafter "New York Board"), wherein she was and is required to, at all times, maintain active registration of Respondent's license with the New York Education, Department Division of Professional Licensing Services, and shall pay all registration fees. (Department's Ex. 4).

3. From on or about August 3, 2009, to the present, Respondent has failed to maintain active registration of her license with the New York State Education Department and pay all registration fees, in violation of the New York Order, as set forth above. (Department's Ex.6)

4. On or about June 12, 2009, the North Carolina State Medical Board (hereinafter "North Carolina Board"), received the Voluntary Surrender of Respondent's medical license, dated June 11, 2009 based on the North Carolina Board's investigation of Respondent's failure to comply with their Consent Order dated May 23, 2008. (Department's Ex. 5)

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York state.

VOTE: Sustained (3-0)

SECOND SPECIFICATION

Respondent violated New York State Education Law Section 6530(29) by violating any term of probation or condition or limitation imposed on the licensee.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Hearing Committee finds that Respondent has shown no interest to maintain her New York State registration by her failure to pay her registration fees. Respondent has furthermore voluntarily surrendered her license to practice medicine in the State of North Carolina. Respondent has provided no explanation or mitigating factors to the Hearing Committee for their consideration. As a result, the Hearing Committee has no recourse but to revoke Respondent's license to practice medicine in New York State. The Hearing Committee believes that revocation protects the public safety and that it is the appropriate sanction under the circumstances presented.

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent's license to practice medicine in New York State is **REVOKED**;
2. This Order shall be effective upon service on the Respondent by personal service or registered or certified mail in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Brooklyn, New York
May 6, 2011

REDACTED

~~Calvin J. Simons, M.D. (Chair)~~
~~William A. Tedesco, M.D.~~
~~Gail S. Hornick-Herrling~~

Joel E. Abelove, Esq.
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower- Room 2512
Empire State Plaza
Albany, New York 12237

Linda Theresa McAlister, M.D.

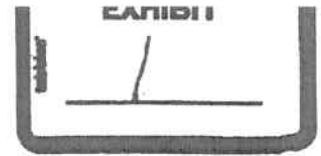
REDACTED

Linda Theresa McAlister, M.D. -

REDACTED

APPENDIX I

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



IN THE MATTER
OF
LINDA THERESA MCALISTER, M.D.
CO-09-11-6971-A

NOTICE
OF
HEARING

TO: LINDA THERESA MCALISTER, M.D.

REDACTED

LINDA THERESA MCALISTER, M.D.

REDACTED

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of New York Public Health Law §230 and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on April 20, 2011, at 10:00 a.m., at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180, and at such other adjourned dates, times, and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A Summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of actual engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of New York Public Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than 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. The answer 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. 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 New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, 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 that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department Attorney: Initial here _____

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. 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
February 17, 2011

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to:
Joel E. Abelove
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower - Room 2512
Empire Stat Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER
OF
LINDA THERESA MCALISTER, M.D.
CO-09-11-6971-A

STATEMENT
OF
CHARGES

LINDA THERESA MCALISTER, M.D., Respondent, was authorized to practice medicine in New York State on February 1, 1980, by the issuance of license number 141151 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. From on or about August 3, 2009, to the present, Respondent, was and is subject to Consent Order BPMC No. #09-142 (hereinafter "New York Order"), with the New York State, Department of Health, State Board for Professional Medical Conduct (hereinafter "New York Board"), wherein she was and is required to, inter alia, maintain active registration of Respondent's license with the New York Education, Department Division of Professional Licensing Services, and shall pay all registration fees.

B. From on or about August 3, 2009, to the present, Respondent has failed to maintain active registration of his license with the New York State Education Department and pay all registration fees, in violation of the New York Order, set forth in Paragraph A, above.

C. On or about June 12, 2009, the North Carolina State Medical Board (hereinafter "North Carolina Board"), received the Voluntary Surrender of Respondent's medical license, dated June 11, 2009, based on the North Carolina Board's investigation of Respondent's failure to comply with their Consent Order, dated May 23, 2008.

D. The conduct resulting in the North Carolina Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(29) (violating any term of probation or condition or limitation imposed on the licensee); and/or
2. New York Education Law §6530(32) (failing to maintain a record for each patient that accurately reflects the evaluation and treatment of the patient).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that the Petitioner charges:

1. The facts in Paragraphs C and/or D.

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530(29) by violating any term of probation or condition or limitation imposed on the licensee, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *February 17*, 2011
Albany, New York

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct