



Department of Health

ANDREW M. CUOMO
Governor

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

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

August 22, 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John Thomas Viti
Associate Counsel
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Bureau of Professional Medical Conduct
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Paul H. Rethier, Esq.
PO Box 307
33 Rosendale Road
Sound Beach, New York 11789

Michael A. Bulanowski, M.D.
240-B West Montauk Highway
Hampton Bays, New York 11946

RE: In the Matter of Michael A. Bulanowski, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 19-219) 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:

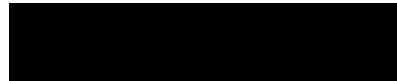
James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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 Judge 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: cmg
Enclosure

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

-----X
IN THE MATTER
OF
MICHAEL A. BULANOWSKI, M.D.
-----X

DETERMINATION
AND
ORDER
19-219

Pursuant to New York State Public Health Law (PHL) § 230(10)(d)(i), the New York State Department of Health, Bureau of Professional Medical Conduct (Department) served Michael A. Bulanowski, M.D. (Respondent) with a Notice of Hearing and Statement of Charges. The Notice of Hearing and Statement of Charges is attached hereto as Appendix I. This hearing was held at the offices of the New York State Department of Health, located at 90 Church Street, New York, New York. **STEVEN I. SHERMAN, M.D.**, Chairperson, **MICHAEL C. IANNUZZI, M.D.**, and **MICHAEL N.J. COLON, ESQ.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to PHL § 230(10)(e). **TINA M. CHAMPION**, Administrative Law Judge, served as the Administrative Officer.

The Department appeared by John Thomas Viti, Associate Counsel. The Respondent appeared by Paul H. Rethier, Esq. Evidence was received, witnesses were sworn or affirmed, and a transcript of the proceeding was made.

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

PROCEDURAL HISTORY

Notice of Hearing and Statement of Charges:	March 19, 2019
Stipulation of Facts:	June 11, 2019
Answer to Statement of Charges:	June 12, 2019
Pre-Hearing Conference:	June 26, 2019
Hearing:	June 26, 2019
Joint Exhibit:	1
Witness for the Department:	James Garofallou-Hogan
Department Exhibits:	1-23
Witness for the Respondent:	Michael A. Bulanowski, M.D.
Respondent Exhibits:	A-1
Deliberation:	June 26, 2019
Transcript Received:	July 23, 2019

STATEMENT OF THE CASE

The Department charged the Respondent with one specification of professional misconduct under NY Educ. Law § 6530. Specifically, the Department charged the Respondent with professional misconduct as defined in NY Educ. Law § 6530(29) for violating a condition imposed on him pursuant to PHL § 230-a.

Pursuant to PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence. However, the parties stipulated to a series of facts resolving all but the penalty phase of the hearing.

Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 "shall be subject to penalties as prescribed in [PHL § 230-a] except that the charges may be dismissed in the interest of justice." The Department recommended that the Respondent's license to

practice medicine be suspended, that the Respondent be fined, and that the Respondent be ordered to take continuing medical education courses. The Respondent asked for the charges against him to be dismissed in the interest of justice.

FINDINGS OF FACT

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

1. Michael A. Bulanowski, M.D., the Respondent, was authorized to practice medicine in New York State on December 10, 1982 by issuance of license number 152718 by the New York State Education Department. (Dept. Ex. 1.)

2. The Respondent had a solo rheumatology practice in South Hampton, New York from 1986 to May 2019. (T. at 52-53.)

3. The Respondent signed a Consent Agreement on June 3, 2016 resulting in the issuance of a Consent Order by the Department that went into effect on June 16, 2016. (Joint Ex. 1.)

4. A condition imposed pursuant to the 2016 Consent Order required that the Respondent comply with each and every penalty imposed by the Order pursuant to PHL § 230-a. (Joint Ex. 1.)

5. One of the penalties imposed by the 2016 Consent Order was that the Respondent was subject to a fine in the amount of \$6,500.00. The fine was to be paid as follows: \$1,500.00 to be paid within 30 days of the effective date of the 2016 Consent Order, \$1,000.00 to be paid within 60 days, 90 days, 120 days and 150 days of the effective day of the 2016 Consent Order, and full and final payment of \$1,000.00 to be made within 180 days from the effective date of this 2016 Consent Order. (Joint Ex. 1.)

6. The Respondent was to pay the full fine amount under the 2016 Consent Order by December 13, 2016. (Joint Ex. 1.)

7. The Respondent made his first initial payment as required by the 2016 Consent Order. (Joint Ex. 1.)

8. The Respondent made five subsequent payments by check as follows, all of which were returned due to insufficient funds:

- a. August 24, 2016, in the amount of \$1,000.00;
- b. March 10, 2017, in the amount of \$5,025.00;
- c. June 26, 2017, in the amount of \$5,025.00;
- d. July 28, 2017, in the amount of \$5,045.00; and
- e. June 6, 2018, in the amount of \$5,065.00. (Joint Ex. 1.)

9. The Respondent claims that there were mitigating factors for the returned checks. (Joint Ex. 1.)

10. On or about May 4, 2018, the Respondent was served by the New York State Office of the Attorney General (Attorney General) with a Summons with Notice to recover damages for the unpaid fine amount due to the Department under the 2016 Consent Order. (Joint Ex. 1.)

11. On or about July 23, 2018, the Respondent entered into an installment payment schedule with the Attorney General. (Joint Ex. 1.)

12. On or about October 15, 2018, the Respondent made his full and final payment to the Attorney General. (Joint Ex. 1.)

HEARING COMMITTEE DETERMINATIONS

The Department charged the Respondent with one specification of professional misconduct as defined in NY Educ. Law § 6530(29) for violating a condition imposed on him pursuant to PHL § 230-a. The Hearing Committee concludes that the Respondent's actions, as stipulated to in the Stipulation of Facts, constitute professional misconduct as defined by NY Educ. Law § 6530(29).

DETERMINATION AS TO PENALTY

The Department has requested that the Hearing Committee suspend the Respondent's license to practice medicine in New York State, opining that the Respondent has betrayed the trust of the public, abused his position as a physician, and is a danger to individuals in the State of New York. The Department has also requested that the Respondent be fined and ordered to take continuing medical education courses. The Respondent has asked for forgiveness as he has since made all the payments due under the 2016 Consent Order and is concerned that any sanction will extend his already existing exclusion from Medicare and Medicaid, thereby furthering the existing barrier to his generating income.

Testimony of Mr. Garofallou-Hogan

Mr. Garofallou-Hogan, the central intake supervisor for the Office of Professional Medical Conduct (OPMC), testified that he worked for the OPMC Physician Monitoring Unit from March 2015 until August 2018, the time period when that unit handled the matter involving the Respondent, and that he supervised the individual assigned to the Respondent's case. (T. at 24-25.) Mr. Garofallou-Hogan testified that it was the duty of the Physician Monitoring Unit to monitor whether the Respondent complied with terms of the 2016 Consent Order. (T. at 25.) He further testified that during the time when the Physician Monitoring Unit was monitoring the Respondent with respect to the terms of the 2016 Consent Order there were several instances when the Respondent expressed to the Department that he was experiencing financial difficulties. (T. at 26-29.) The Respondent did not comply with the payment obligations under the terms of the 2016 Consent Order. (T. at 24-29; Joint Ex. 1.)

Testimony of the Respondent

The Respondent testified that he had a solo rheumatology practice in South Hampton, New York from 1986 to May 2019. (T. at 52-53.) He testified that he has been excluded from the New

York State Medicaid and Medicare program based on professional disciplinary matters, which has impacted his practice. (T. at 57-63, 67-68.) The Respondent testified that he is concerned that further disciplinary sanction in this matter will extend his exclusion. (T. at 69-71.) He testified that since 2015 he has had a license to practice medicine but "essentially" has not been able to practice due to his exclusion. He further testified that ninety percent of his patient population is Medicare and Medicaid. (T. at 77-78, 94-95.) The Respondent testified that his only current income is generated from part-time work as a small group facilitator at Zucker School of Medicine, where he started working in August 2017. (T. at 72.)

Discussion

The Hearing Committee appreciates that the Respondent was experiencing financial difficulties, particularly in light of his inability to participate in the Medicare and Medicaid programs due to his exclusion and his patient population within his rheumatology practice. The Hearing Committee also feels that given the Department's knowledge of those financial difficulties, it is possible this issue would have been avoided if the Department had extended to the Respondent the offer to renegotiate a payment plan. However, the Hearing Committee also acknowledges that it is not incumbent upon the Department to volunteer to accept an arrangement other than what was initially agreed to by both parties, and notes that the Respondent was represented by counsel at the time he voluntarily entered into the 2016 Consent Order. Further, the Hearing Committee found quite troubling the testimony from the Respondent that he repeatedly did not have a specific plan to have the money to pay his fine on the dates that he told the Department he would pay. The Hearing Committee also found the Respondent's demeanor at the hearing to be cavalier and detached, and was underwhelmed by the Respondent's apparent lack of appreciation for the potential consequences to his medical license for not complying with the fine payment terms of the 2016 Consent Order. The Hearing Committee notes that the Respondent has a history of noncompliance and failing to abide with agreed upon terms, and that the Respondent declined an offer for an interview

with the Department when the Department reached out to him regarding his nonpayment. (Dept. Exs. 1, 21.) To his credit, the Hearing Committee acknowledges that the Respondent has chosen to file for bankruptcy under a chapter with full payback of all his debts rather than seeking forgiveness of them. (Resp. Exs. G, H.)


In considering the full spectrum of penalties available under PHL § 230-a, the Hearing Committee finds appropriate that the Respondent partake in ten hours of continuing medical education on a topic or topics of his choosing, preferably in the area of medicine in which he intends to practice should he resume treating patients. In making this finding, the Hearing Committee takes very seriously the Respondent's lack of compliance with the terms of the 2016 Consent Order and has difficulty understanding the Respondent's demeanor, yet finds that the consequences endured by the Respondent since 2015 with respect to the Medicare and Medicaid exclusion and resulting closure of his practice to be sufficient penalty for the nonpayment at issue.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is sustained;
2. Pursuant to PHL § 230-a(8), the Respondent shall be required to complete ten (10) hours of continuing medical education courses on a topic(s) of his choice within ninety (90) days from the date of this Determination and Order, and submit proof of the same to the Director of the Office of Professional Medical Conduct within one hundred twenty (120) days from the date of this Determination and Order; and
3. This Determination and Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

Dated: Albany, New York
August 22, 2019


Steven I. Sherman, M.D.
Michael C. Iannuzzi, M.D.
Michael N.J. Colon, Esq.

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APPENDIX I

IN THE MATTER
OF
Michael A. Bulanowski, M.D.

STATEMENT
OF
CHARGES

Michael A. Bulanowski, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 10, 1982, by the issuance of license number 152718 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent was subject to BPMC Order # BPMC 16-204 (henceforth "Consent Order"), which was issued upon a consent application signed by him on June 3, 2016, and adopted by the Consent Order, which went into effect on June 16, 2016. (This Consent Order is attached as Appendix "A".)

1. A Condition imposed pursuant to the Consent Order, required that "Respondent shall comply with each and every penalty imposed by this Order pursuant to N.Y. Pub. Health Law §230-a.". One of the Penalties imposed by the Order was that "Pursuant to N.Y. Pub. Health Law §§ 230-a(7) and (9), I shall be subject to a fine in the amount of \$6,500.00. \$1,500.00 to be paid within 30 days of the effective date of this Order and payment in the amount of \$1,000.00 to be made within 60 days, 90 days, 120 days and 150 days of the effective day of the Order with full and final payment of \$1,000.00 made within 180 days from the effective date of this Order." Respondent failed to comply with this Condition.

SPECIFICATION OF CHARGES


FIRST SPECIFICATION

VIOLATING ANY CONDITION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(29) by violating any condition imposed on the licensee pursuant to section two hundred thirty of the public health law, as alleged in the facts of the following:

1. Paragraph A and A (1)

DATE: March 19, 2019
New York, New York


Henry Weintraub
Chief Counsel
Bureau of Professional Medical Conduct