

March 29, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Elizabeth Lopez, M.D.
REDACTED ADDRESS

Elizabeth Lopez, M.D.
REDACTED ADDRESS

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

RE: In the Matter of Elizabeth Lopez, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-55) 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., Chief 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 SIGNATURE

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

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

IN THE MATTER
OF
ELIZABETH LOPEZ, M.D.

DETERMINATION
AND
ORDER

BPMC #12-55

COPY

A hearing was held on December 15, 2011, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated October 18, 2011, were served upon the Respondent, **ELIZABETH LOPEZ, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Jerry Waisman, M.D.,** Chair, **William A. Tedesco, M.D.,** and **Thomas W. King, Jr. M.P.A., P.E.,** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, 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, **Elizabeth Lopez, M.D.,** did not appear, although diligent efforts were made to serve her. Evidence was received and transcripts of these proceedings were made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

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 New York 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 State¹. 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

¹ It is noted that in the Statement of Charges, the Department has misstated the statute to the effect that the misconduct would have constituted misconduct under the laws of another state. The statute, actually refers to conduct that would constitute misconduct under the laws of New York State. This error, however, does not deprive the Respondent of actual notice of the charges against her, as the statute is properly quoted by the Department in the Specifications which are set forth on the same page.

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." 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. Elizabeth Lopez, M.D., the Respondent, did not appear at the hearing although diligent efforts were made to serve her with process. (Petitioner's Exhibit 2)
2. Elizabeth Lopez, M.D., the Respondent, was authorized to practice medicine in New York State on October 17, 1983, by the issuance of license number 156161 by the New York State Education Department. (Petitioner's Exhibit 3)
3. On or about February 16, 2011, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order") accepted Respondent's Voluntary Relinquishment of her license to practice medicine in the state of Florida, based on Respondent's failure to meet the prevailing standard of care by prescribing controlled substances without conducting or documenting complete medical histories or physical examinations, by failing to keep legible medical records, and prescribing inappropriately and/or in excessive or inappropriate quantities, controlled substances to patients.
4. The conduct resulting in the Florida 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:
 - A. New York Education Law §6530(3) (negligence on more than one occasion).

- B. N.Y. Education Law §6530(4) (gross negligence on a particular occasion).
- C. N.Y. Education Law §6530(5) (incompetence on more than one occasion).
- D. N.Y. Education Law §6530(6) (gross incompetence).
- E. N.Y. Education Law §6530(32) (failure to maintain proper medical records).

5. On or about October 10, 2010, by Commissioner's Summary Order, the New York State Department of Health summarily suspended the Respondent's New York license to practice medicine based upon the above Florida finding that the Respondent's practice of medicine constituted an imminent danger to the health of the people of Florida. (Petitioner's Exhibit 6, which is attached hereto as Appendix 2)

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education §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)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing, either in person or by counsel. The Administrative Law Judge, after considering the documentary evidence, which included an

Affidavit of Attempted Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for due diligence in the service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed on the merits notwithstanding the Respondent's absence.

The record in this case indicates that Respondent's license to practice medicine has been suspended in the State of Florida. The Florida Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order") accepted Respondent's Voluntary Relinquishment of her license to practice medicine in the state of Florida, based on Respondent's failure to meet the prevailing standard of care by prescribing controlled substances without conducting or documenting complete medical histories or physical examinations, by failing to keep legible medical records, and prescribing inappropriately and/or in excessive or inappropriate quantities, controlled substances to patients.

It is noted that the conduct resulting in the Florida 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(3) (negligence on more than one occasion).
2. Education Law §6530(4) (gross negligence on a particular occasion).
3. Education Law §6530(5) (incompetence on more than one occasion).
4. Education Law §6530(6) (gross incompetence).
5. Education Law §6530(32) (failure to maintain proper medical records).

Respondent did not appear at the hearing, and the record does not contain any evidence of mitigating circumstances, or remorse. The panel noted that that the Respondent was suspended summarily in Florida as she was deemed an immediate and

serious danger to the health of the public in that state. (T. 8) The Respondent was also suspended summarily in New York on October 10, 2010 with a finding that the Commissioner deemed her an imminent danger to the health of the people of New York. (Exhibit 6)

It is noted that several attempts were made to personally serve the Respondent with the New York Summary Order as is attested to by the Affidavit of Attempted Service in the record as Exhibit # 7. In addition, the Department sent the Summary Order to the Respondent by Certified Mail, return receipt requested and this packet was returned to the Department as unclaimed. (See Exhibit # 8)

As to the penalty, the Hearing Committee unanimously agreed that the Summary Order was warranted and determined, again unanimously, that the people of New York State would be protected by a revocation of the Respondent's license and they unanimously deemed revocation the only appropriate penalty in this case.

ORDER


IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine in New York State is revoked.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10) (h).

DATED: Poughquag, New York

January 29, 2012
mark

REDACTED SIGNATURE


Jerry Waisman, M.D., Chair

William A. Tedesco, M.D.
Thomas W. King, Jr. M.P.A., P.E

To:

Elizabeth Lopez, M.D.
Respondent
REDACTED ADDRESS

Elizabeth Lopez, M.D.
Respondent
REDACTED ADDRESS

Joel E. Ablove, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Albany, New York 12237

APPENDIX 1

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

IN THE MATTER
OF
ELIZABETH LOPEZ, M.D.
CO-10-06-3878-A

STATEMENT
OF
CHARGES

ELIZABETH LOPEZ, M.D., Respondent, was authorized to practice medicine in New York State on October 17, 1983, by the issuance of license number 156161 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 16, 2011, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order") accepted Respondent's Voluntary Relinquishment of her license to practice medicine in the state of Florida, based on Respondent's failure to meet the prevailing standard of care by prescribing controlled substances without conducting or documenting complete medical histories or physical examinations, by failing to keep legible medical records, and prescribing inappropriately and/or in excessive or inappropriate quantities, controlled substances to patients.

B. The conduct resulting in the Florida 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(3) (negligence on more than one occasion).
2. New York Education Law §6530(4) (gross negligence on a particular occasion).
3. New York Education Law §6530(5) (incompetence on more than one occasion).
4. New York Education Law §6530(6) (gross incompetence).
5. New York Education Law §6530(32) (failure to maintain proper medical records).

C. The conduct resulting in the Florida 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(9)(d) (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 that state, constitute professional misconduct under the laws of that state).

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

Respondent violated New York 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 Petitioner charges:

1. The facts in Paragraphs A and/or C.
2. The facts in Paragraphs A, B, and/or C.

DATED: *October 18, 2011*
Albany, New York

REDACTED SIGNATURE

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

APPENDIX 2

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

EXHIBIT



IN THE MATTER

OF

ELIZABETH LOPEZ, M.D.
CO-10-06-3878-A

COMMISSIONER'S
SUMMARY
ORDER

TO: ELIZABETH LOPEZ, M.D.
REDACTED ADDRESS

The undersigned, Richard F. Daines, M.D., Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that the duly authorized professional disciplinary agency of another jurisdiction, the State of Florida, Department of Health (hereinafter "Florida Board"), has made a finding substantially equivalent to a finding that the practice of medicine by ELIZABETH LOPEZ, M.D., Respondent, New York license number 156161, in that jurisdiction, constitutes an imminent danger to the health of its people, as is more fully set forth in the Order of Emergency Suspension on License, dated February 18, 2010, attached, hereto, as Appendix "A," and made a part, hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), that effective immediately, ELIZABETH LOPEZ, M.D., shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine.

ANY PRACTICE OF MEDICINE IN THE STATE OF NEW YORK IN VIOLATION OF THIS ORDER SHALL CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY DEFINED BY NEW YORK EDUCATION LAW §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within thirty (30) days after the final conclusion of the disciplinary proceeding in Florida.

The 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 a date and at a location to be set forth in a written Notice of Referral Proceeding to be provided to the Respondent after the final conclusion of the Florida proceeding. Said written Notice may be provided in person, by mail, or by other means. If Respondent wishes to be provided said written notice at an address other than that set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth in this Order, and the Director of the Office of Professional Medical Conduct, at the addresses set forth below.

RESPONDENT SHALL NOTIFY THE DIRECTOR OF THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT, NEW YORK STATE DEPARTMENT OF HEALTH, 433 RIVER STREET, SUITE 303, TROY, NY 12180-2299, VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OF THE FINAL CONCLUSION OF THE PROCEEDING IMMEDIATELY UPON SUCH CONCLUSION.

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 FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a.
YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN
THIS MATTER.

DATE: Albany, New York
10/12/2010

REDACTED SIGNATURE

~~RICHARD F. DAINES, M.D.~~
Commissioner of Health
New York State Department of Health

Inquires should be directed to:

Joel E. Abelove
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, New York 12237
(518) 473-4282