



Department of Health

ANDREW M. CUOMO
Governor

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

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

July 18, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Preston A. Wigfall, M.D.


John Thomas Viti, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

RE: In the Matter of Preston A. Wigfall, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 17- 191) 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
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

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. 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 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
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: nm
Enclosure

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

GOFP

**IN THE MATTER
OF
PRESTON A. WIGFALL, M.D.**

DETERMINATION

AND

ORDER

BPMC-17-191

Respondent was personally served with a Notice of Hearing and Statement of Charges, both dated March 6, 2017.¹ (Ex. 1; Ex. 2) William M. Bisordi, M.D., Chair, Ms. Thea Graves Pellman, and Kenneth J. Steier, M.D., members of the State Board for Professional Medical Conduct ("BPMC"), served as the hearing committee in this matter pursuant to Section 230(10) of the Public Health Law ("PHL"). Denise Lepicier, Esq., Administrative Law Judge ("ALJ"), served as the hearing officer.

The Department of Health ("Department") appeared by John T. Viti, Esq. The Respondent did not appear at the hearing.

Evidence was received and a witness was sworn and heard. A transcript was made of the proceedings. After consideration of the entire record, the hearing committee issues this Determination and Order.

¹ The Department moved at the prehearing conference immediately preceding the hearing on May 9, 2017, to amend the caption on the Notice of Hearing to conform to the addressee on the Notice of Hearing. The motion was granted. (T. 4)

PROCEDURAL HISTORY

Pre-hearing Conference: May 9, 2017²
Hearing Date: May 9, 2017
Witness for the Department: Joanne Haupt, Medical Conduct Investigator

BACKGROUND

The State Board for Professional Medical Conduct (“BPMC”) is a professional disciplinary board of the State of New York, authorized pursuant to PHL § 230, *et seq.*, to consider certain disciplinary matters brought by the New York State Department of Health. The Department has jurisdiction to conduct disciplinary hearings for physicians, physician assistants, specialist assistants, physicians working on a limited permit, and medical residents, when there is a violation of the misconduct provisions of the New York Education Law (“Educ. Law”).

The Respondent is charged with two specifications of misconduct in the Statement of Charges. (Ex. 1) The charges include the “willful or grossly negligent failure to comply with substantial provisions” of New York State law “governing the practice of medicine,” and the failure “to file a report required by law,” both in violation of Educ. Law § 6530. See, Educ. Law § 6530 (16) & (21).

Respondent did not file an answer to the Statement of Charges. A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

² The Administrative Law Judge’s office repeatedly phoned Respondent at his phone number to attempt to arrange a prehearing conference at a mutually agreeable time for the parties to exchange evidence and for the discussion of legal issues. Respondent never responded to the voicemail messages left for him. The ALJ then set the prehearing conference for an hour prior to the hearing on the day set for the hearing and sent a letter, by both mail and email, to the parties confirming the time and location of the conference. The letter was never returned by the postal service. (ALJ Ex. I)

FINDINGS OF FACT

The following findings of fact were made after a review of the entire record in this matter. Numbers and letters in parentheses refer to transcript ("T.") page numbers or exhibits ("Ex."). These citations represent evidence found persuasive by the hearing committee in arriving at a particular finding. Conflicting evidence was considered and rejected in favor of the cited evidence.

1. The Respondent was licensed to practice medicine as a physician in the State of New York on or about October 24, 1983, upon issuance of license number 156463 by the New York State Education Department. (Ex. 3, p. 2; Ex. 4)

2. Joanne Haupt, a Medical Conduct Investigator with the Office of Professional Medical Conduct wrote Respondent an email on April 6, 2016, requesting that Respondent contact her. (Ex. 6, p. 6; T. 14)

3. Respondent contacted Ms. Haupt by phone on April 6, 2016, and Ms. Haupt discussed the necessity of updating Respondent's online "Physician Profile" and how this could be accomplished. Ms. Haupt confirmed Respondent's address, which he confirmed as his address for the last twenty years, and Respondent's phone number. Ms. Haupt also sent a follow-up email to Respondent confirming the phone call and giving written instructions for updating Respondent's Physician Profile. (Ex. 6, p. 5; T. 14-17, 23)

4. Respondent thanked Ms. Haupt for the information she had sent in his email dated April 7, 2016. (Ex. 6, p. 4; T. 15-16)

5. On April 13, 2016, Ms. Haupt wrote an email to Respondent noting that his Physician Profile was last updated on February 27, 2002. (Ex. 6, p. 1-2)

6. On May 4, 2016, Ms. Haupt wrote an email to Respondent explaining that since

he had not updated his Physician Profile, the Office of Professional Medical Conduct would be moving forward with its investigation. (Ex. 6, p. 1)

7. On or about June 13, 2016, Ms. Haupt sent Respondent a letter, by both certified and regular mail at the address Respondent had confirmed, offering him an opportunity for an interview in order for him to provide an explanation of the issues under investigation. The certified letter was returned to the Office of Professional Medical Conduct as unclaimed, but the regular mail letter was not returned. (Ex. 7; Ex. 8; T. 17-18, 23-24)

8. On or about June 29, 2016, Ms. Haupt sent Respondent a letter, by both certified and regular mail at the address Respondent had confirmed, which stated that Respondent's failure to respond to the letter offering him an opportunity for an interview would be taken as a declination of the opportunity. Once again, the certified letter was returned to the Office of Professional Medical Conduct as unclaimed, but the regular mail letter was not returned. (Ex. 9; Ex. 10; T. 18-19, 23-24)

9. On his last registration renewal on about November 21, 2016, Respondent answered in the affirmative to the question which asked: "Since your last registration application, has any licensing or disciplinary authority revoked, annulled, cancelled, accepted surrender of, suspended, placed on probation, or refused to issue or renew a professional license or certificate held by you now or previously, or fined, censured, reprimanded or otherwise disciplined you?" (Ex. 3, p. 7; T. 21)

10. Respondent did not update his Physician Profile to reflect the fact that he had been disciplined by a "licensing or disciplinary authority." The section on "Out-of-State Actions" in his profile was last updated on February 27, 2002. Similarly, the section on "Current Limitations" was last updated on February 27, 2002. (Ex. 5, p. 3; T. 22)

11. As of May 8, 2017, Respondent's Physician Profile has not been updated. (Ex. 5)

12. The Respondent was personally served with a Notice of Hearing, Security Notice, Uniform Hearing Procedures and Statement of Charges at his last registration and confirmed address on March 18, 2017. (Ex. 2; Ex. 3, p. 7; T. 23-24)

DISCUSSION

Public Health Law § 2995-a requires that the Department collect certain information from licensees subject to the authority of the office of professional medical conduct and that this information be made available for dissemination to the public in "Physician Profiles." "[E]ach physician shall update his or her profile information within the six months prior to the expiration date of such physician's registration period, as a condition of registration renewal" and "physicians shall notify the department of any change in the profile information within thirty days of such change." PHL § 2995-a(4).

When Respondent renewed his registration in about November of 2016, he admitted that he had been disciplined, but he has never updated his Physician Profile or notified the Department of a change in information.

The Respondent is charged with a "willful or grossly negligent failure to comply with substantial provisions of . . . state . . . law" in the First Specification in the Statement of Charges in violation of Educ. Law § 6530(16). The hearing committee has determined that the Respondent was given ample opportunity to comply with his obligations under Public Health Law § 2995-a, but willfully failed to comply. **The First Specification in the Statement of Charges is unanimously Sustained.**

The Respondent is charged with "failing to file a report required by law or by the

department of health” in the Second Specification in the Statement of Charges in violation of Educ. Law § 6530(21). The hearing committee has determined that Respondent has failed to update the information he is required to report in his Physician Profile and, therefore, has failed “to file a report required by law or by the department of health.” The **Second Specification** in the Statement of Charges is unanimously **Sustained**.

DETERMINATION AS TO PENALTY

The Hearing Committee has considered the full range of penalties available pursuant to PHL § 230-a, including: (1) censure and reprimand; (2) suspension of the license, wholly or partially; (3) limitation on practice; (4) revocation of the license; (5) annulment of the license or registration; (6) limitation on registration or further licensure; (7) monetary penalties; (8) a course of education or training; (9) performance of public service; and (10) probation.

The committee was very concerned that, despite his knowledge of the requirements of PHL § 2995-a, Respondent has consistently refused to comply and has basically ignored the Department since an initial contact in April of 2016. The committee determined that Respondent should have his license suspended until such time as he complies with the provisions of PHL § 2995-a and updates his physician profile.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The first and second specifications in the Statement of Charges are sustained; and
2. Respondent’s license is suspended until such time as he complies with the provisions of PHL

§ 2995-a and updates his physician profile; and

3. This Order shall be effective on personal service on the Respondent, or seven (7) days after the date of mailing of a copy to Respondent's last known address by certified mail.

DATED: _____, New York

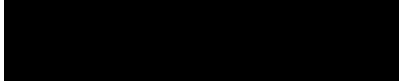
July 13, 2017


WILLIAM M. BISORDI, M.D., Chair,

THEA GRAVES PELLMAN
KENNETH J. STEIER, M.D.

TO:

Preston A. Wigfall, M.D.



John Thomas Viti, Associate Counsel
New York State Department of Health
Division of Legal Affairs
Bureau of Professional Medical Conduct
90 Church Street, 4th floor
New York, N.Y. 10007

APPENDIX I

IN THE MATTER

OF

Preston Wigfall, M.D.

STATEMENT

OF

CHARGES

PRESTON WIGFALL, M.D., the Respondent, was authorized to practice medicine in New York State on October 24, 1983, by the issuance of license number 156463 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. New York Public Health Law Article 29-D §2995-a requires the New York State Department of Health to collect certain information from New York State licensed physicians in order to create individual profiles on licensees in a format to be made available to the public. New York Public Health Law Article 29-D §2995-a(4) requires licensees to "In addition to such periodic reports and providing the same information, each physician shall update his or her profile information within the six months prior to the expiration date of such physician's registration period, as a condition of registration renewal under article one hundred thirty-one of the education law." Respondent, who last updated his profile on February 27, 2002, has failed, at least through March 3, 2017, to provide the information required.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

FAILURE TO COMPLY

Respondent violated New York Education Law §6530(16) by his willful or grossly negligent failure to comply with the substantial provisions of federal, state or local laws, rules or regulations governing the practice of medicine, in that Petitioner alleges the facts of:

1. Paragraph A.

SECOND SPECIFICATION

FAILURE TO FILE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

2. Paragraph A.

DATE: March 6, 2017
New York, New York



Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

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