



Department of Health

ANDREW M. CUOMO
Governor

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

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

May 27, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hannah E.C. Moore
NYS Department of Health
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237

Thomas K. Wittig, Esq.
Voute, Lohrfink, Magro & McAndrew, LLP
170 Hamilton Avenue
White Plains, New York 10601



RE: In the Matter of Stephen Blumberg, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 20-135) 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:

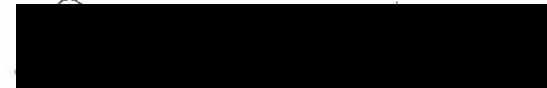
James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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,

A solid black rectangular redaction box covering the signature of James F. Horan.

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

COPY

-----X
IN THE MATTER
OF
STEPHEN BLUMBERG, M.D.
-----X

DETERMINATION
AND
ORDER

BPMC-20-135

A hearing was held on May 13, 2020, remotely via WebEx. Pursuant to Public Health Law (PHL) § 230(10)(e), Peter B. Kane, M.D., Chairperson, Joseph S. Baler, M.D., and David F. Irvine, DHSc, P.A., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Tina M. Champion, Administrative Law Judge (ALJ), served as the Administrative Officer.

The Department appeared by Hannah E.C. Moore, Assistant Counsel. A Notice of Referral Proceeding and Statement of Charges, both dated January 7, 2020, were duly served upon Stephen Blumberg, M.D., (Respondent), who appeared at the hearing by Voute, Lohfink, Magro & McAndrew, LLP, Thomas K. Wittig, Esq., of counsel.¹

The Hearing Committee received and examined documents from the Department (Exhibits 1-4) and from the Respondent (Exhibits A-B). The Hearing Committee heard testimony from the Respondent. A stenographic reporter prepared a transcript of the hearing.

After consideration of the entire record, the Hearing Committee unanimously votes 3-0 to sustain the charges that the Respondent committed professional misconduct in violation of Education Law (Educ. Law) § 6530(9)(d), and that the penalties of censure and reprimand with probation are appropriate.

¹ This matter was initially scheduled for a hearing on February 20, 2020 and was adjourned to May 13, 2020.

BACKGROUND

The Department brought this 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)(d) for "[h]aving his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state." Pursuant to PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence. 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."

FINDINGS OF FACT

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

1. Stephen Blumberg, M.D., the Respondent, was licensed to practice medicine in New York on July 13, 1988 by issuance of license number 175193 by the Education Department. (Ex. 4.)
2. Respondent is a cardiologist and cardiac electrophysiologist practicing medicine in Delaware. (Ex. A.)

3. On July 16, 2019, the Delaware Board of Medical Licensure and Discipline issued an Order approving and entering a Consent Agreement between the Respondent and the Delaware Board. The Order imposed disciplinary action against the Respondent for failing to adequately maintain and properly document patient records, and for engaging in misconduct or a pattern of negligence in the practice of medicine for incidents involving three patients. Pursuant to the Consent Agreement, the Respondent received a letter of reprimand and was ordered to complete four (4) hours of continuing education in record-keeping and documentation. (Ex. 3.)

VOTE OF THE HEARING COMMITTEE

The Hearing Committee, by a vote of 3-0, sustains the charge that the Respondent committed professional misconduct as defined in Educ. Law § 6530(9)(d).

HEARING COMMITTEE DETERMINATIONS

The Department charged the Respondent with professional misconduct pursuant to Educ. Law § 6530(9)(d). The charge contains one specification alleging the Respondent had disciplinary action taken by a duly authorized professional disciplinary agency of another state. The Hearing Committee concludes that the conduct resulting in the Delaware disciplinary action, if committed in New York State, would constitute professional misconduct under the laws of New York State as defined in Educ. Law § 6530(3) for practicing the profession with negligence on more than one occasion and Educ. Law § 6530(32) for failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.

In considering the full spectrum of penalties available under PHL § 230-a, the Hearing Committee found helpful the testimony provided by the Respondent at the hearing. The Respondent testified that he has been practicing medicine for 28 years, is licensed in multiple states, and is board certified in multiple specialties. Regarding record keeping and documentation, the Respondent testified that his errors with two patients were the result of copying a preceding template in an

electronic medical record and pressing sign rather than save to review the document later as he intended. Regarding a defibrillator placement in a third patient, the Respondent testified that he has placed over three thousand (3,000) devices and this is the first occurrence of implanting a device without first obtaining an echocardiogram to determine if the device was medically appropriate. He further testified that he became aware of his failure to obtain an echocardiogram during the procedure, that an echocardiogram was performed and revealed that the device was not medically appropriate, that he immediately removed the device, and that he explained what happened and apologized to the patient's wife while the patient was still recovering from anesthesia and then again to the patient when he woke up. The Respondent testified that he no longer uses the copy template feature in his medical records and that he thinks about the defibrillator patient all the time.

The Department has recommended that the Respondent be subject to a censure and reprimand, a fine, and three years of probation with a practice monitor for record review. The Department also recommends that the Respondent be required to provide the Director of the Office of Professional Medical Conduct with notice of his return to the practice of medicine in New York.


The Hearing Committee, after considering all the evidence before them, feels that a censure and reprimand is appropriate in this matter, but concluded that a fine is not appropriate. The Respondent has remedied the issue at the root of his medical record-keeping mistakes and he has completed the continuing education required by the Delaware Board. (Ex. B.) He also testified as to immediately taking responsibility for his failure to obtain an echocardiogram for the defibrillator patient and the effect it has had on him. The Hearing Committee does not feel that a fine, in addition to censure and reprimand, would serve any purpose. The Hearing Committee does find that a one-year probation with a practice monitor for record review is appropriate if the Respondent begins practicing in New York in the future.

ORDER

Now, after reviewing the evidence from the hearing, it is hereby ordered that:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is sustained;
2. The Respondent is subject to censure and reprimand pursuant to PHL § 230-a(1).
3. The Respondent is subject to probation pursuant to PHL § 230-a(9) for a period of one year in accordance with the Terms of Probation annexed hereto if the Respondent begins practicing in New York, which includes requirements pertaining to providing notice to the Director of the Office of Professional Medical Conduct of practice locations; and
4. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

Dated: May 22, 2020
Syracuse, New York


Peter B. Kane, M.D., Chairperson
Joseph S. Baler, M.D.
David F. Irvine, DHSc, P.A.

Hannah E.C. Moore
Assistant Counsel
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Thomas K. Wittig, Esq.
Voute, Lohrfink, Magro & McAndrew, LLP
170 Hamilton Avenue
White Plains, New York 10601

Stephen Blumberg, M.D.


APPENDIX I

IN THE MATTER
OF
STEPHEN M. BLUMBERG, M.D.

STATEMENT
OF
CHARGES

STEPHEN M. BLUMBERG, M.D., the Respondent, was authorized to practice medicine in New York State on or about 07/13/1988, by the issuance of license number 175193 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 16, 2019, the Delaware Board of Medical Licensure and Discipline issued an Order approving and entering a Consent Agreement between the Respondent and the Delaware Board of Medical Licensure and Discipline. The Order imposed disciplinary action against Respondent, a cardiologist, for failing to adequately maintain and properly document patient records, and for engaging in misconduct or a pattern of negligence in the practice of medicine, for incidents involving three of his patients. Pursuant to the Consent Agreement, Respondent received a letter of reprimand; and was ordered to complete continuing education in record-keeping and documentation.

B. The conduct resulting in the Delaware disciplinary action against Respondent constitutes 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) (practicing the profession with negligence on more than one occasion); and/or
2. New York Education Law § 6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient)

SPECIFICATION OF CHARGES

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §§ 6530[3], [32]) as alleged in the facts of the following:

1. Paragraphs A and B.

DATE: January 7, 2020
Albany, New York


TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX II

TERMS OF PROBATION

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to PHL § 230(19).
2. Respondent shall maintain active registration of his license with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of his employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of his compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if he is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30-day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in the Determination and Order or as are necessary to protect the public health.
6. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
7. Respondent shall practice medicine in New York State only when monitored by a licensed physician, board certified in an appropriate specialty (practice monitor), who is proposed by Respondent and subject to the written approval of the Director of the OPMC.
 - a. Respondent shall make available to the monitor any and all records requested by the monitor. The practice monitor shall on a monthly basis examine a selection (no fewer than 20) of records maintained by the Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to the OPMC.

- b. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of the OPMC.
 - c. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with § 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent commencing practice within the State of New York.
8. The terms set forth in the paragraphs above are the minimum probation terms to be imposed on the Respondent, and other terms may be added by the Director of the OPMC. All compliance costs, including expenses and fees associated with the practice monitor, shall be the Respondent's responsibility.
 9. Respondent shall comply with these probationary terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.