

November 13, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Albert Zamek, M.D.
424 90th Street
Surfside, Florida 33154

Michael G. Bass, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Albert Zamek, M.D.
REDACTED

RE: In the Matter of Albert Zamek, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-374) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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 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
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

ALBERT ZAMEK, M.D.
CO-11-12-6956-A

DETERMINATION

AND

ORDER

BPMC #13-374

COPY

A hearing was held on September 19, 2013, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and Statement of Charges dated May 8, 2013, were served upon the Respondent, **Albert Zamek, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Jerry Waisman**, Chairperson, **Elsa J. Wu, M.D.**, and **Paul J. Lambiase**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **William J. Lynch, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **James E. Dering, Esq.**, General Counsel, by **Michael G. Bass, Esq.**, of Counsel. The Respondent did not appear at the hearing.

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)(b) and 6530(9)(d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

At Respondent's request, the hearing which was initially scheduled for July 24, 2013 was adjourned to September 19, 2013. At Respondent's September 12, 2013 request, a conference call was arranged with the administrative law judge and Petitioner's attorney. Respondent contended that the Department was precluded from going forward with the hearing because he did not have an opportunity to be interviewed by the office of professional medical conduct as required by section 230(10)(a)(iii) of the Public Health Law. That section, however, specifically applies to the investigation of cases referred to an investigation committee as distinguished from the investigation of cases such as this proceeding which are brought at the direction of the director of the office of professional medical conduct. Accordingly, the administrative law judge found the argument without merit and advised Respondent that the hearing would proceed as scheduled. I further note that, although not required, the Department indicated that Respondent had been given notice of an opportunity to be interviewed, but failed to avail himself of that opportunity.

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concluded that Respondent's conduct would constitute misconduct under the laws of New York State as practicing the profession fraudulently (Education Law section 6530[2]) and as failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient (Education Law section 6530[32]).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York State Education Law Section 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based 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(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. After considering the documentary evidence concerning service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Ex. 2), the Administrative Law Judge ruled that the Petitioner had met the requirements of law for service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed on the merits despite Respondent's absence.

The findings adopted by the Florida Board indicate that a patient went to the medical office of Drs. John and David Nehme for an appointment with Dr. David Nehme; however, Dr. Nehme was not at that location on that day. When Respondent, who was renting a portion of Dr. Nehme's office space, came out to the unstaffed reception area, the patient told Respondent that she had an appointment with Dr. Nehme. Respondent asked the patient to fill out intake forms which she did. Respondent then brought the patient to an examination room and conducted an examination. When the patient asked Respondent if he was John or David (an obvious reference to Drs. John and David Nehme), Respondent (whose first name is Albert) falsely answered, "John." When the patient then asked if David was his father, Respondent falsely replied, "David is my uncle." Respondent created no medical record of this encounter. The ultimate finding adopted by the Florida Board was that Respondent had misled the patient regarding his identity, thereby making deceptive and/or untrue representations in or relating to the practice of medicine and that Respondent failed to create a medical record in connection with his examination.

Although Respondent did not appear at the hearing, he did submit a written answer and letters of character reference. Respondent's answer indicates, inter alia, that he disagrees with the findings made by the Administrative Law Judge in Florida; that New York should not impose any discipline because the conduct did not occur within this State, and that the incident which occurred in 2005 is the only conduct charged against him during his more than twenty years of medical practice. The New York Public Health Law, however, provides that the evidence in a referral proceeding is strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee.

The Department indicated that revocation of Respondent's license to practice medicine in New York was within reason, but asked that the Hearing Committee, at a minimum, impose a Censure and Reprimand, and that the Respondent serve a period of probation with a practice monitor if he returns to practice in New York.

The Hearing Committee felt that revocation of Respondent's license was too severe a penalty in light of the time that has passed since Respondent's conduct with no further known incident; however, the fraudulent nature of his conduct does warrant significant oversight of Respondent's conduct should he ever return to practice medicine here. Therefore the Hearing Committee unanimously decided to impose a Censure and Reprimand, and to require that Respondent be placed on probation with a practice monitor for a period of three years.

ORDER

IT IS HEREBY ORDERED THAT:

Respondent shall and hereby does receive a Censure and Reprimand. Respondent's license to practice medicine in New York State shall be placed on probation for a term of three years from the effective date of this Determination and Order. The complete terms of probation which shall include a requirement that Respondent must have a practice monitor during the probationary period as set forth in Appendix II of this Determination and Order and incorporated therein; and

This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: New York, New York
Nov. 7, 2013

REDACTED

~~Jerry Waisman~~
Chairperson

Elisa J. Wu, M.D.
Paul J. Lambiase

APPENDIX I

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



IN THE MATTER NOTICE OF
OF REFERRAL
ALBERT ZAMEK, M.D. PROCEEDING
CO-11-12-6956-A

TO: Albert Zamek, M.D.
424 90th Street
Surfside, FL 33154

Albert Zamek, M.D.
REDACTED

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 24th day of July, 2013, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges that is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten (10) 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. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated 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 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 and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here _____

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five (5) days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

May 8 . 2013

REDACTED

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

Inquiries should be addressed to:

Michael G. Bass
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower - Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

STATEMENT

OF

OF

ALBERT ZAMEK, M.D.
CO-11-12-6956-A

CHARGES

ALBERT ZAMEK, M.D., Respondent, was authorized to practice medicine in New York state on or about February 23, 1990, by the issuance of license number 181578 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 28, 2011, the State of Florida, Division of Administrative Hearings (hereinafter "ALJ"), by RECOMMENDED ORDER, found that the Florida Department of Health established by clear and convincing evidence that during his February 25, 2005, examination of a patient Respondent misled the patient regarding his identity, and therefore made deceptive and/or untrue representations in or relating to the practice of medicine. The ALJ also found that the Florida Department of Health established by clear and convincing evidence that Respondent failed to create any medical records with respect to his examination of the aforementioned patient. On or about December 12, 2011, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by FINAL ORDER, (hereinafter "Florida Order"), approved and adopted the findings of fact set forth in the RECOMMENDED ORDER and ORDERED that Respondent pay a \$5,000.00 fine, complete six hours of continuing medical education in the area of ethics, complete the medical records course sponsored by the Florida Medical Association and be issued a letter of concern by the Florida Board.

B. The conduct resulting in the Florida 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 Section 6530(3) (practicing the profession fraudulently); and/or
2. New York Education Law Section 6530(32) (failure to maintain a record).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(b) by having been found guilty of improper professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based 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 B.

SECOND 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, in that Petitioner charges:

2. The facts in Paragraphs A and B.

DATED: *May 8*, 2013
Albany, New York

REDACTED

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

APPENDIX II

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit a written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway Suite 355, Albany, New York 12204 which shall include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of the OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of the OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Within thirty (30) days of the effective date of the Order and throughout the probationary period, Respondent shall practice medicine in the State of New York only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.
 - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection of records maintained by Respondent, including patient records, prescribing information and office records.

The review will determine whether the Respondent's medical practice is conducted in accordance with the 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 OPMC.

- b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - 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 Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
8. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order, and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.