



Department of Health

ANDREW M. CUOMO
Governor

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

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

June 22, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael Dimayuga, M.D.
800 Sterthaus Avenue, Suite B
Ormond Beach, Florida 32174

Michael Dimayuga, M.D.


Anna Lewis, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

RE: In the Matter of Michael Dimayuga, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 17-171) 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.

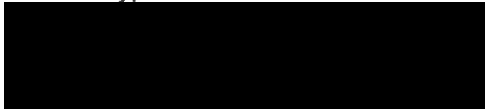
The notice of review served on the Administrative Review Board should be forwarded to:

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

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IN THE MATTER
OF
MICHAEL DIMAYUGA, M.D.

DETERMINATION
AND
ORDER

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BPMC-17-171

The New York State Department of Health (“Department”) charged Michael Dimayuga, M.D. (“Respondent”), with professional misconduct in violation of New York State Education Law § 6530(9)(d). The Department alleges that actions taken by Respondent, for which his medical license was disciplined in another state, constitute professional misconduct under the laws of New York State.

A hearing was held on April 19, 2017. Administrative Law Judge Jankhana Desai presided over the hearing. Pursuant to Section 230(10)(e) of the Public Health Law (“PHL”), Airlie A.C. Cameron, M.D., Chairperson, Iffath Abbasi Hoskins, M.D., and Ruth Horowitz, Ph.D., duly designated members of the State Board for Professional Medical Conduct (“BPMC”), served as the Hearing Committee (“Committee”).

The Department appeared by Anna Lewis, Associate Counsel for the Bureau of Professional Medical Conduct. Respondent did not appear at the hearing. Evidence was received, and a transcript of the proceeding was made. After consideration of the entire record, the Committee voted 3-0 to sustain the charge of professional misconduct and revoke Respondent’s license to practice medicine in New York State.

BACKGROUND

This case was brought pursuant to PHL § 230(10)(p), a statute that provides for a direct referral proceeding when a licensee is charged solely with a violation of Educ. Law § 6530(9). In this case, Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(d), for “having his ... license to practice medicine revoked, suspended or having other disciplinary action taken...” 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. Respondent’s license was disciplined in the State of Florida, and the Department charges that the underlying conduct in Florida violates Educ. Law § 6530(29) (violating any terms of probation or condition or limitation imposed on the licensee pursuant to § 230 of the Public Health Law).

The scope of this direct referral hearing is limited to whether there was a relevant administrative determination in another state and if so, an assessment of the nature and severity of the penalty to be imposed upon the licensee.

PROCEDURAL HISTORY

Respondent did not appear at the hearing, either in person or by counsel. The Department’s evidence established that the Department had met the requirements of law for due diligence in the service of process, that jurisdiction has been established over Respondent, and that the hearing could proceed on the merits notwithstanding Respondent’s absence.

The Notice of Hearing states the following:

Pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges at least ten days prior to the date of the hearing. Any charge and allegation not so answered shall be deemed admitted.

Respondent failed to file any answer to the charges and allegations in the Statement of Charges. At the Department's request, and pursuant to PHL § 230(10)(p), the charges and allegations were deemed admitted.

FINDINGS OF FACT

The Committee made the following findings of fact unanimously:

1. Respondent was authorized to practice medicine in New York State on January 3, 1991, by the issuance of license number 184578, by the New York State Education Department.
2. On December 7, 2012, the Florida Board of Medicine ("Florida Board") rendered a Final Order requiring Respondent to comply with the terms and conditions of that Final Order.
3. On January 10, 2014, the Florida Board filed an Administrative Complaint against Respondent alleging his lack of compliance with the December 7, 2012 Final Order, in violation of Florida statutes.
4. On March 2, 2014, Respondent and the Florida Board entered into a Settlement Agreement to resolve the January 10, 2014 Administrative Complaint.
5. By Order dated June 13, 2014, the Florida Board adopted the March 2, 2014 Settlement Agreement as a Final Order.
6. Pursuant to the June 13, 2014 Final Order, the Florida Board imposed the following: a Reprimand against Respondent's license, an administrative fine of \$10,000, reimbursement of costs of \$1455.73, and a course entitled "Legal and Ethical Implications in Medicine: Physician's Survival Guide – Laws and Rules" or a Board-approved equivalent course.

VOTE OF THE COMMITTEE

Respondent failed to comply with the terms of the Florida Order, and such failure would constitute professional misconduct in New York under Educ. Law § 6530(29). Therefore, the Committee unanimously sustained the charge that Respondent committed professional misconduct as defined in Educ. Law § 6530(9)(d).

COMMITTEE DETERMINATION

Respondent was deemed to have admitted the factual allegations and specification of misconduct contained in the Statement of Charges because he failed to file a written answer. In addition, the Department's documents admitted into evidence fully supported the allegations. The Committee unanimously sustained the specification of misconduct contained in the Statement of Charges.

The Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. The Committee found that Respondent failed to abide by the terms of the Florida Order, such as paying his fines and taking the required course. Respondent's failure to appear at the hearing deprived the Committee of any opportunity to consider mitigating evidence. The Committee unanimously concluded that public protection demands that Respondent's license to practice medicine in New York State be revoked.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.
2. Respondent's license to practice medicine in New York State is hereby **REVOKED**.
3. This Determination and Order shall be effective upon service on the Respondent by personal service or by registered or certified mail as required by PHL 230(10)(h).

DATED: June 15, 2017


Airlie A.C. Cameron, M.D., Chairperson

Iffath Abbasi Hoskins, M.D.
Ruth Horowitz, Ph.D.

To:

Michael Dimayuga
800 Sterthaus Avenue, Suite B
Ormond Beach, FL 32174

Michael Dimayuga


Anna Lewis
Associate Counsel
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, NY 10007

APPENDIX 1

IN THE MATTER

OF

MICHAEL DIMAYUGA, M.D.

STATEMENT

OF

CHARGES

MICHAEL DIMAYUGA, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 3, 1991, by the issuance of license number 184578 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about March 2, 2014, Respondent and the Board of Medicine ("Board"), State of Florida, Department of Health, entered into a Settlement Agreement ("Agreement"). The Settlement was adopted by the Board as a final Order of the Board dated June 13, 2014. The Department of Health had previously charged Respondent in an Administrative Complaint (attached to the Agreement) that alleged violations of Section 458.331(1)(x), Florida Statutes (2012), 2013), for having failed to comply with any of the terms of a previous Board Order dated December 7, 2012.
1. Pursuant to the Order, the Board imposed the following: a Reprimand against Respondent's license; an administrative fine in the amount of ten thousand dollars (\$10,000); reimbursement of costs in the amount of nine hundred and seventy-six dollars and fifty-three cents (\$976.53) (the Board modified the costs to one thousand, four hundred and fifty-five dollars and seventy-three cents (\$1,455.73); and a course entitled "Legal and Ethical Implications in Medicine: Physician's Survival Guide" or a Board-approved equivalent course.
 2. The conduct resulting in the Board's Order against Respondent would constitute misconduct under the laws of New York State pursuant to New York Education

Law §6530(29)(violating any term of probation or conduct or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law).

SPECIFICATION OF CHARGES
HAVING HAD DISCIPLINARY ACTION TAKEN

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(29)) as alleged in the facts of the following:

1. Paragraphs A. and A.1. and A.2.

DATE: February 14, 2017
New York, New York



Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct