



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

March 10, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anthony Picchiello, M.D.


Paul Tsui, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Anthony Picchiello, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 16-081) 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:cah
Enclosure

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

X

IN THE MATTER
OF
ANTHONY PICCHIELLO, M.D.

DETERMINATION
AND
ORDER

X

BPMC #16-081

COPY

A hearing was held on January 14, 2016, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding, dated November 6, 2015 and a Statement of Charges, November 10, 2015, were served upon Anthony Picchiello, M.D., ("the Respondent").

Pursuant to Section 230(10)(e) of the Public Health Law, Dennis P. Zimmerman, M.S., Chair, Arsenio G. Agopovich, M.D., and Reid T. Muller, M.D., 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 Richard J. Zahnleuter, Esq., General Counsel, by Paul Tsui, Esq., of Counsel. The Respondent, Anthony Picchiello, M.D., did appear, *pro se*, and was duly served. 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 Education Law §6530(9)(d) – by having his license to practice medicine suspended, or having other disciplinary action taken, after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension or disciplinary action would, if committed in New York State, constitute professional misconduct.

The Respondent is also charged with professional misconduct pursuant to Education 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.

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:

Anthony Picchiello, M.D.

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. **Anthony Picchiello, M.D.**, the Respondent, did appear at the hearing, *pro se*, and was duly served and notified of the hearing by personal service on November 12, 2015. (Petitioner's Ex. 2)

2. **Anthony Picchiello, M.D.**, the Respondent, was authorized to practice medicine in New York State on or about March 17, 1994, by the issuance of license number 195189 by the New York State Education Department. (Petitioner's Ex. 3)

3. On or about February 16, 2015, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), approved and adopted a Settlement Agreement dated October 30, 2014, entered into by the Florida Department of Health and Respondent. Respondent's Florida medical license # ME67232 was Reprimanded and Suspended pending Respondent undergoing an

evaluation and appearing before the Florida Board's Probation Committee to determine whether to reinstate Respondents license and the conditions of reinstatement.

(Petitioner's Ex. 5)

4. Respondent was ordered to pay a fine of \$20,000.00, pay costs of \$8,169.77, and successfully complete courses on prescribing controlled substances and quality medical record keeping. (Petitioner's Exhibits 4 and 5)

5. The Florida Board's disciplinary action was based upon the treatment that Respondent provided a patient from on or about March 13, 2006, to on or about May 11, 2012, at which time the patient died as the result of polydrug toxicity. The Florida Department of Health charged Respondent with failing to practice medicine in accordance with that level of care, skill and treatment, which is recognized by a reasonably prudent physician as being acceptable under similar conditions and circumstances; prescribing legend drugs, including controlled substances, for the treatment of pain other than in the course of his professional practice by prescribing them inappropriately or in excessive or inappropriate quantities, without regard to the patient's best interests; and failing to maintain records that justified the course of treatment of the patient, including, but not limited to, patient histories, examination results, test results, records of drugs prescribed, dispensed, or administered, and reports of consultations and hospitalizations. (Petitioner's Ex. 6)

6. On or about February 4, 2015, Respondent prepared and/or submitted to the New York State Education Department, a Registration Renewal Document, wherein he falsely answered "No" to question #4 which asked, "Since your last registration application, are charges pending against you in any jurisdiction for any sort of professional misconduct?" (Petitioner's Ex. 7)

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law § 6530(9)(d) by having his license to practice medicine suspended, or having other disciplinary action taken, after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension or disciplinary action would, if committed in New York State, constitute professional misconduct..." :

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law § 6530(21) by willfully making or filing a false report, or failing to file a report required by law of by the department of health or the education department..."

VOTE: Not Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, *pro se*, and was personally served with process. (Petitioner's Exhibit 2)

The record in this case indicates that Respondent entered into a Consent Agreement and Order with the Florida Medical Board wherein Respondent admitted to unprofessional medical conduct based upon his treatment a patient who died as a

result of an over-dose of the drugs prescribed by the Respondent. On the first specification the panel found that this Consent Order alone would sustain the charge brought by the Department. The Department's attorney asked for a penalty of a Censure and Reprimand and a Suspension of his New York license pending the resolution of the Florida penalty. Furthermore, in the event the Respondent should decide to return to practice in New York, the Department asked for a period of probation of three to five years coupled with a practice monitor. In his defense, the Respondent testified and presented a letter of explanation that was received into evidence as Respondent's Exhibit A.

According to the Respondent, he had treated this patient for six years and made multiple psychiatric referrals and told the patient and her parents of the need for psychiatric treatment, all to no avail. The Respondent testified that he continued to treat this patient because he realized that, if he discharged her, he was afraid she would do something to hurt herself. The Respondent acknowledged that he made a mistake and should have held her accountable for not following the treatment plan.

The panel was impressed with the candor and apparent remorse shown by the Respondent and recognized that there was only one patient involved in the over prescribing by the Respondent.

As for the second charge, the Respondent admits he made a mistake on the New York registration form but claimed that it was an inadvertent error and that he had no intention to mislead. The panel determined that he was careless but found that his actions were not willful and so did not sustain the charge of making a false report.

The panel reviewed the entire record in this matter and considered the full range of penalties available pursuant to PHL §230-a, and determined the appropriate penalty to be a Suspension of his New York license until such time as the Florida restrictions on his license are lifted and he is restored to full practice, without restriction in that State.

The panel further determined that if the Respondent decided to return to New York he would then be placed on probation, with a practice monitor, for a minimum of two (2) years under such terms as determined by the Director of OPMC.

ORDER

IT IS HEREBY ORDERED THAT:

1. The first specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.

2. The second specification of professional misconduct, as set forth in the Statement of Charges, is **NOT SUSTAINED**.

3. The Respondent's license to practice medicine in New York is **Suspended** until such time as he is cleared for full practice by the Florida Board of Medicine and the restrictions imposed on his license in that State has been lifted.

4. Should the Respondent decide to return to practice in New York State he then is to be placed on a term of probation, with a practice monitor, under terms to be determined by the Director of OPMC for a minimum of two (2) years.

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

DATED: Saratoga Springs, New York
~~February~~ _____, 2016
March 7



Dennis P. Zimmerman, M.S., Chair

Arsenio G. Agopovich, M.D.
Reid T. Muller, M.D.,

To: Anthony Picchiello, M.D.



Paul Tsui, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Coming Tower Building, Room 2512
Albany, New York 12237

APPENDIX 1

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

IN THE MATTER
OF
ANTHONY PICCHIELLO, M.D.

NOTICE
OF
HEARING

TO: Anthony Picchiello, M.D.
746 Renegade Lane
Port Orange, FL 32129

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. 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 January 14, 2016 at 10:30 a.m., at the Offices of the New York State Department of Health, Riverview Center, 150 Broadway, Menands, NY, 12204, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf, in a manner and form as prescribed by the civil practice law and rules, in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

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

Department attorney: Initial here [REDACTED]

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone 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 HORAN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears

EXHIBIT
#1

below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges no later than ten days prior to the date of the hearing. Any charge and 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. 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 N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the 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 or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

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

Dated: Albany, NY
November 16, 2015


Michael A. Hiser
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be directed to:

Paul Tsui
Associate 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
OF
ANTHONY PICCHIELLO, M.D.
CO-15-03-1269A

STATEMENT
OF
CHARGES

ANTHONY PICCHIELLO, M.D., Respondent, was authorized to practice medicine in New York State on March 17, 1994, by the issuance of license number 195189 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 16, 2015, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), approved and adopted a Settlement Agreement dated October 30, 2014, entered into by the Florida Department of Health and Respondent. Respondent's Florida medical license no. ME67232 was Reprimanded and Suspended pending Respondent undergoing an evaluation and appearing before the Florida Board's Probation Committee to determine whether to reinstate Respondent's license and the conditions of reinstatement. Respondent was ordered to pay a fine of \$20,000.00, pay costs of \$8,169.77, and successfully complete courses on prescribing controlled substances and quality medical record keeping. The Florida Board's disciplinary action was based upon the treatment that Respondent provided a patient from on or about March 13, 2006, to on or about May 11, 2012, at which time the patient died as the result of polydrug toxicity. The Florida Department of Health charged Respondent with failing to practice medicine in accordance with that level of care, skill and treatment, which is recognized by a reasonably prudent physician as being acceptable under similar conditions and circumstances; prescribing legend drugs, including controlled substances, for the treatment of pain other than in the course of his professional practice by prescribing them inappropriately or in excessive or inappropriate quantities, without regard to the patient's best interests; and failing to maintain records that justified the course of treatment of the patient, including, but not limited to, patient histories, examination results, test results, records of drugs prescribed, dispensed, or administered, and reports of consultations and hospitalizations.

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) (Practicing the profession with negligence on more than one occasion); and/or
2. New York Education Law §6530(5) (Practicing the profession with incompetence on more than one occasion); and/or
3. New York Education Law §6530(32) (Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

C. On or about February 4, 2015, Respondent prepared and/or submitted to the New York State Education Department, a Registration Renewal Document, wherein he falsely answered "No" to question #4 which asked, "Since your last registration application, are charges pending against you in any jurisdiction for any sort of professional misconduct?" Respondent made the false representation concealing information that should have been disclosed, knowing the representation was false, and intending to mislead through the false representation.

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension or other disciplinary action involving the license would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

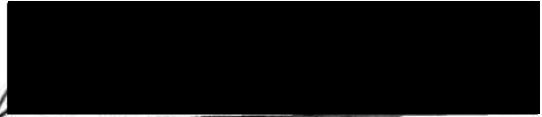
1. The facts in Paragraphs A and B and B1, A and B and B2, and/or A and B and B3.

SECOND SPECIFICATION

Respondent violated New York Education 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, in that Petitioner charges:

2. The facts in Paragraph C.

DATED: *Nov. 10*, 2015
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct