



## Department of Health

ANDREW M. CUOMO  
Governor

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

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

November 27, 2019

### **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Quintairos, Prieto, Wood & Boyer, P.A.  
505 Fifth Avenue  
Fifth Floor  
New, New York 10017

Hannah E.C. Moore, Esq.  
Bureau of Professional Medical Conduct  
Corning Tower Building, Room 2512  
Empire State Plaza  
Albany, New York 12237

**RE: In the Matter of Leovares Mendez, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 19-295) 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: cmg  
Enclosure

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

**COPY**

-----X  
**IN THE MATTER**  
  
**OF**  
  
**LEOVARES MENDEZ M.D.**  
  
-----X

**DETERMINATION**  
  
**AND**  
  
**ORDER**  
19-295

A hearing was held on November 13, 2019, at the offices of the New York State Department of Health (Department), 150 Broadway, Menands, New York. Pursuant to §230(10)(e) of the New York State Public Health Law (PHL), LYON M. GREENBERG, M.D., Chairperson, MARY E. RAPPAZZO, M.D., and JANET R. AXELROD ESQ., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. SEAN D. O'BRIEN, ADMINISTRATIVE LAW JUDGE (ALJ), served as the Administrative Officer.

The Department appeared by Assistant Counsel Hannah E.C. Moore. A Notice of Referral Proceeding and Statement of Charges, dated October 2, 2019, were duly served pursuant to PHL §230(10)(d)(i) upon Leovares Mendez, M.D. (Respondent), who appeared in person along with his attorney Heather M. Palmore, Esq. (Exhibits 1, 2, 3, and 4). The Hearing Committee received and examined documents from the Department (Exhibits 1-8) and from the Respondent (Exhibit A) and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charges that the Respondent committed professional misconduct, in violation of New York State Education Law (Educ. Law) Sections 6530(2), 6530(3), and 6530(22), and that pursuant to New York State Public Health Law Section (PHL) 230-a, the penalty of suspension of his medical license is appropriate.

## BACKGROUND

The Department has brought this case pursuant to PHL Section 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Educ. Law Section 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law Section 6530(9)(d), by having had his license to practice medicine revoked, or suspended, or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in such action would, if committed in New York State, constitute professional misconduct under the laws of New York State. Under PHL Section 230(10), the Department has the burden of proving its case by a preponderance of the evidence.

## FINDINGS OF FACT

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

1. The Respondent was licensed to practice medicine in New York State on August 24, 1999, by the issuance of license number 215509. (Exhibit 8).
2. On June 14, 2019, the State of Texas Medical Board (Texas Board) issued an Agreed Order with the Respondent. The Respondent was represented by legal counsel and Respondent voluntarily agreed to the findings, conclusions of law and the terms and conditions of the Agreed Order. (Exhibit 3).
3. The Agreed Order imposed disciplinary action against the Respondent based on findings the Respondent violated the standard of care for one patient by prescribing controlled substances without appropriate documentation of the physical exam. The Agreed Order also states that a Federal

Temporary Restraining Order was entered against the Respondent by the United States District Court, Northern District of Texas, Dallas Division (Civil Case No: 3;19-CV-1055-S) for issuing prescriptions for a variety of controlled substances, all or some portion of which, were issued without a legitimate medical purpose and outside the usual course of professional practice (Exhibits 3, 5, 6, 7).

4. Per the Agreed Order, the Respondent was ordered to: surrender his Drug Enforcement Administration (DEA) Controlled Substances Registration Certificate; be subject to a practice monitor; take a Continuing Medical Education (CME) in medical record keeping; comply with the Federal Temporary Restraining and/or Temporary Injunction Order and pay a \$3,000.00 administrative penalty. (Exhibit 3).

### **VOTE OF THE HEARING COMMITTEE**

#### **FIRST SPECIFICATION**

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed professional misconduct as defined in Education Law Section 6530(2).

VOTE: Sustained (3-0)

#### **SECOND SPECIFICATION**

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed professional misconduct as defined in Education Law Section 6530(3).

VOTE: Sustained (3-0)

#### **THIRD SPECIFICATION**

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed professional misconduct as defined in Education Law Section 6530(22).

VOTE: Sustained (3-0)

### CONCLUSIONS OF LAW

The Hearing Committee reviewed the Department's evidence showing that the Agreed Order with the Texas Board was signed and agreed to by Respondent. The Texas Board is a duly recognized medical disciplinary authority. The Respondent was represented by counsel before the Texas Board and voluntarily agreed to the findings of fact, conclusions of law and the terms and conditions of the Agreed Order (Exhibit 3).

The Agreed Order states the Respondent prescribed controlled substances to one patient without appropriate documentation of the physical exam and a Temporary Federal Restraining Order was entered against the Respondent for issuing prescriptions for variety of controlled substances, all or some portion of which, were issued without a legitimate medical purpose and outside the usual course of professional practice. In New York, such conduct would constitute practicing the profession fraudulently or beyond its authorized scope as defined in Educ. law Section 6530(2); and his conduct would have also constituted negligence on more than one occasion, as defined in Educ. Law Section 6530(3). In addition, per the Agreed Order, the Respondent did not have proper documentation of a patient's physical exam. New York also requires doctors to maintain records for each patient which accurately reflects the evaluation and treatment for each patient. If the Respondent had disregarded this obligation in New York, his conduct would have constituted professional misconduct as defined in Educ. Law Section 6530(22).

At the hearing, the Respondent disputed the underlying allegations in the civil case now pending against him in Federal District Court in Dallas. However, in the Agreed Order, the Respondent acknowledged and agreed that he "...violated the standard of care by prescribing

controlled substances to one patient without appropriate documentation of the physical exam.” (Exhibit 3). The Agreed Order also finds that the Federal Temporary Restraining Order “...was entered against the Respondent for issuing prescriptions for a variety of controlled substances...all or some portion of which were issued without a legitimate medical purpose and outside the usual course of professional practice.” (Exhibit 3). The Respondent was represented at the Texas Board proceedings and the Respondent voluntarily agreed to the language in the Agreed Order. (Exhibit 3).

Where an action is brought per Educ. Law Section 6530(9), as is the case here, the Hearing Committee is limited to the nature and penalty to be imposed on the Respondent. (PIIL Section 6530(10)(p). Therefore, in considering the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties the Hearing Committee disagrees with the Department’s recommendation that the Respondent’s medical license in New York State be revoked pursuant to PIIL Section 230-a(4).

The Hearing Committee is mindful of the serious nature of the Respondent’s misconduct. However, the civil case against the Respondent is still pending in Federal District Court in Dallas. The Hearing Committee struggled as to imposing the penalty of revocation of the Respondent’s New York medical license but deemed it premature pending the final outcome of the Respondent’s Federal civil matter. This matter can be re-visited once the Respondent’s pending civil case is resolved.

In the meantime, the Texas Board has allowed the Respondent to practice medicine in Texas subject to the terms and conditions set forth in the Agreed Order. Respondent lives in the Dallas, Texas area and practices medicine in Texas and he has not lived nor practiced medicine in New York for several years. In addition, the Respondent has cooperated with authorities and his Federal District Court case is still pending. (Exhibit 3). The Hearing Committee determines the Texas Board, per the terms of the Agreed Order of June 14, 2019, will monitor the Respondent’s actions in Texas, but that

suspension of Respondent's New York medical license while the Respondent fulfills the terms and conditions of the Agreed Order is an appropriate penalty. The suspension period will be for twenty-four (24) months, which coincides with the eight consecutive monitoring periods which are three months each in length per the Agreed Order. The suspension period in New York will start retroactively to the date of the Agreed Order of June 14, 2019.

ORDER

**IT IS HEREBY ORDERED THAT:**

1. The three specifications of professional misconduct, as set forth in the Statement of Charges are sustained;
2. The Respondent's license to practice medicine in New York is **SUSPENDED** for twenty-four (24) months, pursuant to Public Health Law Section 230-a(2) retro-actively to June 14, 2019 the date of the Agreed Order with the Texas Board.
3. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL §230(10)(h).

**DATED NOVEMBER 26, 2019**

**NOV 26 2019**

Division of Legal Affairs  
Bureau of Adjudication

[REDACTED]

**Lyon M. Greenberg M.D.**  
**Chairperson**

**Mary E. Rappazzo, M.D.**  
**Janet R. Axelrod Esq.**

To: **Leovares Mendez M.D.**  
[REDACTED]

**Heather M. Palmore, Esq.**



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Assistant Counsel  
Bureau of Professional Medical Conduct  
Corning Tower Building – Room 2512  
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Albany, New York 12237

# APPENDIX I

IN THE MATTER

OF

LEOVARES MENDEZ, M.D.

STATEMENT

OF

CHARGES

LEOVARES MENDEZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about 08/24/1999, by the issuance of license number 215509 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about June 14, 2019, Respondent entered into an Agreed Order with the Texas Medical Board (hereinafter "Texas Board"). The Agreed Order imposed disciplinary action against Respondent based on findings that Respondent violated the standard of care by prescribing controlled substances to one patient without appropriate documentation of the physical exam, and that a Federal Temporary Restraining Order was entered against Respondent by the United States District Court, Northern District, Dallas Division, for issuing prescriptions for a variety of controlled substances, all or some portion of which were issued without a legitimate medical purpose and outside the usual course of professional practice.

B. Pursuant to the Agreed Order, Respondent was ordered to surrender his Drug Enforcement Administration (DEA) Controlled Substances Registration Certificate; be subject to a practice monitor; take a continuing medical education course in medical recordkeeping; comply with his court-ordered Temporary Restraining Order and/or Temporary Injunction Order; and pay a \$3,000.00 administrative penalty.

C. The conduct resulting in the Texas 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(2) (practicing the profession fraudulently or beyond its authorized scope)
2. New York Education Law § 6530(3) (practicing the profession with negligence on more than one occasion)
3. New York Education Law § 6530(22) (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[2], [3], and [32]) as alleged in the facts of the following:

1. Paragraphs A, B, and C.

DATE: October 2, 2019  
Albany, New York

  
TIMOTHY J. MAHAR  
Deputy Counsel  
Bureau of Professional Medical Conduct