



Department of Health

ANDREW M. CUOMO
Governor


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

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

January 29, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Jennifer Smith, M.D.


RE: In the Matter of Jennifer Smith, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 21-021) 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.

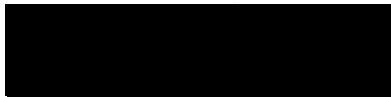
The notice of review served on the Administrative Review Board should be forwarded to:

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
JENNIFER SMITH, M.D.
-----X

DETERMINATION
AND
ORDER
BPMC-21-021

A Notice of Hearing and Statement of Charges dated October 16, 2020 were duly served pursuant to § 230(10)(d)(i) of the Public Health Law (PHL) upon Jennifer Smith, M.D. (Respondent). [Exhibit 2; Appendix I.] Pursuant to PHL § 230(10)(f), the hearing scheduled for December 15, 2020 was adjourned by a telephone conference call on December 14, 2020 at the Respondent's request to January 13, 2021. Although the Respondent confirmed her availability for the hearing, she failed to appear. The hearing held by videoconference proceeded in her absence.

Pursuant to PHL § 230(10)(e), Andrew J. Merritt, M.D., Chairperson, David M. Kirshy, M.D., and Gail S. Homick Herrling, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee. Dawn MacKillop-Soller served as the Administrative Law Judge. The Department of Health, Bureau of Professional Medical Conduct (Department), appeared by Hannah E.C. Moore, Esq. The Hearing Committee received and examined documents from the Department (Exhibits 1-7, 9-12, 14, 19, 20, 22-23.) A transcript of the hearing was made (p. 1-47.)

The Hearing Committee votes 3-0 to sustain the charge that the Respondent committed professional misconduct as defined under Education Law § 6530(29) by violating conditions imposed on her medical license, and to revoke the Respondent's medical license.

Findings of Fact

The Hearing Committee, by unanimous vote, hereby makes the following findings of fact:

1. The Respondent Jennifer Smith, M.D. was authorized to practice medicine in New York State on April 30, 2007, by the issuance of license number 244012. [Exhibits 3-5.]

2. By Consent Order No. 13-31 (Order) dated February 15, 2013, to resolve professional misconduct charges pending against her, the Respondent agreed to the following penalties under PHL § 230-a and conditions:

- Censure and reprimand;
 - Limitation of the license to preclude prescriptions and orders for opiates, synthetic opioids, and their analogues to patients, and administrations of such drugs;
 - probation for a period of 36 months, subject to terms;
 - remain registered with the New York State Education Department pursuant to New York Education Law § 6502;
 - report information to the Department to develop a public physician profile, including changes in profile information within 30 days of any change and updates within six months prior to the expiration date of the registration period, in compliance with PHL § 2995-a(4) and 10 NYCRR 1000.5;
 - cooperate with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of the Order and in investigations concerning herself;
 - meet with a person designated by the Director of OPMC; and
 - respond promptly and provide documents and information as directed.
- [Exhibit 7.]

3. The Respondent failed to comply with the Order. She did not maintain continuous registration status after her registration period expired on March 31, 2020, and she did not update her physician profile within six months of that date or at any point after August 8, 2016. She also failed to cooperate with an OPMC investigation of her by failing to respond to correspondence, failing to schedule and attend an interview, and failing to provide medical records of patient [REDACTED] as directed. [Exhibits 4-7, 20, 22 and 23; Transcript, p. 22-24, 27, 34-38, 40.]

Discussion

The Department charged the Respondent with one Specification of Misconduct, "Violating any term of probation or condition or limitation imposed on the licensee," as defined in § 6530(29) of the Education Law. By letters dated September 13, October 29, and November 12, 2019, the Respondent and her prior counsel were provided the Board Order and an explanation of its directives to maintain active registration and an updated physician profile and to cooperate with an OPMC investigation. [Exhibit 20, 22 and 23; Transcript, p. 35-38.] These letters also informed her she was under investigation and directed she submit to an interview and provide medical records for patient [REDACTED] Justin J. Marchesani, MPH, OPMC Program Director, provided clear instructions in the letters for completing these requirements in compliance with the Order. [Exhibits 20, 22 and 23.] The Respondent failed to comply with the Order.

The October 16, 2020 Notice of Hearing advised the Respondent of the following:

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 not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. [Exhibit 2.]

The Respondent failed to submit any answer to the charges. Factual allegations A., A.1-A.8 and B., B.1-B.6 in the Statement of Charges are therefore deemed admitted. PHL § 230(10)(c)(2); Corsello v. New York State Dept. of Health, 300 A.D.2d 849, 851 (3^d Dept. 2002). [Transcript, p. 13-14.]

The Hearing Committee also sustains the factual allegations as fully supported by the evidence presented. The Respondent stipulated in her 2013 Consent Order that her failure to comply with conditions of the Order "shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29)." [Exhibit 7.] She failed to answer the charge that she violated that Consent Order, and she failed to appear at the hearing or present any evidence to refute it.

In considering the full spectrum of penalties under PHL § 230-a, including revocation, suspension, probation, censure and reprimand and the imposition of civil penalties, the Hearing Committee determined

that the penalty of revocation is appropriate. PHL § 230-a(4). The Order specifically authorized the OPMC to investigate “matters concerning Respondent.” [Exhibit 7.] The OPMC directed the Respondent to submit to an interview and provide medical records of a patient because it had reasonable grounds to believe the Respondent was impaired to practice medicine by drugs or a physical and/or psychiatric condition. [Exhibits B, 19-20, 22 and 23.] Mr. Marchesani detailed patient [REDACTED] complaints that the Respondent prescribed her excessive amounts of benzodiazepines. [Transcript, p. 37.] Another patient raised the same concerns and complained that the Respondent asked him for marijuana and to share his Xanax prescription. [Transcript, p. 24.] The Department is required to ensure compliance with the Board’s Order to confirm the Respondent’s sound medical practice and that her patients receive safe and appropriate prescriptions and treatment. Enforcement of the Order is particularly important because it resulted from the Respondent’s improper prescription practices and inadequate patient care. [Exhibit 7.]

The Hearing Committee is concerned that the Respondent’s impairment was never ruled out. In October 2019, the Respondent stated to Mr. Marchesani that she “felt incapacitated” from a car accident in December 2018. [Transcript p. 35.] The issue of impairment was raised by her prior attorney in June 2019, who questioned whether she sustained “closed head trauma” from the car accident and referred her for an evaluation by an expert in cognitive disorders, the status of which remains unknown. [Exhibits B and 19; Transcript, p. 34-36.] Her several voicemails and statements to Mr. Marchesani since March of 2019 expressing a desire to comply without follow through underscores her seeming intent not to meet her obligations as a licensed physician or to adhere to the Board’s Order. [Exhibits 9-11, 14, 20, 22 and 23; Transcript, p. 29-33, 35-40.]

Order

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct set forth in the Statement of Charges is Sustained.
2. The Respondent's license to practice medicine in the State of New York is hereby Revoked under PHL § 230-a(4).
3. This Determination and Order shall be effective upon service on the Respondent in compliance with PHL § 230(10)(h).

DATED: Albany, New York
January 28, 2021


Andrew J. Mezfit, M.D. (Chair)

David M. Kirshy, M.D.
Gail S. Homick Herrling

TO: Hannah E.C. Moore, Assistant Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, New York 12237-0032

Jennifer Smith, M.D.



APPENDIX I

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

IN THE MATTER

OF

JENNIFER SMITH, M.D.

STATEMENT
OF
CHARGES

JENNIFER SMITH, M.D., the Respondent, was authorized to practice medicine in New York State on or about 4/30/2007, by the issuance of license number 244012 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about 02/12/2013, Respondent voluntarily entered into Consent Order BPMC No. 13-31 ("Order") with the New York State Board for Professional Medical Conduct ("Board"). By entering the Order, Respondent did not contest pending professional misconduct charges alleging negligence on more than one occasion in violation of N.Y. Educ. Law § 6530(3) and failing to maintain records in violation of N.Y. Educ. Law § 6530(32). The Order was approved by the Board on or about 02/15/2013 and became effective on or about 02/26/2013. The Order further stated that Respondent stipulated that her failure to comply with any conditions of the Order shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29). The Order imposed, among others, the following penalties and conditions:

1. A penalty of a Censure and Reprimand pursuant to N.Y. Pub. Health Law § 230-a(1);
2. A penalty of a license limitation pursuant to N.Y. Pub. Health Law § 230-a(3) limiting Respondent's practice to preclude prescribing of opiates, synthetic opioids and their analogues to any patient, and restricting Respondent from ordering or administering such substances;
3. A penalty of a 36-month period of probation, pursuant to N.Y. Pub. Health Law § 230-a(9), subject to various terms;
4. A condition that Respondent shall remain in continuous compliance with all requirements of N.Y. Educ. Law § 6502 including the requirement that a licensee shall register and continue to be registered with the New York State Education Department;

5. A condition that Respondent shall remain in continuous compliance with all requirements of NY Pub. Health Law § 2995-a(4) and 10 NYCRR 1000.5, including but not limited to the requirements that a licensee shall report to the NYS Department of Health ("Department") all information required by the Department to develop a public physician profile for the licensee, shall update her profile information within the six months prior to the expiration date of the licensee's registration period, and shall notify the Department of any change in profile information within 30 days of any change;
6. A condition that Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of the Consent Order and in its investigations of matters concerning Respondent;
7. A condition that Respondent shall meet with a person designated by the Director of OPMC, as directed;
8. A condition that Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed.

B. Respondent violated the terms and/or conditions of BPMC No. 13-31 as follows:

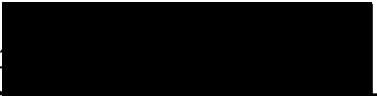
1. Respondent failed to continue to be registered with the New York State Education Department, as her Registration expired at the end of March 2020, and her current status is not registered.
2. Respondent failed to remain in compliance with NY Public Health Law § 2995-a(4) and 10 NYCRR 1000.5 by failing to update her New York State Physician Profile within the six months prior to the expiration date of the licensee's registration period, as she last updated her physician profile on 08/08/2016.
3. Respondent failed to fully cooperate fully with OPMC in its investigation of matters concerning Respondent.
4. Following correspondence from OPMC personnel dated 09/13/2019 requiring Respondent to schedule and attend an interview with OPMC, Respondent failed to schedule and attend an interview.
5. Respondent failed to respond to correspondence from OPMC personnel dated 10/29/2019 requiring Respondent to schedule and attend an interview with OPMC.
6. Respondent failed to respond to correspondence from OPMC personnel dated 11/12/2019 requiring Respondent to provide the medical records of a patient specified in Appendix A.

SPECIFICATION OF CHARGE**VIOLATING ANY TERM OF PROBATION OR CONDITION OR LIMITATION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(29) by violating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law, as alleged in the facts of the following:

1. The facts of paragraph A. and A. 4 and B. and B. 1; and/or
2. The facts of paragraph A. and A. 5 and B. and B. 2; and/or
3. The facts of paragraph A. and A. 6 and B. and B. 3; and/or
4. The facts of paragraph A. and A. 6 and B. and B. 4; and/or
5. The facts of paragraph A. and A. 6 and B. and B. 5; and/or
6. The facts of paragraph A. and A. 6 and B. and B. 6; and/or
7. The facts of paragraph A. and A. 7 and B. and B. 4; and/or
8. The facts of paragraph A. and A. 7 and B. and B. 5; and/or
9. The facts of paragraph A. and A. 8 and B. and B. 6.

DATE: October 16, 2020
 Albany, New York


TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct