



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

September 27, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nathaniel White, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237

Eyad Alsabbagh, M.D.
12148 Cortez Boulevard
Brooksville, Florida 34613

RE: In the Matter of Eyad Alsabbagh, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 23-198) 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. 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 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:

Jean T. Carney, 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 Judge Carney 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,

A solid black rectangular redaction box covering the signature of the sender.

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB:nm
Enclosure

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

COPY

In the matter of

EYAD ALSABBAGH, MD

Determination
and Order

BPMC-23-198

A Notice of Referral Proceeding and Statement of Charges dated July 14, 2023 were served upon Eyad Alsabbagh, MD (Respondent) pursuant to Public Health Law (PHL) § 230(10)(d)(i). (Exhibit 1.) A hearing was held on September 6, 2023, via WebEx videoconference. Pursuant to PHL § 230(10)(e), Jonathan Ecker, MD, Chairperson, Mehdi A. Khan, DO, and Paul J. Lambiase, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee. Jeanne Arnold, Administrative Law Judge (ALJ), served as the administrative officer.

The Department of Health (Department) was represented by Nathaniel White, Associate Counsel. The Respondent appeared. The Hearing Committee received and examined documents from the Department. (Exhibits 1-6.) A transcript of the proceeding was made. After consideration of the entire hearing record, including the testimony of the Respondent, the Hearing Committee issues this Determination and Order sustaining the charges and issuing a censure and reprimand pursuant to PHL § 230-a(1). All findings, conclusions, and determinations are unanimous.

JURISDICTION

The Department brought this case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Education Law § 6530(9). Charges of misconduct under Education Law § 6530(9) are based upon a criminal conviction or an

administrative violation, in New York State or another jurisdiction, for conduct that would constitute a crime or professional misconduct if committed in New York. The Respondent is charged with having disciplinary action taken against his medical license in Florida after a disciplinary action was instituted by a duly authorized professional agency of that 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, a violation of Education Law § 6530(9)(d). The scope of the hearing is limited to whether there is a relevant administrative determination and, if so, to a determination of the nature and severity of the penalty to be imposed. PHL § 230(10)(p). Penalties which may be imposed are set forth at PHL § 230-a. Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51. Under PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York State on January 28, 2003, under license number 227435. (Exhibit 5.)
2. By Administrative Complaint filed April 28, 2021, the State of Florida Board of Medicine (Florida Board) charged the Respondent with violation of Florida statutes applicable to his practice of medicine. By Settlement Agreement approved on July 11, 2022 and Final Order dated October 24, 2022, the Respondent stipulated that if the facts alleged in the Florida Board's complaint were proven, they would constitute violations of Florida statutes and the Respondent accepted the imposition of disciplinary action against his license. The Florida Board determined to impose an administrative fine of \$4,000 and costs totaling \$13,062.28. The Respondent also was required to complete within one year Florida Board approved Continuing

Medical Education (CME) courses, including: five (5) hours in ethics, three (3) hours in records keeping, and two (2) hours in medical marijuana instruction. (Exhibit 6.)

3. The Florida Board's complaint alleged that the Respondent failed to adequately medically justify, or adequately document medical justification to enter two patients in Florida's medical marijuana program; that the Respondent failed to determine, or failed to adequately document the determination that the risks of treating three patients with low-THC cannabis were reasonable; that the Respondent failed to create or adequately document the creation of patient treatment plans for three patients; and that Respondent failed to assess or failed to adequately document the location, severity and/or persistence of a patient's muscle spasms. (Exhibit 6.)

DISCUSSION

The Hearing Committee reviewed the Department's evidence including the Settlement Agreement of the Respondent and the Florida Board and Final Order of the Florida Board. The Florida Administrative Complaint alleged that the Respondent failed to perform legal obligations under Florida Statute § 381.986 in prescribing cannabis and failed to keep legible medical records required under Florida Statute § 458.331(1)(m). Although the Respondent did not admit the specific charges, the Respondent agreed to accept the settlement and imposition of discipline and agreed that if the charges were proven, he would be in violation of the Florida statutes. (Exhibit 6.)

The Hearing Committee agreed that the Respondent's conduct resulting in the Florida Board's disciplinary action would, if committed in New York, constitute misconduct pursuant to Education Law § 6530(3), practicing the profession with negligence on more than one occasion; and Education Law § 6530(32), failing to maintain a record for each patient which accurately

reflects the evaluation and treatment of the patient. The Hearing Committee thus determined that the Respondent violated Education Law § 6530(9)(d) and sustained the charge.

The Hearing Committee considered the penalties authorized by PHL §230-a and unanimously agreed with the Department's recommendation of censure and reprimand.

The Respondent offered explanations of events surrounding his execution of the stipulation, and insisted he signed only because so advised by his lawyer, the investigation was dragging on, and because it was minor and not serious. The Respondent also argued that he should not be disciplined in New York both because Florida has nothing to do with New York and because his medical license in New York is inactive.

The Hearing Committee found that the Respondent's deflections of responsibility reflected a lack of insight. The Respondent has a medical license in New York, even though the Respondent does not practice here, and the license is inactive. (Exhibit 5.) The Hearing Committee concluded that the Department's recommended penalty of censure and reprimand was warranted considering the Respondent's position and the seriousness of the misconduct resulting in the stipulation. The Hearing Committee determined no fine was warranted as the Respondent completed the required CME courses and continues to pay the fine and costs incurred from the Florida administrative action.

ORDER

IT IS HEREBY ORDERED THAT:


1. The specification of professional misconduct, as set forth in the Statement of Charges, is sustained.
2. Pursuant to PHL § 230-a(1), a censure and reprimand is imposed on the Respondent's license to practice medicine.

3. This order shall be effective upon service on the Respondent in compliance with PHL § 230(10)(h).

Dated: Albany, New York

9/25/2023

By:


Jonathan Ecker, MD, Chair
Mehdi A. Khan, DO
Paul J. Lambiase

To: Nathaniel White, Esq.
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Albany, New York 12237

Eyad Alsabbagh, MD
12148 Cortez Boulevard
Brooksville, Florida 34613

IN THE MATTER

OF

EYAD ALSABBAGH, M.D.

STATEMENT

OF

CHARGES

EYAD ALSABBAGH, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 28, 2003, by the issuance of license number 227435 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 6, 2022, the Respondent entered a Settlement Agreement with the Florida Department of Health. The Settlement Agreement was approved and adopted as a Final Order by the Florida Board of Medicine on or about October 18, 2022. The Final Order and Settlement Agreement imposed against the Respondent a \$4,000 fine, costs in the amount of \$13,062.28, a requirement to complete continuing medical education courses in the subjects of laws, rules and ethics, recordkeeping, and medical marijuana. The Settlement Agreement resolved an Administrative Complaint filed against the Respondent by the Florida Department of Health that alleged, during Respondent's care and treatment of three patients, Respondent violated FL Stat. § 458.331(1)(g) by failing to perform any statutory or legal obligation placed upon the licensed physician as set out by FL Stat. § 381.986 (2016) which governed the prescribing of THC cannabis, and that Respondent violated FL Stat. § 458.331(1)(m) for failing to keep legible medical records that justified the course of treatment of the patient. The Administrative Complaint alleged, in part, that the Respondent failed to adequately medically justify, or adequately document medical justification, to enter two patients in Florida's medical marijuana program; that the Respondent failed to determine, or failed to adequately document the determination,

that the risks of treating three patients with low-THC cannabis were reasonable in light of the potential benefit to the patients; that Respondent failed to create, or adequately document the creation of, patient treatment plans for three patients that included the dose, route of administration, planned duration, and/or monitoring of the patients' symptoms and other indicators of tolerance or reaction to the low-THC cannabis or medical cannabis; and that Respondent failed to assess or failed to adequately document the location, severity and/or persistence of a patient's muscle spasms.

B. The conduct resulting in the Florida disciplinary action against the Respondent would constitute misconduct under the laws of New York State pursuant to the following sections of New York law:

1. New York Education Law section 6530(3) (practicing the profession with negligence on more than one occasion).
2. New York Education Law section 6530(32) (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 the Respondent's license to practice medicine revoked, suspended or having other disciplinary action taken, or having the Respondent's application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered the Respondent's 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[3] and/or [32]) as alleged in the facts of the following:

1. Paragraphs A, B and B.1 and/or B.2

DATE: July 14, 2023
Albany, New York



JEFFREY J. CONKLIN
Deputy Director
Bureau of Professional Medical Conduct