



Department of Health

ANDREW M. CUOMO
Governor

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

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

April 8, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED & E-MAIL

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

Paul T. Gentile, Esq.
260 Madison Avenue – 22nd Floor
New York, New York 10016

Matthew Bonanno, M.D.


RE: In the Matter of Matthew Bonanno, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 20-091) 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

Findings of Fact

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

1. The Respondent Matthew Bonanno, M.D., was authorized to practice medicine in New York State on June 11, 2003, by the issuance of license number 228731. [Exhibit 2.]
2. By Order Pursuant to Public Health Law § 230(7)(a) dated September 17, 2019, after affording the Respondent and his attorney the opportunity to be heard, a Committee on Professional Conduct directed the Respondent to submit within 30 days to a medical examination by Keith Berkowitz, M.D. and a psychiatric examination by Jeremy Colley, M.D. at Westchester County Jail due to concerns that he “may be impaired by alcohol, drugs, physical disability or mental disability.” [Exhibit 3.] This Order was based on the Respondent’s possession of guns in August of 2019, which resulted in felony criminal charges in Westchester and Nassau Counties, and concerns that his behavior may have involved alcohol misuse and threats to family. [Transcript, p. 67, 70-71.]
3. The Respondent failed to comply with the Order to submit to the examinations. [Exhibits 6 and 8; Transcript, p. 46.]

Discussion

By letter dated September 18, 2019, the Respondent and his attorney were provided with a copy of the Board’s Order to submit to medical and psychiatric examinations. In email and letter correspondence that same date, April T. Soltren, Senior Medical Conduct Investigator, Physician Monitoring Program, provided the Respondent and his attorney with contact information for the physicians to complete the examinations in compliance with the Order. [Exhibits 4 and 5.] The Respondent’s failure to comply with the Order led to this proceeding charging the Respondent with one Specification of Misconduct, Failure to Comply with an Order, as defined in § 6530(15) of the Education Law.

The January 14, 2020 Notice of Hearing advised the Respondent:

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. [Exhibit 1.]

These mandatory requirements were restated in a January 24, 2020 Pre-Hearing Order issued to the parties by the Administrative Law Judge and are “expressly and unequivocally” stated in PHL § 230(10)(c)(2). Corsetto v. New York State Dept. of Health, 300 A.D.2d 849, 851 (3^d Dept. 2002). [ALJ I.] The Department made an application to have the charge and allegations in the Statement of Charges deemed admitted under PHL § 230(10)(c)(2) due to the Respondent’s failure to file a written answer. Factual allegations A., A.1 and A.2 in the Statement of Charges were therefore deemed admitted under PHL § 230(10)(c). [ALJ II; Pre-hearing Transcript, p. 57, Transcript, p. 3-4.] In any event, the Hearing Committee also sustains the charge and the allegations because the Respondent neither disputed their accuracy nor presented any evidence to contest them.

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 a whole period of suspension until the Respondent complies with the terms of the Committee’s Order is appropriate. PHL § 230-a(2)(e). The Board had explicit authorization under PHL § 230(7)(a) to direct the examinations because it had “reason to believe” the Respondent “may be impaired by alcohol, drugs, physical disability or mental disability.” April Soltren, Senior Investigator, Physician Monitoring Program, explained that the Board directed the examinations based on the Respondent’s possession of guns that led to felony criminal charges and potentially threatening behavior. [Transcript, p. 66-67, 69, 71, 75-76.] The Respondent’s argument that submitting to the examinations would violate his constitutional rights due to the unresolved criminal charges is without merit as a matter of law. [Transcript,

p. 28-29; 64, 85-86, 107, 115.] The Respondent, as a licensed physician, was obligated to comply with the Board's Order regardless of any criminal charges pending against him. PHL § 230(7)(a).

The Respondent objects to the imposition of any penalty because there is "no reason" to discipline him "during his criminal case" and an Interim Order of Conditions prohibits him from practicing medicine. [Exhibit 9; Transcript, p. 87, 102.] The Hearing Committee disagreed with the Respondent's counsel's characterization of the Department as a "mindless bureaucracy" with a "false urgency" in pursuit of its charges. [Transcript, p. 28-29; 87.] The charge in this proceeding is not dependent upon nor will it be affected by the outcome of the Respondent's criminal matter. Rather, the Department is charged with enforcing the Board's Order issued pursuant to its authority to ensure the Respondent's capacity for safe and proper care of patients. The Hearing Committee's concern in this proceeding is that the Respondent remain suspended until he completes psychiatric and medical examinations to rule out impairment. PHL § 230-a(2)(e). The Respondent's failure to testify to explain his defenses in mitigation of his willful and ongoing noncompliance contributed to the Hearing Committee's conclusion that the penalty of suspension until he completes the examinations is entirely appropriate.

Order

Based upon the foregoing, 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 wholly Suspended under PHL § 230-a(2)(c), until such time as the Respondent complies with the terms of the Order pursuant to PHL § 230(7)(a) dated September 17, 2019.
3. The Respondent's compliance shall be subject to the approval in writing by the Director of OPMC.
4. This Determination and Order shall be effective upon service on the Respondent in compliance with PHL § 230(10)(h).

DATED: Albany, New York
April 8, 2020


Jeffrey Perry, D.O. (Chair)

Iffath Abbasi Hoskins, M.D.
Richard S. Goldberg, Esq.

TO: Leslie Eisenberg, Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007

Paul T. Gentile, Esq.
260 Madison Avenue, 22nd Floor
New York, New York 10016

Matthew Bonanno, M.D.


APPENDIX I

IN THE MATTER

OF

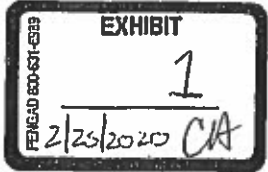
MATTHEW BONANNO, M.D.

STATEMENT
OF
CHARGES

Matthew Bonanno, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 11, 2003, by the issuance of license number 228731 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On September 17, 2019, a Committee of the State Board for Professional Medical Conduct, Pursuant to Public Health Law §230-7(a), issued an Order ("Order"), directing Respondent to schedule, submit to and cooperate with a medical examination and a psychiatric examination, to be performed by two physicians specified in the Order. The examinations were to be scheduled and commenced no later than 30 days after the effective date of the Order, October 18, 2019. Respondent failed to comply with the Order in that:
1. On September 18, 2019, the Order was served on Respondent's counsel, via email and overnight mail, and, on Respondent via regular mail at Westchester County Jail.
 2. On October 21, 2019, OPMC received written notification from the two proposed physicians indicating that neither Respondent nor Respondent's counsel had contacted them to schedule and commence the examinations, as instructed in the Order.



SPECIFICATION OF CHARGES

FIRST SPECIFICATION

Failure to Comply with an Order

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(15) by failing to comply with an order issued pursuant to §230(7)(a) of the Public Health Law, as alleged in the facts of:

1. Paragraph A and its subparagraphs.

DATE: January 14, 2020
New York, New York


Henry Wehtraub
Chief Counsel
Bureau of Professional Medical Conduct