



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

July 30, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

James Y. Severinsky, M.D.
311 West 75th Street
New York, New York 10023

James Y. Severinsky, M.D.
1800 Atlantic Boulevard, #214-A
Key West, Florida 33040

James Y. Severinsky, M.D.
819 Peacock Plaza
Apt. 256
Key West, Florida 33040

Anthohy C. Benigno, Esq.
NYS Department of Health
Corning Tower, Room 2509
Albany, New York 12237

RE: In the Matter of James Y. Severinsky, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-234) 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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "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., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:djh

Enclosure

COPY

IN THE MATTER
OF
JAMES Y. SEVERINSKY, M.D.

DETERMINATION

AND

ORDER

BPMC #02-234

LYON M. GREENBERG, M.D., Chairperson, and MARGERY W. SMITH, M.D. and NANCY MACINTYRE, R.N., Ph.D., duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(12) of the Public Health Law.

SUSAN F. WEBER, ESQ., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this Determination and Order.

SUMMARY OF THE PROCEEDINGS

Notice of Hearing and Statement of Charges:	May 8, 2002
Pre-Hearing Conference:	None Held
Hearing:	June 17, 2002 Riverfront Professional Tower 500 Federal Street Troy, New York
Date of Deliberations:	June 17, 2002

Petitioner appeared by:

Anthony C. Benigno, Esq.
NYS Department of Health
Corning Tower Room 2509
Albany, New York 12237

WITNESSES

For the Petitioner:

Michael Waring, Investigator, OPMC
Kimberly Haley, OPMC

STATEMENT OF CHARGES

The Statement of Charges accuses the Respondent of two counts of professional misconduct: violating a condition imposed by the Board of Professional Medical Conduct Order # 00-226, and willful failure to notify the New York State Department of Education of a change of his mailing address.

The charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto as Appendix 1 and made a part hereof.

FINDINGS OF FACT

Numbers in parenthesis refer to transcript page numbers or exhibits and represent 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. James Y. Severinsky, (hereinafter "Respondent") was licensed to practice medicine in the State of New York on or about April 1, 1996, by License No. 202749 (Ex. 6).
2. On or about August 15, 2000, the New York State Board for Professional Medical Conduct issued Consent Order #BPMC 00-226, wherein Respondent received a three-year suspension, the last 30 months of which were stayed, plus a 30-month period of probation. A condition of the Order was that Respondent maintain a current registration of his license with the New York State Education Department and pay all registration fees, except during actual suspension. (Ex. 1 p. 14-19) His actual suspension ended on February 15, 2001.
3. Respondent's original license registration expired in March, 2001, and he had not re-registered as of June 13, 2002 (T. 15).
4. Respondent's original registration address was 311 West 75th Street, New York, NY, 10023 (Ex. 6).
5. On February 16, 2001, OPMC sent Respondent a letter at his registration address, 311 West 75th Street, New York, NY 10023. On March 29, 2001, the letter was returned unclaimed. (T. 15) On April 2001, OPMC contacted Respondent's former attorney who speculated that Respondent might be in Florida. (T. 15) A motor vehicle search determined that Respondent had obtained a Florida driver's license. Further investigation revealed three addresses for Respondent in Key West, Florida (T. 16).
6. OPMC personnel attempted to contact Respondent at each of the three Florida addresses, in addition to the registration address in New York City provided by Respondent, but received no reply (T. 17).

7. An Internet search turned up a web site, "All Experts", through which Michael Waring, an OPMC investigator, obtained a telephone number and subsequently contacted Respondent by telephone. Mr. Waring informed Respondent that he was out of compliance with the terms of his Consent Order. Respondent stated that he was not interested in practicing medicine or being licensed in the State of New York (T. 10).
8. In March, 2002, Ken Spooner, director of investigations at OPMC, sent Respondent an E-mail message concerning lack of compliance with the terms of the OPMC disciplinary order, and his failure to respond to numerous letters to the various known addresses. Respondent's E-mail response to Mr. Spooner stated that Respondent was not practicing medicine, that he was not seeking a medical license in the State of New York or elsewhere, and that OPMC should please close his file (T. 18, Ex. 10).
9. Mr. Spooner answered that Respondent was in violation of his disciplinary order, and was subject to additional disciplinary proceedings. If Respondent wished to surrender his license in satisfaction of the charges, he should contact Mr. Spooner by telephone or furnish his correct mailing address. Mr. Spooner received no reply (T. 19, Ex. 10).
10. As of April 26, 2002, Respondent's official registration address with the New York State Education Department, Division of Professional Licensing Services, was 311 West 75th Street, New York, NY 10023 (Ex. 2).
11. Personal service of the Notice of Hearing, Statement of Charges, and Summary of Department of Health Hearing Rules was attempted on Respondent at the 311 West 75th Street, NYC, address on May 17th, 2002. The process server remarked that, "according to building management defendant (sic) moved to another address in New York City a few years ago. No listing, however, in telephone directory." (Ex. 3)

12. Personal service of the documents was attempted on Respondent at both the 819 Peacock Plaza, Apt. 256 and the 1800 Atlantic Blvd, addresses in Key West, Florida, on May 17th, 2002. The process server remarked that the Peacock Plaza address is “a business that provided mailboxes for rent by the month or year.” The manager of the condo complex at 1800 Atlantic Blvd. told the process server the Severinsky’s had sold their unit approximately a year ago. (Ex. 4)
13. Thereafter, on May 30th, 2002, Petitioner served Respondent by certified mail at all four addresses Petitioner had obtained for Respondent from the Department of Education and through its own investigations.(Ex. 5)
14. The documents mailed to 311 West 75th Street, NYC, the address Respondent had provided pursuant to law, were returned to Petitioner June 13, 2002, marked “addressee unknown.” (Ex. 7)
15. The documents mailed to 256 Peacock Plaza, Apt. 819, and 819 Peacock Plaza, Apt. 256, Key West, Florida, were received and signed for by a “W.B. Harman” on June 10, 2002 (Ex. 8 & 9).
16. On Friday, June 14, 2002, Attorney Anthony Benigno telephoned Respondent at the number provided by Mr. Waring, and spoke with an individual identifying himself as Dr. Severinsky. Attorney Benigno informed Respondent of the hearing Monday, June 17th, regarding Dr. Severinsky’s failure to register and keep his address current, and his apparent wish to surrender his license, as expressed to Mr. Waring. Benigno explained that the disciplinary surrender would be reported to the National Practitioners’ Data Bank. Respondent stated that he would not admit to anything and would not sign any agreement. Mr. Benigno emphasized that the disciplinary hearing was taking place the following Monday, and Respondent said, “well, you have your little hearing and do whatever you want,” or words to that effect. Respondent then terminated the conversation (T. 23).

PRELIMINARY ISSUE – DUE PROCESS

The Respondent neither appeared nor answered the charges presented, and was not served personally with the Notice of Hearing and Statement of Charges. Before the Hearing Committee could reach the charges, the Administrative Officer had to rule on whether the Petitioner had provided the Respondent adequate notice and an opportunity to be heard. At the close of Petitioner's case, Administrative Law Judge Susan F. Weber found that the State had exercised due diligence in attempting personal service upon the Respondent, that Respondent had actual notice of the proceedings, and that his due process rights had been complied with. She stated that her reasoning would be set forth in this Determination and Order. That reasoning follows:

The subject of a disciplinary proceeding must be afforded reasonable notice and an opportunity to be heard (see, Matter of Verdell v. DeBuono, 262 AD2d 812, 813-814). Public Health Law Section 230 (10)(d) states that the Board shall serve the charges and notice of hearing personally at least twenty days before the hearing. If personal service cannot be made after due diligence and such fact is certified under oath, a copy of the charges and the notice of hearing shall be service by registered or certified mail to the licensee's last known address by the Board at least fifteen days before the hearing.

The Supreme Court, Appellate Division Third Department, had occasion to rule on the due diligence requirements of the Public Health Law in a medical misconduct case June 6, 2002, in In the Matter of A. Alexander Jacoby. In Jacoby, the State had mailed the notice and statement of charges to petitioner's brother and former legal counsel at his former office address. Then personal service was attempted at the same incorrect office address. Two additional mailings were made to the same address. The Appellate Division found that one attempt at personal service at the former attorney's former office did not constitute due diligence such as to allow substitute service by certified or

registered mail. Indeed, those mailings were also made to the same address, despite the fact that there was no reason to believe service to such address would reach the respondent. In Jacoby, the State failed to attempt service upon respondent at the address he had provided in his registration documents, and there was no evidence that the respondent had actual notice of the pending disciplinary proceedings.

The circumstances in the instant case differ significantly from those in Jacoby. Here, Petitioner attempted personal service on Respondent at the address provided by Respondent in his registration documents. In addition, personal service was attempted at three possible addresses turned up through Petitioner's extensive investigations, which included a telephone conversation with Respondent's former counsel, a motor vehicle search, and an Internet investigation. Service by Certified Mail to four addresses gleaned from these investigations was accepted at two addresses, as evidenced by two return receipts. Leads obtained from these investigations resulted in an exchange of E-mails and a telephone conversation between Petitioner's investigators and Respondent, which gave Respondent actual notice of the proceedings. Finally, the Friday before the hearing, Petitioner's Attorney Benigno had a telephone conversation with Respondent concerning the charges against him and the hearing on those charges scheduled for the following Monday. Even had none of these conversations taken place and had actual notice not occurred, Respondent Severinsky's due process rights to reasonable notice and an opportunity to be heard were clearly preserved by Petitioner's diligence in this disciplinary proceeding.

DISCUSSION AND CONCLUSIONS

There is no factual dispute before the Hearing Committee. Respondent has failed to appear or answer, and has indicated that he has no interest in contesting the charges or practicing medicine in New York State or elsewhere. Petitioner has established beyond doubt that Respondent James Y. Severinsky, M.D., failed to report a change of his mailing address to the New York State Education Department in violation of Education Law 6502, Subdivision 5. Failure to maintain a current NYS license registration and to notify OPMC of any change in mailing address was a violation of the terms and conditions of OPMC Order Number 00-226, which had resulted from a previous disciplinary proceeding. These omissions constitute professional misconduct under New York Education Law Section 6530(12) and (29), respectively.

VOTE OF THE HEARING COMMITTEE

1. The FIRST SPECIFICATION charging the Respondent with professional misconduct under N.Y. Education Law 6530 (29) by reason of his violation of conditions imposed upon him by BPMC Order # 00-226 pursuant to Section 230 of the Public Health Law, based upon the allegations contained in paragraphs A and B of the Statement of Charges, is SUSTAINED.

2. The SECOND SPECIFICATION charging the Respondent with professional misconduct under N.Y. Education Law 6530 (12) by reason of his willful failure to notify the New York State Department of Education of a change of his mailing address, based upon the allegations in paragraphs C, D, and E of the Statement of Charges, is SUSTAINED.

DETERMINATION AS TO PENALTY

The Hearing Committee credits Respondent's desire, as evidenced by his E-mail exchange with OPMC investigator Spooner (Ex. 10), not to practice medicine in New York or elsewhere. Evidence clearly establishes that Respondent has willfully violated the terms of his BPMC Consent Order, and effectively severed his connections with the medical profession and the State of New York several years ago, following his previous OPMC discipline. Consequently, the Hearing Committee has determined that the Respondent's license to practice medicine in the State of New York should be revoked. Should Respondent reapply for such privileges in future, in light of his lengthy separation from the practice of medicine, a condition of any re-licensing should be his passage of a clinical competency exam.

ORDER

IT IS HERBY ORDERED THAT:

1. Respondent's license to practice medicine in New York is hereby **REVOKED**.
2. The ORDER shall be effective by five days from mailing the Order to the Respondent, to effectuate service, by registered mail and by regular mail at 819 Peacock Plaza, Apt. 256, Key West, Florida 33040, and 256 Peacock Plaza, Apt. 819, Key West, Florida, 33040.

DATED: Albany, New York
July 29th, 2002



LYON M. GREENBERG, M.D.
Chairperson

MARGERY W. SMITH, M.D.
NANCY MACINTYRE, R.N., Ph.D.

APPENDIX I

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

IN THE MATTER
OF
JAMES Y. SEVERINSKY, M.D.

STATEMENT
OF
CHARGES

James Y. Severinsky, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 1, 1996, by the issuance of license number 202749 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about August 15, 2000 the New York State Board for Professional Medical Conduct issued Consent Order #BPMC 00-226, hereto attached as Exhibit 1, wherein JAMES Y. SEVERINSKY, M.D., Respondent, received a three year suspension with the last thirty months stayed plus a period of probation for thirty months. The Order imposed a condition requiring him to maintain current registration of his license with the New York State Education Department Division of Professional Licensing Services and pay all registration fees except during actual periods of suspension. Respondent's period of actual suspension ended on February 15, 2001.
- B. Respondent's registration of his New York medical license expired in March 2001 and he has not re-registered.
- C. Respondent's original registration address was 311 West 75th Street, New York, NY 10023. As of April 26, 2002, his registration address was the same as when he initially registered with the New York State Department of Education.
- D. On February 16, 2001 the Office of Professional Medical Conduct (OPMC) remitted a letter to Respondent at his registration address. On March 29, 2001 the

letter was returned as unclaimed. On April 19, 2001 OPMC contacted the Respondent's former attorney who speculated that he may be in Florida.

- E. OPMC's investigation determined that Respondent may be living in Key West, Florida. Respondent has obtained a Florida driver's license.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING VIOLATED A CONDITION IMPOSED BY PHL SECTION 230

Respondent is charged with professional misconduct under N.Y. Education Law §6530(29) by reason of his having violated a condition imposed upon him by BPMC Order #00-226 pursuant to Section 230 of the Public Health Law, in that Petitioner charges:

1. The facts in paragraphs A and B.

SECOND SPECIFICATION

WILLFULLY FAILING TO NOTIFY THE DEPARTMENT OF EDUCATION OF A CHANGE OF MAILING ADDRESS

Respondent is charged with professional misconduct under N.Y. Education Law §6530(12) by reason of his willful failure to notify the New York State Department of Education of a change of his mailing address, in that Petitioner charges:

2. The facts in paragraphs C, D and E.

DATED: May 8, 2002
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct