



Department of Health

ANDREW M. CUOMO
Governor

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

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

September 28, 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marc S. Nash
Senior Attorney
New York State Department of Health
Bureau of Professional Medical Conduct
Room 2512, Corning Tower, ESP
Albany, New York 12237

Rex Mathew, M.D.


RE: In the Matter of Rex Mathew, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 18-210) 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

-----X
IN THE MATTER
OF
REX MATHEW, M.D.
-----X

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: DETERMINATION
:
: AND
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: ORDER
: 18-210
:-----X

A hearing was held on July 18, 2018, at the offices of the New York State Department of Health (Department), 150 Broadway, Menands, New York. Pursuant to Public Health Law (PHL) § 230(10)(e), Samuel Bosco, M.D., Chairperson, Peter Kane, M.D., and Janet Axelrod, Esq., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Tina M. Champion, Administrative Law Judge (ALJ), served as the Administrative Officer.

The Department appeared by Marc S. Nash, Senior Attorney. A Notice of Referral Proceeding and Statement of Charges dated May 15, 2018, were duly served upon Rex Mathew, M.D. (Respondent), who did not appear at the hearing.

The Hearing Committee received and examined documents from the Department (Exhibits 1-5). A stenographic reporter prepared a transcript of the proceeding.

After consideration of the entire record, the Hearing Committee unanimously votes 3-0 to sustain the charge that the Respondent committed professional misconduct in violation of Education Law (Educ. Law) § 6530(9), and that the penalty of suspension of his medical license followed by probation is appropriate.

BACKGROUND

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 Educ. Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(d) for "[h]aving his...license to practice medicine revoked, suspended or having other disciplinary action taken...where the conduct resulting in the revocation, suspension or other disciplinary action involving the license...would, if committed in New York state, constitute professional misconduct under the laws of New York state." Pursuant to PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence. Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 "shall be subject to penalties as prescribed in [PHL § 230-a] except that the charges may be dismissed in the interest of justice."

FINDINGS OF FACT

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

1. Rex Mathew, M.D., the Respondent, was licensed by the New York State Education Department to practice medicine in New York on April 25, 2014, by the issuance of license number 274821. (Ex. 3.)

2. On or about April 4, 2018, the New Jersey State Board of Medical Examiners (New Jersey Board) indefinitely suspended Respondent's license to practice medicine and surgery pending a demonstration of fitness and until further order of the New Jersey Board. The New Jersey Board also set forth several requirements that Respondent must meet prior to an restoration of his license. (Ex. 4.)

3. The disciplinary action was acknowledged by and taken on consent of the Respondent via a Final Order of Consent. (Ex. 4.)

4. The disciplinary action stemmed from the Respondent testing positive for amphetamines in February 2016 and positive for opiates and morphine in June 2016. (Ex. 4.)

5. The Respondent, although initially working with the Professional Assistance Program of New Jersey (PAP-NJ), failed to appear for both an assessment and an appointment in July 2016, and failed to respond to a July 2016 letter from PAP-NJ requesting an explanation of his June 2016 positive drug screen. (Ex. 4.)

VOTE OF THE HEARING COMMITTEE

The Hearing Committee decided, by a vote of 3-0, that the evidence supports sustaining the charge of the Respondent having committed professional misconduct as defined in Educ. Law § 6530(9)(d).

HEARING COMMITTEE DETERMINATIONS

The Department charged the Respondent with one specification of professional misconduct pursuant to Educ. Law § 6530(9)(d). The specification relates to the New Jersey Board taking disciplinary action against the Respondent's medical license. The Department alleges that the conduct resulting in that disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State pursuant to Educ. Law § 6530(8) [being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects]. The Hearing Committee concludes that the conduct upon which the New Jersey Board's finding was based would constitute professional misconduct under the laws of New York State as defined in Educ. Law § 6530(8).

The Department has requested that the Hearing Committee revoke the Respondent's license to practice medicine in New York State or, in the alternative if revocation is not ordered, that the Respondent's license be suspended until such time as the Respondent submits to a psychiatric evaluation and is found fit to practice medicine, and that Respondent be subject to five years of

probation with impairment monitoring upon the restoration of his license. In considering the full spectrum of penalties available under PHL § 230-a, the Hearing Committee finds appropriate suspension of the Respondent's license for a period of six months, to be followed by probation for a period of five years.

The Hearing Committee recommends that the OPMC Director convene a committee, pursuant to PHL § 230(7)(a), to determine if cause exists to order the Respondent to submit to an examination concerning impairment due to drugs.

ORDER

Now, after reviewing the evidence from the hearing, it is hereby ordered that:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is sustained;
2. The Respondent's license to practice medicine in the State of New York is wholly suspended under PHL § 230-a(2)(a) for a period of six months;
3. Upon the restoration of the Respondent's license, the Respondent will be placed on probation, with impairment monitoring, for a period of five years. The terms of probation are annexed hereto; and
4. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL § 230(10)(h).

Dated: _____, New York
September 21, 2018



Samuel Bosco, M.D., Chairperson
Peter Kane, M.D.
Janet Axelrod, Esq.

Marc S. Nash
Senior Attorney
New York State Department of Health
Bureau of Professional Medical Conduct
Room 2512, Corning Tower, ESP
Albany, New York 12237

Rex Mathew, M.D.



TERMS OF PROBATION

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by New York Education Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York Public Health Law § 230(10) or (19), or both.
2. Respondent shall maintain active registration of Respondent's license with the New York State Education Department Division of Professional Licensing Services and shall pay all registration fees.
3. Respondent shall only practice when monitored by a qualified health care professional (Sobriety Monitor) proposed by the Respondent and approved, in writing, by the Director of the Office of Professional Medical Conduct (OPMC). The monitor shall not be a family member or friend and shall not be in a professional relationship which would pose a conflict with monitoring responsibilities. Monitoring shall include the following:
 - a. The Respondent shall ensure that the monitor is familiar with Respondent's drug history and with the terms of this Order. Respondent shall cause the monitor to report any deviation from compliance with the terms of this Order to the OPMC. Respondent shall cause the monitor to submit reports to the OPMC on a timely basis;
 - b. The Respondent shall submit, at the request of the monitor or at the request of the Director of the OPMC, to random, unannounced, observed screens for the presence of drugs. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis. Respondent shall report for a drug screen within four hours of being contacted by the monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by Respondent, or if a test is positive for any unauthorized substance;
 - c. The Respondent shall meet with the monitor on a regular basis and the monitor will submit quarterly reports to the OPMC certifying Respondent's sobriety. These reports are to include, (a) forensically valid results of all drug monitoring tests to be performed at a frequency of no less than four per month for the first 12 months of the period of probation, then at a frequency to be proposed by the monitor and approved by OPMC, and (b) an assessment of self-help group attendance; and
 - d. The Respondent shall avoid all substances which may cause positive screens such as herbal tea, poppy seeds, cold medicines, etc. Any positive result will be considered a violation of this Order.
4. Respondent shall provide the Director of OPMC, Riverview Center, 150 Broadway, Suite 355, Albany, New York, 12204, at least every six months and as otherwise requested, and within thirty days of any change in the information, the following in writing:
 - a. a full description of Respondent's employment and practice;
 - b. all professional and residential addresses and telephone numbers within and outside New York State;

- c. all information concerning investigations, arrests, charges, convictions, or disciplinary actions by any local, state, or federal agency; and
 - d. all information concerning investigations, terminations, or disciplinary matters by any institution or facility.
- 5. Respondent shall provide to the Director of OPMC copies of all applications relating to the practice of medicine, including but not limited to, privileges, insurance, and licensure, in any jurisdiction, concurrent with submission of the applications.
- 6. Respondent shall cooperate fully with and respond within two weeks to any OPMC requests to provide written periodic verification of Respondent's compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
- 7. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30-day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume, and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in the Determination and Order or as are necessary to protect the public health.
- 8. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to:
 - a. a review of office records, patient records, hospital charts, and/or electronic records; and
 - b. interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
- 9. Respondent shall comply with these probationary terms and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the State Board for Professional Medical Conduct may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.

APPENDIX I

IN THE MATTER
OF
REX MATHEW, M.D.

STATEMENT
OF
CHARGES

REX MATHEW, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 25, 2014, by the issuance of license number 274821 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 4, 2018, the New Jersey Board of Medical Examiners (hereinafter, "New Jersey Board") by Final Consent Order, indefinitely suspended Respondent's license to practice medicine and surgery pending a demonstration of fitness and until further order of the New Jersey Board. Prior to any restoration of his license, Respondent must, including but not limited to, participate in the Professional Assistance Program (hereinafter "PAP) in New Jersey or a comparable program if Respondent resides in another state, comply with a substance abuse program, abstain from the use of all psychoactive substances, including alcohol and medications, comply with random drug screens, establish his fitness, competence, and capacity to re-enter the active practice of medicine in New Jersey, and provide the New Jersey Board with evidence that he is capable of discharging the functions of a licensee in a manner consistent with the public's health, safety, and welfare. This disciplinary action was based on findings that Respondent tested positive for amphetamines in February 2016 and for opiates in June 2016 and Respondent was engaged in a drug use in a manner likely to impair his ability to practice his profession with reasonable skill and safety.

B. The Conduct resulting in the New Jersey Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State pursuant to the following Section of New York State Law:

1. New York Education Law § 6530(8) (Being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects).

SPECIFICATION OF CHARGES
HAVING HAD DISCIPLINARY ACTION TAKEN

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(8)) as alleged in the facts of the following:

1. The facts in Paragraphs A and B and B1.

DATE: May 15, 2018
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct