



Department of Health

ANDREW M. CUOMO
Governor

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

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

March 16, 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Tsui, Esq.
NYS Department of Health
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237

Nenita Iturzaeta, M.D.
[REDACTED]

RE: In the Matter of Nenita Iturzaeta, M.D

Dear Parties:

Enclosed please find the Determination and Order (No.18-063) 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

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

-----X	
IN THE MATTER	:
	:
OF	:
	:
NENITA ITURZAETA, M.D.	:
	:
-----X	
	BPMC-18-063

A hearing was held on February 14, 2018, at the offices of the New York State Department of Health (Department), 150 Broadway, Suite 510, Menands, New York. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **MICHAEL REICHGOTT, M.D., Ph.D.**, Chairperson, **KENNETH STEIER, D.O.** and **JANET AXELROD, J.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **KIMBERLY A. O'BRIEN, ADMINISTRATIVE LAW JUDGE (ALJ)**, served as the Administrative Officer. The Department appeared by **PAUL TSUI, ESQ.** A Notice of Referral Proceeding and Statement of Charges dated November 21, 2017, were served on **NENITA ITURZAETA, M.D.** (Respondent), who did not appear at the hearing in person or by a representative. The Respondent failed to file an answer, and the charges were deemed admitted, PHL § 230(10)(c)(2). Accordingly, the charges that the Respondent committed professional misconduct, in violation of Education Law (Educ. Law) §§ 6530(9)(b) and 6530(9)(d), are sustained. The Hearing Committee was required to determine only what penalty should be imposed on the Respondent. The Hearing Committee received and examined documents from the Department, exhibits 1-6, and a stenographic reporter prepared a transcript of the proceeding.

BACKGROUND

The Department brought the case pursuant to PHL § 230(10)(p), which provides for an expedited 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)(b), "having been found guilty of professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state," and § 6530(d), "having (her) license to practice medicine revoked, suspended or having other disciplinary action taken..." where the conduct resulting in the disciplinary action taken against her license to practice medicine would, if committed in the state of New York, constitute professional misconduct under the laws of the state of New York, PHL § 230(10). The Department had the burden of proving its case by a preponderance of the evidence. This case is based on an Order of the Medical Board of California (California Board), wherein Respondent's certificate to practice medicine was revoked after it was determined that Respondent's ability to competently practice medicine is impaired because of mental and physical illness; this would constitute misconduct under the laws of New York State, Educ. Law § 6530(8).

FINDINGS OF FACT

The findings of fact were made by the Hearing Committee after a review of the record in this matter. The references in brackets refer to transcript pages [Tr.] and exhibits [Ex.]. The following findings of fact are the unanimous determinations of the Hearing Committee:

1. Respondent, was licensed to practice medicine in New York on January 6, 1972, by the issuance of license number 110970 [Tr. 8; Ex. 3].

2. Respondent was personally served with the Notice of Referral Proceeding and Statement of Charges, and she failed to appear at the February 14, 2018 hearing in person or by a representative and/or to answer the charges [Tr. 11; Ex.1, 2].
3. Respondent held a Physician's and Surgeon's Certificate, No. A31024, to practice medicine in California (certificate). On November 29, 2016, the California Board issued an order granting an interim suspension of Respondent's certificate.¹ The suspension was based upon a September 15, 2016 neuropsychological examination of Respondent, where she was found to be mentally and physically impaired and unable to competently practice medicine. On February 24, 2017, the California Board issued a Default Decision and Order revoking Respondent's certificate [Tr. 8-10; Ex. 4, 5, 6].

CONCLUSIONS

The Department presented evidence of the conduct that led the California Board to revoke Respondent's certificate. The Hearing Committee considered this evidence in reaching a determination about the appropriate penalty to impose. The Hearing Committee also considered the fact that Respondent was personally served with the Notice of Referral Proceeding and Statement of Charges, which notified her about the hearing and that her license to practice medicine in New York was at risk, but she did not appear at the hearing in person or by a representative; she did not file an answer to the charges; and she offered nothing to mitigate the penalty. The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. Based on the foregoing, the Hearing Committee unanimously agreed that revocation was the only appropriate penalty to protect the people of the State of New York.

¹ A "SEALING ORDER" was contained within the order to protect confidential medical and personal information [Ex. 4].

ORDER

IT IS HEREBY ORDERED THAT:


1. The Respondent's license to practice medicine is REVOKED; and
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

DATED: Albany, New York
March 15, 2018


Michael Reichgott, M.D., Ph.D.
Chairperson

Kenneth Steier, D.O.
Janet Axelrod, J.D.

TO: Nenita Iturzaeta, M.D.


Paul Tsui, Esq.
Bureau of Professional Medical Conduct
Corning Tower Building – Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

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

IN THE MATTER
OF
NENITA ITURZAETA, M.D.

STATEMENT
OF
CHARGES

Nenita Iturzaeta, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 6, 1972, by the issuance of license number 110970 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about February 24, 2017, the Medical Board of California, Department of Consumer Affairs (hereinafter "California Board"), by a Default Decision and Order (hereinafter "California Decision"), revoked Respondent's Physician's and Surgeon's Certificate No. A 31024 pursuant to California Business and Professions Code section 822. Based upon a neuropsychological examination of Respondent on or about September 15, 2016, the California Board found that Respondent's ability to practice medicine safely is impaired because she is mentally ill, or physically ill affecting competency.
- B. The conduct resulting in the California Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State Pursuant to the following sections of New York State law:
1. New York Education Law §6530(8) (Having a psychiatric condition which impairs the licensee's ability to practice)

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based 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 B.1.

SECOND SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having her license to practice medicine revoked, suspended or having other disciplinary action taken, or having her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered 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:

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

DATE: November 21, 2017
Albany, New York



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX I

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

IN THE MATTER
OF
NENITA ITURZAETA, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: NENITA ITURZAETA, M.D.

[REDACTED]

[REDACTED]

[REDACTED]

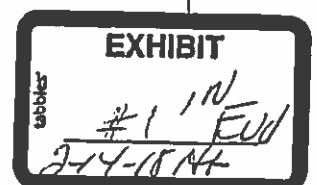
PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on February 14, 2018 at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.¹

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a

¹ For GPS purposes, enter "Menands", not "Albany".



crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges at least ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. You may also file a written brief and affidavits with the Committee. All such documents shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below, at least ten days prior to the date of the hearing. Should the parties have objection(s) to proposed witnesses or documentary evidence, the party raising the objection(s) shall contact the Bureau of Adjudication at least three days prior to the hearing date to arrange for a pre-hearing conference with the Administrative Law Judge, prior to the hearing date.

Not later than ten days prior to the date of the hearing, you are required to file one copy of your proposed exhibits (if any) with the Bureau of Adjudication at the address indicated above, and a copy of all such documents/exhibits must be served on the same date on the Department of Health attorney indicated below. On the day of the hearing, you are also required to provide the original of such exhibits and three copies, for use by the Committee.

Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of

witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.


Department attorney: Initial here 

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED
TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN
THIS MATTER.

DATED: Albany, New York
November 21, 2017


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Paul Tsui
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER

OF

NENITA ITURZAETA, M.D.

STATEMENT

OF

CHARGES

Nenita Iturzaeta, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 6, 1972, by the issuance of license number 110970 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about February 24, 2017, the Medical Board of California, Department of Consumer Affairs (hereinafter "California Board"), by a Default Decision and Order (hereinafter "California Decision"), revoked Respondent's Physician's and Surgeon's Certificate No. A 31024 pursuant to California Business and Professions Code section 822. Based upon a neuropsychological examination of Respondent on or about September 15, 2016, the California Board found that Respondent's ability to practice medicine safely is impaired because she is mentally ill, or physically ill affecting competency.
- B. The conduct resulting in the California Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State Pursuant to the following sections of New York State law:
 1. New York Education Law §6530(8) (Having a psychiatric condition which impairs the licensee's ability to practice)

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based 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 B.1.

SECOND SPECIFICATION


HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having her license to practice medicine revoked, suspended or having other disciplinary action taken, or having her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered 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:

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

DATE: November 21, 2017
Albany, New York



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct