



Department of Health

ANDREW M. CUOMO
Governor

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

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

November 2, 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Tsui
Associate Attorney
New York State Department of Health
Bureau of Professional Medical Conduct
Room 2512, Corning Tower, ESP
Albany, New York 12237

David A. Zarett, Esq.
3333 New Hyde Park Road, Suite 211
New Hyde Park, New York 11042

John J. Martinez, M.D.


RE: In the Matter of John J. Martinez, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 18-244) 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:

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 Judge 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 solid black rectangular box redacting the signature of James F. Horan.

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	:	DETERMINATION
	:	
OF	:	AND
	:	
JOHN J. MARTINEZ, M.D.	:	ORDER
	:	18-244
-----X		

A hearing was held on August 16, 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), **Lyon M. Greenberg, M.D., Chairperson, Jose M. David, M.D., and Paul Lambiase,** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **Matthew C. Hall,** Administrative Law Judge (ALJ), served as the Administrative Officer.

The Department appeared by Associate Attorney, **Paul Tsui, Esq.** A Notice of Referral Proceeding and Statement of Charges dated June 7, 2018, were duly served upon **John. J. Martinez, M.D.** (Respondent), who appeared in person and was represented by **David A. Zarett, Esq.**

The Hearing Committee received and examined documents from the Department (Exhibits 1-10), and from the Respondent (Exhibits A-C, G, O-R, and T-W). 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 charges that the Respondent committed professional misconduct in violation of Education Law (Educ. Law) § 6530(9)(a)(iii), § 6530(9)(b) and § 6530(9)(d), and that the penalty of Censure and Reprimand 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)(a)(iii) for "having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed in this state, would have constituted a crime under New York state law;" 6530(9)(b) for "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;" and 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]."

FINDINGS OF FACT

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

1. John J. Martinez, M.D., the Respondent, was licensed by the New York State Education Department to practice medicine on November 19, 1991, by the issuance of license number 187664. (Ex. 5).
2. The Respondent was also licensed to practice medicine in the State of California. On or about April 9, 2015, in the Superior Court of California, County of Orange, Respondent was convicted upon a plea of guilty of: Injuring a Wireless Device with Intent to Prevent Crime Report, a

misdemeanor, in violation of California Penal Code § 591.5, and Possession of a Destructive Device, Other Than Fixed Ammunition of a Caliber Greater Than .60 Caliber, a misdemeanor, in violation of California Penal Code § 18710(a). (Ex. 6, 9).

3. On or about April 9, 2015, in the Superior Court of California, County of Orange, Respondent was sentenced to three years of probation, a \$5,000.00 fine payable to the Orange County Sheriff's Department Bomb Squad, one day in Orange County Jail, 200 hours of community service, and to attend and complete the Domestic Violence Batterers' Treatment Program. (Ex. 6, 9).

4. On or about August 15, 2017, the Medical Board of California, Department of Consumer Affairs (California Board), by a Decision and Order (California Order), inter alia, reprimanded Respondent and ordered him to attend and complete a Professional Program (Ethics Course) based upon Respondent's admissions to having been convicted of a crime and Respondent's engaging in conduct which breaches the rules of ethical code of the medical profession, and which demonstrates an unfitness to practice medicine by fraudulently representing on a website about his practice and in his curriculum vitae that he had studied at Harvard University.

VOTE OF THE HEARING COMMITTEE

FIRST THROUGH SECOND SPECIFICATION

The Hearing Committee sustained the charge, by a vote of 3-0, that the Respondent committed professional misconduct as defined by New York Education Law §6530(9)(a)(iii).

The Respondent was convicted of committing an act constituting a crime under the law of another jurisdiction, which, if committed within this state, would have constituted a crime under New York state law, (namely N.Y. Penal Law §§ 145.00[4][Criminal Mischief in the Fourth Degree – Intentionally disabling or removing a telephonic device to prevent another person from communicating a request for emergency assistance]; 265.02[2][Criminal Possession of a Weapon in the Third Degree – Possession of any Explosive or Incendiary Bomb]).

THIRD SPECIFICATION

The Hearing Committee sustained the charge, by a vote of 3-0, that the Respondent committed professional misconduct as defined by New York Education Law §6530(9)(b).

The Respondent, was 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[9][a][i] and 6530[20]).

FOURTH SPECIFICATION

The Hearing Committee sustained the charge, by a vote of 3-0, that the Respondent committed professional misconduct as defined by New York Education Law §6530(9)(d).

The Respondent had his license to practice medicine revoked, suspended or had other disciplinary action taken...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...if committed in New York state, would constitute professional misconduct under the laws of New York state. (namely N.Y. Educ. Law §§ 6530[9][a][i] and 6530[20]).

HEARING COMMITTEE DETERMINATIONS

The underlying facts which initiated the California Board's disciplinary action against the Respondent occurred in the state of California. As a result of his conduct, the Respondent was charged with six felony crimes which were reduced to three misdemeanor crimes based on a plea agreement between the Respondent and the Orange County (California) District Attorney's Office. (Ex. 6, 7). In his written plea explanation, the Respondent stated, "On September 2, 2014 in Orange County, I did unlawfully damage a wireless communication device with the intent to prevent the user from notifying law enforcement, and I did possess a destructive device, other than a firearm, of a

caliber greater than .60 caliber." The Respondent was placed on probation for three years, was required to attend and complete a domestic violence program, and was required to spend one night in the Orange County Jail. (Ex. 8). Following his conviction, the California Board filed an "Accusation" against the Respondent seeking suspension or revocation of the Respondent's medical license. (Ex. 9). On April 18, 2017, the California Board and the Respondent reached a settlement, whereby the Respondent was "Publicly Reprimanded" and was required to participate in, and successfully complete a "Professionalism Program (Ethics Course)." (Ex. 9).

The Petitioner recommended revocation of the Respondent's license. The Committee considered the Respondent's sworn testimony and found it to be remorseful and credible. They noted that the incidents which occurred did not allege any shortcomings in the Respondent's clinical skills as a physician and surgeon. The Committee also noted that no patient was harmed by the Respondent's actions and that his transgressions were primarily pertinent to his personal life. While not bound by the penalty determinations of the California Board, the Committee did note that the Respondent did not have his license revoked in the state of California where these incidents occurred, and indeed, did not have his license suspended. Since the Respondent has not practiced medicine in the state of New York since 2004 when he moved his practice to California, he was asked why he was making such an effort to retain his practice privileges in New York state. He responded that while he had no intention to return to his New York practice, he felt it was important to fight for the license he had worked so hard to attain. The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, and the imposition of monetary penalties. The Committee determined that the appropriate penalty considering all of the evidence, was a Censure and Reprimand.

APPENDIX I

IN THE MATTER
OF
JOHN J. MARTINEZ, M.D.

STATEMENT
OF
CHARGES

John J. Martinez, M.D., the Respondent, was authorized to practice medicine in New York State on or about November 19, 1991, by the issuance of license number 187664 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 9, 2015, in the Superior Court of California, County of Orange, Respondent was convicted upon a plea of guilty of:

1. Injuring a Wireless Device With Intent to Prevent Crime Report, a misdemeanor, in violation of California Penal Code §591.5; and
2. Possession of a Destructive Device, Other Than Fixed Ammunition of a Caliber Greater Than .60 Caliber, as a misdemeanor, in violation of California Penal Code §18710(a).

B. On or about April 9, 2015, in the Superior Court of California, County of Orange, Respondent was sentenced to three years of probation, a \$5,000.00 fine payable to the Orange County Sheriff's Department Bomb Squad, one day in Orange County Jail, 200 hours of community service, and to attend and complete the Domestic Violence Batters' Treatment Program.

C. On or about August 15, 2017, the Medical Board of California, Department of Consumer Affairs (hereinafter, "California Board"), by a Decision and Order (hereinafter, "California Order"), inter alia, reprimanded Respondent and ordered Respondent to attend and complete a Professionalism Program (Ethics Course) based upon Respondent's admissions to having been convicted of a crime and Respondent's engaging in conduct which breaches the rules or ethical code of the medical profession, or conduct that is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine by fraudulently representing on a website about his practice and in his curriculum vitae that he had studied at Harvard University.

D. 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(9)(a)(i) (Being convicted of committing an act constituting a crime under New York state law);
2. New York Education Law §6530(20) (Conduct in the practice of medicine which evidences moral unfitness to practice medicine)

SPECIFICATION OF CHARGES

FIRST THROUGH SECOND SPECIFICATIONS

CRIMINAL CONVICTION (Other Jurisdiction)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(iii) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law (namely N.Y. Penal Law §§ 145.00[4][Criminal Mischief in the Fourth Degree – Intentionally disabling or removing a telephonic device to prevent another person from communicating a request for emergency assistance]; 265.02[2][Criminal Possession of a Weapon in the Third Degree – Possession of any Explosive or Incendiary Bomb]) as alleged in the facts of the following:

1. The facts in Paragraph A and A1 and B, and/or
2. The facts in Paragraphs A and A3 and B.

THIRD 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[9][a][i]; 6530[20]) as alleged in the facts of the following:

3. The facts in Paragraphs C and D and D1 and/or D and D2.

FOURTH 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 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[9][a][i]; 6530[20]) as alleged in the facts of the following:

4. The facts in Paragraph C and D and D1 and/or D and D2.

DATE: June 7, 2018
Albany, New York



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct