



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Acting Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

January 18, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marc S. Nash, Esq.
Bureau of Professional Medical Conduct
Division of Legal Affairs
NYS Department of Health
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237

Nathan Dembin, Esq.


RE: In the Matter of Malini Rao, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 23-010) 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.

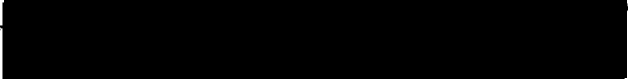
The notice of review served on the Administrative Review Board should be forwarded to:

Jean T. Carney, 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 Ms. Carney 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,


Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: nm
Enclosure

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

COPY

-----X
IN THE MATTER
OF
MALINI RAO, M.D.
-----X

DETERMINATION
AND
ORDER

BPMC-23-010

Pursuant to New York State Public Health Law ("PHL") § 230(19), the New York State Department of Health, Office of Professional Medical Conduct served Malini Rao, M.D. ("Respondent") with a letter initiating a violation of probation proceeding and Specifications of Probation Violations. The hearing was held via videoconference. **PETER B. KANE, M.D.**, Chairperson, **ROSE BERKUN, M.D.**, and **GAIL S. HOMICK HERRLING**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to PHL § 230(10)(e). **TINA M. CHAMPION**, Administrative Law Judge, served as the Administrative Officer.

The New York State Department of Health, Bureau of Professional Medical Conduct ("Department") appeared by Marc S. Nash, Esq. The Respondent appeared by Nathan Dembin, Esq. Evidence was received, witnesses were sworn or affirmed, and a transcript of the proceeding was made.

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

PROCEDURAL HISTORY

Violation of Probation Letter: October 13, 2021
Pre-Hearing Conference: July 12, 2022

Hearing Dates: July 14, 2022
July 15, 2022

Witnesses for Department: Megan Asseng, Administrator, Northwell Health
April Soltren, OPMC Investigator
Bradley Sherman, M.D., Northwell Health

Department Exhibits: 1-14

Witnesses for Respondent: Respondent

Respondent Exhibits: A, C-F

Transcripts: Pre-hearing Conference, Pages 1-44
Hearing, Pages 1-444

Written Submissions Received: October 3, 2022 (Department)
October 13, 2022 (Respondent)¹

Deliberations Held: October 13, 2022

STATEMENT OF CASE

On or about March 29, 2018, the Respondent was disciplined by the New York State Board for Professional Medical Conduct ("BPMC") pursuant to Determination and Order # BPMC-18-067 ("BPMC Decision"), and as modified by the New York State Administrative Review Board for Professional Medical Conduct ("ARB") pursuant to Determination and Order # 18-177 ("ARB Decision"). The Respondent was suspended from practice for fifteen months and placed on probation for three years.

By letter dated October 13, 2021, the BPMC notified the Respondent of the facts forming the basis of its violations of probation determination and provided with Specifications of Probation Violations. The Respondent denied all allegations, claims, specifications, underlying facts, and violations of probation. This hearing was then conducted on the twenty specifications arising from

¹ The Respondent requested and was granted multiple extensions to submit a written brief. The brief submitted was past the date set in the final extension. The Hearing Committee nonetheless considered the Respondent's submission.

alleged violations of four of the Terms of Probation in the Board Order, as modified by the ARB Order.

The Department recommends that the Respondent's license to practice medicine be revoked. The Respondent opposes this recommendation.

FINDINGS OF FACT

The following findings are the unanimous determinations of the Hearing Committee after consideration of the entire record in this matter. Numbers in parentheses refer to exhibits ("Ex.") or transcript page numbers ("Tr.").

1. The Respondent was licensed to practice medicine in New York State on October 5, 2009, by the issuance of license number 255096. (Dept. Ex. 3.)
2. On May 11, 2016, the New Jersey State Board of Medical Examiners (New Jersey Board) issued a Nunc Pro Tunc Order Granting Partial Summary Decision and Suspending License. The New Jersey Board suspended Respondent's license for three years with a minimum of the first two years to be served as active suspension, with the suspension to be tolled while Respondent is not practicing medicine in New Jersey. The New Jersey Board also issued a monetary penalty of \$30,000 and assessed costs of \$20,000. The Respondent was also ordered to attend and successfully complete courses acceptable to the New Jersey Board in medical ethics and medical record keeping. (Dept. Ex. 4, pp. 221-248.)
3. On or about March 29, 2018, the BPMC issued a decision (# 18-067) in which it found that the Respondent violated New York State Education Law §§ 6530(9)(b) and 6530(9)(d), for having committed for 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, and for having her license disciplined by a duly authorized agency of another state,

where the conduct resulting in the discipline would constitute misconduct under the laws of New York State. The BPMC suspended the Respondent's New York medical license for fifteen months and the Respondent was placed on probation for one year. (Dept. Ex. 1, pp. 9-28.)

4. On or about August 9, 2018, the ARB issued a decision (# 18-177) in which it affirmed the BPMC's determination that the Respondent committed professional misconduct and determination to suspend the Respondent's license to practice medicine for fifteen months. The ARB also modified the BPMC's determination by increasing the Respondent's length of probation to three years. (Dept. Ex. 1, pp. 29-43.)

5. As a result of the BPMC Decision and the ARB Decision, the Respondent's license to practice medicine in New York was suspended from April 2018 to July 2019. (Tr. 45.)

6. The Respondent resumed the active practice of medicine in New York State on September 12, 2019. (Tr. 45-46.)

7. By letter dated October 13, 2021, the Respondent was notified of the facts forming the basis of its violations of probation determination and provided with Specifications of Probation Violations. (Dept. Ex. 1.)

8. The Respondent denied "each and every individual allegation and claim and specification and underlying fact cumulatively also as well any violation of probation." (Dept. Ex. 2.)

9. At all times relevant to this hearing, the Respondent was subject to the Terms of Probation set forth in the 2018 BPMC Decision. (Dept. Ex. 1; Tr. 45-46.)

10. **Probation Term 1** to the 2018 BPMC Decision states the following:

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 Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to PHL § 230(19).

(Dept. Ex. 1.)

11. In December 2019, the Respondent submitted a credentialing initial appointment application ("application") to Nassau University Medical Center ("NUMC"). She then submitted a \$200.00 application fee to NUMC via a check dated May 18, 2020. (Dept. Ex. 4, p. 2.)

12. As part of the NUMC application, the Respondent signed a form dated December 20, 2019. The form contained a question (Question 11) that asks, "Have you ever been reprimanded, censured, excluded, suspended (even if the action was stayed), or disqualified from participating in Medicare, Medicaid or any other governmental or quasi-government health-related programs or any other third party payer?" The Respondent answered "No" to this question. (Dept. Ex. 4, pp. 95, 98.)

13. The Respondent's answer to Question 11 on the December 20, 2019, form is false as the Office as the Office of Medicaid Inspector General (OMIG) excluded the Respondent effective April 18, 2019. (Dept. Exs. 4 & 13.)

14. As part of the NUMC application, the Respondent signed a form dated December 23, 2019, certifying that all the information contained in that application was complete and accurate. (Dept. Ex. 4, p. 99.)

15. The Respondent's December 23, 2019, certification is false as the OMIG excluded the Respondent effective April 18, 2019. (Dept. Exs. 4 & 13.)

16. As part of the NUMC application process, the Respondent signed a form dated July 9, 2020. The form contains a question (Question 11) that asks, "Have you ever been reprimanded, censured, excluded, suspended (even if the action was stayed), or disqualified from participating in Medicare, Medicaid or any other governmental or quasi-government health-related programs or any other third party payer?" The Respondent answered "No" to this question. (Dept. Ex. 4, p. 136.)

17. Respondent's answer to question 11 on the July 9, 2020, form is false as the OMIG excluded the Respondent effective April 18, 2019. (Dept. Exs. 4 & 13.).

18. **Probation Term 3** to the 2018 BPMC Decision states the following:

Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of her employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.

(Dept. Ex. 1.)

19. The Respondent worked at Northwell Health ("Northwell") from March 31, 2020, to April 13, 2020. (Tr. 31-35; Dept. Ex. 10.)

20. On or about April 17, 2020, the Respondent informed OPMC Investigator April Soltren that she was working twelve-hour shifts with COVID emergency response for Northwell. The Respondent did not provide her employment start date to OPMC, and the information that she was currently employed was false as the Respondent had been terminated from employment at Northwell on April 13, 2020. (Dept. Exs. 10 & 11; Tr. 31-32, 41, 43-49, 174-178.)

21. On or about May 12, 2020, the Respondent informed Investigator Soltren that she was working on COVID cases in April and May 2020 for Northwell. That information was false as the Respondent had been terminated from employment at Northwell on April 13, 2020. (Dept. Exs. 10 & 11; Tr. 55.)

22. On or about May 12, 2020, the Respondent led Investigator Soltren to believe that she has had continuous work. That information was false as the Respondent had been terminated from employment at Northwell on April 13, 2020, and was not working elsewhere. (Dept. Exs. 10 & 11; Tr. 55-56.)

23. On or about May 12, 2020, the Respondent informed Investigator Soltren that she left Northwell because Northwell had a three-month hiring freeze and because the Respondent did

not want to get COVID. That information was false as the Respondent had been terminated from employment at Northwell on April 13, 2020. (Dept. Exs. 10 & 11; Tr. 55-56.)

24. On or about May 20, 2020, the Respondent sent a facsimile to Investigator Soltren informing her that she worked at Northwell in April and May 2020. That information was false as the Respondent had been terminated from employment at Northwell on April 13, 2020. (Dept. Exs. 6, 10, 11; Tr. 65.)

25. On or about May 20, 2020, the Respondent informed Investigator Soltren that she stopped working at Northwell around May 10, 2020, because Northwell did not pay her. That information was false as the Respondent had been terminated from employment at Northwell on April 13, 2020. (Dept. Exs. 10 & 11; Tr. 73.)

26. **Probation Term 4** to the 2018 BPMC Decision states the following:

Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of her compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.

(Dept. Ex. 1.)

27. Findings of Fact 19-25 above are repeated herein as relating to Probation Term 4.

28. On or about April 21, 2020, the Respondent spoke with Investigator Soltren and advised her that the Respondent would send OPMC her COVID employment contract with Northwell and a proposed contract with NUMC. (Tr. 48-50.)

29. On or about May 1, 2020, the Respondent spoke with Investigator Soltren and advised her that the Respondent would send OPMC her COVID employment contract with Northwell and a recently signed contract with NUMC. (Tr. 53-54.)

30. On or about May 12, 2020, the Respondent spoke with Investigator Soltren and advised her that the Respondent would send OPMC her COVID employment contract with Northwell and a contract with NUMC. (Tr. 54-56.)

31. The Respondent did not forward any of the requested contracts until May 20, 2020.
(Dept. Ex. 6; Tr. 74-75.)

32. Probation Term 7(d) to the 2018 BPMC Decision states the following:

Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with § 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent commencing practice within the State of New York.

(Dept. Ex. 1.)

33. On or about July 22, 2021, the Respondent advised Investigator Soltren that the Respondent had let her medical malpractice insurance expire. (Dept. Ex. 7; Tr. 91-94, 265, 354-356.)

34. Effective July 1, 2021, the Respondent failed to obtain Medical Malpractice Insurance with a limit of \$2 million for each medical incidence and \$6 million total liability. (Dept. Exs. 7-9; Resp. Ex. D; Tr. 92-96, 162-163, 353.)

CONCLUSIONS OF LAW

As required by PHL § 230(10)(f), the Hearing Committee based its conclusions on whether the Department met its burden of establishing that the allegations contained in the Statement of Charges were more probable than not. When the evidence was equally balanced or left the Hearing Committee in such doubt as to be unable to decide a controversy either way, then the judgment went against the Department. (See Prince, Richardson on Evidence § 3-206.) Having considered the complete record in this matter, the Hearing Committee concludes that the Department has established each of the twenty specifications contained in the Violation of Probation letter. The sustained specifications include violations of Probation Terms 1, 3, 4, and 7(d) to BPMC Determination and Order # BPMC-18-067, and as modified by ARB Determination and Order # 18-177. The Hearing Committee made these conclusions of law pursuant to the

factual findings listed above, and all conclusions resulted from a unanimous vote of the Hearing Committee.

DEPARTMENT'S WITNESSES

The Department presented testimony from April Soltren, OMPC Investigator. (Tr. 42-172.) Ms. Soltren has been a Senior Medical Conduct Investigator with the Department of Health for fourteen years and works in the physician monitoring program, which monitors licensees for compliance with BMC Orders. (Tr. 44.) Ms. Soltren was assigned to monitor the Respondent and was in contact with her for the purpose of monitoring compliance at various times since July 2019. (Tr. 45, 47.) Ms. Soltren testified as to the specifics of multiple communications she had with the Respondent between April 2020 and July 2021 pertaining to dates and locations of the Respondent's employment, as well as medical malpractice insurance coverage. (Tr. 48-97.) Ms. Soltren also testified that the Department made numerous requests for the Respondent to provide certain written information relating to compliance. Ms. Soltren's testimony was direct, clear and factual. She was informed and knowledgeable as to all relevant matters, and the Hearing Committee found her to be credible.

The Department also presented the testimony of Megan Asseng, Administrator, and Bradley Sherman, M.D., both of whom are employed by Northwell Health. (Tr. 27-42; 173-192.) Ms. Asseng is the Vice President of Integrated Operations at Northwell Health and testified that the Respondent began working at Northwell on March 31, 2020, and stopped working there on April 13, 2020. (Tr. 29, 31-35; see also Dept. Ex. 10.) Dr. Sherman is the Medical Director and Chief of Medicine at Glen Cove Hospital, which is part of the Northwell Health System. (Tr. 174.) Dr. Sherman testified that the Respondent worked one shift at Syosset Hospital, which is also part of the Northwell Health System, then worked a few shifts at Glen Cove Hospital. (Tr. 175-176.) He testified that the Respondent was given disaster privileges at the Northwell and, as such, the vetting process was superficial in order to get staffing during a time of crisis. (Tr. 176.) Dr. Sherman testified that he learned of the OMPC Order against the Respondent on April 13,

2020, at which time it was determined that the Respondent could no longer work at the hospital or in the Northwell Health System. (Tr. 177.) Dr. Sherman also testified that he informed the Respondent verbally by telephone on April 13, 2020, that the hospital could no longer employ her, and that he memorialized that conversation with a termination letter to the Respondent dated April 14, 2020. (Tr. 178-179; see also Dept. Ex. 11.) Ms. Asseng and Dr. Sherman have no interest in the outcome of this proceeding and provided direct, clear and factual testimony that was also supported by documentary evidence. The Hearing Committee found them both credible.

RESPONDENT'S TESTIMONY

The Respondent was present on both hearing dates and provided testimony. (Tr. 197-424.) The Hearing Committee found the Respondent to be evasive, unreliable and dishonest. When not fabricating stories and changing answers in an attempt to support her narrative, the Respondent spent much time evading direct questions with nonresponsive answers or responses such as "the answer is not yes and not no." (Tr. 291, 292, 293, 309, 315, 316, 318, 338, 339, 343, 349, 368, 393.)

Illustrative of the above is the Respondent's answer to the very simple and direct question "Whatever happened to that two-hundred-dollar application fee if you know that, Doctor?" The Respondent answered:

I know I took the part of the application draft that I filled out incompletely and wrongly, **not falsely**, but wrongly. In 2019 December involves taking a picture of myself and the two-hundred-dollar check or money order. I did take out a check or money order dated December 2019.

I was told by the corporation to keep the money order and not to cash it or not to give it to the hospital. That money with - - money order was sitting in my kitchen drawer until November 17th of 2020 when it was refunded to my bank and I have the relevant documentation indicating that my personal money order was never cashed by the hospital.

What I may have happened is when I signed the contract with Somnia for the per diem position in hopes of obtaining fellowship in April 20 - - I - - that contract came around the first week of May when we could all go back to work in anesthesia again.

There is a slight possibility that the corporation may have cut a check for medical staff privileges on my behalf. Since I did not write that check and since I did not sign it, I have absolutely no idea what happened to that check or who signed it or where -- where -- when or what happened. I have no idea.

(Tr. 245-246.) A mere two questions later, the Respondent was asked "When you signed, have you ever been reprimanded, censured, et cetera, and you said no. Is that correct? Is that true, Doctor?" The Respondent contradicted her prior answer by stating:

The application says no. As I mentioned, the application was filled as a draft, a dry run of potential privileges, that were privy only to the key members of the hospital administration who are responsible for my possible credentialing. **Yes, the application is false.** It was never done with an intent to lie or deceive or deceit anybody. It was done because it was a dry run draft of an application.

And verbally, everyone in the hospital and everyone in the corporation were aware from December of 2019 that I was on the Medicaid exclusion list. That was public knowledge.

(Tr. 247.)

Further illustrating one of the many instances of the Respondent's evasiveness is the following exchange between a Hearing Committee member (HC) and the Respondent, which exchange came after the Respondent failed to provide the Department attorney with a clear answer on the same topic:

HC: Thank you very much. Okay. Next question. Let's see.
Another -- another question is -- okay. I understand that you can't tell whether it was your signature or somebody else's signature on the e-forms. We were shown an exhibit where it was a written signature. Are you saying you did not recognize your -- that signature as your own? Yes, or no?

RESPONDENT: I believe -- I'm not sure. I don't remember the exhibit.

HC: Okay. Let's go back to that, Mr. Nash.

MR. NASH: Okay. I think I know what you're talking about. Let me get there, one second. Okay. One second, I got to get to the other screen to share.

HC: Thank you.

MR. NASH: And what I'm -- what I'm sharing, Judge is what I -- what I previously showed Dr. Rao and the committee during my cross examination, nothing different.

ALJ CHAMPION: Is this as it -- is this part of Exhibit Four that you're pulling up?

MR. NASH: It is, Judge. It is Exhibits Four and what I referenced before regarding the signatures --

HC: Yes.

MR. NASH: -- page ninety-five which was on the screen.

HC: Yes, and Mr. Nash, if you can enlarge it --

MR. NASH: Yeah.

HC: -- so that Dr. Rao can clearly see the signature.

MR. NASH: Sure. This is page ninety-five.

ALJ CHAMPION: Dr. Rao, you're also welcome to pull out your hardcopy that was sent to Mr. Dembin, Exhibit Four, page ninety-five.

HC: Dr. Rao, can you see it clearly enough?

RESPONDENT: Yeah, but I'm not sure if it's me or some --.

HC: Okay. So this is a written signature. Do you recognize the signature as your own?

RESPONDENT: It may be.

HC: Is it a yes or no.

RESPONDENT: I can't --.

HC: Do you recognize -- I mean, I always recognize my own signature. If someone forges my signature, I would probably know. So do you recognize --?

RESPONDENT: ... to say anyone has forged any signature.

HC: No, Dr. Rao, please just answer my question. Do you recognize it as your own signature or you do not? You don't know if this is your own signature?

RESPONDENT: It probably maybe so, yeah, maybe. I think so.
Yeah, I think it's me.

HC: So this is your own signature. This is your own signature,
correct?

RESPONDENT: Correct.

(Tr. 403-406.)

The Hearing Committee found that the Respondent placed blame on others rather than taking accountability for her actions. It also found the Respondent exuded a false sympathetic appeal with an emphasis on exaggerating her limited work during the pandemic to the point of it becoming an insult to medical professionals who genuinely worked tirelessly and selflessly throughout the pandemic, and to the point of using a tragedy to make herself look better. The Hearing Committee did not credit the Respondent's testimony.

FIRST – THIRD SPECIFICATIONS

The Department's First through Third Specifications charge the Respondent with violating the 2018 BPMC Decision's Probation Term 1 by failing to conform her conduct to the moral and professional standards and law governing the practice of medicine for practicing the profession fraudulently or beyond its authorized scope. To sustain a charge that a licensee practiced medicine fraudulently, a hearing committee must find that (1) a licensee made a false representation, whether by words, conduct or by concealing that which the licensee should have disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation, Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (3d Dept. 1966), aff'd, 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). A committee may infer the licensee's knowledge and intent properly from facts that such committee finds, but the committee must state specifically the inferences it draws regarding knowledge and intent, Choudhry v. Sobol, 170 A.D.2d 893, 566 N.Y.S.2d 723 (3d Dept. 1991).

The Respondent undisputedly marked the answer "no" to questions on the NUMC application forms about whether she had been excluded from Medicaid despite having been

excluded and being aware of such exclusion. The Respondent testified that this application was a dry run for credentialing, that it was abandoned, and that all relevant individuals at NUMC was aware of her Medicaid exclusion. She further testified that someone at NUMC told her that it was permissible to submit such a false answer yet was unable to provide the name of any person who told her that it was permissible. The Respondent's explanation for why her false answer was permissible on the NUMC application forms is not persuasive. The Hearing Committee finds that the Respondent knowingly made false representations with intent to mislead when completing Question 11 on the December 20, 2019, and the July 9, 2020, forms, as well the December 23, 2019 certification.

These specifications are sustained.

FOURTH – NINTH SPECIFICATIONS

The Department's Fourth through Ninth Specifications charge the Respondent with violating the 2018 BPMC Decision's Probation Term 3 by failing to provide, in writing, a full description of her employment and practice, and all professional and residential addresses and telephone numbers within and outside New York State.

The Respondent worked at Northwell from March 31, 2020, to April 13, 2020. Specifically, she worked at Northwell's Syosset Hospital on March 31, 2020, and at Northwell's Glen Cove Hospital from April 1, 2020 to April 13, 2020. Upon learning that the Respondent had an OPMC judgment on record, Northwell determined that the Respondent could no longer work for Northwell and, on April 13, 2020, Dr. Sherman verbally advised the Respondent of her termination. On April 14, 2020, Dr. Sherman authored a letter to the Respondent that reiterated his discussion with her. He specifically wrote that Northwell immediately terminated Respondent's per diem employment and that her disaster privileges would likely terminate effective immediately without further notice.

As detailed in the Findings of Fact above, the Respondent provided false information to OPMC regarding the status of her employment on multiple occasions in April and May 2020. She failed to provide her start date and failed to provide a true work history, either orally or in writing.

The Respondent failed to provide a full description of her employment and all professional addresses. Further, the Respondent did not provide Northwell's offer of employment dated March 26, 2020, to OPMC until May 20, 2020, which is beyond the 30-day requirement of time for which the Respondent was to notify OPMC of any additions or changes to the information required by Probation Term 3.

These specifications are sustained.

TENTH – EIGHTEENTH SPECIFICATIONS

The Department's Tenth through Eighteenth Specifications charge the Respondent with violating the 2018 BPMC Decision's Probation Term 4 by failing to cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of the Respondent's compliance with the terms of the 2018 BPMC Order, as modified by the 2018 ARB Order.

The Respondent provided false information to OPMC as noted in the discussion pertaining to the Fourth – Ninth Specifications, above, and failed to provide supporting written information when requested by OPMC Investigator Ms. Soltren. OPMC made multiple requests for written verification relating to employment. The Respondent repeatedly responded by telling Investigator Soltren that she would send her Northwell COVID employment contract, yet the Respondent failed to do so in a timely manner. The Respondent did not provide her Northwell contract until over a month after she was terminated from employment. The Respondent set forth multiple excuses for her delay in providing requested information, including forgetfulness, lackadaisical attitude toward paperwork, and lack of access and/or ability to transmit the information. None of these excuses are persuasive.

These specifications are sustained.

NINETEENTH & TWENTIETH SPECIFICATIONS

The Department's Nineteenth and Twentieth Specifications charge the Respondent with violating the 2018 BPMC Decision's Probation Term 7(d) by failing to cooperate fully with, and

respond in a timely manner to, OPMC requests to provide written periodic verification of the Respondent's compliance with the terms of the 2018 BPMC Order, as modified by the 2018 ARB Order.

The Respondent was obligated to maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year for July 1, 2021, to June 30, 2022. The Respondent had the necessary coverage for the prior policy year but let her excess policy lapse, dropping her coverage limits to \$1 million and \$3 million. In July 2021, the Respondent was advised by OPMC Investigator Soltren that she needed to continue to maintain the excess coverage and that proof of said coverage was needed. On July 28, 2021, Respondent sent OPMC an email in which she stated she was confirming \$1 million and \$3 million excess coverage for the period of July 1, 2021 to July 1, 2022. Attached to the email was a binder for excess professional liability with limits of \$1 million / \$3 million. However, the document reflects that the binder period is 90 days, and the binder number (IE105815) is the same as the binder number on the Certificate of Insurance issued by Medical Malpractice Insurance Pool of New York State with \$1 million / \$3 million coverage that the Respondent had provided to OPMC just days earlier. (Dept. Exs. 7-9.) As of the date of the hearing, OPMC had not received from the Respondent proof of proper medical malpractice insurance for the period of July 1, 2021 to June 30, 2022. (T. 96). The Respondent maintained at hearing that she had the required insurance in effect yet, having complete control over proper proof of such, still did not come forth with convincing evidence of proper coverage. The only document proffered by Respondent was a letter from MMIP stating she had continuous coverage of two separate policies, the letter did not indicate the coverage limits and Respondent testified she was unsure if she had one or two policies. (Resp. Ex. D; Tr. 353.)

These specifications are sustained.

DETERMINATION AS TO PENALTY

The Hearing Committee considered the full spectrum of penalties available pursuant to statute, including revocation, suspension, probation, censure, and the imposition of civil penalties.

The Hearing Committee heard testimony from the OPMC Investigator, Ms. Soltren, and two disinterested Northwell employees, Ms. Asseng and Dr. Sherman. The Hearing Committee deemed the testimony of all three witnesses credible and, where applicable, supported by documentary evidence.


The Hearing Committee found the Respondent's testimony to be riddled with inconsistencies and falsehoods. The Respondent failed to show any genuine remorse or accountability for her actions, resorting instead to disingenuousness, placing the blame on others, and taking the role of being a victim to circumstances. These factors, coupled with the Respondent's failure to comply with the Terms of Probation, has caused the Hearing Committee to conclude that no penalty other than revocation of her license to practice medicine is sufficient to appropriately address the Respondent's shortcomings. Her acknowledgement of a "lackadaisical attitude" toward paperwork and claimed ignorance of "administrative issues" provides the Hearing Committee with no comfort or assurance that the Respondent would truly endeavor to change her behavior going forward, particularly given her pattern of deceitfulness.


ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The First through Twentieth Specifications of probation violations, as set forth in the Statement of Charges, are sustained; and
2. The Respondent's license to practice medicine in the State of New York is revoked; and
3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon the Respondent at her last known address and such service shall be effective upon receipt or seven days after mailing, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York
January 12, 2023


Peter B. Kane, M.D., Chairperson
Rose Berkun, M.D.
Gail S. Homick Herrling

Marc S. Nash, Esq.
Bureau of Professional Medical Conduct
Division of Legal Affairs
NYS Department of Health
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237


Nathan Dembin, Esq.




Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

October 13, 2021

Malini Rao, M.D.

VIA CERTIFIED MAIL - 70171450000132970155

Re: Violation of Probation
Determination and Order BMC # 18-067
Administrative Review Board Determination and Order BMC # 18-177

Dear Dr. Rao:

After an investigation pursuant to N.Y. Public Health Law Section 230(19), I have determined, in my capacity as Director of the Office of Professional Medical Conduct (OPMC) of the New York State Department of Health, that you, Probationer, have violated the terms of probation imposed upon you by Determination and Order BMC # 18-067 (hereinafter BMC # 18-067), effective on or about March 30, 2018, as modified by Administrative Review Board Determination and Order BMC # 18-177 (hereinafter BMC # 18-177). This letter initiates a violation of probation proceeding against you pursuant to N.Y. Public Health Law Section 230(19).

A copy of BMC # 18-067 is attached and marked as "Appendix A," and a copy of BMC # 18-177 is attached and marked as "Appendix B."

My determination that you have committed each of the specified probation violations based on one or more of the facts enumerated in "Appendix C" and as cited below in each Specification of Probation Violation. You may dispute or admit each enumerated fact by placing your signature or initials next to it, in the appropriate space.

Please take notice that if you do not dispute the facts forming the basis of my determination of probation violation within 20 days of the date of this letter, I shall submit this matter, and the undisputed facts set forth directly to a committee on professional conduct for its review and determination.

You were authorized to practice medicine in New York State on or about October 5, 2009 by the issuance of license number 255096. As stated above, you were previously disciplined pursuant to BMC # 18-067, as modified by BMC # 18-177, effective on or about March 30, 2018. These Orders suspended your license to practice medicine for fifteen months followed by three years' probation, commencing on the effective date. The relevant Probation terms, listed in BMC # 18-067, Appendix I, listed the following.

Probation term 1 required that you (henceforth the Probationer) conform your conduct to the moral and professional standards and law governing the practice of medicine. Any act of professional misconduct by the Probationer as defined in N.Y. Educ. Law §§ 6530 or 6531 constitutes a violation of probation and subjects you to an action pursuant to N.Y. Pub. Health Law § 230 (19).

Probation term 3 required that the Probationer shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of her employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC in writing, within 30 days of any additions to or changes in the required information.

Probation term 4 required that the Probationer shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.

Probation term 7(d) required that the Probationer shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with § 230(18)(b) of the Public Health Law, and proof of coverage shall be submitted to the Director of OPMC prior to Respondent commencing practice within the State of New York.

SPECIFICATIONS OF PROBATION VIOLATIONS

FIRST THROUGH THIRD SPECIFICATIONS

Probationer is charged with violating probation term 1 by failing to conform her conduct to the moral and professional standards and law governing the practice of medicine when Probationer practiced the profession fraudulently or beyond its authorized scope, as set forth in:

1. The facts in Paragraphs 1 and 1.a.

2. The facts in Paragraphs 1 and 1.b.
3. The facts in Paragraphs 1 and 1.c.

FOURTH THROUGH NINTH SPECIFICATIONS

Probationer is charged with violating probation term 3 by failing to provide, in writing, a full description of her employment and practice; all professional and residential addresses and telephone numbers within and outside New York State, as set forth in:

4. The facts in Paragraph 2.
5. The facts in Paragraph 3.
6. The facts in Paragraph 4.
7. The facts in Paragraph 5.
8. The facts in Paragraph 6.
9. The facts in Paragraph 7.

TENTH THROUGH EIGHTEENTH SPECIFICATIONS

Probationer is charged with violating probation term 4 by failing cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this BPMC # 18-067, as modified by BPMC 18-177, as set forth in:

10. The facts in Paragraph 2.
11. The facts in Paragraph 3.
12. The facts in Paragraph 4.
13. The facts in Paragraph 5.
14. The facts in Paragraph 6.
15. The facts in Paragraph 7.
16. The facts in Paragraph 8.
17. The facts in Paragraph 9.
18. The facts in Paragraph 10.

NINETEENTH AND TWENTIETH SPECIFICATION

Probationer is charged with violating probation term 7(d) by failing cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this BPMC # 18-067, as modified by BPMC 18-177, as set forth in:

19. The facts in Paragraph 11.

20. The facts in Paragraph 12.

Please be advised that you have a right to a hearing to contest my determination that you have violated your probation, and you have the right to be represented by counsel. If you elect to dispute the facts forming the basis of my determination, you must return the fully executed Appendix B setting forth the facts you specifically deny, as well as those you admit, within 20 calendar days of the date of this letter, to: Paula Breen, Director, Office of Professional Medical Conduct, Riverview Center, 150 Broadway Suite 355, Albany, NY 12204-2719. You shall be afforded a hearing before a committee on professional conduct, which will hear the matter and make findings of fact, conclusions of law and a determination. A stenographic record will be made of the hearing. The committee, after providing you with an opportunity to be heard, shall determine whether you have violated probation and shall impose an appropriate penalty, from among those set forth in N.Y. Public Health Law Section 230-a; these include: a Censure and Reprimand, Suspension of License, Limitation of License, Revocation of License, a Fine, a Course of Education or Training, and/or Public Service. In determining the appropriate penalty, the committee shall consider both the violation of probation and the prior adjudication of misconduct against you. The chairperson of the committee shall issue an order adopting the decision of the committee on professional conduct. The order may be reviewed by the administrative review board for professional medical conduct.

Please be on notice that, should you not dispute the facts forming the basis of my determination within 20 calendar days of the date of this letter, or if my determination that you have violated your probation is sustained by a committee on professional conduct after a hearing, the Board may, among other things, revoke or suspend your license, issue a Censure and Reprimand, impose probation, and order payment of a substantial fine. Given the seriousness of these proceedings, I urge you to consult an attorney immediately.

Very truly yours,



Shelly Wang Bandago
Interim Director, Office of Professional Medical Conduct

cc: Nathan L. Dembin, Esq. - Certified Mail - 70171450000132970186
Marc S. Nash, Associate Counsel, BPMC