



Department of Health

ANDREW M. CUOMO
Governor

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

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

January 15, 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Huey C. Lin, M.D.


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

RE: In the Matter of Huey C. Lin, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 19-008) 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

BACKGROUND

The Department has brought the 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)(b), having been found guilty of professional misconduct by a duly authorized professional disciplinary agency of another state, where the conduct resulting in such action would, if committed in New York State, constitute professional misconduct under the laws of New York State. The Respondent is also charged with professional misconduct pursuant to Educ. Law §6530(9)(d), by having had his license to practice medicine revoked, or suspended, or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in such action would, if committed in New York State, constitute professional misconduct under the laws of New York State. Under PHL §230(10), the Department has the burden of proving its case by a preponderance of the evidence.

FINDINGS OF FACT

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

1. The Respondent was authorized to practice medicine in New York State on June 13, 1975, by the issuance of license number 123931. (Exhibit 8).

2. On October 12, 2017, the Respondent entered into a Stipulated Surrender of License and Order, agreeing to surrender his Physician's and Surgeon's Certificate to the Medical Board of California. The Order specifies that Respondent's surrender of his license constitutes the imposition of professional discipline against the Respondent. (Exhibit 9).

3. The surrender was based upon the Respondent being diagnosed with a mental illness impacting his competency to practice medicine, failure to maintain accurate medical records, gross negligence, and repeated acts of negligence. As a result, the Respondent removed a patient's spleen instead of a kidney, and two other patients died after the Respondent failed to appropriately assess them prior to performing surgery. (Exhibit 9).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law §6530(9)(b).

VOTE: Sustained (3-0)

SECOND SPECIFICATION

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed professional misconduct as defined in Educ. Law §6530(9)(d).

VOTE: Sustained (3-0)

CONCLUSIONS OF LAW

The Hearing Committee reviewed the Department's evidence showing that the Respondent's Physician's and Surgeon's Certificate was surrendered to the Medical Board of California, a duly authorized disciplinary agency. The surrender was based upon the Respondent being diagnosed with a mental illness impacting his competency to practice medicine, failure to maintain accurate medical records, gross negligence, and repeated acts of negligence. In New York, discipline may be imposed if a physician is found practicing the profession while impaired by a mental disability under Educ.

Prosper Remy, M.D.
David F. Irvine, DHSc., P.A.

To: Huey C. Lin, M.D.



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

APPENDIX I

IN THE MATTER
OF
HUEY CHOU LIN, M.D.

STATEMENT
OF
CHARGES

HUEY CHOU LIN, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 13, 1975, by the issuance of license number 123931 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 9, 2017, the Medical Board of California, Department of Consumer Affairs (hereinafter, "California Board") by a Decision and Order (hereinafter, "California Order"), accepted Respondent's voluntary surrender of his Physician's and Surgeon's Certificate No. A 35361. The surrender was based upon Respondent's having a mental illness affecting competency in violation of the California Business and Professions Code (hereinafter, "California Code") §822; gross negligence in violation of California Code §2234(b); repeated acts of negligence in violation of California Code §2234(c); and failure to maintain adequate and accurate medical records in violation of California Code §2266.

B. On or about December 29, 2016, Respondent underwent a mental examination ordered by the California Board. Upon completion of the examination, the psychiatrist concluded that Respondent has a mental illness or condition that impacts his ability to engage in the practice of medicine. It was the opinion of the psychiatrist that Respondent is unable to practice medicine safely at this time, Respondent's

impairment places the public at risk, and Respondent's limitations are beyond being addressed by monitoring or oversight.

C. The findings in the California Order related to the care and treatment of three patients which deviated from accepted standards of care in that Respondent failed to adequately perform preoperative evaluations of the patients including failure to perform additional preoperative workups and failure to review preoperative CT scans, failed to obtain oncology consults, failed to adequately assess the patients' medical histories, failed to properly identify structures intraoperatively, and failed to maintain adequate and accurate records relating to the care and treatment of each of the patients. These deviations from the standards of care, among others, resulted in the erroneous removal of one patient's spleen instead of the left kidney and two of the patients having died.

D. The conduct resulting in the disciplinary action taken against the Respondent would constitute professional misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(7) (Practicing the profession while impaired by a mental disability);
2. New York Education Law §6530(4) (Practicing the profession with gross negligence);
3. New York Education Law §6530(3) (Practicing the profession with negligence on more than one occasion); and/or
4. New York Education Law §6530(32) (Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient)

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[7],[4],[3],[32]) as alleged in the facts of the following:

1. The facts in Paragraphs A, B and D and D.1; A, C and D and D.2; A, C and D and D.3; and/or A, C and D and D.4.

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 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[7],[4],[3],[32]) as alleged in the facts of the following:

2. The facts in Paragraphs A, B and D and D.1; A, C and D and D.2; A, C and D and D.3; and/or A, C and D and D.4.

DATE: September 12, 2018
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct