



Department of Health

ANDREW M. CUOMO
Governor

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

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

September 13, 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marcello Pietrantonio, M.D.


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

RE: In the Matter of Marcello Pietrantonio, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 19-237) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,


James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

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

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: :
IN THE MATTER : DETERMINATION
: :
OF : AND
: :
MARCELLO PIETRANTONI, M.D. : ORDER
: 19-237
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A hearing was held on August 14, 2019, at the offices of the New York State Department of Health (Department), 150 Broadway, Menands, New York. Pursuant to §230(10)(e) of the Public Health Law (PHL), RICHARD F. KASULKE M.D., Chairperson, MICHAEL C. IANNUZZI, M.D., and ELENA M. COTTONE, PA-C, duly designated members of the State Board for Professional Medical Conduct (BPMC), served as the Hearing Committee in this matter. JEAN T. CARNEY, ADMINISTRATIVE LAW JUDGE (A.L.J.), served as the Administrative Officer.

The Department appeared by Senior Attorney Pooja Rawal. The Respondent appeared in person, pro se. Jurisdiction over the Respondent was obtained by service of the Notice of Referral Proceeding and Statement of Charges. The Hearing Committee received and examined documents from the Department (Exhibits 1-4), the Respondent testified in his own behalf; and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charges that the Respondent committed professional misconduct in violation of

Education Law §§6530(9)(d), and 6530(9)(b); and that pursuant to PHL §230-a, the penalty of revocation is appropriate.

BACKGROUND

The Department brought the case pursuant to PHL §230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Education Law §6530(9).

The Respondent is charged with professional misconduct pursuant to Educ. Law §6530(9)(d), 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. The Respondent is also 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.

Under PHL §230(10), the Department had the burden of proving its case by a preponderance of the evidence. Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 “shall be subject to penalties as prescribed in [PHL § 230-a] except that the charges may be dismissed in the interest of justice.”

FINDINGS OF FACT

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

1. The Respondent was authorized to practice medicine in New York State on October 5, 1984, by the issuance of license number 160500. (Exhibit 2).

2. On March 22, 2019, the Commonwealth of Kentucky Board of Medical Licensure (KBML) issued an Order of Indefinite Restriction on the Respondent's license to practice medicine prohibiting him from "performing any act which would constitute the practice of maternal-fetal medicine or obstetrics and gynecology, unless and until approved to do so by the panel". (Exhibit 4).

3. The KBML Order was based on findings made after an administrative hearing wherein the Respondent was found to have engaged in conduct constituting gross negligence; and having violated the standards of acceptable and prevailing medical practice in Kentucky. (Exhibit 4).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

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

VOTE: Sustained (3-0)

SECOND SPECIFICATION

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

HEARING COMMITTEE DETERMINATIONS

The Department met its burden of proving by a preponderance of the evidence that the Respondent committed professional misconduct as alleged in the Statement of Charges. The evidence shows that the KBML indefinitely restricted the Respondent's medical license, prohibiting him from performing any act which would constitute the practice of maternal-fetal medicine or obstetrics and gynecology unless and until approved to do so by the KBML. The Respondent argues that the current charges should be dismissed because he is appealing the KBML Order. However, the Order of Indefinite Restriction remains in effect, and the Respondent is bound by its terms. The consequences of the Respondent's actions constitute professional misconduct under the laws of New York State as defined in Educ. Law §§6530(9)(d) and 6530(9)(b).

In considering the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties; the Hearing Committee noted the nature and severity of the Respondent's actions that prompted the Order of Indefinite Restriction by the KBML. The Hearing Committee also noted that the Respondent showed no remorse and lacked

insight into his actions. Therefore, the Hearing Committee agrees with the Department's recommendation that the Respondent's medical license in New York State be revoked pursuant to PHL §230-a.

ORDER


IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct as set forth in the Statement of Charges are sustained;
2. The Respondent's license to practice medicine is REVOKED; and
3. This Order shall be effective upon service on the Respondent in accordance with the Requirements of PHL §230(10)(h).


DATED: Albany, New York

Sept. 07

, 2019


Richard F. Kasulke, M.D., Chairperson
Michael C. Iannuzzi, M.D.
Elena M. Cottone, PA-C

To: Marcello Pietrantonio, M.D.


Pooja Rawal, Esq.
Senior Attorney
Bureau of Professional Medical Conduct
Corning Tower Building -- Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

IN THE MATTER
OF
MARCELLO PIETRANTONI, M.D.

STATEMENT
OF
CHARGES

MARCELLO PIETRANTONI, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 5, 1984, by the issuance of license number 160500 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 22, 2019, the Commonwealth of Kentucky, Board of Medical Licensure ("KY Board"), issued an Order of Indefinite Restriction ("Order") on the Respondent's Kentucky medical license. The Order restricted and limited the Respondent's license for an indefinite period of time beginning immediately upon the date of filing of the Order. During the effective period of the Order, the Respondent shall not perform any act which would constitute the practice of maternal-fetal medicine or obstetrics and gynecology unless and until approved to do so by the Panel. The Respondent was also ordered to reimburse the KY Board the costs of the proceedings in the amount of \$30,514.90 within five years from entry of the Order. Additionally, prior to the panel considering a request by the Respondent to resume the practice of maternal-fetal medicine or obstetrics and gynecology, the Board ordered the Respondent to complete a clinical skills assessment in maternal-fetal medicine and obstetrics and gynecology and to complete an assessment report and educational or

remediation plan requested by the assessment. The Order was based on the Respondent's care and treatment of three patients.

B. The conduct resulting in the KY Board's disciplinary action against the Respondent would constitute misconduct under the law of New York State pursuant to the following section of New York State Law:

1. N.Y. Educ. Law § 6530(4) (Practicing the profession of medicine with gross negligence on a particular occasion); and/or
2. N.Y. Educ. Law § 6530(3) (Practicing the profession of medicine with negligence on more than one occasion).

SPECIFICATION OF CHARGES

FIRST 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 as alleged in the facts of the following:

1. The facts in Paragraphs A, B, and/or B1.

SECOND 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 as alleged in the facts of the following:

1. The facts in Paragraphs A, B, and/or B1.

DATE: May 29, 2019
Albany, New York


TIMOTHY MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct