



Department of Health

ANDREW M. CUOMO
Governor

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

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

April 24, 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Simon B. Santos-Arias, MD


RE: In the Matter of Simon B. Santos-Arias, MD

Dear Parties:

Enclosed please find the Determination and Order (No. 19-097) 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

In the matter of	:	
	:	
	:	Determination
	:	and Order
Simon B. Santos-Arias, MD	:	
NYS license # 135356	:	CO-18-053165B
	:	
	:	19-097
	:	
	:	

A notice of referral proceeding and statement of charges, dated January 2, 2019, were served on Respondent **Simon B. Santos-Arias, MD**. The statement of charges alleged professional misconduct in violation of New York State Education Law 6530. (Exhibit 1.) A hearing was held at offices of the New York State Department of Health, 259 Monroe Avenue, Rochester, New York, on March 14, 2019.

Pursuant to Public Health Law 230(10)(e), **Heidi B. Miller, PA-C, MPH**, Chair, **Sanford H. Levy, MD**, and **Ashwani Chhibber, MD**, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee. **John Harris Terepka**, Administrative Law Judge, served as the administrative officer.

The Department of Health (the Petitioner) was represented by **Marc S. Nash, Esq.** **Simon B. Santos-Arias, MD**. (the Respondent) did not appear, although duly served with notice of the hearing in conformity with the requirements of PHL 230(10)(d). (Exhibit 2.) Evidence was received and a transcript of the proceedings was made. After consideration of the entire record, the hearing committee issues this determination and order sustaining the charges and revoking the Respondent's license to practice medicine.

JURISDICTION

As is set forth in Public Health Law 230(1)&(7) and Education Law 6530, the legislature created the State Board for Professional Medical Conduct in the Department of Health and authorized it to conduct disciplinary proceedings in matters of professional medical conduct. In this case, the Respondent, a physician, has been charged with misconduct pursuant to Ed.L 6530(9)(a)(iii),(b)&(d).

Pursuant to PHL 230(10)(p), a hearing on limited issues, or "direct referral proceeding," is authorized when a licensee is charged solely with a violation of Ed.L 6530(9). Charges of misconduct under Ed.L 6530(9) are based upon a criminal conviction or an administrative violation, in New York State or another jurisdiction, establishing conduct that would constitute a crime or professional misconduct if committed in New York. The scope of the hearing is limited to whether there is a relevant conviction or administrative determination and if so, to a determination of the nature and severity of the penalty to be imposed. PHL 230(10)(p). Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51.

EVIDENCE

Witnesses for the Petitioner: None
Petitioner exhibits: 1-7

Witnesses for the Respondent: None
Respondent exhibits: None

A transcript of the hearing was made.

FINDINGS OF FACT

1. Respondent Simon Santos-Arias, MD was authorized to practice medicine in New York State on July 28, 1978 under license number 135356. (Exhibit 3.)

2. On April 13, 2015, in the Superior Court of New Jersey, County of Morris, the Respondent pleaded guilty to and was convicted of the crime of third-degree commercial bribery, in violation of NJSA 2C:21-10a(3). The Respondent was sentenced to four years of probation, one hundred hours of community service, a \$5,000 fine and \$30,000 in restitution. (Exhibit 3.)

3. On April 28, 2015, by consent order based upon the Respondent's New Jersey criminal conviction, the New Jersey Board of Medical Examiners suspended the Respondent's medical license for three years and required him to complete an ethics course. (Exhibit 4.)

4. On December 16, 2016, the Florida Board of Medicine, after a hearing, revoked the Respondent's medical license based upon the Respondent's New Jersey criminal conviction, the New Jersey suspension of his medical license, and his failure to report these matters to the Florida Board as required by Florida law. (Exhibit 5.)

HEARING COMMITTEE DETERMINATION

The Respondent's bribery conviction in New Jersey resulted from his admission that he accepted approximately \$30,000 in cash and gifts in return for referring patients for diagnostic testing between 2008 and 2014. The hearing committee agreed that the crime of which the Respondent was convicted in New Jersey, commercial bribery, would, if committed in New York, have constituted commercial bribe receiving in the second degree, a crime under NY Penal Law 180.05. The hearing committee unanimously determined (3-0) that, as alleged in the statement of charges, the Respondent violated Ed.L 6530(9)(a)(iii) which defines professional misconduct as:

9. (a) Being convicted of committing an act constituting a crime under... (iii) the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York State Law.

The New Jersey Board of Medical Examiners, by consent order, suspended the Respondent's medical license and imposed other discipline because he was convicted of a crime. The Florida Medical Board, after a hearing, revoked his license based upon the same criminal conviction, the New Jersey Board's action, and the Respondent's failure to report these matters to the Florida Board as required by Florida law.

The hearing committee agreed that the criminal conviction on which the New Jersey and Florida licensing authorities actions were based was for conduct that would constitute a crime if committed in New York, and so constitutes misconduct pursuant to Ed.L 6530(9)(a)(iii). The Florida Board's actions were also based on conduct that, if committed in New York, would constitute misconduct pursuant to Ed.L 6530(9)(d) (having disciplinary action taken by another state), 6530(16) (failure to comply with state laws governing the practice of medicine) and 6530(21) (failing to file a report required by law).

The hearing committee unanimously determined (3-0) that the Florida Board's Final Order after a hearing, sustaining all allegations in the administrative complaint against him, establishes that the Respondent violated Ed.L 6530(9)(b), which defines professional misconduct as:

9. (b) Having been found guilty of improper 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.

The hearing committee also unanimously determined (3-0) that the New Jersey license suspension and imposition of discipline, and Florida license revocation, established that the Respondent violated Ed.L 6530(9)(d) which defines professional misconduct as:

9. (d) Having his or her license to practice medicine revoked, suspended or having other disciplinary action taken... 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... or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state.

The Petitioner recommended revocation of the Respondent's license. Although duly served with notice of the hearing in conformity with PHL 230(10)(d), the Respondent failed to appear and failed to offer any evidence or argument to persuade the committee to a different conclusion. The hearing committee unanimously (3-0) determined that revocation of the Respondent's license pursuant to PHL 230-a(4) is an appropriate penalty.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in New York State is **REVOKED**.

This order shall be effective upon service on the Respondent by personal service or by registered or certified mail as required under PHL 230(10)(h).

Dated: Albany, New York

By:


Heidi B. Miller, PA-C, MPH, Chair

Sanford H. Levy, MD
Ashwani Chhibber, MD

To: Mark S. Nash, Esq.
Bureau of Professional Medical Conduct
Corning Tower, Empire State Plaza
Albany, New York 12237-0032

Simon B. Santos-Arias, MD


APPENDIX I

IN THE MATTER
OF
SIMON B. SANTOS-ARIAS, M.D.

STATEMENT
OF
CHARGES

Simon B. Santos-Arias, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 28, 1978, by the issuance of license number 135356 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about April 13, 2015, in the Superior Court of New Jersey, County of Morris, State of New Jersey, Respondent was convicted upon a plea of guilty of Commercial Bribery, a third degree felony, in violation of NJSA 2C:21-10a(3). From on or about January 1, 2008 to June 17, 2014, Respondent solicited, accepted, or agreed to accept \$30,000.00 in payments in the form of cash and gifts from Diagnostic Imaging Associates in exchange for referring patients for diagnostic testing.

- B. On or about August 18, 2016, Respondent was sentenced to four years of probation, 100 hours of community service, a \$5,000.00 fine, and \$30,000.00 in restitution. Respondent was given credit for one day spent in jail and probation was transferred to the State of Florida.

- C. The crime of which Respondent was convicted in New Jersey would have constituted a crime if committed in New York State pursuant to New York State Penal Law §180.05 Commercial Bribe Receiving in the Second Degree.

D. On or about April 28, 2015, by a Consent Order, the New Jersey State Board of Medical Examiners suspended Respondent's license to practice medicine for a period of three years with two years active suspension and one year of probation. Respondent was required to attend and successfully complete an ethics course. The suspension was based upon Respondent's conviction of Commercial Bribery.

E. The conduct that resulted in the disciplinary action by the New Jersey Board would have constituted professional misconduct under New York State law pursuant to the following sections of New York State law:

1. Education Law §6530(9)(a)(iii) Being 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.

F. On or about December 16, 2016, the Florida Board of Medicine following a hearing at which Respondent appeared with counsel, by a Final Order, revoked Respondent's license to practice medicine based upon Respondent's conviction for Commercial Bribery, the suspension of Respondent's medical license in New Jersey, Respondent's failure to report his conviction and suspension to the Florida Board of Medicine, in writing, within thirty days, and Respondent's failure to update his Florida physician profile.

G. The conduct that resulted in the disciplinary action by the Florida Board would have constituted professional misconduct under New York State law pursuant to the following sections of New York State law:

1. Education Law §6530(9)(a)(iii) Being 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; and/or

2. Education Law §6530(9)(d) Having his license to practice medicine revoked, suspended or having other disciplinary action taken 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 would, if committed in New York state, constitute professional misconduct under the laws of New York State; and/or
3. Education Law §6530(16) A willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine; and/or
4. Education Law §6530(21) Willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, or willfully impeding or obstructing such filing, or inducing another person to do so.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

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 §180.05 Commercial Bribe Receiving in the Second Degree) as alleged in the facts of the following:

1. The facts in Paragraphs A, B and C.

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 (namely N.Y. Educ. Law §§ 6530[9][a][iii], [9][d],[16] and/or [21]) as alleged in the facts of the following:

2. The facts in Paragraphs F and G and G1, G and G2, G and G3, and/or G and G4.

THIRD THROUGH FOURTH SPECIFICATIONS

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][iii],[9][d],[16] and/or [21]) as alleged in the facts of the following:

3. The facts in Paragraphs D and E and E1.
4. The facts in Paragraphs F and G and G1, G and G2, G and G3, and/or G and G4.

DATE: January 2, 2019
Albany, New York


TIMOTHY J. MAHAR
Acting Deputy Counsel
Bureau of Professional Medical Conduct