



Department of Health

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

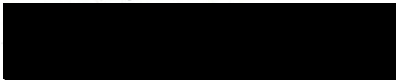
December 1, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hannah E.C. Moore, Esq.
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Bureau of Professional Medical Conduct
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296 Washington Avenue Extension, Suite 3
Albany, New York 12203

Mirko Zugec, M.D.



RE: In the Matter of Mirko Zugec, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 20-294) 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:

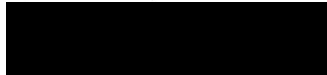
James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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 redaction box covering 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

COPY

-----X
IN THE MATTER
OF
MIRKO ZUGEC, M.D.
-----X

DETERMINATION
AND
ORDER
BPMC-20-294

A hearing was held on November 18, 2020, remotely by videoconference. Pursuant to Public Health Law (PHL) § 230(10)(e), **Reid T. Muller, M.D., Chairperson, Anthony Marinello, M.D., and Myra Nathan, Ph.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **Tina M. Champion**, Administrative Law Judge (ALJ), served as the Administrative Officer.

The Department appeared by Hannah E.C. Moore, Assistant Counsel. A Notice of Referral Proceeding and Statement of Charges, both dated October 13, 2020, were duly served upon Mirko Zucec, M.D., (Respondent), who appeared at the hearing with his counsel, Eugene D. Napierski, Esq.

The Hearing Committee received and examined documents from the Department (Department Exhibits 1-8) and from the Respondent (Respondent Exhibits A, E-H). The Hearing Committee also received a pre-hearing letter brief (dated November 6, 2020) from the Respondent and a reply brief (dated November 13, 2020) from the Department. The Respondent testified on his own behalf. A stenographic reporter prepared a transcript of the proceeding.

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 one specification of professional misconduct pursuant to Educ. Law § 6530(9)(d) for “[h]aving 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.” 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] 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. On April 13, 1999, Mirko Zucec, M.D., the Respondent, was authorized to practice medicine in New York State by issuance of license number 213710. (Dept. Ex. 8.)
2. On September 24, 1999, the Respondent was issued a credential to practice as a physician and surgeon in the State of Washington. (Dept. Ex. 3.)
3. The Respondent lives in Idaho on the border of Washington and is also licensed to practice medicine in Idaho. (Respondent’s Testimony.)

4. On March 6, 2019 the State of Washington Department of Health (Washington DOH) filed a Statement of Charges alleging unprofessional conduct based on a complaint of a patient from an encounter during a medical appointment on August 25, 2015. (Dept. Ex. 3.)

5. On September 27, 2019 the Washington DOH withdrew the March 6, 2019 Statement of Charges “[b]ased on further review of the matter.” (Dept. Ex. 4.)

6. Also on September 27, 2019, the Washington DOH issued a Statement of Allegations and Summary of Evidence against the Respondent based on the same August 25, 2015 medical appointment that was the subject of the withdrawn Statement of Charges. (Dept. Ex. 5.)

7. The Statement of Allegations and Summary of Evidence alleged that a patient complained of numbness in her buttock and that, during the Respondent’s examination, the Respondent lifted the patient’s skirt to evaluate her complaint without the permission of the patient. The Statement of Allegations and Summary of Evidence alleged that the Respondent’s conduct, if proven, would constitute unprofessional conduct pursuant to the Revised Code of Washington (RCW). (Dept. Ex. 5.).

8. Additionally on September 27, 2019, the Respondent and Washington DOH entered into a Stipulation to Informal Disposition (Stipulation) relating to the August 25, 2015 medical appointment. (Dept. Ex. 6.)

9. Within the Stipulation of Informal Disposition, it is stated that:

- a. the Respondent does not admit any of the allegations in the Statement of Allegations and Summary of Evidence or the allegations recited in the Stipulation (Dept. Ex. 6 at ¶ 1.2);
- b. the Stipulation shall not be construed as a finding of unprofessional conduct or inability to practice (Dept. Ex. 6 at ¶ 1.2);
- c. the Respondent acknowledges that a finding of unprofessional conduct or inability to practice based on the allegations in the Stipulation, if

proven, would constitute grounds for discipline under RCW (Dept. Ex. 6 at ¶ 1.3);

d. the Stipulation is not formal disciplinary action (Dept. Ex. 6 at ¶ 1.7); and

e. the Stipulation is a public document and will be reported to the National Practitioner Databank (Dept. Ex. 6 at ¶ 1.7).

10. The Stipulation recited that the Respondent and Washington DOH agreed to the Respondent attending and receiving an unconditional pass from the Professional/Problem Based Ethics Course program offered by the Center for Personalized Education for Physicians and that the Respondent would reimburse costs to the Washington Medical Commission in the amount of \$1,000. (Dept. Ex. 6 at ¶¶ 3.1 and 3.2.)

11. The Respondent's license to practice of medicine in Washington and Idaho has been unaffected by the Stipulation. (Respondent's Testimony.)

12. The Respondent has not previously been the subject of disciplinary action against his medical license in any state where he is authorized to practice medicine. (Respondent's Testimony.)

VOTE OF THE HEARING COMMITTEE

The Hearing Committee, by a vote of 3-0, does not sustain the charge that the Respondent committed professional misconduct as defined in Educ. Law § 6530(9)(d).

HEARING COMMITTEE DETERMINATIONS

The Department asserts that the Washington DOH Stipulation is disciplinary action within the meaning of Educ. Law § 6530(9)(d) and therefore subjects the Respondent to disciplinary action in New York for professional misconduct. The Respondent argues that the Washington DOH Stipulation is not "other disciplinary action" pursuant to Educ. Law § 6530(9)(d) and that this matter should be dismissed.

The Hearing Committee, after thorough consideration of the evidence, testimony, and

arguments made by the parties, concludes that the Washington DOH Stipulation is not disciplinary action within the meaning of Educ. Law § 6530(9)(d). The Hearing Committee finds it compelling that the Statement of Charges in this matter was withdrawn by the Washington DOH and was not refiled but instead replaced with a Statement of Allegations and Summary of Evidence, as well as the direct language in the Stipulation including a statement that the Stipulation is not formal discipline. Accordingly, the Department has not met its burden of proving its case by a preponderance of evidence and the charge is therefore not sustained.

Further, although not determinative of whether the Washington DOH Stipulation constitutes disciplinary action, the Hearing Committee found it noteworthy that the purported actions of the Respondent as described in the deposition of the complaining patient are in direct conflict with the alleged actions of the Respondent as described in the Statement of Allegations and Summary of Evidence and in the Stipulation itself. (Compare Respondent Ex. E with Dept. Exs. 5 and 6.)

ORDER

Now, after reviewing the evidence from the hearing, it is hereby ordered that:


1. The specification of professional misconduct as set forth in the Statement of Charges is not sustained;
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

Dated: Albany, New York
November _____, 2020

NYS DEPT OF HEALTH

NOV 30 2020

**Division of Legal Affairs
Bureau of Adjudication**


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Myra Nathan, Ph.D.

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Mirko Zucec, M.D.



APPENDIX I

IN THE MATTER
OF
MIRKO ZUGEC, M.D.

STATEMENT
OF
CHARGES

MIRKO ZUGEC, M.D. was authorized to practice medicine in New York State on or about April 13, 1999, by the issuance of license number 213710 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 27, 2019, the State of Washington Department of Health ("Department") entered into a Stipulation to Informal Disposition ("Stipulation") after having opened an investigation into the conduct and medical practice of Respondent. The Stipulation required the Respondent to receive an unconditional pass from the Professional/Problem Based Ethics Course program and pay \$1,000.00 in costs. The Stipulation was based on a Statement of Allegations and Summary of Evidence, which Respondent acknowledged, that a finding of unprofessional conduct or inability to practice based on the allegations, if proven, would constitute grounds for discipline under RCW 18.130.180(7) and WAC 246-919-630(2)(g) (sexual misconduct in not allowing a patient the privacy to dress or undress).

1. The conduct resulting in the Order would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(20) ("Conduct in the Practice of medicine which evidences moral unfitness to practice medicine.").

SPECIFICATION OF CHARGES

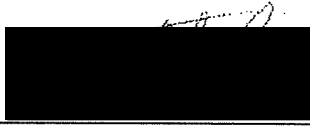
FIRST SPECIFICATION

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, namely N.Y. Educ. Law §6530(20) as alleged in the facts of the following:

1. The facts in Paragraph A and its subparagraph.

DATE: October 13, 2020
New York, New York



Henry Weintraub
Chief Counsel
Bureau of Professional Medical Conduct