



Department of Health

ANDREW M. CUOMO
Governor

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

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

February 16, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Victor Roberts, M.D.


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

RE: In the Matter of Victor Roberts

Dear Parties:

Enclosed please find the Corrected Determination and Order (No. 21-005) 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

COPY

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: **CORRECTED**
: **DETERMINATION**
: **AND**
: **ORDER**
: **BPMC-21-005**
: **VICTOR ROBERTS, M.D.**
: **OF**
: **IN THE MATTER**
-----x

In accordance with Public Health Law (PHL) § 230, and the New York State Administrative Procedure Act (SAPA) Article 3, a hearing was held by videoconference on December 17, 2020. Pursuant to PHL § 230(10)(e), Mary E. Rappazzo, M.D., Chairperson, Eleanor C. Kane, M.D., and Myra M. Nathan, Ph.D., 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 (ALJ), served as the Administrative Officer.

The Department appeared by Associate Counsel Marc S. Nash. The Respondent appeared in person. Jurisdiction over the Respondent was obtained by personal service of the Notice of Referral Proceeding, and Statement of Charges. The Hearing Committee received and examined documents from the Department (Exhibits 1-8); and the Respondent testified in his own behalf. 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 (Educ. Law) § 6530(9)(d).

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 Educ. Law § 6530(9).

The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(d), having had his license revoked, or suspended, or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State, namely Educ. Law § 6530(3) and § 6530(32). The Respondent is also charged with committing professional misconduct as defined by Educ. Law § 6530(2) by practicing the profession of medicine fraudulently.

Under 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." (Educ. Law § 6530).

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 December 5, 2007, by the issuance of license number 246968. (Exhibit 3).

2. An Administrative Complaint charging the Respondent with professional misconduct was filed with the State of Florida Department of Health (Florida DOH) on April 25, 2016. The Administrative Complaint alleged that the Respondent treated five patients for pain by prescribing controlled substances; but failing to either obtain or accurately document complete patient histories, physical examinations, or prior medical or pharmacy records. (Exhibit 6).

3. On May 22, 2019, the Respondent entered into a stipulated settlement with the Florida DOH which resulted in a final Order of the Board of Medicine (Board) dated January 9, 2020, resolving the allegations in the Administrative Complaint. The Respondent was Reprimanded, and the Board imposed certain restrictions and requirements on the Respondent's license to practice medicine. Specifically, the Florida DOH and Board imposed a fine of \$30,000.00, and costs in the amount of \$27,205.28; required the Respondent to complete a Board approved medical records course within one year of the date of the Order; required the Respondent to complete a Board approved course in risk management within one year of the date of the Order; permanently

restricted the Respondent from owning, operating, or practicing in a pain management clinic; permanently restricted the Respondent from treating any patient for chronic nonmalignant pain; and temporarily restricted the Respondent from prescribing Schedule I through IV medications until he has completed an evaluation and personally appears before the Probation Committee of the Board with said evaluation, the recommendations, and proof of compliance. (Exhibits 4 and 5).

4. The Respondent has not completed the required courses, nor has he obtained the required evaluation. (Respondent's testimony).

5. On October 18, 2017, the Respondent renewed his license to practice medicine in New York State, asserting that no charges were pending against him in any jurisdiction for professional misconduct. (Exhibit 7).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION: HAVING HAD DISCIPLINARY ACTION TAKEN

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

VOTE: Sustained (3-0)

SECOND SPECIFICATION: FRAUDULENT PRACTICE

The Hearing Committee concludes that the evidence supports sustaining the charge of having committed professional misconduct as defined in Educ. Law § 6530(2).

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATIONS

The Department met its burden of proving by a preponderance of the evidence that the Respondent was the subject of disciplinary action by the Florida DOH, and his conduct would have resulted in disciplinary action in New York if the conduct had occurred in New York State. Specifically, the Respondent treated several patients for pain by prescribing controlled substances; but failing to either obtain or accurately document complete patient histories, physical examinations, or prior medical or pharmacy records. The Respondent's actions constitute a violation of Educ. Law § 6530(3), practicing the profession with negligence on more than one occasion; and Educ. Law § 6530(32), failing to maintain a record for each patient which accurately reflects the evaluation and treatment of each patient. The committee concludes that the Respondent's actions constitute professional misconduct as defined in Educ. Law §6530(d).

The Department also met its burden of proving by a preponderance of the evidence that the Respondent practiced the profession fraudulently by asserting in his medical license renewal application dated October 17, 2017, that no charges were pending against him for professional misconduct, when such charges had been pending against him since April 25, 2016.

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 that in his testimony, the Respondent continued to deny any wrongdoing, and took no responsibility for his actions. In addition, the Respondent has failed to fully comply with the Florida DOH's Order. He paid the fine and costs, but has not taken the required courses; nor has he obtained an evaluation.

Regarding the allegation concerning falsely asserting that no charges were pending against him the Respondent testified that he accidentally answered no, and had no intent to lie. The Hearing Committee found the Respondent's testimony on this material fact disingenuous, and not credible.

The Department recommended revocation as the only appropriate penalty. The Hearing Committee agrees with the Department and finds that revocation is appropriate.


ORDER

IT IS HEREBY ORDERED THAT:



1. The specifications of professional misconduct as set forth in the Statement of Charges are sustained; and
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
, 2021


Mary E. Rappazzo, M.D., Chairperson
Eleanor C. Kane, M.D.
Myra M. Nathan, Ph.D.

To: Victor Roberts, M.D.


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


APPENDIX A

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

IN THE MATTER

OF

VICTOR ROBERTS, M.D.

STATEMENT
OF
CHARGES

VICTOR ROBERTS, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 5, 2007, by the issuance of license number 246968 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 10, 2020, the Florida Board of Medicine (hereinafter "Florida Board") filed a Final Order, that incorporated a May 2, 2019 Settlement Agreement with amendments, which reprimanded Respondent, permanently restricted Respondent from owning, operating or practicing in a pain management clinic, permanently restricted Respondent from treating any patient for chronic nonmalignant pain, temporarily restricted Respondent from prescribing controlled substances, directed Respondent to take courses on the topics of records and risk management, and assessed a fine of \$30,000.00 and costs of \$27,205.28. This disciplinary action was based on facts that, if proven, would find Respondent's treatment of five patients constituted misconduct in that Respondent committed repeated acts of negligence, prescribed, dispensed, administered, or mixed a controlled substance other than in the

course of his professional practice, and failed to keep legible medical records which justified the course of the patients' treatment.

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

1. New York Education Law § 6530(3) (Practicing the profession with negligence on more than one occasion); and/or
2. New York Education Law § 65330(32) (Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

C. On or about October 18, 2017, Respondent filed a License Renewal with the New York State Education Department for his New York medical license for the period of March 1, 2018 through February 29, 2020. In this renewal application, Respondent answered "no" to the question, "Since your last registration application, are charges pending against you in any jurisdiction for any sort of professional misconduct?" even though that on April 25, 2016, the Florida Board filed an Accusation against Respondent which alleged numerous counts of professional misconduct. Respondent answered "no" knowing, or having reason to know, and with intent to mislead, that his answer of "no" was false.

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(3) and (32)) as alleged in the facts of the following:

1. The facts in Paragraphs A and B and B.1 and/or A and B and B.2.

SECOND SPECIFICATION

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

2. The facts in Paragraph C.

DATE: October 26, 2020
Albany, New York



TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct