



Department of Health

ANDREW M. CUOMO
Governor

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

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

July 23, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Deborah Beth Medows, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007

Nayyera Malik, MD
340 West 85th Street, Suite 810
New York, New York 10024

Nayyera Malik, MD
Kingsboro Addiction Treatment Center
754 Lexington Avenue
Brooklyn, New York 11221

RE: In the Matter of Nayyera Malik, MD

Dear Parties:

Enclosed please find the Determination and Order (No. 21-147) 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:

Jean T. Carney, 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 Carney 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

**IN THE MATTER
OF
NAYYERA MALIK, M.D.**

DETERMINATION

AND

ORDER

BPMC-21-147

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct (“Department”). A Notice of Hearing (“NOH”) dated May 21, 2021 and Statement of Charges (“SOC”) were served on Nayyera Malik, M.D. (“Respondent”). A copy of the NOH and SOC is attached to this Determination and Order as Appendix 1. Hearings were held pursuant to N.Y. Public Health Law (“PHL”) §230 and New York State Admin. Proc. Act §§301-307 and 401. The hearings were held by WebEx video conference. Mary E. Rappazzo, M.D. - *Chair*, Susan C. Ferrary, M.D., and Myra M. Nathan, duly designated members of the State Board for Professional Medical Conduct (“Board”), served as the Hearing Committee (“Committee”) in this matter. Kimberly A. O’Brien, Administrative Law Judge (“ALJ”), served as the Administrative Officer. The Department appeared by Deborah Beth Medows, Senior Attorney. The Respondent appeared and testified on her own behalf.

Evidence was received, including witnesses who were sworn or affirmed, and a transcript of this proceeding was made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

PROCEDURAL HISTORY

Notice of Hearing Statement of Charges	May 21, 2021
Pre-Hearing Conference:	June 29, 2021
Department Witness:	Susan Dame PMC Nurse Investigator
Respondent Witness:	Nayyera Malik, M.D.
Hearing Date:	June 30, 2021
Deliberations Date:	June 30, 2021

STATEMENT OF THE CASE

The Department charged the Respondent with one specification of professional misconduct by failing to respond within thirty days to written communications from the Department and to make available any relevant records with respect to the inquiry. N.Y. Educ. Law §6530 (28).

As required by PHL §230(10)(f), the Hearing Committee based its conclusions on whether the Department met its burden of establishing that the

allegations contained in the Statement of Charges were more probable than not. When the evidence was equally balanced or left the Hearing Committee in such doubt as to be unable to decide a controversy either way, then the judgment went against the Department (*See* Prince, Richardson on Evidence § 3-206 [Farrell 11th ed]).

FINDINGS OF FACT

The following Findings of Fact (“FOF”) were made after a review of the entire record in this matter. Citations in brackets refer to transcript page numbers [“Tr.”] and exhibits [“Ex.”] that were accepted into evidence, and represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings are unanimous unless otherwise stated.

1. Respondent was authorized to practice medicine in New York State on or about August 8, 1995, by the issuance of license number 200418 by the New York State Education Department [Ex. 1, Ex. 2].¹

¹ The ALJ notes that Department’s exhibit 1 is the Notice of Hearing (NOH) and Statement of Charges (SOC) and Department’s exhibit 2 is the affidavit of service. The Department did not produce Respondent’s New York State Education Department (NYSED) physician profile that confirms among other things the date Respondent’s license was issued and license number.

2. Respondent works at New York State Office of Addiction Services and Supports - Kingsboro Addiction Treatment Center, 754 Lexington Avenue, Brooklyn, NY (Kingsborough or work) [Tr. 19, 35].
3. On or about August 23, 2018; October 3, 2018; January 31, 2019; and June 20, 2019, the Department requested in writing the Respondent's medical record for "patient A" (letters). The letters were sent by "CERTIFIED MAIL - RETURN RECEIPT REQUESTED" [Ex. 3; Tr. 17- 20, 26-27].

DISCUSSION

The Department did not produce any returned letters or green card receipts showing who signed for each of the letters [Tr. 20-22, 54-56]. The Department's witness, Susan Dame, PMC Nurse Investigator (Investigator) testified that she prepared the "form letters" and sent them to Respondent. On cross examination Respondent stated that her signature is "easy to read" and she asked the Investigator whether she has any documentation with Respondent's signature on it or that "I signed for any receiving in 2018, 2019 any ... documents letters?" The Investigator had nothing in the file with Respondent's signature on it [Tr. 23-24].

The Investigator testified that she attempted to contact the Respondent by phone. The Hearing Committee Chair asked the Investigator for more detail about the attempts she made to reach Respondent by phone. The Investigator tried to reach Respondent at Kingsboro on 11/13/18 and 11/15/18, and she left a voicemail

with the number where she could be reached. On 12/7/18 she called Kingsboro and “left a voicemail,” and “tried again later in the day” and was “transferred to Dr. Malik’s phone where I was on hold for approximately ten minutes, and I finally got discouraged and hung up.” She called Kingsboro “a third time to speak with the nursing supervisor hoping that maybe she could get in touch with Dr. Malik, and she had left for the day.” On 9/9/19 she called Kingsboro again and left another voicemail message but was “never able to speak with anyone” and never received a return call [Tr. 25-26]. Ms. Dame believes her voicemail messages were left “with the secretary or whoever is the person who would take the phone call. Probably a reception area or whatever” [Tr. 27-28]. On cross examination Respondent asked the Investigator whether she attempted to get her “phone contact information from the health provider network where all New York State physicians have their phone numbers?” Answer: “No I did not” [Tr. 33].

Respondent does not dispute that the Department sent the letters in 2018 and 2019; she did not respond because she did not receive the letters, she does not believe she has ever signed for certified mail at any address, and if she receives a request for medical records at work, she automatically gives it to the medical records Department [Tr. 24, 40-44, 56-59]. The work phones are unreliable, and Respondent keeps her phone number up to date with the “health provider network” [Tr. 31-33].

In the spring of 2021 Respondent “found two envelopes from the Department,” and on May 20th she received a call from Ms. Medows at work. Respondent expressed her concerns about disclosing the record, and Ms. Medows confirmed in an email that the disclosure is appropriate. Respondent immediately provided the Department with the record [Tr. 29-31, 36-38].

CONCLUSIONS

The Committee concluded that Respondent did not respond to the Department’s letters. However, the Department submitted no evidence to show that Respondent received the letters. The Committee found the Respondent to be remorseful and noted that in 2021 when she became aware of the Department’s request for the medical record, she produced it.

DETERMINATION AS TO PENALTY

The Hearing Committee believes that the severity of the Department’s proposed penalty, censure and reprimand and a \$5,000 fine, does not commensurate with the mitigating facts and circumstances, and the finding of misconduct. Pursuant to Educ. Law §6530, “any licensee found guilty of such misconduct under the procedures prescribed in section two hundred thirty of the public health law shall be subject to penalties as prescribed in section two hundred thirty-a of the public health law except that the charges may be dismissed in the interest of justice” (emphasis added). After due and careful consideration of the

record and penalties available pursuant to Public Health Law Section 230-a, the Hearing Committee unanimously determined that the charge against Respondent be dismissed in the interest of justice. While the Committee did not impose a sanction, nor can the Committee do so when no charges have been sustained, the Committee believes Respondent could benefit from continuing medical education (CME) in recordkeeping.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct set forth in the Statement of Charges is dismissed in the interest of justice.
2. There shall be no disciplinary action taken against Respondent's license and no penalty shall be imposed.
3. This Determination and Order shall be effective upon service on the Respondent pursuant to Public Health Law Section 230(10)(h).

DATED: ALBANY, New York
July 19, 2021

MARY E. RAPPAZZO, M.D. (CHAIR)
SUSAN C. FERRARY, M.D.
MYRA M. NATHAN, PHD

To: Deborah Beth Medows
Senior Attorney
New York State Department of Health
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007

Nayyera Malik, MD
340 West 85th Street, Suite 810
New York, New York 10024

Attention: Nayyera Malik, MD
Kingsboro Addiction Treatment Center
754 Lexington Avenue
Brooklyn, New York 11221
*Personal & Confidential Communication

APPENDIX I

EXHIBIT "A"

NEWYORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

NAYYERA BATOOL MALIK, M.D.

STATEMENT

OF

CHARGES

NAYERRA BATOOL MALIK, M.D. was authorized to practice medicine in New York State on or about August 8, 1995, by the issuance of license number 200418 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 23, 2018; October 3, 2018; January 31, 2019; and June 20, 2019, the Office of Professional Medical Conduct requested in writing that Respondent provide the medical records of patient A. As of this date, Respondent has not provided those records.

SPECIFICATION OF CHARGE

FAILURE TO MAKE AVAILABLE ANY RELEVANT RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530 (28) by failing to respond within thirty days to written communications from the department of health and to make available any relevant records with respect to an inquiry, as alleged in the facts of the following:

1. The facts in Paragraph A

DATE: May 21, 2021

New York, New York



Henry Weintraub
Chief Counsel
Bureau of Professional Medical Conduct