



**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

June 29, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Enrique Gonzalez, Jr., P.A.


RE: In the Matter of Enrique Gonzalez, Jr., P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 21-132) 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:

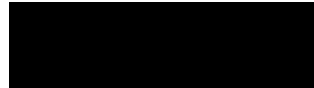
Jean T. Carney, Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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 box redacting 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 :
: ENRIQUE GONZALEZ, JR., P.A. :
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DETERMINATION
AND
ORDER

BPMC-21-132

The Respondent Enrique Gonzalez holds a license as a Physician Assistant in New York State (License) in addition to holding licenses in Texas and California. Following the Respondent's Federal criminal conviction and a professional disciplinary action in Texas, a duly designated Committee from the State Board for Professional Medical Conduct conducted a hearing pursuant to New York Public Health Laws (PHL) § 230(10)(e), to determine if the Respondent's conduct amounted to misconduct in New York and warranted a sanction against his License. Steven I. Sherman, D.O., Chairperson, Krishna R. S. Gujavarty, M.D. and Janet Axelrod, Esq. served as the Hearing Committee and Administrative Law Judge James F. Horan served as the Administrative Officer. The Department of Health appeared by Marc Nash, Esq. and the Respondent appeared *pro se*. After considering the documentary evidence and the testimony from the hearing, the Committee finds that the Respondent's conduct in Texas would amount to professional misconduct in New York and votes 3-0 to fine the Respondent \$500.00.

BACKGROUND

The Department brought this case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with violations under New York Education Law (EL)

§6530(9), which addresses conduct resulting in criminal convictions or disciplinary action by another jurisdiction. The Statement of Charges (Department Exhibit 1) alleges that the Respondent violated EL § 6530(9)(a)(ii) by engaging in conduct that resulted in a criminal conviction for a crime under Federal Law. The Charges alleged further that the Respondent committed misconduct under the definition at EL § 6530(9)(d), by engaging in conduct that resulted in disciplinary action by the duly designated disciplinary body of another state for conduct that would also constitute misconduct if committed in New York. The Department charged that the Respondent's conduct in Texas would constitute misconduct in New York State under EL § 6530(9)(a)(ii). Pursuant to PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence.

The Committee conducted the hearing by WebEx Videoconference on June 10, 2021. The Department offered six documents into evidence, which the Administrative Officer received into the record:

- Department 1 – Notice of Referral Proceeding and Statement of Charges,
- Department 2 – Affidavit of Service,
- Department 3 – New York State Education Department Verification Searches,
- Department 4 – United States District Court Certificate of Judgement in a Criminal Case,
- Department 5 – United States District Court Information,
- Department 6 – Texas Physician Assistant Board Agreed Order.

The Respondent introduced one exhibit, a letter from his spouse:

Respondent A – Letter from [REDACTED]

Neither party objected to the other party's exhibits. The Respondent and Mrs. Gonzalez both testified, under oath and subject to questions from the Department's Counsel and the Committee.

The hearing record also included a transcript from the hearing, which a stenographic reporter prepared.

FINDINGS OF FACT

The Committee made the following findings of fact (FF) after affording the parties an opportunity to be heard and after considering the evidence. In instances in which conflicting evidence appears in the record, the Committee considered and rejected that other evidence.

1. The Respondent received a license to practice as a Physician Assistant in New York State (No. 009346) on June 3, 2003 [Department Exhibit 3].
2. The Office of the Professions at the New York State Education Department lists the Respondent's License status as "INACTIVE" [Department Exhibit 3].
3. The United States District Court for the Western District of Texas found the Respondent guilty on June 12, 2019 for violating Title 49 U.S.C. § 46506(2) by Lewd, Indecent or Obscene Acts within Special Aircraft Jurisdiction of the U. S. [Department Exhibit 4].
4. The Respondent's conduct occurred on February 3, 2019 on a United Airlines flight originating at Los Angeles International Airport and arriving in San Antonio International Airport [Department Exhibit 5].
5. The District Court sentenced the Respondent to pay a \$500.00 fine and a \$10.00 mandatory special assessment [Department Exhibit 5].
6. The Respondent also holds a license in the State of California [Department Exhibit 6].
7. The Medical Board of California took no action against the Respondent following the criminal conviction [Department Exhibit 6].
8. The Respondent has held a license to practice as a physician assistant in Texas since January 19, 2001 [Department Exhibit 6].

9. The Respondent entered into an Agreed Order with the State of Texas Physician Assistant Board (Texas Board) on March 27, 2020 [Department Exhibit 6].

10. The Agreed Order found that San Antonio Police arrested the Respondent for indecent exposure on an airplane while engaged in a consensual display of affection with his wife [Department Exhibit 6].

11. The Agreed Order found authority for the Texas Board to discipline the Respondent following his criminal conviction for acting in an unprofessional or dishonorable manner that is likely to deceive, defraud or injure the public [Department Exhibit 6].

12. The Agreed Order considered the following mitigating factors for consideration in determining a sanction:

- the Respondent has no Texas Board history,
- the events in question appear to be an isolated incident, which raises no concerns about patient interaction or care,
- the Respondent serves an underserved population,
- the Respondent was remorseful and candid with the Texas Board,
- the Respondent self-reported the arrest to the Texas Board and the Medical Board of California,
- the Medical Board of California has taken no action,
- the Respondent's criminal conviction resulted in only a \$500.00 fine and
- the Respondent cooperated in the investigation of the allegations related to the Agreed Order and agreed to the entry of the Agreed Order [Department Exhibit 6].

13. The Texas Board imposed a Public Reprimand and fined the Respondent \$1000.00 [Department Exhibit 6].

HEARING COMMITTEE DETERMINATION

The Hearing Committee, by a vote of 3-0, sustains the charge that the Respondent committed professional misconduct as defined in EL §§ 6530(9)(a)(ii) & 6530(9)(d). The finding that the Respondent engaged in professional misconduct makes the Respondent subject to the penalties in PHL § 230-a, except that the charges may be dismissed in the interest of justice. The penalties under PHL § 230-a, include a fine pursuant to PHL § 230-a (7). The Department requested that the Committee impose a Censure & Reprimand and a substantial fine. The Respondent has requested a dismissal. The Committee votes 3-0 to fine the Respondent \$500.00.

The Committee considered several factors in arriving at this sanction. The District Court limited the criminal sentence to a fine. The Respondent testified that the Court ordered a psychological evaluation prior to his trial and the evaluation found no reason for concern. In her written statement [Respondent Exhibit A], Mrs. Gonzalez indicated that the events on the airplane followed the moderate consumption of alcohol in an airport lounge. In response to questioning from the Committee, the Respondent testified that he has never been disciplined for or charged with an offense involving alcohol consumption. The Texas Board found no reason for concern about patient interaction or care. The Texas Board has already reprimanded the Respondent publicly.


The Committee concludes that the Respondent's conduct amounted to a one-time incident during which, as the Respondent stated, he "lost focus". We find a \$500.00 fine appropriate as the sole sanction against the Respondent's License.

ORDER

Now, after reviewing the evidence from the hearing, the Committee renders the following Order

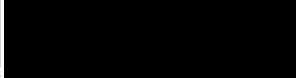
1. We sustain the Specifications charging that the Respondent committed professional misconduct under the definitions at EL §§ 6530(9)(a)(ii) & 6530(9)(d).
2. We fine the Respondent \$500.00.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).
4. Payment of the fine shall be made within thirty (30) days after the Respondent's receipt of this Order and such payment shall be sent by certified mail and shall be made payable to the New York State Department of Health, Bureau of Accounts Management, Room 2748 Corning Tower, Empire State Plaza, Albany, New York 12237-0016.
5. Any fine not paid in accordance with terms prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes, but is not limited to, the imposition of interest, late payment charges and collection fees, referral to the New York State Department of Taxation and Finance for collection and non-renewal of permits and licenses [Tax Law Section § 171(27); State Finance Law § 18, New York Civil Practice Law & Rules § 5001 and Executive Law Section § 32].

Dated: Woodmere, New York
June 22, 2021


Steven I. Sherman, D.O., Chairperson
Krishna R. S. Gujavarty, M.D.
Janet Axelrod, Esq.

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

Enrique Gonzalez, Jr., P.A.



APPENDIX I

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

IN THE MATTER
OF
ENRIQUE GONZALEZ, JR., P.A.

STATEMENT
OF
CHARGES

ENRIQUE GONZALEZ, JR., P.A., the Respondent, was authorized to practice as a physician assistant in New York State on or about June 3, 2003, by the issuance of license number 009346 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about June 14, 2019, in the United States District Court, Western District of Texas, San Antonio Division, Respondent was convicted of Lewd, Indecent, or Obscene Acts within Special Aircraft Jurisdiction of the U.S. [49 U.S.C. § 46506(2)] and fined \$500.00.
- B. On or about March 27, 2020, the Texas Medical Board (hereinafter, "Texas Board") issued an Agreed Order which reprimanded Respondent and issued an administrative penalty of \$1,000.00. The disciplinary action was based on Respondent's federal conviction of June 14, 2019.
- C. The conduct resulting in the Texas Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State pursuant to the following Section of New York State Law:

1. New York Education Law § 6350(9)(a)(ii) (Being convicted of committing an act constituting a crime under federal law).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. The facts in Paragraph A.

SECOND 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 license to practice as a physician assistant revoked, suspended or having other disciplinary action taken, or having his 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)(ii)) as alleged in the facts of the following:

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

DATE: April 13, 2021
Albany, New York


TIMOTHY J. MAHAR
Deputy Counsel
Bureau of Professional Medical Conduct