



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Acting Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

January 11, 2022

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Richard Austin, Jr., M.D.
Soledad Correctional Training Facility
[REDACTED]
Soledad, CA 93960

Karen Mazzocco, Esq.
Avvocato LLC
2618 San Miguel Dr. #1131
Newport Beach, CA 92660-5437

Hannah E.C. Moore, Esq.
Bureau of Professional Medical Conduct
Division of Legal Affairs
New York State Department of Health
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Richard Austin, Jr., M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 22-004) 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 (j), (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:

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 Ms. 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,



Dawn MacKillop-Soller
Acting Chief Administrative Law Judge
Bureau of Adjudication

DXM: cmg
Enclosure

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

COPY

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IN THE MATTER
OF
RICHARD AUSTIN, JR., MD

:
: DETERMINATION
:
: AND
:
: ORDER
:
:-----X

BPMC-22-004

A Commissioner's Order of Summary Action dated August 24, 2021, Notice of Referral Proceeding and Statement of Charges dated August 25, 2021, and an Amended Statement of Charges dated October 25, 2021, were duly served upon Richard Austin, Jr., MD (Respondent). (Exhibits 1-3.) A hearing was held on December 16, 2021 via WebEx videoconference. Pursuant to § 230(10)(e) of the Public Health Law (PHL); **JAMES M. LEONARDO, MD**, Chairperson, **JOSEPH S. BALER, MD**, and **EILEEN PASQUINI, BS, AAS**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **NATALIE BORDEAUX, ADMINISTRATIVE LAW JUDGE (ALJ)**, served as the Administrative Officer.

The Department appeared by Hannah Moore, Assistant Counsel. The Respondent did not appear for the hearing. The hearing proceeded in his absence. The Hearing Committee received and examined documents from the Department (Exhibits 1-5). A transcript of this proceeding was made.

After considering the entire hearing record, the Hearing Committee hereby issues this Determination and Order. All findings, conclusions, and determinations are unanimous.

JURISDICTION

This case began with an Order by the Commissioner of Health summarily suspending the Respondent's medical license pursuant to PHL § 230(12)(b). The Respondent is charged with professional misconduct pursuant to New York Education Law (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 in this state, would have constituted a crime under New York state law. A licensee charged solely with a violation of Educ. Law § 6530(9) is entitled to a hearing, the scope of which is limited to whether there is a relevant conviction or administrative determination and if so, the nature and severity of the penalty to be imposed. PHL § 230(10)(p). Hearing procedures are set forth in Department regulations at 10 NYCRR Part 51. The Department had the burden of proving its case by a preponderance of the evidence. PHL § 230(10)(f).

FINDINGS OF FACT

1. On March 6, 1990, the Respondent was authorized to practice medicine in New York by the Education Department and was issued license number 181634. (Exhibit 5.)
2. On or about March 21, 2018, the Respondent was found guilty and convicted in the Superior Court of California, County of Orange, of one felony count of Attempted Kidnapping under Cal. Penal Code § 664(a) and § 207(a) and one felony count of Stalking under Cal. Penal Code § 646.9(a). On or about September 2, 2020, the Respondent was found guilty and convicted in the Superior Court of California, County of Orange, of one felony count of Attempted Murder under Cal. Penal Code § 664(a) and § 187(a). Each felony count was subject to a sentence enhancement because the Respondent was found to have perpetrated the crimes with a firearm. On March 19, 2021, the Respondent was sentenced to a term of imprisonment for life plus one year, with the possibility of parole. (Exhibits 3 and 4.)

CONCLUSIONS OF LAW

Although the Respondent was duly served by personal service with notice of the hearing, he failed to respond or appear at the hearing to present any evidence to contest the stated charge.¹ The

¹ On December 15, 2021, the Respondent's attorney declined the WebEx invitation for this hearing.

Department having established jurisdiction and proper notice, the ALJ determined that the hearing could proceed on the merits despite the Respondent's absence.

The August 25, 2021 Notice of Referral Proceeding advised the Respondent to

file a written answer to each of the charges and allegations in the Statement of Charges at least ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. [Exhibit 2.]

The Respondent did not submit a timely answer to the Statement of Charges. Therefore, the charge set forth in the Statement of Charges is deemed admitted. PHL § 230(10)(p).

The Hearing Committee also sustains the charge based upon the evidence presented. The felonies for which the Respondent was convicted in California would, if committed in New York, constitute crimes under New York Penal Law, specifically, Attempted Kidnapping in the Second Degree (NY Penal Law § 110 and § 135.20), Stalking in the Second Degree (NY Penal Law § 120.55), and Attempted Murder in the Second Degree (NY Penal Law § 110 and § 125.25). These convictions in California amount to professional misconduct as defined in Educ. Law § 6530(9)(a)(iii), being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed in this state, would have constituted a crime under New York state law.

In consideration of the full spectrum of penalties under PHL § 230-a, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, the Hearing Committee agreed with the Department's recommendation that revocation of the Respondent's medical license is warranted. The Hearing Committee was very troubled by the Superior Court of California judge's determinations at the Respondent's sentencing hearing that the Respondent's crimes involved the threat of great bodily harm to another person, or other acts disclosing a high degree of cruelty, viciousness or callousness, and that the Respondent's violent


conduct presents "a serious danger to society". (Exhibit 4.) Based upon the sentencing minutes, the crimes for which the Respondent was convicted, and the Respondent's failure to offer any mitigating information, the Hearing Committee concluded that revocation of the Respondent's medical license was the appropriate penalty in this case.

ORDER


IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is sustained.
2. The Respondent's license to practice medicine in the state of New York is revoked. PHL § 230-a(4).
3. This Order shall be effective upon service on the Respondent in compliance with PHL § 230(10)(h).

DATED: *January 5*, 2022
Cooperstown, New York


James M. Leonardo, MD
Chairperson

Joseph S. Baler, MD
Eileen Pasquini, BS, AAS

To: Richard Austin, Jr., M.D.
Soledad Correctional Training Facility

Soledad, CA 93960

Karen Mazzocco, Esq.
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Division of Legal Affairs
New York State Department of Health
2512 Corning Tower – Empire State Plaza
Albany, NY 12237-0032

IN THE MATTER
OF
RICHARD AUSTIN, JR., M.D.

AMENDED
STATEMENT
OF
CHARGES

RICHARD AUSTIN, JR., M.D., the Respondent, was authorized to practice medicine in New York State on or about 03/06/1990, by the issuance of license number 181634 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about 03/21/2018, Respondent was found guilty and convicted, following a jury verdict in the Superior Court of California, County of Orange, of one count Attempted Kidnapping (felony) and one count Stalking (felony), with both counts subject to an Armed with a Firearm in the Commission of a Felony enhancement. On or about 09/02/2020, Respondent was found guilty and convicted, following a jury verdict in the Superior Court of California, County of Orange, of one count Attempted Murder (felony), subject to an Armed with a Firearm in the Commission of a Felony enhancement. On or about 03/19/2021, Respondent was sentenced to an aggregate term of imprisonment of life plus one year.

SPECIFICATION OF CHARGES
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 §§ 110/125.25 Attempted Murder in the Second Degree; N.Y. Penal Law §§ 110/135.20 Attempted Kidnapping in the Second Degree; and N.Y. Penal Law §§ 120.55 Stalking in the Second Degree) as alleged in the facts of the following:

1. Paragraph A.

DATE: October 25, 2021
Albany, New York



Jeffrey J. Conklin
Acting Deputy Counsel
Bureau of Professional Medical Conduct