



Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 8, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Enker, M.D.
825 Northern Blvd., Suite 201
Great Neck, New York 11021

Mamie Stathatos-Fulgieri, Esq.
Vigorito, Barker, Patterson, Nichols
and Porter, LLP
300 Garden City Plaza, Suite 100
Garden City, New York 11530

David W. Quist, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, 25th Floor
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Paul Enker, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 21-250) 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 Dawn MacKillop-Soller.

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

-----X
IN THE MATTER
OF
PAUL ENKER, M.D.

:
: DETERMINATION
:
: AND
:
: ORDER
: BPMC-21-250
: X

A Notice of Referral Proceeding and Statement of Charges dated September 30, 2021 (Exhibit 1 and attached as Appendix I), were duly served upon counsel for Paul Enker, M.D. (Respondent) pursuant to PHL § 230(10)(d)(i). (Exhibit 2.) On November 8, 2021, the Respondent submitted an answer. A hearing was held on November 18, 2021, via WebEx videoconference. Pursuant to § 230(10)(e) of the Public Health Law (PHL), **MOHAMMAD-REZA GHAZI-MOGHADAM, M.D.**, Chairperson, **REID T. MULLER, M.D.** and **JEFFREY FUDIN, Pharm. D.**, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee in this matter. **NATALIE BORDEAUX, ADMINISTRATIVE LAW JUDGE**, served as the administrative officer.

The New York State Department of Health (Department) appeared by David W. Quist, Associate Attorney. The Respondent appeared and testified on his own behalf, and was represented by Mamie Státhatos-Fulgieri, Esq. Falguni Patel, the Respondent's assistant for nearly fourteen years, also testified on the Respondent's behalf. The Hearing Committee received and examined documents from the Department (Exhibits 1-4) and the Respondent (Exhibit A). A transcript of the proceeding was made. Upon consideration of the entire hearing record, the Hearing Committee hereby issues this determination.

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)(e), by having been found by the commissioner of health (Commissioner) to be in violation of PHL article thirty-three.

FINDINGS OF FACT

The Hearing Committee, by unanimous vote, hereby makes the following findings of fact:

1. The Respondent was authorized to practice medicine in New York on April 27, 1994 under license number 195459. (Exhibit 3.)
2. On November 11, 2019, the Respondent entered into a Stipulation and Order with the Department to settle an administrative enforcement action. Pursuant to the Stipulation and Order, the Respondent admitted, and the Commissioner found, that the Respondent violated two provisions within PHL Article 33, specifically, PHL § 3343-a(2)(b)(iii), by failing to safeguard his unique username and password for the Prescription Monitoring Program (PMP) in or about 2015, which resulted in unauthorized access to the PMP; and PHL § 3343-a(2)(a), by prescribing sixteen prescriptions for controlled substances from March 12 through June 1, 2018 without first consulting the PMP. The Respondent agreed to pay a civil penalty of \$4,000 to resolve the enforcement action. (Exhibit 4.)

CONCLUSIONS OF LAW AND DETERMINATION AS TO PENALTY

The Department charged the Respondent with one Specification of professional misconduct under Educ. Law § 6530(9)(e), having been found by the Commissioner to be in violation of PHL, Article 33, after the Respondent entered into a Stipulation and Order to

resolve charges that he violated PHL § 3343-a(2)(b)(iii) and § 3343-a(2)(a). In this referral proceeding, the Department seeks a censure and reprimand and the imposition of a fine, whereas the Respondent has asked that no penalty be imposed, arguing that even a censure and reprimand would restrict the Respondent's ability to practice medicine.

The Hearing Committee considered the information provided in the Stipulation and Order, and the Respondent's testimony at the hearing. The Hearing Committee credits the Respondent's swift acceptance of responsibility for mistakes he made, most notably during a relocation to another medical practice. The Respondent testified that he hadn't written his own prescriptions for many years before the errors, which occurred while he was trying to ease the workload of his physician assistant, who had moved to the new practice with him, and who normally wrote prescriptions for the Respondent's patients. The Respondent was unfamiliar with the version of software utilized by his new medical practice, which appeared similar to software used in his prior office but had certain material differences which were not immediately apparent. The Respondent also explained that he had previously written his PMP password on paper, but immediately adjusted to saving his PMP credentials electronically.

The Hearing Committee accepts the Respondent's explanation for the errors surrounding his failure to consult the PMP before issuing several prescriptions for controlled substances, as well as his lack of awareness regarding the risks of recording password information on paper. The Hearing Committee is satisfied by the Respondent's immediate implementation of serious changes to office policies and procedures after being informed of the Article 33 violations. In addition, the Hearing Committee notes that the mistakes delineated in the Stipulation and Order occurred during a short period of time, were small in number, and did not result in patient harm.

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.”

The Respondent has practiced medicine in New York for nearly three decades with an otherwise unblemished record. He has positively impacted the lives of a countless number of patients and has dedicated his professional life to his patients. (Exhibit A.) Although the Hearing Committee acknowledges the importance of the PMP as a tool for preventing the issuance of unnecessary prescriptions for controlled substances, the Hearing Committee is satisfied that the Respondent has learned his lesson and will not commit similar errors again.

As the Respondent paid the maximum allowable fine for the charges delineated in the Stipulation and Order when he agreed to settle that administrative enforcement action, the Hearing Committee sees no basis for the imposition of a separate fine in this proceeding. Furthermore, although the Department characterized a censure and reprimand as a seemingly small penalty, the Hearing Committee finds that the resulting limitations in the Respondent’s ability to fully practice medicine and continue to help his patients greatly outweigh any purported benefit in the imposition of a penalty. The Hearing Committee is satisfied that the Respondent has already been adequately penalized and has adjusted his actions, the most important and desired results. Therefore, the Hearing Committee has determined to dismiss the charge in the interest of justice.

Paul Enker, M.D. - Direct Referral

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is dismissed in the interest of justice pursuant to Educ. Law § 6530.
2. There shall be no disciplinary action taken against the Respondent and no penalty imposed.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

DATED: 12/6/2021, New York (Amsterdam), 2021

[Redacted Signature]

Mohammad-Reza Ghazi-Moghadam, M.D.
Chairperson

Reid T. Muller, M.D.
Jeffrey Fudin, Pharm. D.

To: Paul Enker, M.D.
825 Northern Blvd., Suite 201
Great Neck, NY 11021

Mamie Stathatos-Fulgieri, Esq.
Vigorito, Barker, Patterson, Nichols & Porter, LLP
300 Garden City Plaza, Suite 100
Garden City, NY 11530

David W. Quist, Associate Attorney
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower - 25th Floor

APPENDIX I

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

IN THE MATTER

OF

PAUL ENKER, M.D.

STATEMENT
OF
CHARGES

PAUL ENKER, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 27, 1994, by the issuance of license number 195459 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 11, 2019, Respondent entered into Stipulation and Order CS-20-001 with the New York State Department of Health, dated on or about January 17, 2020. Pursuant to the terms of the Stipulation and Order, Respondent admitted, and the Commissioner of Health found, that Respondent had inadequately safeguarded his username and password for the Prescription Monitoring Program, resulting in unauthorized access, and that Respondent had issued prescriptions for controlled substances for twelve patients with no record that Respondent or Respondent's Physician Assistant designee had consulted the Prescription Monitoring Program as required. Accordingly, Respondent was found in violation of Public Health Law §§ 3343-a(2)(a) and 3343-a(2)(b)(iii), two provisions of Article 33 of the Public Health Law, and was required to pay a civil penalty in the amount of \$4,000..

B. The conduct resulting in the Board's Decision and Order against Respondent would constitute misconduct under the laws of New York State pursuant to New York

Education Law Section 6530(9)(e) (having been found in violation of Article 33 of the Public Health Law).


SPECIFICATION OF CHARGES

FIRST SPECIFICATION
HAVING BEEN FOUND IN VIOLATION OF ARTICLE 33
OF THE PUBLIC HEALTH LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(e) by having been found by the commissioner of health to be in violation of article thirty-three of the public health law as alleged in the facts of the following:

1. The facts in Paragraphs A and B.

DATE: September 30, 2021
Albany, New York


JEFFREY J. CONKLIN
Acting Deputy Counsel
Bureau of Professional Medical Conduct