



Department of Health

KATHY HOCHUL
Governor

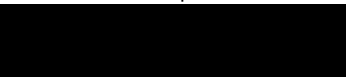
JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

November 20, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Pablo Merced, M.D.



Ian H. Silverman, Esq.
NYS Department of Health
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Pablo Merced, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 23-237) 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.

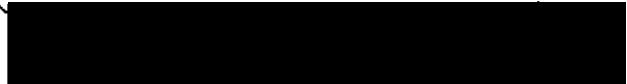
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A solid black rectangular redaction box covering the signature of the Chief Administrative Law Judge.

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB:nm
Enclosure

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

COPY

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IN THE MATTER

DETERMINATION

OF

AND

PABLO MERCED, M.D.

ORDER

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BPMC-23-237

A Notice of Referral Proceeding and Statement of Charges dated September 19, 2023, were duly served upon Pablo Merced, M.D. (Respondent) pursuant to Public Health Law (PHL) § 230(10)(d)(i). A hearing was held on November 15, 2023, via WebEx videoconference. Pursuant to PHL § 230(10)(e), **SAMUEL F. BOSCO, M.D.**, Chairperson, **JERRY R. BALENTINE, D.O.**, and **EILEEN PASQUINI, B.S., A.A.S.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee. **NATALIE BORDEAUX**, Administrative Law Judge (ALJ), served as the administrative officer.

The Department appeared by Ian H. Silverman, Associate Counsel. The Respondent did not appear. The Hearing Committee received and examined documents from the Department (Exhibits 1-6). A transcript of the proceeding was made. After consideration of the entire hearing record, the Hearing Committee hereby issues this Determination and Order, sustaining the charge and revoking the Respondent's medical license. All findings, conclusions, and determinations are unanimous.

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 Education Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Education Law § 6530(9)(d), having voluntarily or otherwise surrendered his medical license in Kentucky, after a disciplinary action was instituted

by a duly authorized professional agency of that state, where the conduct resulting in the surrender of his license would, if committed in New York state, constitute professional misconduct under the laws of New York. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York on July 1, 1985, under license number 163055. (Exhibit 5.)

2. On April 24, 2023, the Respondent entered into an Agreed Order of Surrender with the Commonwealth of Kentucky Board of Medical Licensure (Kentucky Board), to resolve charges that he departed from or failed to conform to acceptable and prevailing medical practices when prescribing medications (primarily, suboxone) to patients without sufficient monitoring and counseling, failing to address inappropriate urine drug screen results, issuing prescriptions to patients who tested positive for methadone without efforts to taper, and providing early refills. Pursuant to the Order, the Respondent indefinitely and permanently surrendered his Kentucky medical license and agreed to reimburse the Kentucky Board for total costs of \$6,125 associated with its investigation and enforcement of the charges against the Respondent. (Exhibit 6.)

DISCUSSION

Although duly notified of the date, time and place of the hearing, the Respondent did not appear on his own behalf or by representative. On September 30, 2023, a process server attempted to personally serve the Respondent with the Notice of Referral Proceeding and Statement of Charges at his last known address, pursuant to PHL § 230(10)(d), and found an abandoned building. (Exhibits 1-2.) The Department then sent the Respondent the Notice of Referral Proceeding and Statement of Charges to the Respondent's last known address on file with the New York State

Education Department on October 3, 2023. (Exhibits 2-4.) Upon the Department having established jurisdiction and proper notice, the ALJ determined that the hearing could proceed on the merits despite the Respondent's absence.

The Respondent entered into an Agreed Order of Surrender with the Kentucky Board to resolve charges that his prescribing patterns during periods when the Respondent was out of the country departed from or failed to conform to acceptable and prevailing medical practices. The Hearing Committee agreed that the Respondent's conduct resulting in the Kentucky Board's disciplinary action would, if committed in New York, constitute misconduct pursuant to Education Law § 6530(3), practicing the profession with negligence on more than one occasion. The Hearing Committee thus determined that the Respondent violated Education Law § 6530(9)(d).

After determining to sustain the charge, the Hearing Committee considered all possible penalties authorized by PHL § 230-a, and agreed with the Department that revocation of the Respondent's medical license was warranted.

The Kentucky Board received a referral from the Kentucky Office of Inspector General, Drug Enforcement and Professional Practices Branch of the Cabinet for Health and Family Services (OIG), after the OIG reviewed the Respondent's prescribing patterns during periods when he was out of the country (May 19-24 and July 1-5, 2019) and found that for 6 of the 11 days reviewed, the Respondent submitted claims for and received payment from the Medicaid Program for patient encounters that would have taken at least 13 hours of work per day. A consultant retained by the Kentucky Board reviewed 14 of the Respondent's charts for dates of service in which the Respondent was not in the country and noted a pattern of cut-and-pasted notes without subjective data, objective data, assessment, and planning (SOAP) information regarding treatment rendered. The prescriptions issued by the Respondent for those patients on those dates were made without

sufficient monitoring and counseling. He failed to address inappropriate urine drug screen results, prescribed to patients positive for methadone without efforts to taper, and provided early refills.

The Hearing Committee found the information in the Respondent's Agreed Order of Surrender with the Kentucky Board reprehensible and not befitting of a practicing physician. For these reasons, the Hearing Committee determined that revocation of the Respondent's license was the only appropriate penalty.

ORDER

IT IS HEREBY ORDERED THAT:

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

DATED: November 16, 2023
Albany, New York



Samuel F. Bosco, M.D., Chairperson
Jerry R. Balentine, D.O.
Eileen Pasquini, B.S., A.A.S.

To: Pablo Merced, M.D.



Ian H. Silverman, Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building - Room 2512
Empire State Plaza
Albany, New York 12237

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

IN THE MATTER
OF
PABLO MERCED, M.D.

STATEMENT
OF
CHARGES

PABLO MERCED, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1985, by the issuance of license number 163055 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 24, 2023, the Commonwealth of Kentucky Board of Medical Licensure (Kentucky Board) entered into an Agreed Order of Surrender with the Respondent. The Kentucky Board Order was based on Respondent's prescribing patterns. Respondent failed to conform to acceptable and prevailing medical practices. Respondent cut and pasted notes with no meaningful subjective, objective, assessment and plan (SOAP) information. Respondent prescribed suboxone to patients without sufficient monitoring and counseling. Respondent failed to address inappropriate drug screen results. Respondent prescribed to patients positive for methadone. Respondent made no efforts to taper. Finally, Respondent provided early refills.

B. Respondent's conduct as described above would, if committed in New York State, constitute professional misconduct under the laws of the State of New York as follows:

1. New York Education Law §6530 (3) (practicing the profession with negligence on more than one occasion).

SPECIFICATION OF CHARGES
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) as alleged in the facts of the following:

1. The facts in Paragraph A and B.

DATE: September 19, 2023
Albany, New York


Jeffrey J. Conklin
Deputy Director
Bureau of Professional Medical Conduct