



Department of Health

KATHY HOCHUL
Governor

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

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

June 16, 2023

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jacques G. Simon, Esq.
200 Garden City Plaza
Suite 301
Garden City, New York 11530

Ahvie Herskowitz, M.D.


Paul Tsui, Esq.
NYS Department of Health
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Ahvie Herskowitz, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 23-131) 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:

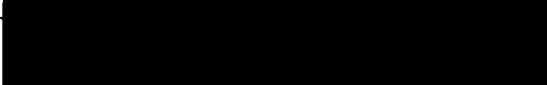
Jean T. Carney, Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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,



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 :
: OF :
: AHVIE HERSKOWITZ, M.D. :
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DETERMINATION
AND
ORDER

BPMC-23-131

A Notice of Referral Proceeding and Statement of Charges dated January 13, 2023, were duly served upon Ahvie Herskowitz, M.D. (Respondent) pursuant to Public Health Law (PHL) § 230(10)(d)(i). (Exhibits 1, 2.) A hearing was held on May 11, 2023, via WebEx videoconference. Pursuant to PHL § 230(10)(e), **DAVID E. KAPLAN, M.D.**, Chairperson, **MOHAMMAD-REZA GHAZI-MOGHADAM, M.D.**, and **DAVID F. IRVINE, DHSc, P.A.**, 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 Paul Tsui, Esq. The Respondent was represented by Jacques G. Simon, Esq. The Respondent testified on his own behalf, and called Carmen Forrester, his office manager, as a witness. The Hearing Committee received and examined documents from the Department (Exhibits 1-5), and from the Respondent (Exhibit C-K). A transcript of the proceeding was made (T 1-70). The Respondent submitted a memorandum of law in advance of the hearing, and the Department submitted a post-hearing brief. The hearing record closed on June 12, 2023, and the Hearing Committee deliberated on June 14, 2023. After consideration of the entire hearing record, the Hearing Committee hereby issues this Determination and Order imposing a censure and reprimand on 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 two specifications of professional misconduct: (1) Education Law § 6530(9)(b), having been found guilty of improper professional practice or professional misconduct by a duly authorized professional agency of another state where the conduct upon which the finding would, if committed in New York state, constitute professional misconduct under the laws of New York state; and (2) Education Law Education Law § 6530(9)(d), having disciplinary action taken against his medical license in California, after the action was instituted by a duly authorized professional agency of that state, where the conduct resulting in the disciplinary action 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 May 18, 1979, under license number 138098. (Exhibit 3.)
2. By decision dated November 23, 2021, effective December 23, 2021, the Medical Board of California (California Board) determined to revoke the Respondent's medical license, stay the revocation, and impose a five-year probation period, with conditions, including the Respondent's successful completion of a Board-approved course in medical recordkeeping. The determination was based upon a review of the Respondent's treatment of two patients (Patients 1 and 2), from which the California Board concluded that the Respondent committed multiple acts of negligence with respect to his treatment of the patients and documentation of treatment, acted with gross

negligence with respect to Patient 2, and failed to properly document the extent of his treatment.

(Exhibit 4.)

DISCUSSION

The California Board found that the Respondent committed multiple acts of negligence by recommending and providing prolozone injections for Patient 1 without having performed a thorough examination of the patient's cervical spine, and that the Respondent also acted negligently in failing to document information he provided to Patient 1 regarding subcutaneous trigger point prolozone injections and the patient's consent to receiving the injections. With respect to Patient 2, the California Board determined that the Respondent acted with gross negligence in failing to perform a thorough assessment and physical examination, including an EKG, of the patient before commencing treatment. The California Board also concluded that the Respondent acted negligently by failing to document: (a) an initial thorough physical examination of Patient 2 or any follow-up examination; and (b) the information he provided Patient 2 about intravenous ozone therapy and the patient's consent to receive the treatment. (Exhibit 4.)

At the hearing, the Department struck factual allegation C(3), which alleged that the Respondent's conduct that resulted in the California Board's disciplinary action would, if committed in New York, constitute misconduct under Education Law § 6530(5), practicing the profession with incompetence on more than one occasion. (T 27.)

The Hearing Committee agreed that the Respondent's conduct resulting in the California Board's disciplinary action would, if committed in New York, constitute misconduct pursuant to Education Law § 6530(3), practicing the professional with negligence on more than one occasion; Education Law § 6530(4), practicing the profession with gross negligence on a particular occasion; and Education Law § 6530(32), failing to maintain a record for each patient which accurately

reflects the evaluation and treatment of the patient. The Hearing Committee thus determined that the Respondent violated Education Law § 6530(9)(b) and § 6530(9)(d), and sustained both specifications.

After determining to sustain the charge, the Hearing Committee considered all possible penalties authorized by PHL § 230-a. The Department recommended the imposition of a minimum three-year suspension of the Respondent's medical license, a stay of the suspension, and a three-year probation term, during which the Respondent would be able to practice medicine only under the supervision of a practice monitor and must complete continuing medical education including, but not limited to, a medical record keeping course. (Department's Brief, p. 10.) The Respondent requested a penalty commensurate with that imposed by the California Board. (T 13-14.)

The Hearing Committee carefully reviewed the California Board's decision, which found no patient harm. The Hearing Committee was not swayed by the Department's assertion that the California Board's decision imposed a restriction upon the Respondent's ability to practice medicine that was somehow prompted by the misconduct findings. They noted that the only restriction imposed regarding the Respondent's practice, included under the heading titled, "General Probation Requirements," was a prohibition against the Respondent practicing medicine in his own or a patient's residence, unless the patient resides in a skilled nursing facility or similar licensed facility. However, the California Board made no finding that the Respondent caused patient harm. Instead, all findings involved the Respondent's recordkeeping practices. To that effect, the Respondent showed compliance with the California Board's decision. (Exhibits C-F.) In addition, he testified that he revised informed consent forms provided to patients, making them more specific, in keeping with the standard of care. The Respondent explained that he made these changes after completing the required recordkeeping course. (T 41-49.)


While the Hearing Committee does not condone the Respondent's previous failings with respect to medical recordkeeping, a crucial component of medical practice, the Hearing Committee is satisfied that the Respondent has learned to correct his recordkeeping issues and has already made improvements. Reciprocal penalties in New York would not prove meaningful, as the Respondent does not practice in the State of New York, and no basis for such penalties were shown to be necessary. The Hearing Committee seeks to impress upon the Respondent the import of medical recordkeeping, while recognizing the Respondent's acceptance of responsibility and continued compliance with the terms of the California Board's decision. For these reasons, the Hearing Committee has determined to impose a censure and reprimand as admonishment for the Respondent's prior omissions, but declines to impose more severe penalties.

ORDER

IT IS HEREBY ORDERED THAT:

1. The first and second specifications of charges, as set forth in the Statement of Charges, are sustained.
2. A censure and reprimand is imposed on the Respondent's license to practice medicine in the state of New York pursuant to PHL § 230-a(1).
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

DATED: June 15, 2023
Albany, New York


David E. Kaplan, M.D., Chairperson
Mohammad-Reza Ghazi-Moghadam, M.D.
David F. Irvine, DHSc, P.A.

To: Jacques G. Simon, Esq.
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Ahvie Herskowitz, M.D.



Paul Tsui, Associate Esq.
New York State Department of Health
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Corning Tower Building – 25th Floor
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Albany, New York 12237

IN THE MATTER

OF

AHVIE HERSKOWITZ, M.D.

STATEMENT

OF

CHARGES

Ahvie Herskowitz, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 18, 1979, by the issuance of license number 138098 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 23, 2021, the Medical Board of California, Department of Consumer Affairs (hereinafter, "California Board"), by a Decision and Order (hereinafter, "California Order"), inter alia, revoked Respondent's Physician's and Surgeon's Certificate No. C 50117, stayed the revocation, and placed Respondent on probation for five years subject to certain terms and conditions including, but not limited to, enrolling in and completing a medical record keeping course.

B. The California Board's disciplinary action was based upon board findings that Respondent failed to meet professional standards of care in the treatment of two patients by engaging in repeated negligent acts involving simple departures from the professional standards of care and grossly negligent acts involving extreme departures from professional standards of care including, but not limited to, failure to perform thorough patient examinations, failure to perform thorough and complete patient assessments, failure to document such examinations and assessments, failure to document information given to the patients regarding ozone treatment procedures,

failure to document appropriate patient consent to such procedures, failure to perform follow up examinations, and/or failure to include an EKG in the initial assessment of one patient.

C. The conduct resulting in the California Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following section(s) of New York State law:

1. New York State Education Law §6530(3) (Practicing the profession with negligence on more than one occasion); and/or
2. New York State Education Law §6530(4) (Practicing the profession with gross negligence on a particular occasion); and/or
3. New York State Education Law §6530(5) (Practicing the profession with incompetence on more than one occasion); and/or
4. New York State Education Law §6530(32) (Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State as alleged in the facts of the following:

1. The facts of Paragraphs A, B and C and C1, C and C2, C and C3, and/or C and C4.

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 the Respondent's license to practice medicine revoked, suspended or having other disciplinary action taken, or having the Respondent's application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered the Respondent's 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 as alleged in the facts of the following:

2. The facts of Paragraphs A, B and C and C1, C and C2, C and C3, and/or C and C4.

DATE: January 13, 2023
Albany, New York



JEFFREY J. CONKLIN
Deputy Director
Bureau of Professional Medical Conduct