

Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299
www.health.ny.gov

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

April 13, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Maria Padilla, M.D.

REDACTED

Jeffrey J. Conklin, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237

RE: In the Matter of Maria Padilla, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-83) 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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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 Mr. Horan 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,

REDACTED

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah
Enclosure

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

IN THE MATTER

OF

Maria Padilla, M.D. (Respondent)

DETERMINATION

AND

ORDER

BPMC #11-83

COPY

Lyon Greenberg, M.D. (Chair), William Tedesco, M.D., and Frances Tarlton, duly designated members of a Hearing Committee (Committee) from the State Board for Professional Medical Conduct (BPMC), conducted a hearing in this matter pursuant to New York Public Health Law (PHL) §230(10) (McKinney Supp. 2011). James F. Horan, Administrative Law Judge, (ALJ) served as the Committee's Administrative Officer. The Department of Health (Petitioner) appeared by Jeffrey J. Conklin, Esq., Associate Counsel. The Respondent failed to appear personally or by counsel. The Petitioner charged that the Respondent committed professional misconduct under New York Education Law (EL) §6530(15)(McKinney Supp. 2011) by failing to comply with a BPMC Order. The Respondent failed to file an answer to the charge. At the hearing, the Committee considered exhibits (Ex) from the Petitioner and the Respondent. A stenographic reporter prepared a transcript (Tr) of the proceedings, pages 1-18. After considering the evidence, the Committee affirms the charge that the Respondent failed to comply with a BPMC Order. Pursuant to PHL §230-a (2)(e), the Committee suspends the Respondent's license to practice medicine in New York State (License) until the Respondent complies with the BPMC Order.

PROCEDURAL HISTORY AND EVIDENCE

Date of Notice of Hearing and Statement of Charges:	January 7, 2011
Date of Service of Notice of Hearing and Statement of Charges:	January 19, 2011
Date of Answer to Charges:	None submitted
Date of Hearing :	February 28, 2011
Location of Hearing:	New York State Department of Health 433 River Street., 5 th Floor Troy, NY 12180
Witnesses:	None
Deliberations Date:	February 28, 2011
Transcript received:	March 17, 2011

On February 28, 2011, a pre-hearing conference and the hearing occurred in the Respondent's absence. The Respondent did submit documents that the ALJ received into the record as Exhibit A at the pre-hearing conference. The ALJ also received ten documents into the record from the Petitioner:

- Ex 1 Notice of Hearing
- Ex 2 Affidavit of Service
- Ex 3A Order pursuant to PHL § 230(7)
- Ex 3B Roe to Padilla Letter
- Ex 3C Certified Mail Receipt
- Ex 3D Return Receipt
- Ex 3E Affidavit of Service
- Ex 4 Letter from Dr. Cheney
- Ex 5A Registration with New York State Department of Education
- Ex 5B Database Search

The hearing record also included the hearing transcript.

The ALJ ruled that the Petitioner effected legally sufficient service of the Notice of Hearing and Statement of Charges and that BPMC had obtained jurisdiction over the Respondent [T 3]. The ALJ noted further that the Respondent submitted documents in evidence as Ex A on February 21., 2011. The ALJ concluded that the submission demonstrated that the Respondent was aware that a proceeding involving her License was pending on February 28, 2011 [T 3]. The ALJ then granted the Petitioner's motion to deem the Statement of Charges [Ex 1] admitted due to the Respondent's failure to file an answer. The Notice of Hearing at page 2 stated:

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. (Underline in original)

See also Corsello v. New York State Department of Health, 300 A.D.2d 849, 752 N.Y.S.2d 156 (3rd Dept. 2002).

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record available to the Hearing Committee in this matter. These facts represent testimony and/or documentary evidence found persuasive by the Hearing Committee in arriving at a particular finding. The Petitioner, which has the burden of proof, was required to prove its case by a preponderance of the evidence. The Hearing Committee unanimously agreed on all Findings of Fact.

1. Respondent was authorized to practice medicine in New York State on April 8, 1993 by the issuance of license number 191849 by the New York State Education Department and the

Respondent is currently registered to practice medicine in New York State [Ex 5A].

2. On June 16, 2010, a BPMC Committee (Impairment Committee) ordered the Respondent to submit to a mental examination within fourteen days pursuant to PHL § 230(7), upon the Committee's Determination that the Respondent may be impaired in the practice of medicine by mental disability or psychiatric condition [Ex 3A].

3. The Respondent failed to submit to the examination within fourteen days [Ex 4].

CONCLUSIONS

Under PHL § 230, BPMC operates as the duly authorized physician disciplinary agency of the State of New York. A BPMC impairment committee may direct a licensee to submit to an examination under sec 230(7), when that Committee has reason to believe that a licensee may be impaired by alcohol, drugs, physical disability or mental disability. A BPMC hearing committee conducts a hearing and renders a determination on charges that a licensee has committed professional misconduct under the definitions at EL § 6530, including the provisions at EL § 6530(15) that define professional misconduct as failure to comply with a BPMC Order. A hearing committee that sustains misconduct charges may then impose a sanction against a licensee pursuant to the provision at PHL § 230-a, including the provisions at 230-a(2) that authorize suspension of a physician's license.

This Hearing Committee has considered the record in this case. At the outset, the Committee notes an error in the transcript of the proceedings, because the transcript fails to include the opening statement by the Committee's Chair. We amend the record to include the

Chair's Statement that appears as Appendix I to this Determination and Order.

After considering the now complete record, the Hearing Committee affirms the charge that the Respondent has committed professional misconduct in violation of EL § 6530(15) by failing to comply with a BPMC Order. Exhibits in evidence provided a preponderance of evidence to prove the charge [see Ex 3A and Ex 4] and the Respondent's failure to file an answer to the charge deemed the charge admitted.

DETERMINATION AS TO PENALTY

After a full and complete review of all of the evidence presented and pursuant to the Findings of Fact and Conclusions of Law, the Hearing Committee votes unanimously to suspend the Respondent's License pursuant to PHL 230-a(2)(e) until such time as the Respondent complies with the Impairment Committee's June 16, 2010 Order. The Hearing Committee reviewed the Respondent's submissions in Exhibit A and we found the Respondent's statements rambling in nature. We wish to express our concern to the Respondent about her possible mental illness and we urge the Respondent to undergo the examination, not merely to comply with the BPMC Order, but also for the Respondent's sake. We note that the Respondent now practices in Puerto Rico and we wonder if the Respondent has ignored the BPMC Order because she no longer intends to return to New York to practice. We caution the Respondent that her failure to comply with the BPMC Order could result in action against her license in Puerto Rico due to information from the Practitioner Data Bank.

ORDER

Based on the foregoing, **the Hearing Committee issues the following ORDER:**

1. We **SUSTAIN** the Specification in the Statement of Charges;
2. We **SUSPEND** the Respondent's License until such time as she complies with the terms in the BPMC June 10, 2010 Order.

DATED: Troy, New York

March 9th, 2011

REDACTED

Lyon Greenberg, M.D., (Chair)

William Tedesco, M.D.

Frances Tarlton

Maria Padilla, M.D.
Urb. Altura de Mayaguez, Calle Laliza -
1940
Mayaguez, Puerto Rico 00682-6206

Jeffrey J. Conklin, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Rm. 2509 Corning Tower
Empire State Plaza
Albany, NY 12237

APPENDIX I

Chair's Statement

Hearing Committee Opening Statement for the Chairperson

Good morning. I am **Dr. Lyon Greenberg**, and I am a member of the State Board for Professional Medical Conduct and **Chair** of today's hearing. The other members of this morning's Hearing Committee of the State Board for Professional Medical Conduct are **Dr. William Tedesco** and **Ms. Frances Tarlton**.

The Honorable **James F. Horan** is the **Administrative Law Judge** for this hearing and shall rule on all motions, questions of legal procedure and legal objections. The Administrative Law Judge is not a voting member of the panel. The members of the hearing panel serve as impartial adjudicators of the facts, and have no advance knowledge of the matter that is to be heard today.

This hearing by the State Board for Professional Medical Conduct is conducted pursuant to Section 230 of the Public Health Law of the State of New York. Section 230 created the State Board for Professional Medical Conduct and has empowered it to conduct this type of hearing. The purpose of this hearing is to determine whether the Respondent committed an act or acts of misconduct and if disciplinary action should be imposed.

The General Counsel of the Department of Health has prepared a memorandum of law on the definitions of professional misconduct set forth in New York Education Law, Section 6530 for the guidance of the hearing committees and the Administrative Law Judge. The lawyers for the Office of Professional Medical Conduct have copies of this memorandum, and a copy is available for the Respondent. If these definitions

of professional misconduct are relevant to the Statement of Charges in this proceeding and if the Respondent wishes to comment on or dispute any questions addressed in this legal memorandum, he or his counsel should do so in writing before the last day of the hearing.

The hearing which we are holding today is an administrative hearing and, as such, our procedure is more informal than that of a trial. This Hearing Committee is not bound by the strict rules of evidence, but its conclusions will be based on a preponderance of the evidence. A transcript will be taken of these proceedings. Should the Respondent's counsel desire a copy, one may be ordered from the reporting service. All witnesses at this hearing will testify under oath. Our procedure is for the proponent of the witness to conduct direct examination of that witness with his/her opponent then being given the opportunity to cross-examine that witness. Members of this Hearing Committee will also have the opportunity to ask the witness questions. Irrelevant or repetitious testimony may be curtailed by the Administrative Law Judge. All parties and committee members are reminded that ex parte communication will not be allowed. The Hearing Committee may require the submission of proposed findings of fact, memoranda, or other written material from counsel in order to expedite the hearing or aid in the decision-making process.

* Please turn off or mute your cell phones/ other electronic devices.

Before starting, I ask that all persons in the hearing room identify themselves for the record.

Appendix II

Statement of Charges

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

IN THE MATTER
OF
MARIA PADILLA, M.D.

NOTICE
OF
HEARING

TO: Maria Padilla, M.D.
REDACTED

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on February 25, 2010, at 10:00 a.m., at the Offices of the New York State Department of Health, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, New York 12180, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

**YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE
PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.**



Department attorney: Initial here _____

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The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, New York 12180, ATTENTION: HON. JAMES HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate

action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
January 7, 2010

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Jeffrey J. Conklin
Associate Counsel
Bureau of Professional Medical Conduct
Empire State Plaza
Corning Tower, Room 2517
Albany, New York 12237
(518) 473-4219

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

-----X
IN THE MATTER : STATEMENT
OF : OF
MARIA PADILLA, M.D. : CHARGES
-----X

Maria Padilla, M.D., the Respondent, was authorized to practice medicine in New York State on April 8, 1993, by the issuance of license number 191849 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine, and resides at REDACTED

FACTUAL ALLEGATIONS

- A. On or about June 16, 2010, a Committee on Professional Conduct of the State Board for Professional Medical Conduct (hereinafter referred to as the "Committee") issued an Order finding that Respondent may be impaired by reason of mental disability or by having a psychiatric condition which impairs her ability to practice medicine. A copy of the Order is attached hereto and made a part hereof as Exhibit "A". On June 18, 2010, a copy of the Order was served upon the Respondent by first class mail. Pursuant to New York Public Health Law Section 230 (7), the Committee ordered the Respondent to submit to and cooperate with a mental examination by Benjamin B. Cheney, M.D., an examining physician designated by the Committee upon the advice of the Office of Professional Medical Conduct (hereinafter referred to as "OPMC"). The examination was ordered to be scheduled no later than 14 days of the effective date of the Order, unless the Director of OPMC extended the deadline in writing. The Director of OPMC did not so extend the deadline for the Respondent to submit to a

mental examination. To date, the Respondent has failed to submit to a mental examination in violation of the Order. Pursuant to New York Education Law Section 6530 (15), the failure of Respondent to comply with this Order is professional misconduct.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

VIOLATION OF A BOARD ORDER

Respondent is charged with committing professional misconduct as defined in New York Education Law Section 6530(15) by reason of her failure to comply with the Order, pursuant to Public Health Law Section 230 (7) (a) and (b), of the Committee directing the Respondent to submit to a mental examination as alleged in the following:

1. The facts set forth in paragraph A.

DATED: January 7, 2011
Albany, New York

REDACTED
PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

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

IN THE MATTER
OF
MARIA PADILLA, M.D.

ORDER PURSUANT
TO
§230(7) OF THE
PUBLIC HEALTH
LAW

Upon affording Maria Padilla, M.D., (the Licensee), an opportunity to be heard before a Committee on Professional Conduct of the State Board for Professional Medical Conduct and after reviewing the information presented by the Office of Professional Medical Conduct (OPMC) on June 16, 2010, the Committee has found reason to believe that the Licensee may be impaired by reason of a mental disability or by having a psychiatric condition which impairs her ability to practice.

Pursuant to N.Y. Public Health Law § 230(7) the Committee hereby orders the Licensee to submit to and cooperate with a mental examination by Benjamin B. Cheney, M.D., 211 East 43rd Street, Suite 2301, New York, NY 10017, an examining physician designated by the Committee after requesting (and receiving) the advice of OPMC. The Licensee did not appear, nor did she submit any documents or other information on her own behalf.

Said examination must be scheduled by the Licensee with the examining physician and shall be commenced no later than 14 days of the effective date of the Order unless the Director of the Office of Professional Medical Conduct extends this deadline in writing. The examination shall be completed at such time as the examining physician determines that it is completed. Cooperation with the evaluation shall require the Licensee to comply with the terms set forth in attached Exhibit A.

Pursuant to N.Y. Educ. Law § 6530(15), failure to comply with this Order is professional misconduct.

SO ORDERED.

Dated: June 16, 2010

REDACTED

Chairperson
Committee on Professional Medical Conduct

EXHIBIT A

1. Licensee shall schedule the examination with the designated Examining Physician to begin within 14 days of the effective date of the Order, unless the Director of the Office of Professional Medical Conduct extends this deadline in writing.
2. The Examining Physician may require any further evaluation, examinations, or testing that the Examining Physician deems appropriate to enable the Examining Physician to complete the evaluation of Licensee; this may entail evaluations, examinations, or testing of Licensee by other professionals whom the Examining Physician shall designate. Licensee shall cooperate and comply with such requirement.
3. The examination shall not be completed until the Examining Physician determines that it is completed and the Licensee shall cooperate completely with all aspects of the examination.
4. The Licensee shall provide, whenever requested, any releases or consents with respect to confidentiality that the Examining Physician, the Board or the Office of Professional Medical Conduct deem necessary:
 - a. To permit the examination to proceed and the Examination Report to issue;
 - b. To permit the Examining Physician, the Board, or the Office of Professional Medical Conduct to obtain any information, including but not limited to, medical records, from other sources that are relevant to the evaluation;
 - c. To facilitate the evaluation, examination, or testing of Licensee by other professionals whom the Examining Physician may designate;
 - d. To authorize the Examining Physician to provide OPMC with information about Licensee's compliance or noncompliance with this Order;
 - e. To provide OPMC with the Examining Physician's complete documentation in support of the Examining Physician's Examination Report;
 - f. To authorize the Examining Physician or other persons involved in the examination process to testify before the Board for Professional Medical Conduct concerning Licensee and matters related to the examination.