

December 28, 2011

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Jeffrey J. Conklin, Esq.  
NYS Department of Health  
ESP-Corning Tower – Room 2512  
Albany, New York 12237

Helen Evrard, M.D.  
REDACTED ADDRESS

**RE: In the Matter of Helen Evrard, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 11-311) 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., Chief 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 ADDRESS

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

-----X  
IN THE MATTER : DETERMINATION  
: :  
OF : AND  
: :  
HELEN EVRARD, M.D. : ORDER  
-----X

BPMC #11-311

A Notice of Hearing and Statement of Charges, dated October 28, 2011, were served upon the Respondent, Helen Evrard, M.D. FRANCES E. TARLTON, (Chair), JOSE M. DAVID, M.D., and MARY E. RAPPAZZO, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10) (Executive) of the Public Health Law. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Jeffrey J. Conklin, Esq., Associate Counsel. The Respondent failed to appear in person or by Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

PROCEDURAL HISTORY

Date of Service:	November 3, 2011
Answer Filed:	None Filed
Pre-Hearing Conference:	December 13, 2011
Hearing Date:	December 20, 2011
Witnesses for Petitioner:	None
Witnesses for Respondent:	None
Deliberations Held:	December 20, 2011

STATEMENT OF CASE

Petitioner has charged Respondent, an internist specializing in allergy and immunology, with one specification of professional misconduct. The charges relate to the alleged failure to comply with an Order issued pursuant to Public Health Law §230(7)(a) and (b), directing Respondent to submit to a medical and psychiatric examination. Respondent is therefore charged with one count of professional misconduct in violation of Education Law §6530(15).

A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

Respondent failed to file an Answer to the Statement of Charges no later than ten days prior to the hearing, as required by Public Health Law §230(10)(c)(2). This statute

"expressly and unequivocally provides that 'the licensee shall file a written answer to each of the charges and allegations in the statement of charges no later than ten days prior to the hearing, that any charge and allegation not so answered shall be deemed admitted'..." (Matter of Corsello v. New York State Department of Health, et al, 300 A.D.2d 849 (3<sup>rd</sup> Dept. 2002)).

Upon motion by the Petitioner, the Administrative Law Judge ruled that all allegations and charges be deemed admitted.

#### **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

#### **Respondent**

1. Helen Evrard, M.D. (hereinafter "Respondent"), was authorized to practice medicine in New York State by the New York State Education Department's issuance of license number 172434 on or about September 23, 1987. (Exhibit #3).

2. Respondent was personally served with the Notice of Hearing and Statement of Charges on November 3, 2011. (Exhibit #2).

3. On or about June 22, 2011, a Committee on Professional Conduct of the State Board for Professional Medical Conduct ("Committee") issued an Order finding that Respondent may be impaired by reason of physical and mental disabilities or by having a psychiatric condition which impairs her ability to practice medicine. (Exhibit #5A).

4. On July 14, 2011, a copy of the Order was served upon the Respondent by first class mail. (Exhibit #5C).

5. Pursuant to the Order, Respondent was required to submit to and cooperate with a medical and psychiatric examination by an examining physician designated by the Committee upon the advice of the Office of Professional Medical Conduct ("OPMC"). The examinations were ordered to be scheduled no later than 14 days after the effective date of the Order, unless the Director of OPMC extended the deadline in writing. (Exhibit #5A).

6. In a letter dated July 25, 2011, Respondent stated that she was in the process of filing personal bankruptcy and had no income other than Social Security Disability, and was unable to afford the expense of the ordered evaluation. She

also indicated that her New York medical license would "expire" at the end of August, 2011, and that she had no plan to resume the practice of medicine. (Exhibit #8A).

7. In a letter dated September 7, 2011, Respondent reiterated that she did not intend to seek "reactivation" of her medical license, and that she was planning on leaving New York State by the end of the year. She further stated that she continued to receive care from various therapists for multiple medical conditions, including severe scoliosis. (Exhibit #6).

8. As of the date of this Hearing, Respondent had not completed the medical and psychiatric examinations required by the Board's Order. (Record as a Whole).

#### CONCLUSIONS OF LAW

Respondent is charged with one specification of professional misconduct, based upon her failure to comply with the Board's Order to submit to a medical and psychiatric examination, in violation of Education Law §6530(15).

The Hearing Committee made the following conclusions of law pursuant to the factual findings listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee takes note of the fact that the charges were deemed admitted, following Respondent's failure to file the statutorily required Answer. Moreover, the documents received into evidence provide an ample basis upon which to sustain the charge. Accordingly, the Hearing Committee voted to sustain the factual allegations, as well as the First Specification of professional misconduct set forth in the Statement of Charges.

**DETERMINATION AS TO PENALTY**

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, determined that Respondent's license to practice medicine should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The record clearly established that Respondent failed to obtain the medical and psychiatric examinations required pursuant to the Board's June 22, 2011 Order. It is apparent from the correspondence sent by Respondent that she does not intend to obtain the needed examinations. She based her decision, at least in part, on her perception that her medical



license has expired. This is not correct. Only her registration to practice has expired. Her license remains active, unless affirmatively revoked by the Board, or surrendered upon mutual Consent.

It is highly unlikely that Respondent will ever comply with the Order, given her poor health and intent to leave New York State. Under the circumstances, a suspension of license until she complied with the Order would be meaningless. Revocation of Respondent's medical license is the only viable sanction which will serve to protect the public.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The First Specification of professional misconduct, as set forth in the Statement of Charges is SUSTAINED;
2. Respondent's license to practice medicine in the State of New York is hereby REVOKED;
3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York  
December 27, 2011

REDACTED SIGNATURE

FRANCES E. TARLTON (CHAIR)

JOSE M. DAVID, M.D.  
MARY E. RAPPAZZO, M.D.

TO: Jeffrey J. Conklin, Esq.  
Associate Counsel  
New York State Department of Health  
Corning Tower Building - Room 2512  
Empire State Plaza  
Albany, New York 12237

Helen Evrard, M.D.

REDACTED ADDRESS

**APPENDIX I**

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

-----X  
IN THE MATTER : STATEMENT  
OF : OF  
HELEN EVRARD, M.D. : CHARGES  
-----X

HELEN EVRARD, M.D., the Respondent, was authorized to practice medicine in New York State on September 23, 1987, by the issuance of license number 172434 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine, and resides at REDACTED ADDRESS

**FACTUAL ALLEGATIONS**

- A. On or about June 22, 2011, 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 physical and mental disabilities 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 July 14, 2011, a copy of the Order was served upon the Respondent by first class mail. Pursuant to New York Public Health Law Section 230 (7) (a) and (b), the Committee ordered the Respondent to submit to and cooperate with a medical and psychiatric examinations by Margaret Jarvis, M.D., Medical Director, Marworth Treatment Center, located in Waverly, Pennsylvania, an examining physician designated by the Committee upon the advice of the Office of Professional Medical Conduct (hereinafter referred to as "OPMC"). The examinations were ordered to be scheduled no later than 14 days after 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 medical and psychiatric examinations. To date, the Respondent has failed to submit to a medical and psychiatric examinations in violation of the aforesaid 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 medical and psychiatric examinations as alleged in the following:

1. The facts set forth in paragraph A.

DATED: October 28, 2011  
Albany, New York

REDACTED SIGNATURE

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