

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

NEW YORK
state department of
HEALTH

Public

Sue Kelly
Executive Deputy Commissioner

March 29, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jude B. Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Mary Zhu, M.D.
REDACTED

Mary Zhu, M.D.
REDACTED

Steven B. Bassoff, Esq.
1220 S Street - Suite 100
Sacramento, California 95811-7138

RE: In the Matter of Mary Zhu, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-85) 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.

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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
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 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
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

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

-----X
IN THE MATTER : DETERMINATION
OF :
MARY ZHU, M.D. :
CO-11-12-6805-A : ORDER
-----X
BPMC #13-85

COPY

A Notice of Referral Proceeding and Statement of Charges, dated November 30, 2012, were served upon the Respondent, Mary Zhu, M.D. **TREVOR A LITCHMORE, M.D. (Chair), JANET M. MILLER, R.N., and REID T. MULLER, 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)(e) of the Public Health Law. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Jude B. Mulvey, Esq., Associate Counsel. The Respondent failed to appear, either in person or by Counsel. A hearing was held on January 24, 2013. 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.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law §6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(d). A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

The Department was unable to personally serve Respondent with the Notice and Statement of Charges. (Exhibit #2). Substituted service was accomplished by sending the documents to Respondent by certified mail, return receipt requested. (Exhibit #3). Two days before the hearing, Respondent's California counsel acknowledged service and submitted a copy of the brief submitted to the Sacramento County Superior Court as part of an appeal of the California action. The administrative law judge

ruled that the Department had achieved service and obtained jurisdiction over the Respondent in this matter.

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.

1. Mary Zhu, M.D., (hereinafter "Respondent") was authorized to practice medicine in New York State on August 29, 1991 by the issuance of license number 186722 by the New York State Education Department. (Exhibit #4).

2. On or about November 29, 2011, the Division of Medical Quality, Medical Board of California, (hereinafter "California Board"), Be Decision ("California Order") revoked Respondent's license to practice medicine, stayed the revocation and placed Respondent on probation for five (5) years during which she is required to complete continuing medical education courses in prescribing and record keeping practices, and complete a clinical training program. The California Order was based on the findings of a contested administrative hearing. The California Board found that Respondent committed gross negligence in the care of

three patients, negligence on more than one occasion in her care of three patients and the failure to maintain adequate and accurate medical records of five patients. (Exhibit #5).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The evidence established that Respondent was disciplined by the California after finding that she her care and treatment of several patients demonstrated both gross negligence and negligence on more than one occasion. The California Board further found that Respondent's medical records also fell below minimal acceptable standards.

The Hearing Committee unanimously concluded that Respondent's actions, if occurring in New York State, would constitute professional misconduct in violation of New York Education Law §6530(3) [negligence on more than one occasion]; §6530(4) [gross negligence], and §6530(32) [failure to maintain adequate records]. Accordingly, the Committee voted to sustain the Specification of Professional Misconduct set forth in the Statement of Charges.

Respondent's California attorney urged the Committee to delay acting until the appellate process is completed. We

considered this request, but ultimately determined that the case should go forward. We have been presented by a final action taken by the duly authorized professional disciplinary agency of the State of California. This provided the basis for the Department's action against Respondent. In the event that Respondent prevails in her appeal of the California Board decision, she is free to request a reconsideration of this Committee's Determination and Order in this matter.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously 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.

Respondent was found guilty of negligence and gross negligence, as well as poor record-keeping. Respondent is not currently registered in New York and has not practiced here in many years. She failed to appear at the hearing and presented no evidence which might mitigate the sanction imposed by this Committee. In the event that she successfully completes the terms of probation imposed upon her by the California Board, and wishes to return to New York, she may petition to have her

TO: Jude B. Mulvey, Esq.
Associate Counsel
New York State Department of Health
Corning Tower - Room 2512
Albany, New York 12237

Mary Zhu, M.D.

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APPENDIX I

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

IN THE MATTER
OF
MARY ZHU, M.D.
CO-11-12-6805-A

STATEMENT
OF
CHARGES

MARY ZHU, M.D., Respondent, was authorized to practice medicine in New York state on August 29, 1991, by the issuance of license number 186722 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 29, 2011, the Division of Medical Quality, Medical Board of California, (hereinafter "California Board"), by Decision (hereinafter "California Order") revoked Respondent's license to practice medicine, stayed the revocation and placed Respondent on probation for five (5) years during which she is required to complete Continuing Medical Education courses in prescribing and record keeping practices, and complete a clinical training program. The California discipline was based on Respondent's commission of gross negligence in the care of three patients, negligence on more than one occasion in her care of three patients and failure to maintain adequate and accurate medical records of five patients.

B. The conduct resulting in the California Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530 (3) (negligence on more than one occasion);
2. New York Education Law §6530 (4) (gross negligence)
3. New York Education Law §6530 (32) (failure to maintain adequate records)

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine revoked or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *Nov. 30*, 2012
Albany, New York

REDACTED

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