

NEW YORK
state department of
HEALTH

Public

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

Sue Kelly
Executive Deputy Commissioner

August 20, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joel E. Ablove, Esq.
NYS Department of Health
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237

John M. Purcell, Jr., M.D.
REDACTED

Graig F. Zappia, Esq.
Tully Rinckey, PLLC
441 New Karner Road
Albany, New York 12205

RE: In the Matter of John M. Purcell, Jr., M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-260) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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:

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:nm
Enclosure

COPY

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

-----X
IN THE MATTER : DETERMINATION
: :
OF : AND
: :
JOHN M. PURCELL, JR., M.D. : ORDER
CO-12-07-3287-A :
-----X BPMC-13-260

A Notice of Referral Proceeding and Statement of Charges, both dated May 2, 2013, were served upon the Respondent, John M. Purcell, Jr., M.D. **STEVEN I. SHERMAN, D.O., M.S. (Chair), DAVID B.L. MEZA, III, M.D., and FRANCES E. TARLTON,** 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 Joel E. Abelove, Esq., Associate Counsel. The Respondent appeared by Tully Rinckey, PLLC, Graig F. Zappia, Esq., of Counsel. A hearing was held on July 25, 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)(a)(i) [having been convicted of committing an act constituting a crime under New York State Law. A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

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. John M. Purcell, Jr., M.D., (hereinafter "Respondent") was authorized to practice medicine in New York State on May 16, 2005 by the issuance of license number 236184 by the New York State Education Department. (Exhibit #3).

2. On or about August 2, 2010, in Town of Colonie Justice Court, State of New York, Respondent was found guilty, based on a plea of guilty, of Driving While Intoxicated, Aggravated DWI, DWI with a BAC greater than .08 of 1%, Failure to Keep Right and a Traffic Device Violation, in violation of New York Vehicle and Traffic Law §§1192.2,3,2-AA, class U misdemeanors, and Vehicle and Traffic Law §§1120 and 1111. On May 10, 2011, Respondent was sentenced to \$2,700.00 fine, \$1,370.00 in surcharges, and a six month license revocation. (Exhibit #4).

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 convicted of driving while intoxicated, and several related misdemeanors under New York State Law. Therefore, the Hearing Committee voted to sustain the 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, unanimously determined that Respondent should receive a censure and reprimand, in satisfaction of the charges. In addition, Respondent shall be required to satisfactorily complete the 5 year contract which he voluntarily entered into with the Committee on Physician's Health. 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 presented very emotional testimony surrounding the circumstances of his arrest and conviction. He made no

attempt to dodge responsibility for his actions, and acknowledged the risk of harm to others presented by his driving while severely intoxicated (BAC greater than 0.18%). He further acknowledged, with some reluctance, the fact that his drinking had become a problem some years before his arrest.

Following Respondent's guilty plea, he voluntarily entered into a 5 year contract with the Committee for Physician Health ("CPH"), a division of the Medical Society of the State of New York. The CPH established an individual recovery program for Respondent, including treatment, therapy, mutual self-help and a variety of monitoring activities, including random-observed urine assays. Respondent testified that he has been randomly tested six times per month for the past three years, and has always tested negative for alcohol, as well as 14 drugs. He also submitted a letter, dated July 22, 2013, written by Susan A. Hill, the Assistant Director of the CPH. In this letter, Ms. Hill attested to Respondent's full compliance with all conditions for participation. (Exhibit D).

In determining the appropriate sanction to be imposed, the Hearing Committee considered the fact that this conviction was a first offense, albeit a serious one. We also gave great weight to the fact that Respondent voluntarily entered into a treatment and monitoring program with the CPH, and has maintained full compliance for three years as of the date of the hearing.

The Department requested a censure and reprimand, along with a fine, and a five year term of probation, continuing the CPH monitoring for the full period.

The Committee concurred on the imposition of a censure and reprimand, but does not see the value in a monetary fine. Respondent has already paid a substantial monetary penalty through the criminal process. The Board generally reserves monetary penalties for instances of unjust enrichment by licensees - a situation not present here.

Given the fact that Respondent has already substantially completed his five year contract with the CPH, the Committee does not believe that an additional five year period of monitoring is warranted. Rather, we will require Respondent to successfully complete the full five year contract which he voluntarily entered into with the CPH. The Committee unanimously concluded that this will provide a sufficient opportunity for Respondent to demonstrate his long-term commitment to sobriety.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) is SUSTAINED;
2. Respondent shall and hereby does receive a CENSURE AND REPRIMAND for his misconduct. In addition, Respondent shall be required to successfully complete the five year contract which he voluntarily entered into with the Committee for Physician Health. Failure to complete the contract with CPH may present grounds for further disciplinary action;
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: Woodmere, New York

8/15, 2013

REDACTED

STEVEN I. SHERMAN, D.O., M.S. (CHAIR)

DAVID B.L. MEZA, III, M.D.
FRANCES TARLTON

TO: Joel E. Abelove Tsui, Esq.
Associate Counsel
New York State Department of Health
Corning Tower - Room 2512
Albany, New York 12237

John M. Purcell, Jr., M.D.

REDACTED

Graig F. Zappia, Esq.
Tully Rinckey, PLLC
441 New Karner Road
Albany, NY 12205

APPENDIX I

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

IN THE MATTER
OF
JOHN M. PURCELL, Jr., M.D.
CO-12-07-3287-A

STATEMENT
OF
CHARGES

JOHN M. PURCELL, Jr., M.D., Respondent, was authorized to practice medicine in New York State on May 16, 2005, by the issuance of license number 236184 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 2, 2010, in Town of Colonie Justice Court, State of New York, Respondent was found guilty, based on a plea of guilty, of Driving While Intoxicated, Aggravated DWI, DWI with a BAC greater than .08 of 1%, Failure to Keep Right, and a Traffic Device Violation, in violation of New York Vehicle And Traffic Law, §§1192.2,3, 2-AA, class U misdemeanors, and Vehicle and Traffic Law §§1120 and 1111, and was sentenced on May 10, 2011, to a \$2,700.00 fine, 1,370.00 in surcharges, and a 6 month license revocation.

SPECIFICATION

Respondent violated New York Education Law §8530(9)(a)(i) by being convicted of committing an act constituting a crime under New York State law, in that Petitioner charges:

1. The facts in paragraph A.

DATED: *May 2*, 2013
Albany, New York

REDACTED

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