

NEW YORK
state department of
HEALTH

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

Sue Kelly
Executive Deputy Commissioner

November 15, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert W. Ciccarelli, R.P.A.
REDACTED

Robert W. Ciccarelli, R.P.A.
REDACTED

Robert W. Ciccarelli, R.P.A.
St. John's Episcopal Hospital
Emergency Department
327 Beach 19th Street
Far Rockaway, New York 11691

David W. Quist, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Robert W. Ciccarelli, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-377) 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:cah

Enclosure

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

IN THE MATTER
OF
ROBERT W. CICCARELLI, R.P.A.

DETERMINATION

AND

COPY

ORDER

BPMC #13-377

A hearing was held October 17, 2013, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated August 9, 2013, were served upon the Respondent, **Robert W. Ciccarelli, R.P.A.**

Pursuant to Section 230(10)(e) of the Public Health Law, **William P. Dillon, M.D.**, Chair, **William A. Tedesco, M.D.**, and **Dennis P. Zimmerman, M.S., CRC.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **James E. Dering, Esq.**, General Counsel, by **David W. Quist, Esq.**, of Counsel. The Respondent, **Robert W. Ciccarelli, R.P.A.**, did not appear, although duly served. Evidence was received 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 when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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, the Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(iii) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within New York state would have constituted a crime under New York state law. Specifically, the Respondent was found guilty of driving while intoxicated in the State of Arizona. Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

approximately \$1,500.00, plus incarceration costs, and to install an ignition Interlock device for a period of one year.

4. The conduct resulting in the Arizona conviction against Respondent would constitute a crime under the laws of New York State, and misconduct pursuant to the following section of New York State law: New York Education Law Sec. 6530(9)(a)(iii), by being convicted of an act constituting a crime under the law of another jurisdiction which, if committed within New York state, would have constituted a crime under New York state law.

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law §6530(9)(a)(iii) by being convicted of an act constituting a crime under the law of another jurisdiction which, if committed within New York state, would have constituted a crime under New York state law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing, either in person or by counsel. The Administrative Law Judge, after considering the documentary evidence, which included Affidavits of Non-Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for due diligence in the service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed on the merits notwithstanding the Respondent's absence¹. It is noted that the Department's attorney also sent the Respondent, by Certified Mail, the Notice of Referral herein, the Statement of Charges, and a copy of the Summary of Department of Health Hearing rules. (Petitioner's Exhibit 3)

The record in this case indicates that Respondent was convicted of a crime in the State of Arizona. (See Exhibit 5) Specifically, the documentation in the record from the State of Arizona shows that the Respondent pled guilty to the misdemeanor charge of driving while intoxicated. Had this act occurred in New York, it would have constituted medical misconduct. The Department asked for a penalty of Censure and Reprimand and a fine, (T. 16) and indicated, on inquiry from the Chair, that such a penalty would sufficiently protect the public in New York State, (T. 16). In its deliberations, the panel considered the full range of penalties available in the case and determined, unanimously, that a Censure and Reprimand coupled with a \$1,500.00 fine would be appropriate.

¹ On November 4, 2013, the Department's attorney, Mr. Quist, sent a letter to the Administrative Officer, advising that he had received a phone message from the Respondent who indicated that he is now working in New York and living in Florida. The Respondent had acknowledged to Mr. Quist that he did receive the Department's materials when he, belatedly, checked his Arizona mail. The Respondent, according to Mr. Quist, admitted that he did not update his address with State Education as required. Mr. Quist's letter did provide addresses for the Respondent in New York and Florida and this Determination and Order will be sent to these addresses as well as to the address of record.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.
2. The Respondent is **censured and reprimanded** for conduct resulting in the Arizona conviction of driving while intoxicated, which conduct would constitute misconduct under the laws of New York State.
3. A fine of One Thousand Five Hundred Dollars (\$1,500.00) is imposed on the Respondent. The fine is payable in full within 90 days of the effective date of this Order. Payment must be submitted to the New York State Department of Health, Bureau of Accounts Management, Empire State Plaza, Corning Tower, Room 2784, Albany, New York 12237. Failure to pay the fine on time will subject the Respondent to all provisions of law relating to debt collection by New York State, including imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits and licenses (Tax Law Section 171[27], State Finance Law Section 18, CPLR Section 5001, Executive Law Section 32).
4. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Buffalo, New York

November 14, 2013

REDACTED

William P. Dillon, M.D., Chair,

**William A. Tedesco, M.D.
Dennis P. Zimmerman, M.S., CRC.**

To:
Robert W. Ciccarelli, R.P.A.
Respondent
REDACTED

Robert W. Ciccarelli, R.P.A.
Respondent
REDACTED

Robert W. Ciccarelli, R.P.A.
Respondent
St. John's Episcopal Hospital
Emergency Department
327 Beach 19th Street
Far Rockaway, N.Y. 11691

David W. Quist, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX 1

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

IN THE MATTER
OF
ROBERT W. CICCARELLI, R.P.A.
CO-12-07-3742-A

NOTICE OF
REFERRAL
PROCEEDING

TO: Robert W. Ciccarella, R.P.A.
REDACTED

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 17th day of October, 2013, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

EXHIBIT

1

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten (10) 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. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated 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 New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that 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 and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here



The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five (5) days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

Aug. 9, 2013

REDACTED

MICHAEL A. HISER
Acting Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

David W. Quist
Associate Attorney
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER	STATEMENT
OF	OF
ROBERT W. CICCARELLI, R.P.A. CO-12-07-3742-A	CHARGES

ROBERT W. CICCARELLI, R.P.A., the Respondent, was authorized to practice as a physician assistant in New York state on July 29, 1985, by the issuance of license number 002719 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 17, 2010, in the Manistee Justice Court of the State of Arizona in and for the County of Maricopa, following a plea of guilty, Respondent was convicted of driving under the influence of intoxicating liquor or drugs, a misdemeanor, and was sentenced to ten days in jail, all but one day suspended upon successful completion of a court-ordered screening program, probation for a two year period, made to pay a fine and assessments in an amount of approximately \$1,500, plus incarceration costs, and to install an ignition interlock device for a period of one year. The court also provided for the State's request of a future restitution hearing if necessary.

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(a)(iii) by being convicted of committing an act constituting a crime under the law of another

~~jurisdiction and which, if committed within New York state, would have constituted a~~
crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *Aug. 9*, 2013
Albany, New York

REDACTED

MICHAEL A. HISER
Acting Deputy Counsel
Bureau of Professional Medical Conduct