

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

NEW YORK
state department of
HEALTH

Public

Sue Kelly
Executive Deputy Commissioner

March 19, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sherylann Wade-Neal, M.D.
REDACTED

Jude B. Mulvey, Esq.
NYS Department of Health
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Sherylann Wade-Neal, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-65) 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:

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.

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 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: nm
Enclosure

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

COPY

IN THE MATTER
OF
SHERYLANN WADE- NEAL, M.D.

DETERMINATION
AND
ORDER

BPMC No. 14-65

FRANCES E. TARLTON, Chair, JOSE M. DAVID, M.D. and ELEANOR C. KANE, 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 of New York (hereinafter "Public Health Law"). Administrative Law Judge, CHRISTINE C. TRASKOS, ESQ, served as the Administrative Officer.

The Department of Health appeared by JAMES E. DERING ESQ., General Counsel, by JUDE B. MULVEY, ESQ., of Counsel. SHERYLANN WADE-NEAL M.D., Respondent, (hereinafter "Respondent") did not appear in person but participated by telephone.

Evidence was received and argument heard, and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Notice of Hearing & Statement of Charges:	January 3, 2014
Date of Answer to Charges:	None Received
Pre-hearing Conference:	February 4, 2014

Hearing Date:	February 13, 2014
Witnesses for Petitioner:	Diane Riley
Witnesses for Respondent:	Sherylann Wade-Neal, M.D.
Hearing Transcript Received:	February 27, 2014
Deliberations:	February 13, 2014

STATEMENT OF CASE

On February 4, 2014, the Administrative Law Judge (ALJ) held a pre-hearing conference. Respondent did not appear at this pre-hearing and no counsel appeared on her behalf. At that pre-hearing, the ALJ ruled that the service of the Notice of Hearing and Statement of Charges on Respondent was effected on January 7, 2014 by personal service and that the Board for Professional Medical Conduct had obtained jurisdiction over Respondent¹. (Pre-hearing transcript p.6, Petitioner's Ex. 2)

At the onset of the hearing, the Petitioner made a motion to have the charges deemed admitted based on Respondent's failure to file an answer. The Notice of Hearing, Petitioner's Exhibit 1 at page 2 states:

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.

¹ Public Health Law Section 230(10)(d)(i) requires that "(a) copy of the charges and notice of hearing shall be served on the licensee personally by the board at least thirty days before the hearing. If personal service cannot be made after due diligence and such fact is certified under oath, a copy of the charges and the notice of hearing shall be served by registered or certified mail to the licensee's last known address by the board at least fifteen days before the hearing."

Public Health Law §230(10)(c) clearly indicates that the failure to file a written answer will result in the charges and allegations being deemed admitted. Due to Respondent's failure to submit a written answer, the ALJ ruled that the factual allegations and charges of misconduct contained in the Statement of Charges (Petitioner's Ex. 1) were deemed admitted by Respondent. See also Corseello v. New York State Department of Health, 300 A.D. 2d 849, 752 N.Y.S. 2d 156 (App.Div. 3rd Dep't. 12/19/ 2002) .

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York pursuant to Section 230 et seq. of the Public Health Law of New York. This case was brought by the New York State Department of Health, Office of Professional Medical Conduct (hereinafter "Petitioner" or "Department") pursuant to §230 of the Public Health Law. Pursuant to §6530 of Education Law of New York (hereinafter "Education Law") the Respondent is charged with one specification of misconduct for violating terms and conditions of probation. Pursuant to Public Health Law § 230(10)(c)(2), the Respondent is required to file a written answer to the charges and allegations. The Respondent failed to file an answer to the charges, therefore, all the factual allegations and specifications of professional misconduct are deemed admitted. A copy of the Notice of Hearing and Statement of Charges, is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Unless otherwise noted, all findings and conclusions set forth below are the unanimous determinations of the Hearing Committee. Conflicting evidence, if any, was considered and

rejected in favor of the cited evidence. Numbers and letters below in parentheses refer to exhibits (denoted by the prefix "Ex.") or transcript page numbers ("T."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. The Hearing Committee hereby makes the following findings of fact:

1. Sherylann Wade-Neal, M.D., the Respondent, was authorized to practice medicine in New York State on February 6, 1984, by issuance of license number 157324 by the New York State Education Department. (Pet. Ex.3)
2. Respondent entered into a Consent Agreement and Order that was adopted by the Board of Professional Medical Conduct (the Board) identified as BPMC No. 11-34 (hereinafter "Consent Agreement") which was effective February 21, 2011. (Pet. Ex. 13)
3. By the terms of the Consent Agreement, Respondent agreed, among others, to a Censure and Reprimand, a three (3) year period of probation, a \$5,000 fine to be paid within thirty (30) days of the effective date of the Consent Order, and agreed to provide semi-annual submissions detailing her compliance with the Medical Board of California, Department of Consumer Affairs' Decision, which was the basis of the New York discipline. The Consent Agreement also included requirements that Respondent provide ninety (90) days notice, in writing, to the Office of Professional Medical Conduct ("OPMC") should Respondent return to the practice of medicine in New York State, to cooperate fully with OPMC in its administration and enforcement of the Consent Order, and to respond in a timely manner to all OPMC requests. (Pet. Ex. 13)
4. Respondent is in violation of the Consent Agreement in that:
 - 1) Respondent failed to pay the \$5,000 fine imposed by the Consent Agreement within thirty days of the Consent Order. (T. 29)

- 2) Between February 16, 2011 and present, Respondent has failed to respond to correspondence and requests for information from OPMC including, but not limited to, correspondence dated February 16, March 22, March 29, April 29, and June 8, 2011. (Pet. Exs. 4-8)
- 3) Respondent provided obstetrical care for approximately nine (9) days as a locum tenens physician at E.J. Noble Hospital, in Gouverneur, New York, from on or about July 26, 2012 through on or about August 3, 2012 without providing ninety days notice to OPMC that she was returning to the practice of medicine in New York State. (Pet. Ex. 12)

CONCLUSIONS OF LAW

The Hearing Committee makes the unanimous conclusion, pursuant to the Findings of Fact listed above, that all the Factual Allegations contained in the January 3, 2014 statement of charges are **SUSTAINED**.

Based on the above, the complete Finding of Fact and the discussion below, the Hearing Committee unanimously concludes that **ALL SPECIFICATIONS OF MISCONDUCT** contained in the Statement of Charges are **SUSTAINED**.

The rationale for the Hearing Committee's conclusions is set forth below.

DISCUSSION

Respondent is charged with one (1) specification of alleging professional misconduct within the meaning of §6530 of the Education Law. The Hearing Committee determined that all of the allegations and all of the charges contained in the Statement of Charges were established by a preponderance of the evidence. In addition to the fact that the allegations are deemed admitted, the Hearing Committee concludes that the documentary evidence and the credible

testimony of Diane Riley, presented by the Department sustains the allegations independently. The Hearing Committee finds that Diane Riley, supervisor of the Probation Unit within the Physicians Monitoring Unit of OPMC, provided a detailed account of Respondent's lack of compliance with the terms of the Consent Order.

Although Respondent did not file an answer to the Charges she contacted the Department on the morning of the hearing. Respondent was allowed to address the Hearing Committee via telephone with respect to the issue of mitigation. Respondent acknowledged that she was convicted of filing a false tax return in California. She closed her office practice in 2009. Since then Respondent has worked infrequently because she is required to have a practice monitor in California and has had difficulty obtaining one. Respondent acknowledged that she has not practiced medicine anywhere since 2012. Respondent told the Hearing Committee that she took the locum tenens work at EJ Noble Hospital in New York State so that she could visit with her son who was in the army at Fort Drum. She stated that her failure to provide OPMC with 90 days prior notice was an oversight and was not intentional. (T. 23-27) Respondent admitted that she also overlooked providing the data sheet to OPMC and acknowledged that she has not submitted a payment plan for the civil penalty in the past 3 years. (T. 29, 31) Respondent concluded by saying that she has experienced great financial difficulty and would like to return to practice medicine in New York someday because her family still resides here. She asked the Hearing Committee for leniency and pointed out that her conduct had nothing to do with patient care issues or medical malpractice. (T. 35)

The Hearing Committee took Respondent's testimony into consideration before they made their determination of penalty.

DETERMINATION AS TO PENALTY

After a full and complete review of all of the evidence presented and pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above, a unanimous Hearing Committee determines that Respondent's license to practice medicine in the State of New York should be revoked. This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including revocation, suspension, and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interests of justice.

The Hearing Committee finds that Respondent failed to comply with a Consent Order that she willingly signed three years ago. The Hearing Committee notes that the terms of the Consent Order were straightforward and that OPMC made numerous attempts to secure Respondent's compliance. More importantly, the Hearing Committee finds that Respondent acted irresponsibly when she failed to notify OPMC before she returned to practice medicine at EJ Noble Hospital in New York State. They also believe that her promises to OPMC to pay the civil penalty and to fill out the data sheet were not made in good faith. While Respondent testified that her skills are not in question, the Hearing Committee has an obligation to safeguard patients from physicians whose skill level may be outdated because they have not practiced medicine in several years. Finally, the Hearing Committee believes that attention to detail is essential to the safe practice of medicine. They conclude that Respondent's actions demonstrate a pattern of inattention to detail and an inability to comply with basic directives from OPMC. An extended probation cannot remedy this behavior. As a result, the Hearing Committee believes that revocation is the appropriate sanction in this instance.

ORDER

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

1. All the Factual Allegations and Specifications of misconduct as set forth in the Statement of Charges (Ex.1) are **SUSTAINED**;
2. The Respondent's license to practice medicine in New York State is hereby **REVOKED**;
3. This **ORDER** shall be effective on personal service on the Respondent or 7 days after the date of mailing of a copy to Respondent by certified mail or as provided by Public Health Law §230(10)(h).

Albany, New York

DATED: March 13, 2014

BY: REDACTED

FRANCES E. TARLTON, Chair
JOSE M. DAVID, M.D.
ELEANOR C. KANE, M. D.

To: Sherylann Wade-Neal, M.D.

REDACTED

Jude B. Mulvey, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower- Rm. 2512
Empire State Plaza
Albany, New York 10007

APPENDIX 1

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

IN THE MATTER
OF
SHERYLANN WADE-NEAL, M.D.

NOTICE
OF
HEARING

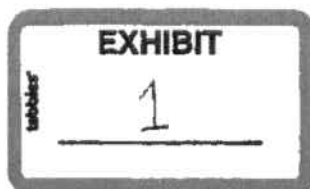
TO: Sherylann Wade-Neal, M.D.

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 13, 2014, at 10:30 a.m., at the Offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Albany, New York 12204-2719 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 _____

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, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, 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.

DATE JAN. 3, 2014

Albany, NY

REDACTED

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be directed to:
Jude B. Mulvey
Associate Counsel
Bureau of Professional Medical Conduct

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

IN THE MATTER
OF
SHERYLANN WADE-NEAL, M.D.

STATEMENT
OF
CHARGES

SHERYLANN WADE-NEAL, M.D., Respondent, was authorized to practice medicine in New York State on February 6, 1984, by the issuance of license number 157324 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent entered into a Consent Agreement with the New York State Department of Health, identified as BPMC Order No. 11-34 (hereinafter "Consent Agreement") which was effective February 21, 2011. A copy of the Consent Agreement is attached as Exhibit A. By the terms of the Consent Agreement, Respondent agreed, among others, to a Censure and Reprimand, three (3) year period of probation, a \$5,000 fine to be paid within thirty (30) days of the effective date of the Consent Order, and agreed to provide semi-annual submissions detailing her compliance with the Medical Board of California, Department of Consumer Affairs' Decision, which was the basis of the New York discipline. The Consent Agreement also included requirements that Respondent provide ninety (90) days notice, in writing, to the Office of Professional Medical Conduct ("OPMC") should Respondent return to the practice of medicine in New York State, to cooperate fully with OPMC in its administration and enforcement of the Consent Order, and to respond in a timely manner to all OPMC requests. Respondent is in violation of the Consent Agreement in that:

- 1 Respondent failed to pay the \$5,000 fine imposed by the Consent Agreement within thirty days of the Consent Order
- 2 Between February 16, 2011 and present, Respondent has failed to respond to correspondence and requests for information from OPMC including, but not limited to, correspondence dated February 16, March 22, March 29, April 29, and June 8, 2011.
- 3 Respondent provided obstetrical care for approximately nine (9) days as a *locum tenens* physician at E.J. Noble Hospital, Gouverneur, New York, from on or about July 26, 2012 through on or about August 3, 2012 without providing ninety days

notice to OPMC that she was returning to the practice of medicine in New York State.

SPECIFICATIONS OF MISCONDUCT

**VIOLATING ANY TERM OF PROBATION OR CONDITION OR LIMITATION PLACED ON
LICENSE**

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530 (29) by violating any term of probation or condition or limitation imposed on the licensee pursuant to Section two hundred thirty of the Public Health Law, as alleged in the facts of the following:

1. The facts set forth in Paragraphs A and A.1, A and A.2 and/or A and A.3.

DATED: JAN. 3, 2014
Albany, New York

REDACTED

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct