

January 24, 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael Garrett, M.D.
REDACTED

Michael Garrett, M.D.
REDACTED

Michael G. Bass, Esq.
Nathaniel C. White, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 10007

RE: In the Matter of Michael Garrett, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 14-19) 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.

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:cah
Enclosure

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

IN THE MATTER
OF
MICHAEL GARRETT, M.D.

COPY
DETERMINATION
AND
ORDER
BPMC #14-19

GAIL S. HOMICK HERRLING, Chair, WILLIAM A. TEDESCO, M.D. 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 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 MICHAEL G. BASS, ESQ., of Counsel. MICHAEL GARRETT M.D., Respondent, (hereinafter "Respondent") did not appear in person or by a representative.

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: | September 18, 2013 |
| Date of Answer to Charges: | None Received |
| Pre-hearing Conference: | October 28, 2013 |

Hearing Date: ~~November 4, 2013~~

Witnesses for Petitioner: None

Witnesses for Respondent: None

Hearing Transcript Received: November 25, 2013

Deliberations: November 4, 2013

STATEMENT OF CASE

On October 28, 2013, the Administrative Law Judge (ALJ) held a pre-hearing conference. Respondent did not appear at this pre-hearing and no counsel appeared on his 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 October 4, 2013 by certified mail after personal service was attempted by due diligence and that the Board for Professional Medical Conduct had obtained jurisdiction over Respondent¹. (Pre-hearing transcript p.13, Petitioner's Exs. 2-5)

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 Corsello 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 six specifications 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. Michael J. Garrett, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1981, by issuance of license number 146407 by the New York State Education Department. (Pet. Ex.6)
2. On July 11, 2011, Respondent entered into a Consent Agreement and Order that was adopted by the Board of Professional Medical Conduct (the Board) (BPMC No. 11-178) binding the Respondent to the terms and conditions of the Order. The Consent Agreement and Order was the result of an uncontested charge filed against the Respondent by the Office Professional Medical Conduct (OPMC)for "Negligence on More Than One Occasion" as defined in N.Y. Educ. Law§6530(3).(Pet. Ex. 8)
3. The binding terms and penalty of the Consent Agreement and Order included, inter alia
 - 1) That Respondent shall remain in continuous compliance with all requirements of N.Y. Education Law §6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department(except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Education Law §6502(4) to avoid registration and payment fees. This condition shall take effect 120 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee in New York State; and
 - 2) That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Consent Order and in its investigations

of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State; and

- 3) Respondent shall provide the Director of OPMC the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution of facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.(Pet. Ex.8)
4. On July 25,2011, an OPMC Senior Medical Conduct Investigator,(SMCI) sent correspondence to Respondent outlining BPMC No. 11-178 and requesting Respondent complete and return a data sheet and a current copy of Respondent's Curriculum Vitae. The OPMC's correspondence dated July 25, 2011 was not answered by Respondent and OPMC never received any of the requested information. (Pet. Ex.9)
5. On September 15, 2011, SMCI sent correspondence to Respondent directing Respondent to complete the data sheet and Curriculum Vitae and return it to OPMC. OPMC never received a completed data sheet or Curriculum Vitae. (Pet. Ex. 10)
6. On October 20, 2011, SCMI sent correspondence by "certified mail return receipt requested" reminding Respondent of his responsibility to comply with BPMC No. 11-178 and directing that

Respondent address his recent noncompliance. The correspondence was returned to OPMC as "unclaimed" and OPMC never received the requested documents. (Pet. Exs. 11,12)

7. On November 16, 2011, SMCI sent correspondence to Respondent "certified mail return receipt requested" informing Respondent that OPMC had not received the completed data sheet or the Curriculum Vitae that was requested in prior correspondence. SMCI informed Respondent that failing to respond to OPMC communications would be considered a violation of N.Y. Education Law § 6530(28). The correspondence was returned to OPMC as "unclaimed". OPMC never received any of the requested documents.(Pet. Exs. 13,14)
8. OPMC sent Respondent correspondence "certified mail return receipt requested" and "First Class Mail" on July 17, 2012 reminding Respondent to register his license and complete an accompanying Compliance Declaration. The correspondence was returned to OPMC "unclaimed" and OPMC never received the Compliance Declaration. (Pet. Exs. 15,16)
9. Respondent's last registration period was July 1, 2010 through June 30, 2012. Respondent's license status is currently "not registered." (Pet. Ex. 7)

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 September 18, 2013 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 did not appear at the hearing, either in person or by counsel. The Hearing Committee finds that the Respondent failed in his responsibility to keep his contact information current as he is required to do under the Education Law.

In addition to the fact that the allegations are deemed admitted, the Hearing Committee concludes that the documentary evidence presented by the Department sustains the allegations independently.

The Hearing Committee finds that Respondent willingly entered into a Consent Agreement in 2011. In the agreement, Respondent acknowledged that he had practiced substandard medicine with respect to several emergency room patients. Respondent further agreed to a stayed suspension of his license and was placed on probation for three years. (Dept. Ex. 8) The Hearing Committee finds that Respondent has totally disregarded an agreement that was established to provide oversight for patient safety. They also note that Respondent has failed to re-register his license in further defiance of the Board's Order.

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 he willingly signed two years ago. Respondent has an obligation to maintain contact with the Board and respond to their inquiries. The Hearing Committee is further troubled that Respondent may be practicing medicine elsewhere without the oversight that was provided in his agreement with the Board. 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).

, New York

DATED: Jan 22, 2014

BY: REDACTED

GAIL S. HOMICK HERRLING, Chair
WILLIAM A. TEDESCO, M.D.
REID T. MULLER, M. D.

To: Michael Garrett, M.D.
REDACTED

Michael Garrett, M.D.
REDACTED

Michael G. Bass, Esq.
Nathaniel C. White, 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

EXHIBIT
MT 10/29/13
Received

IN THE MATTER
OF
MICHAEL GARRETT, M.D.

NOTICE
OF
HEARING

TO: Michael Garrett, 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 November 4, 2013, 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, 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 Sept 18, 2013

Albany, New York

REDACTED

Michael A. Hiser
Acting Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be directed to:
Nathaniel White, Assistant Counsel
Bureau of Professional Medical Conduct
(518) 473-4282

IN THE MATTER
OF
MICHAEL J. GARRETT, M.D.

STATEMENT
OF
CHARGES

MICHAEL J. GARRETT, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1981, by the issuance of license number 146407 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 11, 2011, Respondent entered into a Consent Agreement and Order that was adopted by the Board of Professional Medical Conduct (BPMC No. 11-178) binding the Respondent to the terms and conditions of the Order. The Consent Agreement and Order was the result of an uncontested charge filed against the Respondent by the Office of Professional Medical Conduct (OPMC) for "Negligence on More Than One Occasion" as defined in N.Y. Educ. Law Section 6530(3).

B. The binding terms and penalty of the Consent Agreement and Order included, *inter alia*:

1 That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ. Law Section 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the

option provided in N.Y. Educ. Law Section 6502(4) to avoid registration and payment of fees. This condition shall take effect 120 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee in New York State; and

2. That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Consent Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State; and

3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.

C. On or about July 25, 2011, an OPMC Senior Medical Conduct Investigator (SMCI) sent correspondence to Respondent outlining BMC No. 11-178 and requesting Respondent complete and return a data sheet and a current copy of Respondent's Curriculum Vitae. The OPMC's correspondence dated July 25, 2011 was not answered by Respondent and OPMC never received any of the requested information.

D. On or about September 15, 2011, SMCI sent correspondence to Respondent directing Respondent to complete the data sheet and Curriculum Vitae and return to OPMC. OPMC never received a completed data sheet or Curriculum Vitae.

E. On or about October 20, 2011, SMCI sent correspondence by "certified mail return receipt requested" reminding Respondent of his responsibility to comply with BPMC No. 11-178 and directing that Respondent address his recent noncompliance. The correspondence was returned to OPMC as "unclaimed" and OPMC never received the requested documents.

F. On or about November 16, 2011, SMCI sent correspondence to Respondent "certified mail return receipt requested" informing Respondent that OPMC had not received the completed data sheet or the Curriculum Vitae that was requested in prior correspondence. SMCI informed Respondent that failing to respond to OPMC communications would be considered a violation of N.Y. Educ. Law Section 6530(28). The correspondence was returned to OPMC as "unclaimed". OPMC never received any of the requested documents.

G. OPMC sent Respondent correspondence "certified mail return receipt requested" and "First Class Mail" on or about July 17, 2012 reminding Respondent to register his license and complete an accompanying Compliance Declaration. The correspondence was returned to OPMC "unclaimed" and OPMC never received the Compliance Declaration.

H. Respondent's last registration period was July 1, 2010 through June 30, 2012. Respondent's license status is currently "not registered".

SPECIFICATIONS OF MISCONDUCT

FIRST THROUGH SIXTH SPECIFICATIONS

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 following:

1. The facts in Paragraph A, B.2, B.3 and/or C.
2. The facts in Paragraph A, B.2, B.3 and/or D.
3. The facts in Paragraph A, B.2, B.3 and/or E.
4. The facts in Paragraph A, B.2, B.3 and/or F.
5. The facts in Paragraph A, B.2, B.3 and/or G.
6. The facts in Paragraph A, B.1 and H.

DATE: September 19, 2013
Albany, New York

REDACTED

Michael A. Hiser
Acting Deputy Counsel
Bureau of Professional Medical Conduct