



Department of Health

ANDREW M. CUOMO
Governor

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Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

January 4, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ajoy Bhattacharya, M.D.
[REDACTED]

Nathaniel White, Esq.
NYS Department of Health
ESP – Corning Tower – Room 2512
Albany, New York 12237

RE: In the Matter of Ajoy Bhattacharya, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-320) 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 (l), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "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,



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

COPY

IN THE MATTER
OF
AJOY BHATTACHARYA, M.D.

DETERMINATION
AND
ORDER

BPMC #15-320

A Notice of Hearing and Statement of Charges, dated September 9, 2015 and September 2, 2015, respectively, were served upon **AJOY BHATTACHARYA, M.D.** ("Respondent"). **KENDRICK A. SEARS, M.D.**, Chairperson, **DENNIS P. ZIMMERMAN, M.S., CRC**, and **JAMES LEONARDO, M.D., Ph.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to § 230(10)(e) of the Public Health Law of the State of New York ("Public Health Law"). **DAWN MacKILLOP-SOLLER, ESQ., ADMINISTRATIVE LAW JUDGE ("ALJ")**, served as the Administrative Officer.

The Department appeared by Nathaniel White, Esq. Respondent did not appear at the hearing. The Hearing Committee received and examined documents from the Department and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charges that Respondent committed professional misconduct by his violation of a condition imposed on his medical license pursuant to PHL § 230, under a Bureau of Professional Misconduct Consent Order ("BPMC Order"), by his willful or grossly negligent failure to comply with substantial provisions of state law or regulation governing the practice of medicine, and by his failure to file a report required by the Department. The Hearing Committee unanimously votes 3-0 to revoke Respondent's license to practice medicine in the State of New York.

PROCEDURAL HISTORY

Date Charges Served:	September 29, 2015
Date of Answer to Charges:	None submitted
Pre-Hearing Conference Held:	October 16, 2015
Hearing Date:	October 29, 2015
Location of Hearing:	New York State Department of Health 150 Broadway, Suite 510 Albany, New York 12204
Witness for the Department:	None
Witness for the Respondent:	None
Deliberations Held:	October 29, 2015
Transcript Received:	November 19, 2015

After due diligent attempts to personally serve Respondent with the Notice of the Hearing and Statement of Charges at the address registered with the New York State Education Department ("ED") failed, the Department served Respondent by certified mail at his registered address, establishing service pursuant to PHL § 230(10)(d)(i). Accordingly, the ALJ ruled that all requirements for proper notice were satisfied and the Board obtained jurisdiction over Respondent [Exhibits 2, 3, 4].

Respondent did not appear in person or by an attorney at the pre-hearing conference held October 16, 2015. Respondent again did not appear in person or by an attorney at the hearing held October 29, 2015. The Department made a motion to have the charges and allegations in the Statement of Charges deemed admitted pursuant to PHL § 230(10)(c), due to Respondent's failure to file a written answer. The Notice of Hearing, Department's Exhibit 1, states at page two the following:

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 no later than ten days prior to the date of the hearing. Any charge and allegation not so answered shall be deemed admitted.

After determining that the Notice of Hearing complied with the requirement that a licensee be provided notice pursuant to Public Health Law § 230(10)(c), and determining that the Respondent failed to file a written answer to the specifications of misconduct and factual allegations A, A.1, B., B.1, C and C.1 in the Statement of Charges dated September 2, 2015, the ALJ ruled at the hearing that the charges were “deemed admitted under Section 230(10)(c)” [Testimony 16; Exhibit 1], Corsello v. New York State Dept. of Health, 300 A.D.2d 849 (3rd Dept. 2002).

STATEMENT OF THE CASE

The Board functions pursuant to PHL § 230 *et seq.* as a duly authorized professional disciplinary agency of the State of New York. The Department charged that Respondent committed professional misconduct as defined in Education Law § 6530(29), by violating a condition imposed on his medical license pursuant to PHL § 230, under BPMC Order Number 12-43, which became effective on March 13, 2012. The Department also charged that Respondent committed professional misconduct as defined in Education Law §§ 6530(16) and 6530(21) in his failure to comply with substantial provisions of state law or regulation governing the practice of medicine and in his failure to file a report required by law or the Department of Health. 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 Hearing Committee makes the following Findings of Fact after a review of the entire record in this matter. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence. The references in brackets refer to exhibits ["Ex.,"] and testimony ["T.,"]. The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. Respondent was authorized to practice medicine in New York State on December 16, 2003 by the issuance of license number 230782 by the ED [Ex. 1, 4].

2. The BPMC Order adopted the terms of a Consent Agreement and Order, which was signed by Respondent on February 28, 2012. As part of that agreement, Respondent admitted to one specification of professional misconduct, negligence on more than one occasion, and the factual allegations set forth therein, in full satisfaction of the remaining 15 specifications of professional misconduct charged against him and agreed to the penalties of license suspension for a period of five years, with the entire period of the suspension stayed, and probation for a period of three years, subject to terms and conditions.¹ The conditions Respondent agreed to include remaining in continuous compliance with all requirements of Education Law § 6502, including maintaining active and continuous registration of his medical license with the ED, cooperating fully with the OPMC in its administration and enforcement of the Consent Agreement and Order, including responding to OPMC

¹ Although not part of the charges, the probationary terms include: (1) Enrolling in and successfully completing 150 hours of Category 1 Continuing Medical Education in anesthesiology and medical records and communication with physicians and nurses; (2) Performing medical services only when monitored by a licensed physician board certified in an appropriate specialty ("practice monitor"); (3) A license restriction in the practice of anesthesiology until the completion of a clinical competency assessment ("CCA") performed by the Mount Sinai School of Medicine, Department of Anesthesiology, CCA program; and (4) Identification of a Preceptor (a physician who is board certified in the same specialty), to be approved by the Director of the Office of Professional Medical Conduct ("OPMC"), for the purposes of developing and submitting a remediation plan addressing the deficiencies, retraining, and recommendations identified in the CCA [Ex. 5].

correspondence and requests to promptly provide all documents and information within Respondent's control, and scheduling a meeting with OPMC personnel, upon request [Ex. 5].

3. As part of the Consent Agreement and Order, Respondent stipulated that his failure to comply with any conditions of the Order "shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29)" [Ex. 5].

4. In a letter to Respondent dated July 30, 2013, a Senior Medical Conduct Investigator from OPMC reminded Respondent of his obligations under the BPMC Order, including the requirement that he maintain continuous and active registration of his medical license. In the same correspondence, the OPMC investigator also requested Respondent to review the information posted on his New York State Physician Profile ("NYSPP") and "update each section to reflect current and accurate information," in compliance with PHL § 2995-a(4) and 10 NYCRR 1000.5. The OPMC investigator also stated her attempts to contact Respondent "via telephone" [Ex. 6].

CONCLUSIONS OF LAW

In addition to the allegations and specifications of misconduct being deemed admitted because Respondent failed to file a written answer, the Department provided the Hearing Committee with evidence to show that Respondent committed professional misconduct in his non-compliance with a condition of the BPMC Order to maintain active and continuous registration of his medical license with the ED. The Department's evidence also demonstrated Respondent's failures in not complying with state law governing the practice of medicine and in not filing a report required by law, which occurred when he failed to update his NYSPP with the 2012 professional discipline and Board Order information, pursuant to PHL § 2995-a(4) and 10 NYCRR 1000.5 [Ex. 4,8].

In the First Specification of Misconduct charged by the Department, Respondent was charged with engaging in misconduct, under the definition of Education Law § 6530(29), by violating a condition imposed on his medical license, pursuant to PHL § 230 and the BPMC Order. In the Second and Third Specifications of Misconduct charged by the Department, Respondent was charged with professional misconduct, under Education Law §§ 6530(16) and 6530(21), by his failure to comply with PHL § 2995-a(4), which mandates reporting to the Department certain information not otherwise obtainable, within a specific timeframe, for the purpose of updating the NYSPP. The Hearing Committee sustains all three Specifications 3-0.

Concerning to the Hearing Committee was Respondent's conduct in not following through with a condition in the Consent Agreement and Order, which he executed. Instead of maintaining his medical license registration, as required under the Board Order, Respondent permitted it to lapse on July 1, 2013. In the Consent Agreement signed by Respondent, he stipulated that his failure to comply with any of the terms or conditions of the BPMC Order "shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29)" [Ex. 5]. Still, equally disconcerting as Respondent's failure to comply with the agreement in this manner is his persistent disregard for the laws governing his profession. As a New York State medical licensee, Respondent was mandated, pursuant to 10 NYCRR 1000.5, to update his NYSPP with the professional discipline information resulting from the Board Order within 30 days of the effective date of the order. PHL § 2995-a(4) required Respondent to report to the Department "in the time and manner required by the commissioner any other information as is required...for the development of profiles...which is not otherwise reasonably obtainable." In an effort to effectuate Respondent's compliance with the Board Order, OPMC made efforts to contact Respondent to no avail.

Under these circumstances, the Hearing Committee unanimously concludes that the Findings of Fact and Specifications of Misconduct contained in the Statement of Charges were established by a preponderance of the evidence, and that Respondent has committed professional misconduct as defined in Education Law § 6530(29) by violating a condition imposed upon his medical license pursuant to PHL § 230. The Hearing Committee also finds that Respondent committed professional misconduct as defined in Education Law §§ 6530(16) and 6530(21), in his failure to comply with substantial provisions of state law or regulation governing the practice of medicine and in his failure to file a report required by the Department of Health

The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, and found that the sustained specifications indicate Respondent's complete disregard of a Board Order and the law. Additionally, the Hearing Committee did not have the benefit of any mitigation or rehabilitation by Respondent due to his failure to appear at the hearing. As such, the Hearing Committee concluded that Respondent's license to practice medicine must be revoked.

ORDER

IT IS HEREBY ORDERED THAT:

1. The three specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**;
2. The license of the Respondent to practice medicine in New York State is hereby **REVOKED**;
3. This Determination and Order shall be effective upon service on the Respondent. Service shall be either by certified mail upon the Respondent at his 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: Albany, New York
December 31, 2015


KENDRICK SEARS, M.D., Chair,

Dennis P. Zimmerman, M.S., CRC
James Leonardo, M.D., Ph.D.

To:

Ajoy Bhattacharya, M.D.


Nathaniel White, Esq.
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I



**IN THE MATTER
OF
AJOY BHATTACHARYA, M.D.**

NOTICE
OF
HEARING


TO: Ajoy Bhattacharya, M.D.


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 October 29th, 2015, at 10:30 A.M., at the Offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719¹ 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 a manner and form as prescribed by the civil practice law and rules, 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 

¹ For GPS purposes, enter "Menands", not "Albany".

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 no later than ten days prior to the date of the hearing. Any charge and 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.

Dated: Albany, New York
September 9, 2015


Michael A. Hiser
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be directed to:

Nathanial White
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, New York 12237
(518) 473-4282

**IN THE MATTER
OF
AJAY BHATTACHARYA, M.D.**

**STATEMENT
OF
CHARGES**

AJAY BHATTACHARYA, M.D., the Respondent, was authorized to practice medicine in New York State on December 16, 2003, by the issuance of license number 230782 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about February 28, 2012, Respondent voluntarily entered into Consent Order BPMC No. 12-43 ("Order") with the New York State Board for Professional Medical Conduct ("Board"). By entering the Order, Respondent admitted to practicing the profession with negligence on more than one occasion in violation of NY Educ. Law §6530(3). The Order was approved by the Board on March 13, 2012 and became effective March 20, 2012. The Order imposed a five year period of suspension with the entire period of suspension stayed, three years of probation and, among other things, the following condition:
1. Respondent shall remain in continuous compliance with all requirements of New York Education Law §6502, including that Respondent shall register and continue to be registered with the NYS Education Department and that Respondent shall pay all registration fees and that this condition shall take effect 120 days after the Order's effective date;
- B. Respondent violated the terms and/or conditions of BPMC Order 12-43 as follows:
1. As of June 30, 2013, Respondent has failed to maintain an active registration with the New York State Education Department.
- C. New York Public Health Law §2995-a requires the New York State Department of Health to collect certain information from New York State licensed physicians in order to create individual profiles on licensees in a format to be made available to the public. New York Public

Health Law 29-D §2995-a(4) requires licensees to "report to the [Health] department on forms and in the time and manner required by the [Health] commissioner any other information as is required by the department for the development of profiles under this section which is not otherwise reasonably obtainable". On or about July 30, 2013, Respondent was notified by letter of his continuing obligation to update his physician profile.

1. As of the date of these charges, Respondent has not updated his physician profile.

SPECIFICATION OF MISCONDUCT

FIRST SPECIFICATION

VIOLATING ANY TERM OF PROBATION OR CONDITION OR LIMITATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. 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 in paragraphs A and A.1 and B and B.1.

SECOND SPECIFICATION

FAILURE TO COMPLY

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(16) for a willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules, or regulations governing the practice of medicine, as alleged in the facts of the following:

2. The facts in paragraphs C and C.1.

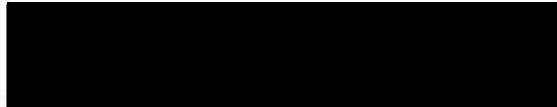
THIRD SPECIFICATION

FAILURE TO FILE A REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, or willfully impeding or obstructing such filing, or inducing another person to do so, as alleged in the facts of the following:

3. The facts in paragraphs C and C.1.

DATE: September 2, 2015
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct