



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Acting Commissioner

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

Public

February 5, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel F. Jung, D.O.

Daniel F. Jung, D.O.

Thomas M. Gallo, PA, JD
865 Merrick Avenue – Suite 200 South
Westbury, New York 11590

Paul Tsui, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Daniel F. Jung, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-008) 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,


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
OF333
DANIEL F. JUNG, D.O.
CO-13-07-3770-A

DETERMINATION

AND

ORDER

BPMC #15-008

COPY

A hearing was held on October 16, 2014, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, dated June 27, 2014, were served upon the Respondent, **Daniel F. Jung, D.O.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Diane M. Sixsmith, M.D., M.P.H., Chair, Janet R. Axelrod, Esq., and David B. L. Meza, III, M.D.,** 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 **Paul Tsui, Esq.,** of Counsel. The Respondent, **Daniel F. Jung, D.O.,** did appear, with counsel, **Thomas M. Gallo, P.A., J.D.,** of the firm of **Kern, Augustine, Conroy & Schoppmann, P.C.** of Westbury, New York. 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 being convicted of committing acts constituting crimes under the laws of another jurisdictions, Reckless Driving and Wanton Endangerment. The Respondent is also charged with professional misconduct pursuant to Education Law §6530(9) (d) by having his license to practice medicine suspended after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state where the conduct resulting in the suspension would, if committed in New York State, constitute professional misconduct under the laws of New York State.

Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: None
For the Respondent: Daniel F. Jung, D.O.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to 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. All Hearing Committee findings were unanimous.

1. Daniel F. Jung, D.O., the Respondent, did appear at the hearing and was personally served with process, on July 8, 2014.(Petitioner's Ex. 2)
2. Daniel F. Jung, D.O., the Respondent, was authorized to practice medicine in New York State on April 22, 2009, by the issuance of license number 252887 by the New York State Education Department. (Petitioner's Ex. 3)
3. On or about January 20, 2013, Respondent was arrested, In the County of McCracken, Commonwealth of Kentucky for Driving Under the Influence of Alcohol or Drugs and Failure to Notify the Department of Transportation of Change of Address. On or about September 10, 2013, Respondent pleaded guilty in the Circuit/District Court, County of McCracken, Commonwealth of Kentucky, to a reduced charge of Wanton

Endangerment in the Second Degree (a misdemeanor) and was sentenced to a \$709.00 fine, 30 days incarceration and two years supervision. (Petitioner's Ex. 6 and 7)

4. On or about March 28, 2013, Respondent was admitted to the Metro Atlanta Recovery Residences (MARR) and diagnosed with Alcohol Dependence, Inhalant Abuse, and Polysubstance Dependence. On or about June 12, 2013, Respondent was discharged from MARR for inappropriate conduct and disciplinary violations.

(Petitioner's Ex. 10)

5. On or about June 27, 2013, the Commonwealth of Kentucky, Board of Medical Licensure (hereinafter "Kentucky Board") issued an Emergency Order of Suspension, suspending Respondent's Kentucky license to practice osteopathy. The basis of the Emergency Order was, among others, Respondent's conviction in the State of Illinois, on or about June 18, 2012, for driving while intoxicated as well as the Respondent's arrest and conviction in the Commonwealth of Kentucky referred to above in Paragraph "3." (Petitioner's Ex. 8)

6. On or about September 19, 2013, the Kentucky Board, by an Agreed Order of Surrender (hereinafter "Kentucky Order"), had Respondent, whose medical specialty is vascular surgery, surrender his license to practice. The basis of the Order of Surrender was, among others, Respondent's conviction in the State of Illinois and Respondent's admission for substance abuse treatment at MARR referred to in Paragraph "4."

(Petitioner's Ex. 9)

7. The conduct resulting in the Kentucky Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State Law:

a. New York Education Law §6530(8) (Being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects).

b. New York Education Law §6530(9)(a)(iii) (Being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York State law.)

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

"Respondent violated New York State Education Law §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 this state, would have constituted a crime under New York State law, in that ..."

VOTE: This Specification was withdraw by the Department at the Hearing.

SECOND SPECIFICATION

"Respondent violated New York State Education Law §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 this state, would have constituted a crime under New York State law, in that..."

VOTE: Sustained (3-0)

THIRD SPECIFICATION

"Respondent violated New York State Education Law §6530(9)(d) by having his license to practice medicine suspended or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension and/or surrender of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing with counsel. The documentary evidence included an Affidavit of Personal Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2). There was no dispute about jurisdiction.

At the hearing, the Department withdrew Specification One, the charge of Reckless Driving in Illinois. The undisputed evidence in this case, however, establishes a history of alcohol and substance abuse which the Respondent has not denied. At the hearing, the Respondent acknowledged his history of substance abuse but testified that he is now sober and has been in recovery for over 18 months.

The panel was impressed with the candor of the Respondent and noted his hard work in the process of rehabilitation. The Respondent testified that he never used

alcohol while practicing as a physician and no patient was ever injured by his actions. It is clear from his testimony that the Respondent is taking his recovery seriously. The Respondent testified that he would be in recovery from alcoholism for the rest of his life. The Respondent's testimony was corroborated by documentation from his treatment program at Willingway Hospital in Kentucky and also by a letter from the Medical Director of the Kentucky Physicians Health Foundation.

While the panel was impressed with the honesty and valiant efforts of the Respondent in working on his sobriety, they noted, unanimously, that 18 months of recovery is a brief span in view of a long history of substance abuse. The panel considered the full range of penalties available in a case such as this and determined, unanimously, that the Respondent's license should be suspended. Further, this suspension should be stayed and the Respondent placed on probation for a period of five years, during which time the Respondent is directed to continue his cooperation and compliance with the Willingway program in Kentucky and the New York Committee on Physicians Health should Doctor Jung decide to return to New York State.

ORDER

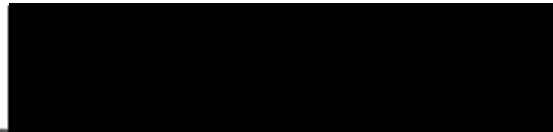
IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine in New York State is suspended for a period of five (5) years and this suspension is stayed in full.

2. The Respondent is placed on probation for a period of five years, the terms of which are attached hereto as Appendix 2.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10) (h).

DATED: New York, New York
~~November _____, 2014~~

February 3, 2015



Diane M. Sixsmith, M.D., M.P.H., Chair

Janet R. Axelrod, Esq.
David B. L. Meza, III, M.D.,

To:

Daniel F. Jung, D.O.



Daniel F. Jung, D.O.



Thomas M. Gallo, PA, JD
Attorney for Respondent
865 Merrick Avenue, Suite 200 South
Westbury, N.Y. 11590

Paul Tsui, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Albany, New York 12237

APPENDIX 1

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

IN THE MATTER OF DANIEL JUNG, D.O.
CO-13-07-3770A

NOTICE OF REFERRAL PROCEEDING

TO: Daniel Jung, D.O.

Daniel Jung, D.O.

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 20th day of August, 2014, 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

June 27, 2014


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Paul Tsui
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

IN THE MATTER
OF
DANIEL F. JUNG D.O.
CO-13-07-3770-A

STATEMENT
OF
CHARGES

DANIEL F. JUNG, D.O. Respondent, was authorized to practice medicine in New York State on April 22, 2009, by the issuance of license number 252887 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 18, 2012, in the County of Massac, State of Illinois, Respondent was arrested for Driving Under the Influence, which was reduced to Reckless Driving, a class A misdemeanor. On or about August 2, 2012, Respondent pleaded guilty in the County Court, County of Massac, State of Illinois to the charge of Reckless Driving and sentenced to a fine and period of supervision.

B. On or about January 20, 2013, Respondent was arrested, in the County of McCracken, Commonwealth of Kentucky for Driving Under the Influence of Alcohol or Drugs and Failure to Notify the Department of Transportation of Change of Address. On or about September 10, 2013, Respondent pleaded guilty in the Circuit/District Court, County of McCracken, Commonwealth of Kentucky, to a reduced charge of Wanton Endangerment in the Second Degree (a misdemeanor) and sentenced to a \$709.00 fine, 30 days incarceration and two years supervision.

C. On or about March 28, 2013, Respondent was admitted to the Metro Atlanta Recovery Residences (MARR) and diagnosed with Alcohol Dependence, Inhalant Abuse, and Polysubstance Dependence. On or about June 12, 2013, Respondent was discharged from MARR for inappropriate conduct and disciplinary violations.

D. On or about June 27, 2013, the Commonwealth of Kentucky, Board of Medical Licensure (hereinafter "Kentucky Board") issued an Emergency Order of Suspension, suspending Respondent's Kentucky license to practice osteopathy. The basis of the Emergency Order was, among others, Respondent's conviction in the State of Illinois, referred to in Paragraph "A" as well as the Respondent's arrest in the Commonwealth of Kentucky referred to in Paragraph "B." On or about September 19, 2013, the Kentucky Board, by an Agreed Order of Surrender (hereinafter "Kentucky Order"), had Respondent, whose medical specialty is vascular surgery, surrender his license to practice. The basis of the Order of Surrender was, among others, Respondent's conviction in the State of Illinois, referred to in Paragraph "A," and Respondent's admission for substance abuse treatment at MARR, referred to in Paragraph "C."

E. The conduct resulting in the Kentucky Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State Law:

1. New York Education Law §6530(8) (Being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects).

2. New York Education Law §6530(9)(a)(iii) (Being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York State law).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York State Education Law §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 this state, would have constituted a crime under New York State law, in that Petitioner charges:

1. The facts in Paragraph A.

SECOND SPECIFICATION

Respondent violated New York State Education Law §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 this state, would have constituted a crime under New York State law, in that Petitioner charges:


2. The facts in Paragraph B.

THIRD SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by having his license to practice medicine suspended or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension and/or surrender of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that the Petitioner charges:

3. The facts in Paragraphs D and E and E1, and/or E and E2.

DATED: *June 27*, 2014
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX 2

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Albany, New York 12204; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State, Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more, Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices,
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances,

7. Respondent shall continue his current treatment for substance abuse at the Willingway Hospital in Kentucky, or a similar program approved by the Director of OPMC. Respondent shall cause his treatment program to submit quarterly reports to OPMC certifying whether Respondent is in compliance with his treatment plan and to report to OPMC within 24 hours if Respondent leaves treatment. Respondent shall give written authorization for his treatment program psychologist to provide the Director of OPMC with all information or documentation requested by OPMC to determine whether Respondent is in compliance with his treatment plan and this Order.