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June 12, 2015

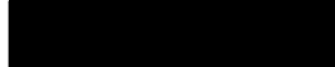
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Arvid Yung, M.D.



Jordan S. Fensterman, Esq.
Abrams & Fensterman
1111 Marcus Avenue – Suite 107
Lake Success, New York 11042

Arvid Yung, M.D.



Jude B. Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Arvid Yung, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-148) 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,

A black rectangular redaction box covering the signature of James F. Horan.

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
ARVID YUNG, M.D.

DETERMINATION
AND
ORDER

BPMC #15-148

COPY

A Notice of Hearing and Statement of Charges were served on **ARVID YUNG, M.D.**, Respondent, on February 20, 2015. A hearing was held on April 23, 2015 at the Offices of the New York State Department of Health, 150 Broadway, Suite 510 Albany, New York ("the Petitioner").

Lyon M. Greenberg, M.D., Chair, **Richard H. Edmonds, Ph.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. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **James E. Dering, Esq.**, General Counsel, by **Jude B. Mulvey, Esq.**, of Counsel.

The Respondent appeared with counsel, **Jordan S. Fensterman, Esq.**, of the firm of **Abrams & Fensterman** of Lake Success, New York. Evidence was received, witnesses were sworn or affirmed, and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Date of Service of Notice Of Hearing and Statement of Charges:	February 20, 2015
Answer Filed:	March 17, 2015
Hearing Date:	April 23, 2015
Witness for Petitioner:	Patricia Biski, Supervisor of the Profile Unit, DOH
Witness for Respondent:	Arvid Yung, M.D.
Deliberations Date:	April 23, 2015

STATEMENT OF THE CASE AND BACKGROUND

Petitioner charged Respondent with two (2) specifications of professional misconduct. The first specification charged Respondent with committing professional misconduct as defined in N.Y. Educ. Law §6530 (16) by his willful or grossly negligent failure to comply with the substantial provisions of federal, state or local laws, rules or regulations governing the practice of medicine.

The second specification charged Respondent with committing professional misconduct as defined in N.Y. Educ. Law §6530 (21) by failing to file a report required by law or by the Department of Health or the Education Department.

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 transcript page numbers or Exhibits, denoted by the prefixes "T." or "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. Respondent was authorized to practice medicine in New York State on or about March 5, 2013 by the issuance of license number 269023 by the New York State Education Department. (Petitioner's Ex. # 3)

2. New York Public Health Law Article 29-D §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..." (Petitioner's Ex. # 9)

3. Respondent was notified by correspondences dated April 10, 2013, May 21, 2013, November 7, 2013 and March 10, 2014 of his continuing obligation to provide the information required to establish his physician profile. (Petitioner's Exhibits #4 to # 8)

4. As of September 5, 2014, Respondent has failed to provide the information required to establish his physician profile. (Petitioner's Ex. # 8)

5. Beginning in March of 2014, the Respondent was in the process of moving his residence from Rochester, New York, to Columbus, Ohio, to begin a residency in that city. (Respondent's Ex. # B)

6. On June 18, 2014, the Respondent notified the United States Postal Service of his new address in Ohio effective June 21, 2014. (Respondent's Ex. # C)

7. On June 21, 2014, the Respondent took possession of his apartment at 221 Vine Street, Columbus, Ohio as is evidenced by a receipt dated May 7, 2014. (Respondent's Ex. # D)

8. On June 18, 2014, the Respondent paid Mayflower Movers, \$3,151.68 to move his belongings from Rochester to Columbus. (Respondent's Ex. # E)

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent as set forth in the Statement of Charges does **not** constitute professional misconduct under the laws of New York State.

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York State Education Law §6530 (16) by his willful or grossly negligent failure to comply with the substantial provisions of federal, state or local laws, rules or regulations governing the practice of medicine...."

VOTE: Not Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York State Education Law §6530 (21) by failing to file a report required by law or by the department of health or the education department...."

VOTE: Not Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Hearing Committee determined that the evidence of the Respondent's actions in this case, as set forth in the Statement of Charges, is **not sufficient** to sustain a finding that Respondent committed medical misconduct. Therefore, the Hearing Committee has unanimously determined to DISMISS both charges in the interests of justice.

The panel noted that Respondent may have failed to provide all the information required to establish his physician profile, but this was not evidenced by negligence or misconduct on his behalf. The Respondent testified, credibly and persuasively, of his several attempts to complete this process on line and his reasonable belief that he had, in fact, supplied all the requested information to the Department of Education. (T. 76-99)

Of greater significance to the panel was the fact of Respondent's move to Ohio around the time the computer documentation was due. The Respondent's evidence shows that, beginning in March of 2014, he was in the process of moving his residence from Rochester, New York, to Columbus, Ohio, to begin a residency in that city and that,

on June 18, 2014, the Respondent notified the United States Postal Service of his new address in Ohio effective June 21, 2014. The evidence goes on to show that on June 21, 2014, the Respondent took possession of his apartment in Columbus, Ohio, and that on June 18, 2014, the Respondent paid Mayflower Movers some \$3,151.68 to move his belongings from Rochester to Columbus.

In reaching this decision, the panel considered all the evidence and testimony and recognized that Doctor Yung is conscientious and in no way negligent in his duties to the profession. The panel noted that the move from Rochester to Columbus interfered with his mail and that the Respondent did, in fact, complete the process, albeit a day late. That being said, the record shows that Doctor Yung attempted to complete this complex process in a timely fashion. Finally, and in the interests of justice, the panel concluded that this young doctor has a promising career in front of him and the hearing committee did not wish to diminish his career by a mark of misconduct over an unintended clerical error that had no bearing on patient care.

ORDER

IT IS HEREBY ORDERED THAT:

1. All charges and specifications contained in the Statement of Charges (Appendix 1) are DISMISSED.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Albany, New York
June 11, 2015



Lyon M. Greenberg, M.D., Chair,

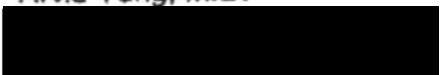
Richard H. Edmonds, Ph.D.,
Eleanor C. Kane, M.D.,

TO:

Avid Yung, M.D.



Avid Yung, M.D.



Jordan S. Fensterman, Esq.
Attorney for Dr. Yung
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Lake Success, New York 11042

Jude B. Mulvey, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Coming Tower, Room 2512
Empire State Plaza
Albany, New York 12237

Avid Yung, M.D. - Determination and Order

APPENDIX I

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

IN THE MATTER
OF
ARVID YUNG, M.D.

NOTICE
OF
HEARING

TO: Arvid Yung, 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 April 23, 2015, at 1:00 P.M., at the Offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 355, 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

EXHIBIT

1

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 January ¹³ 6, 2015

Albany, NY


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

IN THE MATTER
OF
ARVID YUNG, M.D.

STATEMENT
OF
CHARGES

ARVID YUNG, M.D., the Respondent, was authorized to practice medicine in New York State on March 5, 2013, by the issuance of license number 269023 by the New York State Education Department. Respondent is currently registered to practice medicine in New York State through February 2015.

FACTUAL ALLEGATIONS

A. New York Public Health Law Article 29-D §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..." Respondent was notified by correspondences dated April 10, 2013, May 21, 2013, November 7, 2013 and March 13, 2014 of his continuing obligation to provide the information required to establish his physician profile.

1. As of July 30, 2014, Respondent had failed to provide the information required to establish his physician profile.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

FAILURE TO COMPLY

Respondent violated New York Education Law §6530(16) by his willful or grossly negligent failure to comply with the substantial provisions of federal, state or local laws, rules or regulations governing the practice of medicine, in that Petitioner alleges:

1. The facts in Paragraphs A and A1.

SECOND SPECIFICATION

FAILURE TO FILE A REPORT

Respondent violated New York Education Law §6530(21) by failing to file a report required by law or by the department of health or the education department, in the Petitioner alleges:

2. The facts in Paragraphs A and A 1.

DATE: January 12, 2015
Albany, New York



Michael A. Hiser
Deputy Counsel
Bureau of Professional Medical Conduct