



Department of Health

ANDREW M. CUOMO
Governor

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

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

December 18, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Kenneth C. Manfre, M.D.


Kenneth C. Manfre, M.D.


RE: In the Matter of Kenneth C. Manfre, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-310) 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. 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
KENNETH C. MANFRE, M.D.,
RESPONDENT

DETERMINATION

AND

ORDER

BPMC #15-310

A hearing was held on October 15, 2015, at the offices of the New York State Department of Health ("Department"). Pursuant to § 230(10)(e) of the Public Health Law, Mohammad-Reza Ghazi-Moghadam, M.D., Chair, Gail Homick Herrling, and Rose Berkun, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Dawn MacKillop-Soller, Esq. was the Administrative Law Judge. The references in brackets refer to exhibits ["Ex."].

The Department appeared by Richard Zahnleuter, Esq., Acting General Counsel, by David Quist, Esq., of counsel. A Notice of Referral Proceeding and Statement of Charges dated July 27, 2015, were served upon the Respondent, Kenneth C. Manfre, M.D.¹ There were no witnesses. After consideration of the entire record, the Hearing Committee issues this Determination and Order,

¹ Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix I. After several attempts at personal service at both the Respondent's registration address and one additional address the Department had for Respondent, the Department served Respondent by certified mail, establishing service pursuant to Public Health Law § 230(10)(d)(i). As a result, at the hearing, the ALJ found that jurisdiction was established. [Ex. 2]

finding that revocation of Respondent's license to practice medicine in New York State is appropriate.

STATEMENT OF THE CASE

This proceeding was commenced pursuant to Education Law § 6530(9)(b) and (d). These sections make it professional misconduct for a physician to have "been found guilty of...professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state," and to have "his...license to practice medicine revoked, suspended or having other disciplinary action taken...were the conduct resulting in the [disciplinary action] would, if committed in New York state, constitute professional misconduct under the laws of New York state."

The laws of New York state allegedly violated by the Colorado discipline are Education Law § 6530(15) [failing to comply with an order for monitoring and an evaluation] and § 6530(29) [violating a condition or limitation imposed on the licensee]. This case is based on a Colorado Medical Board's ("Colorado Board") Order of Suspension dated April 22, 2014.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter:

1. Kenneth C. Manfre, M.D., the Respondent, was authorized to practice medicine in New York State on February 13, 1981, by the issuance of license number 145146 by the New York State Education Department. [Ex. 3]
2. On January 27, 2014, the Colorado Board summarily suspended Respondent's license to

practice medicine pursuant to Colorado Revised Statute Sec. 24-4-104(4). [Ex. 4] The Colorado Board ordered the Respondent to cooperate with the Colorado Physician Health Program ("CPHP"), including undergoing an evaluation by CPHP. [Ex. 4]

3. On April 22, 2014, the Colorado Board vacated the summary suspension issued January 27, 2014, and issued an Order of Suspension pursuant to Colorado Revised Statute 12-36-118(9)(a). The Colorado Board found that Respondent had failed to cooperate with CPHP and had failed to undergo an evaluation as previously ordered and, thus, that this suspension was warranted. [Ex. 4]

4. Failure to comply with a Board ordered evaluation is misconduct in New York state. (*See* Education Law § 6530(15)).

5. Failure to comply with a condition or limitation imposed by the Board on a licensee is misconduct in New York state. (*See* Education Law § 6530(29))

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing in person or by counsel. After considering the documentary evidence concerning service of the Notice of Referral Proceeding and Statement of Charges, the Administrative Law Judge ruled that the Department had met the requirements of law for service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed on the merits despite Respondent's absence.

Respondent failed to cooperate with the Colorado Board's order to their physician's health program for evaluation and treatment. The purpose behind the order to comply with CPHP was to evaluate Respondent's "physical or mental illness or condition". [Ex. 4] The Hearing Committee considers Respondent's failure in this regard to be a serious deviation and is concerned about both the conduct which led the Colorado Board to issue such an order on April 22, 2014, and the fact that Respondent did not comply with the order after it was issued.

In turning to the assessment of a penalty, the Committee found Respondent's indifference towards his own mental and physical health evident in his failure to comply with the Colorado Board's order. This indifference indicated to the Hearing Committee the serious nature of Respondent's misconduct. The Hearing Committee determined that Respondent's license should be revoked.

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under New York State laws.

VOTE: Sustained (3-0)

SECOND SPECIFICATION

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

VOTE: Sustained (3-0)

ORDER


IT IS HEREBY ORDERED THAT:

1. The factual allegations and specifications contained in the Statement of Charges

(Appendix I) are SUSTAINED;

2. Respondent's license to practice medicine in the State of New York is revoked; and
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: Albany, New York
December 16, 2015




Mohammad-Reza Ghazi-Moghadam, M.D.,
Chairperson

Gail Homick Herrling
Rose Berkun, M.D.

To:

David Quist, Esq., Attorney for Petitioner
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

Kenneth C. Manfre, M.D.


Kenneth C. Manfre, M.D.


APPENDIX I

IN THE MATTER

OF

KENNETH C. MANFRE, M.D.

STATEMENT

OF

CHARGES

KENNETH C. MANFRE, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 13, 1981, by the issuance of license number 145146 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 22, 2014, an Inquiry Panel of the Colorado Medical Board determined that Respondent was out of compliance with an Order to CPHP, which required Respondent to schedule and attend an intake appointment with the Colorado Physician Health Program ("CPHP"), and to cooperate fully with CPHP, including compliance with requests or recommendations deemed appropriate by CPHP to facilitate any and all examinations necessary to determinate Respondent's fitness to practice because of a physical or mental illness or condition. The April 22, 2014 Board Order suspended Respondent's license "until such time as Respondent is in full compliance with the Order to CPHP, CPHP has provided adequate confirmation to the Panel of Respondent's full compliance with the Board's Order to CPHP and Respondent has received written notice from the Board that the suspension has been vacated."

B. The conduct resulting in the Colorado Medical Board's Order against Respondent would constitute misconduct under the laws of New York State pursuant to New York

Education Law Sections 6530(15) (failure to comply with an order compelling examination) and/or 6530(29) (failure to comply with a term of probation or condition or limitation imposed on licensee).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §§ 6530(15) and/or 6530(29)) as alleged in the facts of the following:

1. The facts in Paragraphs A and B.

SECOND SPECIFICATION

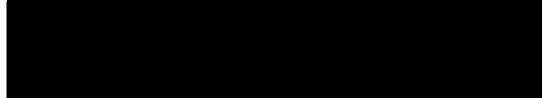
HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a

license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law § 6530(15) and/or 6530(29)) as alleged in the facts of the following:

1. The facts in Paragraphs A and B.

DATE: July 27, 2015
Albany, New York


MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct