



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

November 19, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anna R. Lewis, Esq.
NYS Department of Health
90 Church Street - 4th Floor
New York, New York 10007

Michael Pamplona, R.P.A.


RE: In the Matter of Michael Pamplona, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-277) 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

-----X
IN THE MATTER : DETERMINATION
: :
OF : AND
: :
MICHAEL PAMPLONA, R.P.A. : ORDER
-----X

BPMC #15-277

A Notice of Hearing and Statement of Charges, dated September 2, 2015, were served upon MICHAEL PAMPLONA, R.P.A. ("Respondent"). FLORENCE KAVALER, M.D., M.P.H., Chairperson, THOMAS LEE, M.D., and JAMES DUCEY, 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"). WILLIAM J. LYNCH, ESQ., ADMINISTRATIVE LAW JUDGE ("ALJ"), served as the Administrative Officer.

The Department of Health, Office of Professional Medical Conduct ("Petitioner" or "Department") appeared by RICHARD J. ZAHNLEUTER, Acting General Counsel, by ANNA R. LEWIS, ESQ., of Counsel. Respondent did not appear at the proceeding in person or by an attorney. Evidence was received, witnesses sworn and heard, and transcripts of the proceedings were made.

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

PROCEDURAL HISTORY

Date Charges Served:	September 11, 2015
Date of Answer to Charges:	None submitted
Pre-Hearing Conference Held:	October 1, 2015
Hearing Date:	October 15, 2015
Witness for the Petitioner:	Lawrence Matlin
Witness for the Respondent:	None
Deliberations Held:	October 15, 2015
Transcript Received:	October 26, 2015

Respondent did not appear in person or by an attorney at the pre-hearing conference that was held on October 1, 2015. The Department presented evidence that Respondent was personally served with the Notice of Hearing and Statement of Charges. Therefore, the ALJ ruled that the Board for Professional Medical Conduct had obtained jurisdiction over Respondent.

Respondent again did not appear in person or by an attorney at the hearing which was held on October 15, 2015. The Department made a motion to have the charges and allegations in the Statement of Charges deemed admitted because Respondent did not file a written answer. After determining that the Notice of Hearing complied with the requirement that a licensee be provided with notice pursuant to Public Health Law § 230(10)(c), the ALJ ruled that the factual allegations and specifications of misconduct contained in the Statement of Charges were

deemed admitted because Respondent failed to file a written answer. Corseello v. New York State Department of Health, 300 A.D.2d 849 (3rd Dept. 2002)

STATEMENT OF CASE

Respondent was charged with five specifications of professional misconduct, as defined in § 6530 of the Education Law of the State of New York ("Education Law"): practicing beyond authorized scope, failure to comply with State laws and regulations, fraudulent practice, false report and moral unfitness. The factual allegations are that Respondent, using the identity of a physician, issued two prescriptions for controlled substances to a person who was not a patient of Respondent's supervising physician. A copy of the Notice of Hearing and Statement of Charges is attached to this Determination and Order as Appendix 1.

FINDINGS OF FACT

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

Having heard testimony and considered documentary evidence presented by Petitioner, the Hearing Committee hereby makes the following findings of fact:

1. On or about October 22, 2003, Respondent was authorized to perform medical services as a physician assistant, under the supervision of and within the scope of practice of a supervising physician in New York State, by issuance of license number 009633. (Department Ex. 3).

2. Respondent was employed at North Central Bronx Hospital as a Physician Assistant in the Emergency Room from November 11, 2003 through November 6, 2011. (T. 23; Department Ex. 7).

3. On December 24, 2011, Respondent went to the North Central Bronx Emergency Room and attempted to access the computer with his own log on information, but he was unsuccessful. Respondent then began small talk with a physician assistant who was working that day, Mark Galliguez, who was logged onto a computer. When Respondent asked Mr. Galliguez if he could use the computer, Mr. Galliguez assumed Respondent needed internet access. When Mr. Galliguez left the area to tend to a patient, Respondent used the computer to write two prescriptions: a 90 count prescription for Percocet and a 60 count prescription for Valium. Respondent used the identification and DEA numbers of Dr. Rajesh Verma to write the prescriptions. The prescriptions were written for a [REDACTED]

[REDACTED] North Central Bronx Hospital has no record of a patient with that name. (Department Ex. 5, 6).

CONCLUSIONS OF LAW

The Hearing Committee recognized that Respondent's fear of being arrested if he attended the hearing may have been the reason for his absence, but that Respondent also failed to avail himself of submitting some written answer to the Statement of Charges or engaging the services of an attorney to appear at the hearing on his behalf.

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 the testimony of Department Investigator Lawrence Matlin and several documents which were admitted in evidence. Based on the foregoing, the Hearing Committee unanimously concluded that the Findings of Fact and Specifications of Misconduct were established by a preponderance of the evidence.

The Hearing Committee considered the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. The sustained specifications indicate that Respondent lacks

integrity and either is illegally using or diverting controlled substances. Respondent's failure to appear meant that the Hearing Committee had no explanation for Respondent's misconduct and no evidence of remorse or rehabilitation. Therefore, the Hearing Committee concluded that Respondent's license to perform medical services as a physician assistant must be revoked.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The five specifications of professional misconduct set forth in the Statement of Charges are SUSTAINED;

2. Respondent's license to perform medical services as a physician assistant in the State of New York is REVOKED;

3. This Determination and Order shall be effective upon service. 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: November 10, 2015
New York, New York


FLORENCE KAVALER, M.D., M.P.H. (CHAIR)

THOMAS LEE, M.D.
JAMES DUCEY, M.D.

APPENDIX 1

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

IN THE MATTER
OF
MICHAEL PAMPLONA, R.P.A.

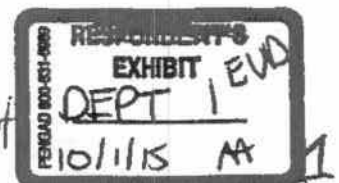
NOTICE
OF
HEARING

TO: MICHAEL PAMPLONA, R.P.A.
[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 October 15, 2015, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, NY 10007, 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 [REDACTED]

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: September 2, 2015
New York, N.Y.


Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be directed to:
Anna R. Lewis
Associate Counsel
New York State Health Department
Division of Legal Affairs
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, NY 10007
Ph.: 212-417-4450 Fax: 212-417-4392

IN THE MATTER
OF
MICHAEL PAMPLONA, R.P.A.

STATEMENT
OF
CHARGES

MICHAEL PAMPLONA, R.P.A., the Respondent, was authorized to perform medical services as a physician assistant, under the supervision of and within the scope of practice of a supervising physician in New York State, on or about October 22, 2003, by the issuance of license number 009633 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 24, 2011, Respondent knowingly issued two prescriptions for controlled substances including Valium and Percocet for Individual A (identified in Appendix A). Individual A was not a patient in the practice of any physician supervisor of the licensee. Respondent issued the prescriptions in the name of another physician assistant.

1. Respondent did so with intent to mislead.

FIRST SPECIFICATION

PRACTICING BEYOND AUTHORIZED SCOPE

Respondent violated New York Education Law §6530(24) by practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform, or performing without adequate supervision professional services

which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger, as alleged in the facts of:

1. Paragraph A.

SECOND SPECIFICATION

FAILURE TO COMPLY WITH STATE LAWS AND REGULATIONS

Respondent is charged with committing professional misconduct as defined in N. Y. Educ. Law §6530(16) by willfully and/or grossly negligently failing to comply with Article 33 of N.Y. Public Health Law and the regulations promulgated thereunder, as alleged in the facts of:

2. Paragraph A.

THIRD SPECIFICATION

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently, as alleged in the facts of:

3. Paragraph A. and A.1.

FOURTH SPECIFICATION

FALSE 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, as alleged in the facts of:

4. Paragraph A.

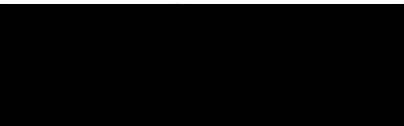
FIFTH SPECIFICATION

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice, as alleged in the facts of:

5. Paragraph A. and A.1.

DATE: September 2, 2015
New York, New York



Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct