



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

May 12, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Lee A. Davis, Esq.
NYS Department of Health
ESP - Coming Tower – Room 2438
Albany, New York 12237-0032

Steven Gus Epstein, M.D.
603 7th Street South – Suite 500
Saint Petersburg, Florida 33701

RE: In the Matter of Steven Gus Epstein, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.16-157) 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. 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 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.

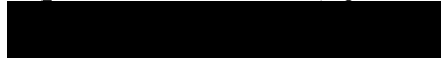
The notice of review served on the Administrative Review Board should be forwarded to:

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

Steven Gus Epstein, M.D.
NYS license # 148164

**Determination
and Order**

BPMC #16-157

COPY

A notice of referral proceeding and statement of charges, both dated January 29, 2016, were served on Respondent **Steven Gus Epstein, M.D.** The statement of charges alleged professional misconduct in violation of New York State Education Law 6530. A hearing was held at offices of the New York State Department of Health, Rochester, New York, on March 17, 2016.

Pursuant to Public Health Law 230(10)(e), **Richard F. Kasulke, M.D.**, Chair, **James G. Egnatchik, M.D.**, and **Georgia K. Millor, Ph.D., R.N.**, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee. **John Harris Terepka**, Administrative Law Judge, served as the administrative officer.

The Department of Health (the Petitioner) was represented by **Lee A. Davis, Esq.** **Steven Gus Epstein, M.D.**, (the Respondent) did not appear, although duly served with notice of the hearing in conformity with the requirements of PHL 230(10)(d). Evidence was received and a transcript of the proceedings was made. After consideration of the entire record, the hearing committee issues this determination and order sustaining the charge and imposing a censure and reprimand.

JURISDICTION

As is set forth in Public Health Law 230(1)&(7) and Education Law 6530, the legislature created the State Board for Professional Medical Conduct in the Department of Health and authorized it to conduct disciplinary proceedings in matters of professional medical conduct. In this case, the Respondent, a physician, has been charged with misconduct pursuant to Ed.L 6530(9)(d).

Pursuant to PHL 230(10)(p), a hearing on circumscribed issues, or "direct referral proceeding," is authorized when a licensee is charged solely with a violation of Ed.L 6530(9). Charges of misconduct under Ed.L 6530(9) are based upon a criminal conviction or an administrative violation, in New York State or another jurisdiction, establishing conduct that would constitute a crime or professional misconduct if committed in New York. The scope of the hearing is limited to whether there is a relevant conviction or administrative determination and if so, to a determination of the nature and severity of the penalty to be imposed. PHL 230(10)(p). Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51. The burden of proof is on the Petitioner. 10 NYCRR 51.11(d)(6).

EVIDENCE

| | |
|-------------------------------|------|
| Witnesses for the Petitioner: | None |
| Petitioner exhibits: | 1-9 |
| Witnesses for the Respondent: | None |
| Respondent exhibits: | None |

A transcript of the hearing was made. (Transcript, pages 1-20.)

FINDINGS OF FACT

An opportunity to be heard having been afforded the parties and evidence having been considered, it is hereby found:

1. Respondent Steven Gus Epstein, M.D. was authorized to practice medicine in New York State on October 30, 1981 under license number 148164. (Exhibit 7.)
2. On February 11, 2013, the Florida Board of Medicine issued a Final Order imposing disciplinary action against the Respondent. (Exhibit 8.) The Final Order incorporated a settlement agreement (Exhibit 8, pages 3-10) entered into by the Respondent after an administrative complaint (Exhibit 8, pages 11-15) brought charges that he failed to maintain complete legible medical records that justified the course and results of treatment accurately, with regard to over 100 patients at a hospital where he was a surgeon.
3. The discipline imposed by the Florida Board included:
 - a. A letter of concern.
 - b. A \$5,000 fine.
 - c. Reimbursement of costs in the amount of at least \$1,812 but not to exceed \$3,812.
 - d. Completion by the Respondent of a medical record keeping course approved by the Florida Board.
 - e. Completion of the patient records alleged to be incomplete and untimely. (Exhibit 8, pages 4-6.)

HEARING COMMITTEE DETERMINATION

Although duly served with notice of the hearing in conformity with PHL 230(10)(d) (Exhibits 2, 3, 4, 5, 6), the Respondent failed to appear. The Respondent also failed to file a timely written answer to the statement of charges. Pursuant to PHL 230(10)(p) the charges and allegations were deemed admitted. Corsello v. NYS Department of Health, 300 A.D.2d 849 (3rd Dept. 2002.)

Records from the Florida Board of Medicine established that the Respondent was charged with falling egregiously behind in his medical record documentation while employed as a surgeon in a Florida Hospital. The charges alleged failure, over a period of years, to complete required documentation for more than 100 patient medical charts relating to surgery and other treatment, including failure to dictate patient histories and physicals, operative reports and discharge summaries. (Exhibit 8, pages 12-13.) The Respondent agreed to the imposition of discipline by the Florida Board on the basis of these charges. (Exhibit 8, page 4.)

The Petitioner charged that the conduct that resulted in the Florida Board Order would constitute professional misconduct in New York pursuant to Ed.L 6530(3) (negligence on more than one occasion) and 6530(32) (failure to maintain adequate medical records.)

The hearing committee agreed that the Respondent's failure to complete his records as alleged would constitute misconduct in New York pursuant to Ed.L 6530(32):

Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient...

The committee concluded, however, that the evidence was not specific enough to meet the Petitioner's burden of proving the charges under 6530(3), negligence, because the Florida Board Order contained insufficient detail for the panel to understand the precise nature of the documentation problem. The committee noted that the Florida Board did not make a finding of negligence (Transcript, page 19), and the Respondent apparently did not lose any privileges at the hospital where he was employed. (Exhibit 8, page 13.)

The hearing committee unanimously determined that the Florida Board's disciplinary action, which included a letter of concern, a \$5,000 fine, a requirement to complete a record

keeping course, and a directive to complete his records, established that the Respondent violated Ed.L 6530(9)(d) which defines professional misconduct, in pertinent part, as:

9. (d) Having his or her license to practice medicine revoked, suspended or having other disciplinary action taken... where the conduct resulting in the revocation, suspension or other disciplinary action... would, if committed in New York state, constitute professional misconduct under the laws of New York state.

The Petitioner recommended a censure and reprimand pursuant to PHL 230-a(1), a \$3,000 fine pursuant to PHL 230-a(7), and a directive to comply with the Florida Board order. (Transcript, page 18.) The hearing committee agreed that a censure and reprimand was appropriate. The committee noted that the Respondent has already paid fines and costs in Florida (Exhibit 8, pages 4-5) and did not think an additional financial penalty was necessary. The committee found no authority in PHL 230-a for an order to comply with the administrative directives of another state. The committee further noted that the Respondent submitted evidence that he has completed all required terms of the Florida order and that his license is currently "clear, active." (Exhibit 9.) The committee concluded that the requested order to comply with the Florida order would be superfluous.

The hearing committee determination sustaining the charge and imposing a censure and reprimand was unanimous.

ORDER

IT IS HEREBY ORDERED THAT:

The Respondent is hereby Censured and Reprimanded pursuant to PHL 230-a(1).

This order shall be effective upon service on the Respondent by personal service or by certified mail as required under PHL 230(10)(h).

Dated: Albany, New York

By:


Richard F. Kasulke, M.D.
Chair

James G. Egnatchik, M.D.
Georgia K. Millor, Ph.D., R.N.

To: Lee A. Davis, Esq.
Bureau of Professional Medical Conduct
Corning Tower, Empire State Plaza
Albany, New York 12237-0032

Steven Gus Epstein, M.D.
603 7th Street South, Suite #500
Saint Petersburg, Florida 33701

APPENDIX I

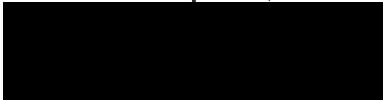
NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

**IN THE MATTER
OF
STEVEN GUS EPSTEIN, M.D.**

**NOTICE OF
REFERRAL
PROCEEDING**

**TO: Steven Gus Epstein, M.D.
603 7th Street
Suite 500
St. Petersburg, FL 33701**

Steven Gus Epstein, M.D.



PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. 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 March 17th, 2016 at 10:30 a.m., at the offices of the New York State Department of Health, 259 Monroe Ave, Rochester, NY 14607.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which 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 or sworn testimony on your behalf. Such evidence 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 which 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.

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 HORAN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau



①

of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges at least 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. You may also file a written brief and affidavits with the Committee. All such documents 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, at least ten days prior to the date of the hearing. Should the parties have objection(s) to proposed witnesses or documentary evidence, the party raising the objection(s) shall contact the Bureau of Adjudication at least three days prior to the hearing date to arrange for a pre-hearing conference with the Administrative Law Judge.

Not later than ten days prior to the date of the hearing, you are required to file one copy of your proposed exhibits (if any) with the Bureau of Adjudication at the address indicated above, and a copy of all such documents/exhibits must be served on the same date on the Department of Health attorney indicated below. On the day of the hearing, you are also required to provide the original of such exhibits and three copies, for use by the Committee.

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.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here [REDACTED]

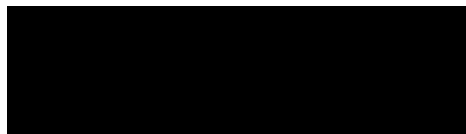
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name

appears below, at least five 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.

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
January 29, 2016



MICHAEL A. FISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

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

IN THE MATTER
OF
STEVEN GUS EPSTEIN, M.D.

STATEMENT
OF
CHARGES

STEVEN GUS EPSTEIN, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 30, 1981, by the issuance of license number 148164 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 11, 2013, the Florida Board of Medicine (Florida Board) issued a Final Order imposing disciplinary action against Respondent's Florida medical license, by incorporating a Settlement Agreement signed by Respondent on or about October 29, 2012. The Final Order imposed a Letter of Concern, an administrative fine of \$5,000, a requirement that Respondent complete a record keeping course and a requirement that Respondent to complete all patient records referenced in the Administrative Complaint that gave rise to the Final Order. The Florida Board's Final Order was based upon Respondent admitting that the factual allegations in the Administrative Complaint, if proven, would constitute misconduct with respect to Respondent's failure to maintain complete, legible medical records that justified the course of treatment to over 100 patients.

B. The conduct resulting in the Florida Order 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 (3) [negligence on more than one occasion]; and/or
2. New York Education Law §6530 (32) [record keeping].

SPECIFICATION OF CHARGES

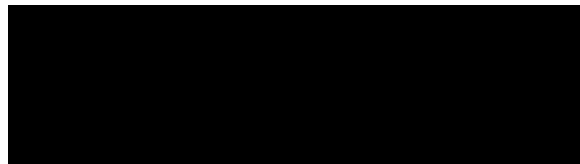
FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York State as alleged in the facts of the following:

1. The facts in Paragraphs A and B.1; and/or A and B.2.

DATE: January 29, 2016
Albany, New York



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct