



**Department
of Health**

ANDREW M. CUOMO
Governor

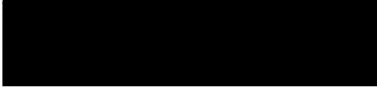
HOWARD A. ZUCKER, M.D., J.D.
Commissioner

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

December 29, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jayesh R. Patel, M.D.



Nathaniel White, Esq.
NYS Department of Health
Corning Tower Room 2512
Empire State Plaza
Albany, New York 12237

Jayesh R. Patel, M.D.



RE: In the Matter of Jayesh R. Patel, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-315) 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: nm
Enclosure

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

**IN THE MATTER
OF
JAYESH R. PATEL, M.D.,
RESPONDENT**

COPY

DETERMINATION

AND

ORDER

BPMC #15-315

A hearing was held on October 29, 2015 at the offices of the New York State Department of Health and pursuant to Public Health Law ("PHL") § 230(10)(e). Kendrick A. Sears, M.D., Chair, Dennis Zimmerman, M.S.,CRC, and James Leonardo, 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. served as the Administrative Law Judge ("ALJ").

The Department of Health ("Department") appeared by Nathaniel White, Esq. Jayesh R. Patel, M.D. ("Respondent") did not appear at the hearing. A Notice of Hearing and the Statement of Charges, dated September 9, 2015 and September 2, 2015 respectively, were served upon the Respondent. The Committee received and examined documents from the Department and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charge that Respondent committed professional misconduct by violating terms and conditions imposed on his medical license, under a Bureau of Professional Misconduct Consent Order ("BPMC Order"), pursuant to PHL § 230, in violation of

New York Education Law ("Education Law") § 6530(29). The Committee unanimously votes 3-0 to revoke Respondent's license to practice medicine in the State of New York.

PROCEDURAL HISTORY

Dates Charges Served:	September 22 and 29, 2015
Date of Answer to Charges:	None submitted
Pre-Hearing Date:	October 16, 2015
Hearing Date:	October 29, 2015
Location of Hearing:	New York State Department of Health 150 Broadway, Suite 510 Albany, New York 12204
Witness for the Department:	None
Witness for Respondent:	None
Deliberations Held:	October 29, 2015
Transcript Received:	November 19, 2015

After attempts to personally serve Respondent with the Notice of Hearing and Statement of Charges at the address registered with the New York State Education Department ("ED") failed, the Department presented evidence that Respondent was served by certified mail to his last known address, establishing service pursuant to PHL § 230(10)(d)(i). Accordingly, the ALJ ruled that the Board for Professional Medical Conduct obtained jurisdiction over Respondent [Exhibits 2,3,4,5].

The Respondent did not appear in person or by an attorney at the pre-hearing conference held October 16, 2015. Respondent again did not appear in person or by an attorney at the hearing held October 29, 2015. The Department made a motion to have the charges and allegations in the Statement of Charges deemed admitted, pursuant to PHL § 230(10)(c), due to Respondent's failure

to file a written answer.¹ The Department's Exhibit I, the Notice of Hearing, states at page two the following:

"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 no later than ten days prior to the date of the hearing. Any charge and allegation not so answered shall be deemed admitted."

After determining that the Notice of Hearing complied with the requirement that a licensee be provided notice pursuant to Public Health Law § 230(10)(c), and determining that the Respondent failed to file a written answer to the specification of misconduct and factual allegations A.,A.1,A.2,A.3,A.4,A.5,B.1;B.2,B.3,and B.4 in the Statement of Charges dated September 2, 2015, the ALJ ruled at the hearing that they were "deemed admitted under Section 230(10)(c)" [Testimony 24], [Exhibit I], Corsetto v. New York State Dept. of Health, 300 A.D.2d 849 (3rd Dept. 2002).

STATEMENT OF THE CASE

The State Board for Professional Medical Conduct functions pursuant to PHL § 230 *et seq.* as a duly authorized professional disciplinary agency of the State of New York. The Department charged that Respondent committed professional misconduct under the definition in Education Law § 6539(29), by violating terms and conditions imposed on his medical license, pursuant to PHL § 230, under BPMC Order Number 14-27, which became effective November 7, 2014

¹ Although the Notice of Hearing and PHL § 230(10)(c) clearly indicate that the failure to file a written answer will result in the charges and allegations being deemed admitted, the Hearing Committee found that the evidence did not show that Respondent was served with notice of the Amended Statement of Charges dated October 14, 2015. The Amended Statement of Charges added additional factual allegations to the case (A.6 and B.5) that in Respondent's failure to maintain active and continuous registration of his medical license with the ED, he violated the condition in the BPMC Order requiring continuous compliance with Education Law § 6502 [Exhibit 1A]. As such, the Committee found that the added factual allegations A.6 and B.5 contained in the Amended Statement of Charges could not be deemed admitted by the Respondent.

[Exhibits 1,3]. A copy of the Notice of Hearing and Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The Committee makes the following Findings of Fact after a review of the entire record in this matter. Under PHL § 230(10), the Department had the burden of proof in this case to prove its case by a preponderance of the evidence. The references in brackets refer to exhibits ["Ex."] and testimony ["T."]. The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. Respondent was authorized to practice medicine in New York State on July 1, 1993 by the issuance of license number 192716 by the ED [Ex. 1,6].
2. The BPMC Order adopted the terms of a Consent Agreement, which was signed by Respondent on October 22, 2014. As part of that agreement, Respondent did not contest two specifications of misconduct and agreed to the penalties of Censure and Reprimand, payment of a \$5,000.00 fine, and sixty months' probation, subject to terms and conditions.² He also agreed to the conditions of reporting to the New York State Physician Profile ("NYSPP") all information required by the Department to develop a public physician profile, including a complete history of criminal convictions, in compliance with PHL § 2995-a(4) and 10 NYCRR 1000.5, and maintaining continuous registration of his medical license with the ED. Further conditions agreed to by Respondent include responding to OPMC correspondence, including personnel requests to

² Although not part of the charges, the probationary terms include enrolling in and successfully completing a continuing education program in professional ethics, submitting to evaluations by a board-certified psychiatrist, licensed mental health practitioner, or other health care professional at the direction of the Director of OPMC, enrollment in the Committee for Physician Health ("CPH") and engaging in a contract with CPH, and practicing medicine only when monitored by Sobriety Monitor, a Practice Supervisor, and a Therapist [Ex. 6,7].

return a data sheet with employment, residential, and professional status information, providing a curriculum vitae ("CV"), and contacting OMPC personnel, as directed, to schedule a meeting [Ex. 6,7].

3. As part of the Consent Agreement, Respondent stipulated that his failure to comply with any term or condition of the order "shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29)" [Ex. 6,7].

4. In written and email correspondence to Respondent dated November 5 and 19, 2014, OMPC personnel directed Respondent to return the data sheet, provide his CV within 15 days, update his physician profile to reflect two prior criminal convictions, and contact OPMC to schedule a meeting [Ex. 8,9]. In a voicemail message left for Respondent on his cell phone dated December 2, 2014, an OPMC investigator requested Respondent return the call to discuss the terms and conditions of the BPMC Order [Ex. 10A]. In email correspondence to Respondent dated December 2, 2014 and January 6, 2015, the Department reiterated these requests and directed Respondent to cooperate with OPMC's efforts in enforcing the BPMC Order [Ex. 10].

CONCLUSIONS OF LAW

In addition to allegations and specifications of misconduct A.1-A.5 and B.1-B.4 that were deemed admitted due to Respondent's failure to file a written answer, the Department provided the Hearing Committee with evidence to show Respondent's non-compliance with the terms and conditions of the BPMC Order. The Department's evidence demonstrated that Respondent failed to: (1) Pay the \$5,000.00 fine [Ex. 11]; (2) Update his NYSPP to reflect two misdemeanor convictions for Reckless Driving, in violation of Vehicle & Traffic Law § 1212, and Circumventing an Interlock Device, in violation of Vehicle & Traffic Law § 1198.9(A), on June

4, 2010 and September 26, 2013 respectively [Ex. 12,13]; (3) Respond to OPMC personnel's requests to (a) provide a copy of his CV, (b) schedule a meeting, and (c) complete and return a data sheet [Ex. 8,9,10A]; and (4) Appropriately respond to OMPC's directives and requests in these regards [Ex. 8,10].³

In the only Specification charged by the Department, Respondent was charged with engaging in misconduct, under the definition of Education Law § 6530(29), by violating terms and conditions imposed on his medical license, pursuant to PHL § 230 and the BPMC Order. The Committee sustains that Specification 3-0. Particularly troubling to the Hearing Committee is that Respondent acted in this manner despite executing the Consent Agreement, which was included as part of the Consent Order, pursuant to Public Health Law § 230, amid numerous attempts by OPMC to contact Respondent. In the Consent Agreement agreed upon by Respondent, he stipulated that his failure to comply with any of the terms or conditions of the BPMC Order "shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29)" [Ex. 6,7]. Against this backdrop, the Hearing Committee unanimously concludes that the Findings of Fact and Specification of Misconduct contained in the Statement of Charges were established by a preponderance of the evidence, and that Respondent has violated the terms and conditions imposed upon his medical license pursuant to Public Health Law § 230, thereby constituting professional misconduct pursuant to Education Law § 6530(29).

The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of

³ The Hearing Committee considered the Department's evidence regarding the factual allegation in the Amended Statement of Charges dated October 14, 2015, alleging Respondent's failure to maintain continuous registration of his medical license with the ED, as required under the BPMC Order and Education Law § 6502, and concluded that since the evidence did not show Respondent was served with the Amended Statement of Charges, they could not consider it.

monetary penalties. The sustained specification indicates Respondent's level of disregard for his obligations under the order, as evidenced by his failures to follow through with any of its terms and conditions. Additionally, Respondent's non-appearance at the hearing left the Committee without an understanding for these failures. As such, the Hearing Committee concluded that Respondent's license to practice medicine must be revoked.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.
2. The license of the Respondent to practice medicine in New York State is hereby **REVOKED**.
3. This Determination and Order shall be effective upon service on the Respondent. 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: Albany, New York
December 26, 2015**

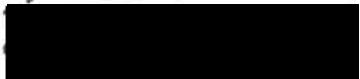


KENDRICK SEARS, M.D., Chair,

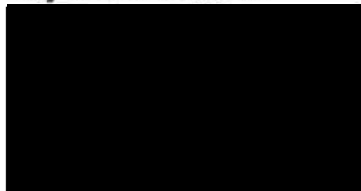
**Dennis Zimmerman, M.S., CRC
James Leonardo, M.D.**

To:

Jayesh R. Patel, M.D.



Jayesh R. Patel, M.D.



Nathaniel White, Esq.
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

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

EVIDENCE
10/29/15

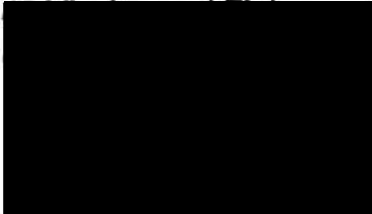
IN THE MATTER
OF
JAYESH R. PATEL, M.D.

NOTICE
OF
HEARING

TO: Jayesh R. Patel, M.D.



Jayesh R. Patel, 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 October 29th, 2015, at 10:30 A.M., at the Offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719¹ 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 a manner and form as prescribed by the civil practice law and rules, 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

¹ For GPS purposes, enter "Menands", not "Albany".

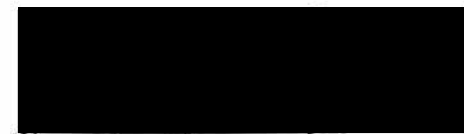
The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 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 no later than ten days prior to the date of the hearing. Any charge and 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.

Dated: Albany, New York
September 9, 2015



Michael A. Hiser
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be directed to:

Nathaniel White
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, New York 12237
(518) 473-4282

IN THE MATTER
OF
JAYESH R. PATEL, M.D.

STATEMENT
OF
CHARGES

JAYESH R. PATEL, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1993, by the issuance of license number 192716 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 22, 2014, Respondent voluntarily entered into Consent Order BPMC No. 14-277 ("Order") with the New York State Board for Professional Medical Conduct ("Board"). By entering the Order, Respondent did not contest pending professional misconduct charges alleging that he had been convicted of committing an act constituting a crime under New York state law in violation of NY Educ. Law §6530(9)(a)(i) and that he had practiced the profession of medicine fraudulently in violation of NY Educ. Law §6530(2). The Order was approved by the Board on October 30, 2014 and became effective November 7, 2014. The Order imposed, among other things, the following penalties and conditions:

1. A penalty and fine of \$5,000.00 to be paid in full within 60 days of the effective date of the Order;
2. A condition that Respondent shall provide, in writing, the Office of Professional Medical Conduct (OPMC) with a full description of Respondent's employment and practice and all professional and residential addresses and telephone numbers within and outside New York State, within thirty (30) days of the effective date of the Order;
3. A condition that, thirty (30) days after the Order's effective date, Respondent shall remain in continuous compliance with all requirements of NY Pub. Health Law § 2995-a(4) and 10 NYCRR 1000.5, including but not limited to the requirements that a licensee shall report to the NYS Department of Health ("Department") all information required by the Department to develop a public physician profile for the licensee and

continue to notify the Department of any change in profile information within 30 days of any change;

4. A condition that Respondent shall meet with a person designated by the Director of OPMC, as directed; and
5. A condition that Respondent shall promptly respond and provide all documents and information within Respondent's control to OPMC, as directed.

B. Respondent violated the terms and/or conditions of BPMC No. 14-277 as follows:

1. Respondent failed to pay the agreed fine amount within 60 days of the effective date of the Order, as required by BPMC No. 14-277, and has failed to pay any portion of the fine thereafter.
2. Respondent failed to respond to correspondence from OPMC personnel dated November 5, 2014 that required Respondent to complete and return a "data sheet" needed to update OPMC on Respondent's employment status and professional and residential contact information; that also required Respondent provide a copy of his curriculum vitae within fifteen (15) days of the date of the correspondence; and that required Respondent to contact OPMC personnel to schedule a meeting upon receipt of the correspondence.
3. Respondent failed to remain in compliance with NY Public Health Law § 2995-a(4) and 10 NYCRR 1000.5 by failing to report to the New York State Physician Profile all information required by the Department to develop a public physician profile for the licensee; specifically Respondent failed to update his physician profile to include his June 4, 2010 misdemeanor conviction for reckless driving in violation of NYS Vehicle and Traffic Law §1212 and his September 26, 2013 misdemeanor conviction for circumvention of the interlock device in violation of NYS Vehicle and Traffic Law §1198.9(a).
4. Respondent failed to respond to correspondence from OPMC personnel dated November 19, 2014 that required Respondent to complete and return a "data sheet" needed to update OPMC on Respondent's employment status and professional and residential contact information; that also required Respondent provide a copy of his curriculum vitae within fifteen (15) days of the date of the correspondence; and that

required Respondent to contact OPMC personnel to schedule a meeting upon receipt of the correspondence.

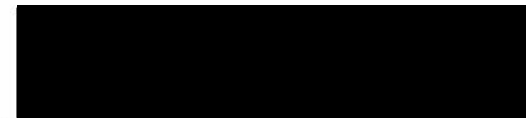
SPECIFICATION OF CHARGES

VIOLATING ANY TERM OF PROBATION OR CONDITION OR LIMITATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(29) by violating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law, as alleged in the facts of the following:

1. The facts in paragraphs A and A.1 and B and B.1; and/or
2. The facts in paragraphs A and A.2, B and B.2 and/or B and B.4; and/or
3. The facts in paragraphs A and A.3 and B and B.3; and/or
4. The facts in paragraphs A and A.4, B and B.2 and/or B and B.4; and/or
5. The facts in paragraphs A and A.5, B and B.2 and/or B and B.4.

DATE: September 2, 2015
Albany, New York



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct