

NEW YORK
state department of
HEALTH

Public

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

April 3, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sandra Reines, M.D.
REDACTED ADDRESS

John Thomas Vita, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

RE: In the Matter of Sandra Reines, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-60) 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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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,

REDACTED SIGNATURE

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

Sandra Reines, M.D. (Respondent)

BPMC
Determination and Order No. 12-60

COPY

Jerry Waisman, M.D. (Chair), Frank E. Iaquinta, M.D. and Constance Diamond, D.A., duly designated members of the State Board for Professional Medical Conduct (BPMC), served as the Hearing Committee in this matter pursuant to New York Public Health Law (PHL) §230(10)(e)(McKinney Supp. 2012). James F. Horan, Administrative Law Judge, served as the Committee's Administrative Officer. The Department of Health (Petitioner) appeared by John Thomas Viti, Esq. The Respondent chose not to appear at the hearing, but submitted a brief to the Committee. The Committee received and examined documents from the parties. A stenographic reporter prepared a transcript of the proceeding. After consideration of the record, the Hearing Committee sustains the charge that the Respondent committed professional misconduct by failing to comply with a prior BPMC Committee Order to submit to a psychiatric evaluation (Evaluation Order), pursuant to PHL § 230(7)(a). The Committee votes to 2-1 to suspend the Respondent's license to practice medicine in New York State (License), until such time as the Respondent complies with the Evaluation Order. The Committee member who dissented from the suspension vote would revoke the Respondent's License.

Procedural History

Date of Notice of Hearing and
Statement of Charges:

December 8, 2011

Date of Service of Notice of Hearing and

Statement of Charges:	December 12, 2011
Date of Answer to Charges:	None submitted
Date of Hearing:	February 6, 2012
Location of Hearing:	New York State Department of Health 90 Church St., 4 th Floor New York, NY 10007
Transcript received:	March 2, 2012

The Administrative Officer called the parties to appear at a pre-hearing conference in this matter at 9:30 a.m. on the day of the hearing, February 6, 2012. The Respondent contacted the Administrative Officer and the Petitioner's counsel by electronic mail (E-mail) on February 2, 2012 and moved to dismiss the hearing as void and unnecessary. The Administrative Officer advised the parties in a return E-mail that an Administrative Officer in these hearings lacks the authority to dismiss a case. The Administrative Officer advised the Respondent to appear at the hearing and ask the Committee to dismiss the proceeding. The Respondent failed to appear for the Pre-Hearing Conference and the Administrative Officer proceeded in the Respondent's absence. The Petitioner made a motion to have the charges deemed admitted based on Respondent's failure to file an answer. The Petitioner's Exhibit (Ex.) 4, the Notice of Hearing, states at page 2 that:

Pursuant to the provisions of PHL §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. (Underline in original)

The Administrative Officer ruled that due to the failure to file an answer to the charges, the charges would be deemed admitted. Also at the Pre-hearing, the Administrative Officer determined that the Respondent received legally sufficient notice concerning the hearing and that the Board had obtained jurisdiction over the Respondent. The Administrative Officer also received 19 documents into evidence from the Petitioner [Ex. 1-18A]. The ALJ also accepted into evidence ALJ I, a package of material that included the Respondent's E-mail and motion to the Administrative Officer and the Administrative Officer's response to both parties. A full list of the exhibits in evidence appears as the Appendix I to this Determination.

Following the pre-hearing conference, but prior to the hearing's commencement, the Respondent appeared and presented the Administrative Officer with further documentation on the motion to dismiss. The Respondent declined to appear at the hearing or to meet the Committee members. The ALJ received the Respondent's documents into the record as Exhibit A. The hearing proceeded in the Respondent's absence. Following the hearing, the Administrative Officer received a further e-mail from the Respondent that attached the dismissal documentation once again, along with a draft dismissal order. The Administrative Officer has designated that attachment as Exhibit ALJ II, for identification only. The Committee gave no consideration to that attachment because the Respondent submitted the attachment following the hearing and following the time at which the Petitioner would have received the chance to challenge the document, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3rd Dept. 1997) .

The Committee found at the hearing that the Notice of Hearing and PHL §230(10)(c) clearly indicated that the failure to file a written answer will result in the charges and allegations being deemed admitted. Due to Respondent's failure to submit a written answer, the factual

allegations and charges of misconduct contained in the Statement of Charges (Ex. 1) are deemed admitted by the Respondent, Corsello v. New York State Department of Health, 300 A.D.2d 849, 752 N.Y.S.2d 156 (3rd Dept. 2002).

Statement of 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 Petitioner charged that the Respondent committed professional misconduct under the definition in N.Y. Education Law (EL) § 6530 (15)(McKinney Supp. 2012), by failing to comply with an Order issued under PHL § 230(7). This Determination and Order attaches a copy of the Notice of Hearing and the Statement of Charges as Appendix II.

Findings of Fact

The Committee makes the following Findings of Fact after a reviewing the entire record in this matter. The brackets following the Findings cite to testimony [T] and/or documentary evidence [Ex.] the Committee found persuasive in arriving at a particular finding. In instances in which other information in the record conflicts with the evidence on which the Committee relied in making the Findings, the Committee considered and rejected that other information. Under PHL § 230(10), the Petitioner bore the burden to prove its case by a preponderance of the evidence. The Committee agrees unanimously on all Findings.

1) The Respondent received her License (# 172924) from the New York State Education Department on November 6, 1987 [Ex. 1].

2) The Respondent is currently unregistered to practice medicine in New York State [Ex. 1].

3) The Office for Professional Medical Conduct (OPMC) advised the Respondent on June 16, 2009 that OPMC had information indicating that the Respondent might be impaired by alcohol, drugs, physical disability or mental disability and that an Evaluation Committee would hold a hearing into that information on July 15, 2009, to determine whether to order the Respondent to submit to a medical or psychiatric evaluation [Ex. 12].

4) The notice concerning the Evaluation Committee advised the Respondent that she could appear before the Evaluation Committee accompanied by legal counsel, that the Respondent would receive an opportunity to be heard before the Committee and that, if the Respondent failed to appear before the Evaluation Committee, the Committee would proceed in the Respondent's absence [Ex. 12].

5) The Evaluation Committee issued an Order on July 15, 2009 directing the Respondent to submit to and cooperate with a psychiatric examination by Zev Labins, M.D. [Ex. 13].

6) The Evaluation Order directed the Respondent to schedule and commence the examination with Dr. Labins by August 15, 2009 [Ex. 13].

7) The Respondent never contacted Dr. Labins for an appointment and the Respondent never presented herself for an evaluation [Ex. 14].

Conclusions

The Hearing Committee makes the unanimous conclusion, pursuant to the Findings we listed above, to sustain the Factual Allegation from the December 8, 2011 Statement of Charges and to sustain the Misconduct Specification charging that the Respondent committed professional misconduct by failing to comply with an Order pursuant to PHL § 230(7). The Respondent's failure amounted to professional misconduct under EL § 6530(15).

The Respondent raised two defenses. First, the Respondent's written submission stated that this proceeding was void because the Petitioner's counsel indicated that the proceeding would be closed, but in fact there was really no way to protect the Respondent's confidentiality. The Respondent failed to appear at the hearing and explain what she meant by the argument. The Committee gave no consideration to the argument. Second, the Respondent argued that there would be no need for an evaluation by Dr. Labins, because the Respondent already underwent a psychiatric evaluation. The Respondent did submit a copy of a psychiatric evaluation with her written submission [Ex. A], but that evaluation appears to have taken place over twenty years ago. The Respondent provided no evidence to indicate that she had undergone the examination that the Evaluation Committee had ordered.

Determination As To Penalty

Under PHL § 230-a, this Committee may impose penalties for professional misconduct against the Respondent. Those penalties include a suspension from practice until such time as the Respondent complies with a BPMC Order [§ 230-a(2)(e)]. This Committee votes to 2-1 to

suspend the Respondent under § 230-a(2)(e) until such time as the Respondent complies with the Evaluation Order. The Respondent failed to appear at the hearing, to explain her failure to comply with the Evaluation Order or to explain whether she ever intends to return to medical practice. The Respondent is unregistered to practice currently by her own choice, but without some restriction on her License such as the suspension, the Respondent could have returned to practice merely by registering once again and paying the registration fee. The Committee majority concludes that the suspension will protect the public by assuring that the Respondent will be unable to practice without complying with the Evaluation Order. The third Committee member votes to revoke the Respondent's License. That Committee member concludes that the Respondent's failure to comply with the Order since 2009 demonstrates that the Respondent will be no more likely to comply with the Evaluation Order now, even with the Suspension Order in place.

Based on the foregoing, the Committee issues the following ORDER:

1. The Committee sustains the First Specification contained in the Statement of Charges (Ex. 1);

2. The Committee suspends the Respondent's License until such time as the Respondent complies with the conditions in the Evaluation Order.

DATED: *March 29,* , New York
2012

REDACTED SIGNATURE

A horizontal line with a scribble underneath, indicating a redacted signature.

Jerry Waisman, M.D. (Chair),
Frank E. Iaquina, M.D.,
Constance Diamond, D.A.

Appendix I

List of Exhibits

- Ex. A Respondent's Brief
- Ex. 1 New York State Education Department Licensing Documents,
Ex. 2 Physician Search Printout,
Ex. 3 Internet Printout Current Address,
Ex. 4 Notice of Hearing / Statement of Charges,
Ex. 5 Return Receipt Signed,
Ex. 6 Priority Mail Delivery Confirmation,
Ex. 7 Affidavit of Mail Service,
Ex. 8 E-mail from Viti to Reines 12/9/11,
Ex. 9 E-mail Reines to Viti 12/8/11,
Ex. 10 E-mail Viti to Reines 12/5/11,
Ex. 11 E-mail Reines to Viti 12/2/11,
Ex. 12 E-mail to Respondent with Evaluation Order attached 11/30/11,
Ex. 13 Regular mail letter transmitting Evaluation Order,
Ex. 14 Labins Affidavit,
Ex. 15 Letter from Respondent to Brenda McGreavey,
Ex. 16 E-mail McGreavey to Reines 5/2/11,
Ex. 17 E-mail Reines to McGreavey 3/28/11,
Ex. 18 E-mail McGreavey to Reines 3/28/11,
Ex. 18A E-mail Reines to Viti 2/4/12.
- ALJ I E-mail with attachment Horan to Reines 2/2/12.
ALJ II E-mail with attachment Reines to Horan 2/6/12 (for ID only).

Appendix II

Statement of Charges (attached)

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

IN THE MATTER

OF

Sandra Reines, M.D.

STATEMENT
OF
CHARGES

Sandra Reines, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 6, 1987, by the issuance of license number 172924 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 16, 2009, pursuant to Public Health law Section 230(7)(a), a Committee of the Board of Professional Medical Conduct met and determined that there was reason to believe that Respondent might be impaired by alcohol, drugs or a physical or mental disability and ordered Respondent to undergo an evaluation by Zev Labins, M.D., to begin on or before July 15, 2009.

1. Respondent has failed to comply with the Order.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

FAILING TO COMPLY WITH AN ORDER

Respondent is charged with committing professional misconduct as defined in N.Y. Education Law §6530(15) by failing to comply with an Order issued pursuant to Public Health Law §230(7), as alleged in the facts set forth in:

1. Paragraph A and A. 1.

DATE:

December 8, 2011
New York, New York

REDACTED SIGNATURE

Roy Nemerson

Deputy Counsel
Bureau of Professional Medical Conduct