Howard A. Zucker, M.D., J.D
Acting Commissioner of Health

NEW YORK
state department of
HEALTH

Public

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

January 2, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nicole Charder, M.D.
REDACTED

James C. Knox, Esq.
E. Stewart Jones Law Firm, PLLC
28 Second Street
Troy, New York 12180

Jude B. Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Nicole Charder, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-002) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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,

REDACTED
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 NICOLE CHARDER, M.D.	DETERMINATION AND ORDER BPMC #15-002

A Notice of Hearing and Statement of Charges were served on **NICOLE CHARDER, M.D.**, Respondent, on September 26, 2014. A hearing was held on December 10, 2014 at the Offices of the New York State Department of Health, 150 Broadway, Albany, New York ("the Petitioner").

Mary E. Rappazzo, M.D., Chair, **Jose M. David, M.D.**, and **Janet R. Axelrod, Esq.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **James E. Dering, Esq.**, General Counsel, by **Jude B. Mulvey, Esq.**, of Counsel.

The Respondent appeared with counsel **James C. Knox, Esq.**, of the firm of **E. Stewart Jones, PLLC** of Troy, New York. Evidence was received, witnesses were sworn or affirmed, and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Date of Service of Notice Of Hearing and Statement of Charges:	October 9, 2014
Answer Filed:	December 3, 2014
Hearing Date:	December 10, 2014
Witnesses for Petitioner:	Patricia Biski, M.D.
Witnesses for Respondent:	Nicole Charder, M.D.
Deliberations Date:	December 10, 2014

STATEMENT OF THE CASE AND BACKGROUND

Petitioner charged Respondent, a physician practicing forensic psychiatry at Bellevue Hospital in New York City, with two (2) specifications of professional misconduct. The first specification charged Respondent with committing professional misconduct as defined in N.Y. Educ. Law §6530 (16) by her willful or grossly negligent failure to comply with the substantial provisions of federal, state or local laws, rules or regulations governing the practice of medicine.

The second specification charged Respondent with committing professional misconduct as defined in N.Y. Educ. Law §6530 (21) by willfully failing to file a report required by law or by the Department of Health or the Education Department.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to transcript page numbers or Exhibits, denoted by the prefixes "T." or "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Respondent was authorized to practice medicine in New York State on or about March 12, 2013 by the issuance of license number 269143 by the New York State Education Department. (Petitioner's Exhibit # 3)

2. New York Public Health Law Article 29-D §2995-a requires the New York State Department of Health to collect certain information from New York State licensed physicians in order to create individual profiles on licensees in a format to be made available to the public. New York Public Health Law 29-D §2995-a(4) requires licensees to "report to the [Health] department on forms and in the time and manner required by the [Health] commissioner any other information as is required by the department for the development of profiles under this section..."

3. Respondent was notified by correspondences dated April 10, 2013, May 21, 2013, October 25, 2013 and/or March 10, 2014 of her continuing obligation to provide the information required to establish her physician profile. (Petitioner's Exhibits # 4 to # 8)

4. As of September 5, 2014, Respondent has failed to provide the information required to establish her physician profile. (Petitioner's Exhibit # 9)

CONCLUSIONS OF LAW

Pursuant to the Findings of Fact as set forth above, the Hearing Committee unanimously concludes that the Factual Allegations and Specifications as set forth in the Statement of Charges, are resolved as follows:

1. The First Specification of professional misconduct, as set forth in the Statement of Charges, is **NOT SUSTAINED;**

2. The Second Specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED.**

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York State Education Law §6530 (16) by her willful or grossly negligent failure to comply with the substantial provisions of federal, state or local laws, rules or regulations governing the practice of medicine...."

VOTE: Not Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York State Education Law §6530 (21) by failing to file a report required by law or by the department of health or the education department...."

VOTE: Sustained (3-0)

In its deliberations the panel reviewed the record and testimony as it pertained to each of the specifications and determined, unanimously, that the first specification should not be sustained and that the second specification should be sustained. The panel based its determination on finding that the burden of proof on all the elements of the first specification was not established by the record and testimony in this case.

HEARING COMMITTEE DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, after due deliberation, unanimously determined that the second specification in this case should be sustained.

The pivotal fact in this case is beyond dispute. It is clear and uncontroverted that the Respondent did not file her profile report as required by law. The Respondent's attorney did not dispute the fact that his client made a mistake and was negligent in not responding to the numerous letters from the Department requesting her compliance. (T. 72) Mr. Knox's argument was that these mistakes and acts of negligence did not rise to the level of medical misconduct.

The panel did not accept this argument. New York State Education Law §6530 (21) denominates it to be medical misconduct to fail to file a report required by law. The report in this case was required by law and the Respondent was given ample notice and several warnings to comply. The explanation given by the Respondent does not excuse her

misconduct. The Respondent explained that her mail was being sent to her mother's house as it has been since she went away to college. While this is understandable it is not excusable. The Department recommended a Censure and Reprimand and a monetary fine. The panel was sympathetic to this young doctor and did not wish to impose a fine. The panel felt that the Respondent has now learned her lesson and will, in the future, pay better attention to her professional mail. Accordingly, the panel was unanimous in finding that a Censure and Reprimand with no fine was sufficient and just punishment for this failure to file a report.

ORDER

IT IS HEREBY ORDERED THAT:

1. The first Specification of professional misconduct, as set forth in the Statement of Charges, is **NOT SUSTAINED;**
2. The second Specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED;**
3. The Respondent is **censured and reprimanded** for her failure to file a report as required under New York State Law .
4. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Loudonville, New York
January 1, 2015

REDACTED

Mary E. Rappazzo, M.D., Chair

Jose M. David, M.D.
Janet R. Axelrod, Esq.,

TO:

Nicole Charder, M.D.
REDACTED

James C. Knox, Esq.
Attorney for Dr. Charder
E. Stewart Jones Law Firm, PLLC
28 Second Street
Troy, New York 12180

Jude B. Mulvey, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
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

IN THE MATTER OF NICOLE CHARDER, M.D.	NOTICE OF HEARING

TO: Nicole Charder, M.D.
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 December 3, 2014, at 10:00 a.m., at the Offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719, 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_____

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 Sept. 26, 2014

REDACTED

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Albany, NY

Inquiries should be directed to:
Jude Mulvey, Associate Counsel
Bureau of Professional Medical Conduct

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

IN THE MATTER OF NICOLE CHARDER, M.D.	STATEMENT OF CHARGES

NICOLE CHARDER, M.D., the Respondent, was authorized to practice medicine in New York State on March 12, 2013, by the issuance of license number 269143 by the New York State Education Department. Respondent is currently registered to practice medicine in New York State through February 2015.

FACTUAL ALLEGATIONS

A. New York Public Health Law Article 29-D §2995-a requires the New York State Department of Health to collect certain information from New York State licensed physicians in order to create individual profiles on licensees in a format to be made available to the public. New York Public Health Law 29-D §2995-a(4) requires licensees to "report to the [Health] department on forms and in the time and manner required by the [Health] commissioner any other information as is required by the department for the development of profiles under this section..." Respondent was notified by correspondences dated April 10, 2013, May 21, 2013, October 25, 2013 and/or March 10, 2014 of her continuing obligation to provide the information required to establish her physician profile.

1. As of September 5, 2014, Respondent has failed to provide the information required to establish her physician profile.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

FAILURE TO COMPLY

Respondent violated New York Education Law §6530(16) by her willful or grossly negligent failure to comply with the substantial provisions of federal, state or local laws, rules or regulations governing the practice of medicine, in that Petitioner alleges:

1. The facts in Paragraphs A and A.1.

SECOND SPECIFICATION

FAILURE TO FILE A REPORT

Respondent violated New York Education Law §6530(21) by willfully failing to file a report required by law or by the department of health or the education department, in the Petitioner alleges:

2. The facts in Paragraphs A and A.1.

DATE: September 26, 2014
Albany, New York

REDACTED

Michael A. Hiser
Deputy Counsel
Bureau of Professional Medical Conduct