

Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

December 4, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Susan Lopez-Feniquito, M.D.

Redacted Address

Susan Lopez-Feniquito, M.D.

Redacted Address

Paul Stein, Esq.

NYS Department of Health

Bureau of Professional Medical Conduct

90 Church Street - 4th Floor

New York, New York 10007

RE: In the Matter of Susan Lopez-Feniquito, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-230) 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., 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, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

**IN THE MATTER
OF
SUSAN LOPEZ-FENIQUITO, M.D.**

**DETERMINATION
AND
ORDER**

BPMC #08-230

COPY

Kenneth Kowald, (Chair), Jinil Yoo, M.D., and Uma B. Mishra, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10) of the Public Health Law. Christine C. Traskos Esq., Administrative Law Judge, (“**ALJ**”) served as the Administrative Officer.

The Department of Health appeared by Paul Stein, Esq., Associate Counsel. Respondent, Susan Lopez- Feniquito, M.D. did not appear personally and was not represented by Counsel.

Evidence was received and examined. Transcripts of the proceeding were made. After consideration of the record, the Hearing Committee issues this Determination and Order.

PROCEDURAL HISTORY

Date of Notice of Hearing and
Statement of Charges:

October 3, 2008

Date of Service of Notice of Hearing and
Statement of Charges:

October 23, 2008 (see discussion below)

Date of Answer to Charges:	None submitted
Date of Hearing :	November 7, 2008
Location of Hearing:	New York State Department of Health 90 Church St., 4 th Floor New York, NY 10007
Witness for the Petitioner:	Investigator Ralph Pezzulo
Deliberations Date:	November 7, 2008
Transcript received:	November 24, 2008

On November 7, 2008, the date of the hearing, Respondent did not appear and no Counsel appeared on her behalf. After all documents were marked for identification, the ALJ ruled that the service of the Notice of Hearing and Statement of Charges on Respondent was effected on October 23, 2008 by certified mail after personal service was attempted by due diligence and that the Board for Professional Medical Conduct had obtained jurisdiction over Respondent [T. 11-13, 16]¹; (Petitioner's Exhibit 7)²

At the onset of the Hearing, the Petitioner made a motion to have the charges deemed admitted based on Respondent's failure to file an answer. The Notice of Hearing (Department's Exhibit 1) at page 2 states:

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

¹ Numbers in brackets refer to Hearing transcript page numbers [T-]

² Refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit #). No exhibits were submitted by Respondent.

deemed admitted. (Underline in original)

Public Health Law §230(10)(c) clearly indicates 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 ALJ ruled that the factual allegations and charges of misconduct contained in the Statement of Charges (Department's Exhibit 1) were deemed admitted by Respondent [T- 68-69]. See also Corsello v. New York State Department of Health, 300 A.D.2d 849, 752 N.Y.S.2d 156 (App. Div. 3rd Dep't. 12/19/2002).

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (§230 *et seq.* of the Public Health Law of the State of New York [**"P.H.L."**]). This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct (**"Petitioner"** or **"Department"**) pursuant to §230 of the P.H.L. Susan Lopez-Feniquito, M.D. (**"Respondent"**) is charged with three (3) specifications of professional misconduct as set forth in §6530 of the Education Law of the State of New York (**"Education Law"**).

Respondent is charged with professional misconduct by reason of: failing to maintain accurate records for patients she treated, failing to respond to written communications from the Department of Health and failing to comply with Public Health Law §18.

Respondent failed to submit an answer and therefore all the Factual Allegations and all the Specifications of Misconduct contained in the Statement of Charges are deemed admitted. A copy of the Notice of Hearing and the 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 available to the Hearing Committee in this matter. These facts represent testimony and/or documentary evidence found persuasive by the Hearing Committee in arriving at a particular finding. The Petitioner, which has the burden of proof, was required to prove its case by a preponderance of the evidence. The Hearing Committee unanimously agreed on all Findings of Fact.

1. Respondent was authorized to practice medicine in New York State on or about September 6, 1973 by the issuance of license number 117643 by the New York State Education Department. Respondent is not currently registered to practice medicine in New York State.

2. The State Board for Professional Medical Conduct has obtained personal jurisdiction over Respondent. (determination made by the ALJ); (P.H.L. §230[10][d]); (Petitioner's Ex. 1); [T. 11-13,16]

3. During periods in or after October 2006, Respondent failed to maintain records for patients A through E which accurately reflected the care and treatment of these patients.(Petitioner's Ex. 28)

4. Respondent failed to respond within thirty days to repeated written communications from the Department of Health between on or about February 7, 2007 and on or about October 1, 2007, with respect to the whereabouts of medical records for patients A through E from her past New York State medical practice, and failed to make available any relevant records. (Petitioner Exs. 22, 24); [T. 46- 49]

5. Respondent failed to provide access by Patients A through E to their own medical records, despite receiving written requests from the patients for these records between in or about September 2005 and in or about July 2007. (Petitioner's Exs. 9 through 12, 14 through 21, 23, 27, 28); [T. 23-46]

CONCLUSIONS OF LAW

The Hearing Committee makes the unanimous conclusion, pursuant to the Findings of Fact listed above, that all the Factual Allegations contained in the October 3, 2008 Statement of Charges are **SUSTAINED**.

Based on the above, the complete Findings of Fact and the discussion below, the Hearing Committee unanimously concludes that ALL THE SPECIFICATIONS OF MISCONDUCT contained in the Statement of Charges are **SUSTAINED**.

The rationale for the Hearing Committee's conclusions is set forth below.

DISCUSSION

Respondent is charged with three (3) specifications alleging professional misconduct within the meaning of §6530 of the Education Law. The Hearing Committee determined that all of the allegations and all of the charges contained in the Statement of Charges were established by a preponderance of the evidence.

Respondent did not appear at the Hearing, either in person or by counsel. Her failure to file an answer to the Statement of Charges that were properly served upon her, resulted in the admission of the allegations and charges of misconduct outlined in the Notice of Hearing. The Hearing Committee concludes that Respondent chose to ignore the Notice of Hearing even though she apparently signed the receipt for certified mail that was legally authorized after attempts at personal service were unsuccessful. She made no attempts to respond or contact the Department after she became aware of these proceedings.

In addition to the fact that the allegations are deemed admitted, the Hearing Committee concludes that the documentary evidence and the credible testimony of Supervising Medical Conduct Investigator Pezzulo presented by the Department sustains the allegations independently.

The Hearing Committee believes that Respondent failed to safeguard numerous patient records while she was in the process of closing her office. They have no reason to doubt the information provided by the physician landlord, Dr. Reyes as well as the new tenant Dr. Calves that Respondent left the files in disarray at her office before discarding them in the dumpster. (Pet. Ex. 25) [T. 52] Respondent did not make any arrangements to return patient records after she left New York State even after several patients made attempts to contact her. In addition, Respondent failed to respond to OPMC regarding the whereabouts of the missing records which further compounds her misconduct.

DETERMINATION AS TO PENALTY

After a full and complete review of all of the evidence presented and pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above, a unanimous Hearing Committee determines that Respondent's license to practice medicine in the State of New York shall be suspended until she provides her practice records to Patients A through E. Respondent shall also

provide a record maintenance plan that is satisfactory to OPMC . She is also assessed a civil penalty in the amount of Ten Thousand Dollars (\$10,000). Upon compliance with these terms and conditions, Respondent's license shall be placed on probation for a period of three (3) years. This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including revocation, suspension, and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interests of justice.

Since Respondent did not appear at the Hearing, the record contains no evidence of mitigating circumstances. The Hearing Committee believes that this penalty, including the \$10,000 fine, sends an appropriate message that physicians must provide appropriate protection of medical records that belong to their patients and cannot be cast aside for the physician's convenience.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The FIRST, SECOND and THIRD SPECIFICATIONS contained in the Statement of Charges (Petitioner's Exhibit #1) are **SUSTAINED**; and
2. Respondent's license to practice medicine in the State of New York is hereby **wholly SUSPENDED until the Respondent complies with the terms or conditions of this Decision and Order**; and
3. Respondent is assessed a civil penalty of **TEN THOUSAND DOLLARS (\$10,000)**, payable to NYS Department of Health, Bureau of Accounts Management, Corning Tower Room 1717, Empire State Plaza, Albany, New York 12237 within 90 days of the effective date of this Order; and

4. That any civil penalty not paid by the date prescribed herein shall be subject to all provisions of laws relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees; and non-renewal of permits or licenses (Tax Law, section 171(27); State Finance Law, section 18; CPLR, section 5001; Executive Law, section 32; and

5. Upon satisfactory compliance with the terms or conditions of this Decision and Order, the suspension will be stayed and Respondent's license shall be placed on probation for a period of **THREE (3) YEARS;**

6. Respondent's license shall be placed on **PROBATION** for **THREE (3)** years and she shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order; and

7. This Order shall be effective on personal service on the Respondent or 7 days after the date of mailing of a copy to Respondent by certified mail or as provided by P.H.L. §230(10)(h).

DATED: New York, New York
2008

December 31

Redacted Signature

17

KENNETH KOWALD., (Chair)

JINIL YOO, M.D.

UMA B. MISHRA, M.D.

Susan Lopez-Feniquito, M.D.

Redacted Address

Susan Lopez-Feniquito, M.D.

Redacted Address

Paul Stein, Esq.

Associate Counsel

NYS Department of Health

Bureau of Professional Medical Conduct

90 Church Street- 4th Fl.

New York, NY 10007

APPENDIX 1

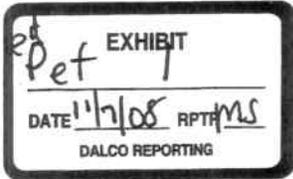
NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
SUSAN LOPEZ FENIQUITO, M.D.

NOTICE
OF
HEARING

TO: SUSAN LOPEZ FENIQUITO, M.D.

Redacted Address



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 November 7, 2008, 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. 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.

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, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, 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.

DATED: New York, New York
October 3, 2008

Redacted Signature

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Paul Stein
Deputy Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
90 Church Street, 4th Floor
New York, NY 10007
(212) 417-4450

EXHIBIT "A"

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

IN THE MATTER
OF
SUSAN LOPEZ FENIQUITO, M.D.

STATEMENT
OF
CHARGES

SUSAN LOPEZ FENIQUITO, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 6, 1973, by the issuance of license number 117643 by the New York State Education Department. Respondent is not currently registered to practice medicine in New York State.

FACTUAL ALLEGATIONS

- A. During periods in or after October 2006, Respondent failed to maintain records for patients A-E which accurately reflected the care and treatment of these patients.
- B. Respondent failed to respond within thirty days to repeated written communications from the department of health between on or about February 7, 2007 and on or about ^{Oct. 1, 2007} ~~May 22, 2007~~, with respect to the whereabouts of medical records for patients ~~A-E~~ ^{A-G and A-E} from her past New York State medical practice, and failed to make available any relevant records. *not amended* *est* *est*
- C. Respondent failed to provide access by Patients A-E to their own medical records, despite receiving written requests from the patients for these records between in or about ~~February 2007~~ ^{September 2005} and in or about July 2007.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

1. Paragraph A.

SECOND SPECIFICATION

FAILURE TO RESPOND TO OPMC

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(28) by failing to respond within thirty days to written communications from the department of health and to make available any relevant records with respect to an inquiry or complaint about the licensee's professional misconduct. The period of thirty days shall commence on the date when such communication was delivered personally to the licensee. If the communication is sent from the department of health by registered or certified mail, with return receipt requested to the address appearing in the last registration, the period of thirty days shall commence on the date of delivery to the licensee, as indicated by the return receipt, as alleged in the facts of:

2. Paragraph B.

THIRD SPECIFICATION

FAILURE TO COMPLY WITH PUB. HEALTH LAW SEC. 18

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(40) by failing to provide access by qualified persons to patient information in accordance with the standards set forth in section eighteen of the public health law as added by chapter 497 of the laws of 1986, as alleged in the facts of:

3. Paragraph C.

DATE: New York, New York
October 3, 2008

Redacted Signature

ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX 2

Standard Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession. Respondent acknowledges that if s/he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).

2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.

3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law Section 32].

5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

6. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient

records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.

7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

8. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.