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Executive Deputy Commissioner

February 27, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mark D. Forte, M.D.
[redacted]

Paul Tsui, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Mark D. Forte, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-044) 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

MARK D. FORTE, M.D.
CO-13-12-7242A

DETERMINATION

AND

ORDER

BPMC #15-044

COPY

A hearing was held on December 11, 2014, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated October 27, 2014, were served upon the Respondent, **MARK D. FORTE, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Mohammad-Reza Ghazi-Moghadam, M.D., Chair, Trevor A. Litchmore, M.D.** and **Dennis P. Zimmerman, M.S., CRC,** 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 **Paul Tsui, Esq.**, of Counsel. The Respondent, **Mark D. Forte, M.D.**, did not appear, although duly served. Evidence was received and transcripts of these proceedings were made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(b) and Education Law §6530(9)(d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: None

For the Respondent: None

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 exhibits, denoted by the prefix "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. Mark D. Forte, M.D., the Respondent, did not appear at the hearing. An affidavit of attempted service, dated November 8, 2014, was admitted at the hearing. (Petitioner's Exhibit 2.)

2. Mark D. Forte, M.D., the Respondent, was authorized to practice medicine in New York State on July 12, 2001, by the issuance of license number 221988 by the New York State Education Department . (Petitioner's Ex. 4)

3. On or about December 4, 2009, the Respondent and the Colorado Medical Board, State of Colorado (hereinafter "Colorado Board"), by an Interim Cessation of Practice Agreement (hereinafter "Colorado Agreement"), agreed that Respondent will not perform any act requiring a license issued by the Board, based on a report from the Colorado Physician Health Program that the Respondent had physical or mental illnesses or conditions that rendered him unsafe to practice medicine pending further evaluation and investigation of his practice. (Petitioner's Ex. 5)

4. On or about November 20, 2013, the Colorado Board, by an Order of Suspension From The Practice as a Physician, pursuant to Section 12-36-118(9)(a), C.R.S. (hereinafter "Colorado Order"), summarily suspended Respondent's license to practice as a physician, based on Respondent's failure to comply with the requirements of the Colorado Board's order to the Colorado Physicians Health Program (hereinafter "CPHP"). (Petitioner's Ex. 6)

5. The conduct resulting in the Colorado Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following section of New York State law:

a. New York Education Law §6530(29) by violating any term of probation or condition or limitation imposed on the Licensee.

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct 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 in that Respondent, by Consent Order, was found guilty of improper professional practice by the State Board of Medicine of the State of Colorado.

VOTE: Sustained (3-0)

SECOND SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(d) by having his license suspended by the State Board of Medicine of Colorado 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.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing and was deemed in default. The Administrative Law Judge, after considering the documentary evidence, which included an Affidavit of Non-Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed, notwithstanding the absence of the Respondent. It is noted that the affidavits of attempted service document multiple attempts at service, all to no avail. (See Exhibit 2)

The record in this case shows that the Respondent has had a troubled history with mental health and substance abuse issues. The Department's attorney indicated at the hearing that, in 2009, the Respondent and the Colorado Medical Board agreed that Respondent will not perform any act requiring a license issued by the Board. This action was based on a report from the Colorado Physician Health Program that the Respondent had physical or mental illnesses or conditions that rendered him unsafe to practice medicine pending further evaluation and investigation of his practice. (Petitioner's Exhibits 1 and 5)

Thereafter, in February of 2013, the Board ordered Respondent to go to the Colorado Physician Health Program ("CPHP") for an evaluation to determine whether he had physical or mental illness or conditions that might impact his ability to practice medicine with reasonable skill and safety to patients. This Order required Respondent to schedule an appointment with CPHP, to cooperate fully with CPHP in a timely manner and to comply with any and all requests or recommendations CPHP deemed appropriate. (See Exhibit 5)

According to the Department, the Respondent did not cooperate with CPHP in its efforts to evaluate him and thus the Colorado Board had reasonable grounds to believe that the public health, safety, or welfare was endangered. The Board determined that Respondent had physical or mental illnesses or conditions that rendered him unsafe to practice medicine. It should be noted that, in February of 2013, the parties reaffirmed the Interim Cessation of Practice Agreement ("Interim Agreement") of December 4, 2009 pending further evaluation of the Respondent. (See Exhibit 5)

Exhibit 6 shows that, in November of 2013, the Colorado Board revisited this matter and found that the Respondent had failed to comply with CPHP's requirements of ongoing evaluation and monitoring as required in the February Order. Specifically, the Panel reviewed the Respondent's case and found that the Respondent had not cooperated with CPHP. This failure was deemed grounds for suspension and they suspended Respondent's license to practice as a Physician in the State of Colorado. (See Exhibit 6)

As to the penalty, the Hearing Committee determined that the people of New York State would be protected by a suspension of the Respondent's license, pending his full reinstatement in Colorado. The Hearing Committee also determined that, after his reinstatement in Colorado, the Respondent may then petition for a lifting of the New York Suspension upon a showing to the New York OPMC Director of his current mental condition and competence in the field of medicine he wishes to practice.

Thus, on review of all the facts and circumstances in this case, the panel determined that the Respondent's New York license to practice medicine should be indefinitely suspended, wholly, until such time as he complies with all the terms and conditions of the Colorado Board's order. In particular, the suspension should continue until the Colorado suspension is lifted and he is fully reinstated in that state. Furthermore, the Respondent will then have to satisfy the New York OPMC Director as to his current competency to practice medicine.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine in New York State is suspended until such time as the Respondent's license to practice medicine in the State of Colorado is fully reinstated and the suspension in that jurisdiction is lifted.

2. The license of the Respondent to practice medicine in New York State is suspended until such time as the Respondent's license to practice medicine in the State of Colorado is fully reinstated and the Respondent, upon application, satisfies

the Director of the New York OPMC as to his current competency to practice medicine.

3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Amsterdam, New York
January ~~___~~, 2015
Feb 26

[redacted]

Mohammad-Reza Ghazi-Moghadam, M.D., Chair

Trevor A. Litchmore, M.D.
Dennis P. Zimmerman, M.S., CRC

To:

Mark D. Forte, M.D.
Respondent
[redacted]

Paul Tsui, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2512
Albany, New York 12237

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APPENDIX 1

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

IN THE MATTER	NOTICE OF
OF	REFERRAL
MARK D. FORTE CO-13-12-7242A	PROCEEDING

TO: Mark Forte, M.D.
[redacted]

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures 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 the 11th day of December, 2014, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204-2719.

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

EXHIBIT
#1

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 F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten (10) 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. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated 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 New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51 8(b), the Petitioner demands, hereby, disclosure of the evidence that 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 and/or other evidence that cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) 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 (5) 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.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
Oct. 27, 2014

[redacted]

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

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

STATE OF NEW YORK : DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER OF MARK D. FORTE, M.D. CO-13-12-7242-A	STATEMENT OF CHARGES

MARK D. FORTE, M.D., Respondent, was authorized to practice medicine in New York State on July 12, 2001, by the issuance of license number 221988 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 4, 2009, the Respondent and the Colorado Medical Board, State of Colorado (hereinafter "Colorado Board"), by an Interim Cessation of Practice Agreement (hereinafter "Colorado Agreement"), agreed that Respondent will not perform any act requiring a license issued by the Board, based on a report from the Colorado Physician Health Program that the Respondent had physical or mental illnesses or conditions that rendered him unsafe to practice medicine pending further evaluation and investigation of his practice.

B. On or about November 20, 2013, the Colorado Board, by an Order of Suspension From The Practice As A Physician, pursuant to Section 12-36-118(9)(a), C.R.S. (hereinafter "Colorado Order"), summarily suspended Respondent's license to practice as a physician, based on Respondent's failure to comply with the requirements of the Colorado Board's order to the Colorado Physicians Health Program (hereinafter "CPHP").

C. The conduct resulting in the Colorado Board disciplinary action against Respondent 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(29) by violating any term of probation or condition or limitation imposed on the Licensee.

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A, B and C.

SECOND SPECIFICATON

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine revoked, suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

2. The facts in Paragraphs A, B and C.

DATED: Oct. 27, 2014
Albany, New York

[redacted]
MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct