

Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

March 24, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rogers Nwabue, M.D.

Redacted Address

Kevin C. Roe, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237

RE: In the Matter of Rogers Nwabue, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 10-50) 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. 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 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., 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
ROGERS NWABUE, M.D.

DETERMINATION
AND
ORDER

BPMC #10-50

COPY

John Waldman, M.D.(Chair), Trevor A. Litchmore, M.D., and David Irvine, DHSc, RPA-C 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 Kevin C. Roe, Esq., Associate Counsel. Respondent, Rogers Nwabue, 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:

December 21, 2009

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

January 28, 2010 (see discussion below)

Date of Answer to Charges:	None submitted
Pre-Hearing Conference Held:	February 8, 2010
Date of Hearing :	February 17, 2010
Location of Hearing:	Tax Appeals Tribunal 500 Federal Street, 5 th Floor Troy, NY 12180-2893
Deliberations Date:	February 17, 2010
Transcript received:	March 5, 2010

On February 8, 2010, the ALJ held a Pre-Hearing Conference. Respondent did not appear at this Pre-Hearing and no Counsel appeared on his behalf. At that Pre-Hearing, the ALJ found that the service of the Notice of Hearing and Statement of Charges on Respondent was effected on January 28, 2010, and that the Board for Professional Medical Conduct had obtained jurisdiction over Respondent [P.H.T 4 -5. see also T. 4-6]¹; (Petitioner's Exhibit 1)²; (ALJ's Exhibit 1).

At the pre-Hearing conference, 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 deemed admitted. (Underline in original)

¹ Numbers in brackets refer to Hearing transcript page numbers [T-] or to Pre-Hearing transcript page numbers [P.H.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. ALJ exhibits were not admitted in evidence and were not reviewed by the Hearing Committee but were made part of the record.

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 [PH T-5]. 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).

On the February 17, 2010 Hearing day, Respondent did not personally appear nor was he represented by Counsel.

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. Rogers Nwabue, M.D. ("**Respondent**") is charged with one (1) specification 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 failure to comply with an Order from the State Board of Professional Medical Conduct.

Respondent failed to submit an answer and therefore all the Factual Allegations and the Specification 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 is not licensed or registered in New York State but was authorized to practice medicine in New York State as a resident in a public hospital pursuant to Education Law §6526.
2. The State Board for Professional Medical Conduct has obtained personal jurisdiction over Respondent (P.H.L. §230[10][d]); (Petitioner's Exhibit 1); [T. 4-6].
3. By Order dated September 16, 2009, Respondent was directed by the New York State Board for Professional Medical Conduct to submit to and cooperate with a psychiatric examination by John Whipple, M.D., Accumen Assessments, Lawrence, Kansas. The Order further directed that Respondent contact the examining physician and that the examination commence within 14 days. To date, Respondent has not contacted the examining physician and no psychiatric examination has been conducted.

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 December 21, 2009 Statement of Charges are **SUSTAINED**.

Based on the above, the complete Findings of Fact and the discussion below, the Hearing Committee unanimously concludes that **THE SPECIFICATION OF MISCONDUCT** contained in

the Statement of Charges is **SUSTAINED**.

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

DISCUSSION

Respondent is charged with one (1) specification 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. His failure to file an answer to the Statement of Charges that were properly served upon him, resulted in the admission of the allegations and charges of misconduct outlined in the Notice of Hearing.

In addition to the fact that the allegations are deemed admitted, the Hearing Committee concludes that the documentary evidence presented by the Department sustains the allegations independently.

The Hearing Committee believes that Respondent, until such time that he complies with the Order of the Board to submit to a psychiatric evaluation, should not be issued a license nor be allowed to practice medicine in New York State.

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 should not be issued a license nor be allowed to practice medicine in New York State. 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 or any attempt at compliance by Respondent. The Hearing Committee concludes that it would endanger patient safety if Respondent were allowed to be licensed or practice medicine without full compliance with the Board's Order for a psychiatric examination.

Under the totality of the circumstances, the Hearing Committee concludes that this penalty is commensurate with the level and nature of Respondent's professional misconduct.

ORDER

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

1. The FIRST SPECIFICATION contained in the Statement of Charges (Petitioner's Exhibit1) is **SUSTAINED**; and
2. Respondent is prohibited from further medical licensure in the State of New York;
3. 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

March 23, 2010

Redacted Signature

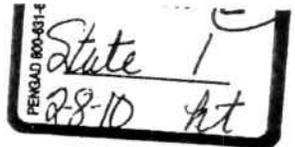
JOHN B. WALDMAN M.D., (Chair)
TREVOR LITCHMORE, M.D.
DAVID IRVINE, DHSC RPA-C

Rogers Nwabue, M.D.
111 Porter Avenue, Apt. 248
Buffalo, NY 14201

Kevin C. Roe, Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Empire State Plaza
Corning Tower- 25th Floor
Albany, NY 12237

APPENDIX 1

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



IN THE MATTER : NOTICE
OF : OF
ROGERS NWABUE, M.D. : HEARING

TO: ROGERS NWABUE, M.D.

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 17th day of February 2010, at 10:00 in the forenoon of that day at 5th Floor, Hedley Building, 433 River Street, Troy, New York 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 Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, (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 Section 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 Section 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.

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 THE OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW SECTION 230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
December 31, 2009

Redacted Signature

~~PETER D. VAN BUREN~~
Deputy Counsel

Inquiries should be directed to:

KEVIN C. ROE
Associate Counsel
2512 Corning Tower
Albany, New York 12237-0032
(518) 473-4282

**IN THE MATTER
OF
ROGERS NWABUE, M.D.**

**STATEMENT
OF
CHARGES**

ROGERS NWABUE, M.D., the Respondent, practiced medicine in New York State from September 2008 to March 2009 as a Resident (PGY 3) at the University at Buffalo, Department of Gynecology-Obstetrics.

FACTUAL ALLEGATIONS

- A. By Order dated September 16, 2009, Respondent was directed by the New York State Board for Professional Medical Conduct to submit to and cooperate with a psychiatric examination by John Whipple, M.D., Accumen Assessments, Lawrence, Kansas. The Order further directed that Respondent contact the examining physician and that the examination commence within 14 days. To date, Respondent has not contacted the examining physician and no psychiatric examination has been conducted.

SPECIFICATION

Failure to Comply with a Board Order

Respondent is charged with failure to comply with a Board order in violation of New York Education Law §6530(15) in that, Petitioner charges the facts in Paragraph A above.

DATE: December 21, 2009
Albany, New York

Redacted Signature

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct