

NEW YORK
state department of
HEALTH

Public

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

Sue Kelly
Executive Deputy Commissioner

April 26, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michelle Caesar, M.D.
REDACTED

Anna R. Lewis, Esq.
NYS Department of Health
90 Church Street - 4th Floor
New York, New York 10007

RE: In the Matter of Michelle Caesar, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-78) 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

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

Michelle Caesar, M.D. (Respondent)

Determination and Order No. 12-78

COPY

Donald H. Teplitz, M.D. (Chair), Natalie Langston-Davis, M.D. and Alan Kopman, F.A.C.H.E., 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 Anna R. Lewis, Esq. The Respondent appeared pro se. 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 3-0 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.

Procedural History

Date of Notice of Hearing and
Statement of Charges:

December 28, 2011

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

January 10, 2012

Date of Answer to Charges:	None submitted
Date of Hearing:	February 17, 2012
Location of Hearing:	New York State Department of Health 90 Church St., 4 th Floor New York, NY 10007
Transcript received:	March 14, 2012

The Respondent contacted the Administrative Officer prior to the hearing to request an adjournment, on grounds that the charge against her was unfounded. The Administrative Officer scheduled a telephone conference call concerning the adjournment request among the parties, the Committee and the Administrative Officer. Under PHL § 230(10)(f) only the Committee may grant an adjournment of the first day a hearing. Following the conference call, the Committee denied the adjournment. The written request for an adjournment and the Administrative Officer's letter concerning the conference call appear as Exhibit A in the hearing record.

The Administrative Officer also provided notice to the parties to appear at a pre-hearing conference in this matter at 9:30 a.m. on the day of the hearing, February 17, 2012. The Respondent failed to appear for the Pre-Hearing Conference and the Administrative Officer proceeded with the Conference 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.) 1, 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 nine documents into evidence from the Petitioner. The ALJ also accepted into evidence the letter from the Respondent requesting the adjournment. The Respondent appeared at hearing and offered four additional documents that that the Administrative Officer received into the record. A full list of the exhibits in evidence appears as Appendix I to this Determination.

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). Under PHL § 230(7), a BPMC committee holds the authority to direct a licensee to submit to a medical or psychiatric examination if the committee has reason to believe that the licensee may be impaired by mental or other disabilities. 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 (# 212720) from the New York State Education Department on December 8, 1998 [Ex. 3].

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

3) The Respondent was diagnosed with bipolar disorder in 1990 [Ex. A, Ex. C].

4) The Respondent moved to Mississippi to practice medicine in 2000, pursuant to her obligation to the National Health Service Corps [T 18].

5) As part of her medical licensure application in Mississippi, the Respondent disclosed her mental health diagnosis and then complied with a requirement to enter into the Mississippi Recovering Physicians' Program (MRPP) around October 2002 [T 18, 22; Ex. 5 p. 94].

6) The Respondent complied with the monitoring under MRPP [Ex. 5 pp. 94-98].

7) The Respondent returned to New York State in 2002 and entered into a monitoring agreement with the Committee for Physicians' Health (CPH) of the Medical Society of the State of New York [Ex. 5].

8) The Respondent signed conditions for participation (Conditions) with CPH on May 23, 2002 [Ex. 5 pp. 104-106].

9) The Conditions provide that CPH would monitor the Respondent's health for a minimum of five years, beginning in May 2002, with discharge contingent upon successful participation with CPH [Ex. 5 p. 104].

10) The Conditions at paragraph 12 provided that the Respondent authorized CPH to disclose/release to BPMC all information that CPH had obtained concerning the Respondent in the event that the Respondent presented an imminent danger to the public, refused to cooperate with CPH, refused to submit to treatment or if treatment failed to alleviate the Respondent's impairment substantially [Ex. 5 pp. 015-106].

11) The Respondent was compliant with treatment and conditions into 2006, but left medical practice in 2003 following her father's death and took further leaves of absence from the National Health Service due to hospitalizations in 2004 [Ex. 5 pp. 8-10].

12) After the Respondent became well enough to return to practice, she became frustrated by a delay in finding a placement to complete her service obligation with the National Health Service [Ex. 5 pp. 10-11].

13) The Respondent's frustration with finding a placement resulted in the Respondent becoming non-compliant with medication in 2006 and resulted in hospitalizations [Ex. 5 pp. 12-13].

14) The Respondent failed to provide quarterly monitoring reports to CPH for all four quarters in 2008 and the first quarter of 2009 [Ex. 15 pp. 73, 74, 76, 77].

15) Due to the Respondent's continued refusal to meet the Conditions, CPH turned the Respondent's file over to the Department of Health in August 2009 [Ex. 5 p. 72].

16) The Department of Health Office for Professional Medical Conduct (OPMC) advised the Respondent in April 2010 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 May 26, 2010 to determine whether to order the Respondent to submit to a medical or psychiatric evaluation [Ex. 4].

17) 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. 4].

18) The Evaluation Committee issued an Order on May 26, 2010 finding reason to believe that the Respondent may be impaired by alcohol, drugs, physical disability or mental disability and directing the Respondent to submit to and cooperate with a psychiatric examination by Samuel Glazer, M.D. [Ex. 7].

19) The Evaluation Order directed the Respondent to schedule and commence the examination with Dr. Glazer by June 28, 2010 and the Evaluation Order warned the Respondent that the failure to comply with the Evaluation Order completely would constitute professional misconduct [Ex. 7].

20) The Respondent never made an appointment and the Respondent never presented herself for an evaluation [Ex. 9].

Conclusions

The Hearing Committee makes the unanimous conclusion, pursuant to the Findings we listed above, to sustain the Factual Allegation from the December 28, 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 challenged the Administrative Officer's pre-hearing conference ruling that the Respondent failed to file an answer. The Respondent argued that she answered the charges in prior written submissions to OPMC, such as those included in Exhibit A. The Respondent also argued that CPH had no authority to transfer the Respondent's file to OPMC because there was a time-limited contractual agreement with CPH which had terminated prior to the transfer. Further, the Respondent contended that she was unable to attend the examination with Dr. Glazer due to a medical appointment and that either Dr. Glazer or OPMC Staff bore the burden thereafter to contact the Respondent to reschedule the examination. In addition, the Respondent accused CPH of lying about the Respondent's non-compliance. Finally, the Respondent indicated that she is in treatment for her condition and that she has no plans to return to medical practice, so BPMC should stop pursuing this matter against the Respondent.

The Committee finds the Respondent's arguments unconvincing. The Respondent concedes that she suffers from mental illness and she concedes that she failed to appear for the

examination to determine whether her condition impairs her ability to practice. The Respondent's failure constituted misconduct and now places the Respondent's License at jeopardy. The Evaluation Order made clear that the Respondent (rather than Dr. Glazer or OPMC Staff) bore the responsibility to schedule and commence the examination by June 28, 2010 [Ex. 7]. The CPH Conditions also made clear that the oversight by CPH would run from May 2002, for a minimum of five years, contingent upon successful participation [Ex. 5]. The Respondent argued that the Conditions applied for a shorter time and that there was an overlap in the agreement with MRPP, but the Respondent failed to produce any written information from MRPP or CPH concerning overlap or that contradicted the written terms of the Conditions from May 2002.

The Respondent accused CPH of lying about the Respondent's non-compliance. The Committee compared the information from CPH with the Respondent's representations. The Committee found that the Respondent lacked credibility in her representations and the Committee found the information from CPH reliable. We note that the Respondent refused to testify under oath at the hearing [T 22], that she was evasive and argumentative in answering questions and that she contradicted other information in the record. As we noted already, the Respondent made claims about the CPH Conditions that conflicted with the written terms of the Conditions that the Respondent signed. We also find the Respondent's conduct in response to this OPMC action similar to the conduct that CPH found non-compliant. The Respondent failed to appear for the Evaluation Committee Hearing, the examination, an interview with OPMC [Ex. A] or the pre-hearing conference. The Respondent also sought to avoid the present hearing [Ex. A] and she challenged the authority of BPMC to continue to inquire about the Respondent's

illness. This conduct together presents a pattern in which the Respondent is attempting to evade the monitoring of her condition and her ability to practice.

The CPH Conditions at Paragraph 12 provided that CPH could transfer the Respondent's file to OPMC at the time the Respondent became non-compliant or the Respondent's treatment failed to alleviate her condition [Ex. 5]. Under PHL § 230(10)(a), BPMC holds the responsibility to investigate any complaint against a physician, without regard to the source. The information in this case revealed a clear need to determine whether the Respondent's condition impairs her ability to practice. The Respondent's efforts to avoid the examination have now risen to the level of misconduct and the Committee now must determine what sanction for that misconduct is necessary to protect the public.

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 3-0 to suspend the Respondent under § 230-a(2)(e) until such time as the Respondent complies with the Evaluation Order. The Respondent is unregistered to practice currently by her own choice, but without some restriction on her License such as the suspension, the Respondent can return to practice merely by registering once again and paying the registration fee. The Committee concludes that the suspension will protect the public by assuring that the Respondent will be unable to practice without complying with the Evaluation Order.

We reject the Petitioner's request that we revoke the Respondent's License. Although we found troubling both the Respondent's non-compliance with the CPH Conditions and the Respondent's presentation at the hearing, we also note that the Respondent was compliant previously with monitoring by both MRPP and for a time with CPH. In addition, the Respondent has indicated that she would now be willing to submit to an Evaluation [T 65]. Further, we note that the Respondent has represented that she has continued in treatment for her condition, although she failed to provide any information about her condition in writing from her current treating physician. The Respondent's compliance with treatment alone does not demonstrate that the Respondent is capable of returning to practice.

The Respondent indicated that she may not wish to return to practice, but she refuses to surrender her License. The Respondent's License will now remain suspended until she undergoes an evaluation examination, with a physician whom OPMC designates and under conditions that OPMC designates. The Respondent alone bears the responsibility to comply with those conditions. The Committee directs that OPMC provide the examining physician with a copy of the transcript from this hearing. We also recommend that, if the Respondent does someday return to practice, that whatever Committee sets conditions for that return should place the Respondent on monitored probation for a substantial period of time to assure the Respondent has returned to practice safely.

ORDER

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:

, New York
2012

REDACTED

Donald H. Teplitz, D.O. (Chair),
Natalie Langston, M.D.,
Alan Kopman, F.A.C.H.E.

Appendix I

List of Exhibits

- Ex. A Respondent's Letter,
 - Ex. B Mississippi Recovery Physician's Program,
 - Ex. C Letter 4/30/10,
 - Ex. D Handwritten Letter 11/26/10,
 - Ex. E Letter 4/21/10,
 - Ex. F U.S. Department of Justice Letter 4/29/10.
-
- Ex. 1 Notice of Hearing and Statement of Charges,
 - Ex. 2 Affidavit of Service,
 - Ex. 3 New York State Department of Education Licensure File,
 - Ex. 4 Notice of Evaluation Hearing,
 - Ex. 5 Committee on Physician Health File,
 - Ex. 6 Affirmation of Courtney Berry, Esq.,
 - Ex. 7 Evaluation Order,
 - Ex. 8 Letter 6/7/10,
 - Ex. 9 Affidavit of Samuel Glazer, M.D.

Appendix II

Statement of Charges (attached)

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

IN THE MATTER
OF
MICHELLE CAESAR, M.D.

NOTICE
OF
HEARING

TO: Michelle Caesar, M.D.

REDACTED

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §23 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 February 17, 2012 at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, N 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 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, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES HORAN, ACTING 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
December 2nd, 2011

REDACTED

Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Anna R. Lewis
Associate Counsel
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, NY 10007
(212) 417-4369

**IN THE MATTER
OF
MICHELLE CAESAR, M.D.**

**STATEMENT
OF
CHARGES**

Michelle Caesar, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 8, 1998, by the issuance of license number 212720 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about May 26, 2010, 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 Samuel Glazer, M.D., to begin on or before June 28, 2010.
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 28, 2011
New York, New York

REDACTED

Roy Nemerson

**Deputy Counsel
Bureau of Professional Medical Conduct**