

January 12, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Luqman Dabiri, M.D.
REDACTED

Luqman Dabiri, M.D.
1220 East New York Avenue
Brooklyn, New York 11212

Bruce F. Gilpatrick, Esq.
Heidell, Pittoni, Murphy & Bach, LLP
81 Main Street
White Plains, New York 10601

Jude Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237

RE: In the Matter of Luqman Dabiri, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-005) 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:

Enclosure

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

COPY

IN THE MATTER
OF
LUQMAN DABIRI, M.D.

DETERMINATION

AND

ORDER

BPMC #15-005

A hearing was held on November 19, 2014, at the offices of the New York State Department of Health, 150 Broadway, Albany, New York. The State Board of Professional Medical Conduct served Respondent, **LUQMAN DABIRI, M.D.**, with the Notice of Referral Proceeding and Statement of Charges, both dated August 7, 2014. Pursuant to Section 230(10)(e) of the Public Health Law, Chairperson, **JACQUELINE H. GROGAN, Ed.D.**, **JOSEPH S. BALER, M.D.**, and **JAMES M. LEONARDO, M.D., Ph.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **KIMBERLY A. O'BRIEN ESQ.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **JAMES DERING ESQ.**, General Counsel, by **JUDE MULVEY ESQ.**, of Counsel. The Respondent **LUQMAN DABIRI, M.D.** appeared in person and was represented by **BRUCE GILPATRICK, ESQ.** 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 of the misconduct and if the specification is sustained the 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 Section 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:	Luqman Dabiri, M.D.

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 or transcript page numbers, denoted by the prefix "Ex." or "Tr." 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. Luqman Dabiri, M.D., the Respondent, was authorized to practice medicine in New York State on January 10, 2013, by the issuance of license number 268264 by the New York State Education Department (Ex.3).

2. On or about February 26, 2009, the State of Florida Board of Medicine ("Florida Board") issued a Notice of Intent to Approve Licensure with Conditions & Order ("2009 Florida Order") allowing Respondent to practice medicine in Florida under certain conditions including that for a period of one year he would practice medicine under the direct supervision of a physician approved by the Florida Board ("supervising physician") (Ex.6; Tr.15).

3. In June of 2009 and again in June of 2011 Respondent requested that the Florida Board reconsider its requirement that he work with a supervising physician in Florida and each time the Florida Board denied his request (Ex. 6 at p.29; Tr. 27-30).

4. On or about April 19, 2013, the State of Florida Department of Health issued disciplinary charges against Respondent ("complaint") alleging that among other things Respondent violated the 2009 Florida Order by practicing medicine in Florida from November 1, 2011 to February 10, 2012 without a supervising physician (Ex.5; Tr. 5-6, 31).

5. Respondent entered into a consent agreement which was approved by the Florida Board by final order on or about August 12, 2013 ("Florida consent agreement") (Ex. 5; Tr. 31).

6. Pursuant to the Florida consent agreement Respondent's Florida medical license was suspended pending an evaluation/ report by the Florida Cares Program, Center for Personalized Education for Physicians or The Federation for State Medical Boards and National Board of Medical Examiners Post Licensure Assessment System Institute for Physician Evaluation, and the Florida Board's consideration of the evaluation/report and approval for reinstatement; he received a reprimand; and he was fined \$3,000.00 and ordered to pay \$2,225.84 in costs (Ex. 5;Tr. 6-7).

VOTE OF THE HEARING COMMITTEE

Respondent violated New York Education Law Section 6530(9)(d) "by having his license to practice medicine revoked, suspended or having other disciplinary action taken, after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state."

VOTE: Sustained (3-0)

DISCUSSION & CONCLUSIONS

The Hearing Committee was required to hear and consider only evidence and testimony relating to the nature of the Florida action and the severity of the penalty to be imposed upon the licensee. The Department presented documentary evidence showing that in 2013 disciplinary charges were brought against Respondent in Florida alleging that Respondent did not comply with the terms of the 2009 Florida Order. In lieu of going forward to a hearing, on or about August of 2013 Respondent entered into a Florida Consent Agreement wherein he was reprimanded for unprofessional conduct, required to pay a fine and costs, and required to submit to an evaluation and appear before the Florida Board for reinstatement of his Florida license. In January of 2013 Respondent was granted a license to practice medicine in New York State and has been practicing medicine here. The Department argued that Respondent should not be allowed to practice medicine in New York until his Florida medical license is reinstated.

Respondent testified that New York was aware of the underlying issues that lead Florida to issue him a "conditional" medical license in 2009 (Tr. 21-22, 34-35). He said that he is living and practicing medicine in New York and intends to remain here (Tr. 22). At the time of the hearing

Respondent said that he was awaiting the results of the Florida evaluation/report and he believed that his Florida license would be reinstated without any conditions (Tr. 20-21).

The Committee concluded that regardless of whether New York granted Respondent a license after being informed about the underlying issues in the 2009 Florida Order, it does not negate the fact that Respondent violated the conditions of the 2009 Florida Order including that he was practicing medicine in Florida without a supervising physician and that this would constitute professional misconduct had it occurred in New York. Based on the foregoing, the Committee determined that Respondent's license to practice medicine in New York shall be suspended until his Florida medical license is reinstated.

ORDER

IT IS HEREBY ORDERED THAT:

1. The factual allegations and the specification of misconduct in the Statement of Charges (Appendix 1) are **SUSTAINED**; and
2. Respondent's license to practice medicine in New York State shall be suspended until his license to practice medicine in the State of Florida is reinstated; and
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: Jan. 8, New York,
2015

REDACTED

JACQUELINE H. GROGAN, Ed.D, Chair
JOSEPH S. BALER, M.D.
JAMES M. LEONARDO, M.D., Ph.D.

To: Luqman Dabiri, M.D.

REDACTED

Luqman Dabiri, M.D.
1220 East New York Avenue
Brooklyn, New York 11212

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Heidell, Pittoni, Murphy & Bach, LLP
81 Main Street
White Plains, New York 10601

Jude Mulvey, Esq.
Bureau of Professional Medical Conduct
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

Appendix 1

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

IN THE MATTER

OF

LUQMAN DABIRI, M.D.
CO-13-08-4570A

NOTICE OF

REFERRAL

PROCEEDING

TO: Luqman Dabiri, M.D.
1220 East New York Avenue
Brooklyn, NY 11212

Luqman Dabiri, M.D.
REDACTED

Luqman Dabiri, M.D.
PO Box 30104
Staten Island, NY 10303

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 15th day of October, 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

EXHIBIT

tabular

1

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.

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 _____

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

Aug. 7, , 2014

REDACTED

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Jude B. Mulvey
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
LUQMAN DABIRI, M.D.
CO-13-08-4570A

STATEMENT
OF
CHARGES

LUQMAN DABIRI, M.D., Respondent, was authorized to practice medicine in New York State on January 10, 2013, by the issuance of license number 268264 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 26, 2009, the State of Florida Board of Medicine (hereinafter "Florida Board") issued Respondent a medical license under conditions (hereinafter "Florida Notice and Order"), including the conditions, among others, that Respondent practice medicine only under direct supervision of an approved physician for a period of one year.

B. Respondent was unable to retain a board qualified OB/GYN willing to accept the responsibility of the direct supervision requirement and on or about June 4, 2009, sought reconsideration from the Florida Board to return to practice under indirect supervision of a Board-certified Florida licensed physician. Respondent's request for reconsideration was denied on or about June 19, 2009. Respondent second request for reconsideration was denied on or about August 22, 2011.

C. On or about April 19, 2013, the State of Florida Department of Health (hereinafter "Florida Department of Health") instituted disciplinary charges against Respondent (hereinafter "Florida Administration Complaint"), alleging, among others, that Respondent violated the Florida Notice and Order by practicing medicine without an approved supervisor from November 1, 2011 to February 10, 2012 and by failing to ensure that approved supervisors submitted quarterly reports to the Florida Board's Probation Committee.

D. On or about June 4, 2013, Respondent entered into a Consent Agreement (hereinafter "Florida Consent Agreement") with the Florida Department of Health. Under the terms of the Florida Consent Agreement, Respondent admitted that if proven, the allegations in the Florida Administrative Complaint would constitute grounds for professional discipline by the Florida Board. As such, Respondent's Florida Medical license was suspended until he undergoes an evaluation by the Florida Cares Program, the Center for Personalized Education for Physicians ("CPEP") or the Federation for State Medical Boards and National Board of Medical Examiner's Post Licensure Assessment System Institute for Physician Evaluation, and appears with his evaluators before the Florida Board's Probation Committee for consideration for reinstatement. Respondent also received a reprimand, was fined \$3,000.00 and ordered to pay \$2,225.84 in costs. The Florida Board accepted and approved the Florida Consent Agreement by Final Order ("Florida Final Order") on or about August 12, 2013.

E. The conduct resulting in the Florida Board's 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 (15) (failure to comply with a Board Order).

SPECIFICATION

Respondent violated Education Law §6530 (9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, after a disciplinary action was instituted by a duly authorized disciplinary agency of that 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 Petitioner charges:

1. The facts in Paragraph A, B, C, D and E.

DATED: Aug. 7, 2014
Albany, New York

REDACTED

MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct