



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

February 1, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David Brzostowicki, M.D.
1321 N.W. 14th Street #102
Miami, Florida 33125

David Brzostowicki, M.D.
1325 Portifino Circle, Apt. #801
Weston, Florida 33326

David Brzostowicki, M.D.
450 SW 8th Street
Miami, Florida 33130

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180

RE: In the Matter of David Brzostowicki, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-022) 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), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "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.

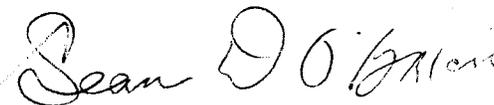
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

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

COPY

DETERMINATION

AND

ORDER

BPMC NO. 06-22

IN THE MATTER
OF
DAVID BRZOSTOWICKI, M.D.

A Notice of Hearing and Statement of Charges, both dated December 8, 2005, were served upon the Respondent, **DAVID BRZOSTOWICKI, M.D.** **SCOTT GROUDINE, M.D.**, Chairperson, **ALEXANDER M. YVARS, M.D.** and **WILLIAM McCAFFERTY, ESQ.**, duly designated members of the State Board for Professional Medical Conduct ("the New York Board"), served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on January 19, 2006, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.** The Respondent, although statutorily served with the notice and charges, failed to appear at the hearing, to file an answer or to request an adjournment.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

PROCEDURAL HISTORY

Answer Filed	None
Pre-Hearing Conference	None
Witness for Petitioner	Randy Erwin, Senior Medical Conduct Investigator, Office of Professional Medical Conduct, Physician Monitoring Program
Witnesses for Respondent	None
Hearing Date	January 19, 2006
Deliberation Date	January 19, 2006

STATEMENT OF CASE

The State Board for Professional Misconduct 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 (hereinafter "P.H.L.")).

This case was brought by the New York State Department of Health, Office of Professional Medical Conduct (hereinafter "Petitioner" or "Department") pursuant to §230 of the P.H.L. **DAVID BRZOSTOWICKI, M.D.**, ("Respondent") is charged with three specifications of professional misconduct, as defined in §6350 of the Education Law of the State of New York ("Education Law"). Specifically, Respondent is charged with one specification each of misconduct under Education Law §6530(9)(b), 9(d) and (29).

These charges concern Respondent's having had discipline imposed against him by the State of Florida, Board of Medicine ("the Florida Board") in 2002, upon the subsequent revocation of his medical license by the Florida Board after he failed to comply with provisions of the previous disciplinary order, and upon his failure to comply with the terms of a consent order with the New York State Office of Professional Medical Conduct

("OPMC"). Copies of the Commissioner's Order and Statement of Charges are attached to this Determination and order as Appendix I.

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 unless otherwise specified.

1. **DAVID BRZOSTOWICKI, M.D.**, the Respondent, was authorized to practice medicine in New York State on August 7, 1986, by the issuance of license number 167413 by the New York State Education Department. (Ex. 4)
2. On or about October 30, 2002, the Florida Board entered a Final Order ("the First Florida Order") in which discipline was imposed upon Respondent, including a requirement that he document the completion of 10 hours of Continuing Medical Education ("CME") in the area of operative hysteroscopy within one year. In October 2003, the Florida Board granted an extension until April 29, 2004 for the submission of proof of completion of the CME requirement. (Ex. 5, Administrative Complaint)
3. On October 22, 2003, the Vice Chair of the New York State Board adopted a Consent Order, disposing of charges brought against Respondent in this state and accepting a consent agreement between Respondent and OPMC, wherein Respondent agreed to accept a Censure and Reprimand and pay a \$5,000 fine. These penalties were

imposed for Respondent's having engaged in the conduct that resulted in the administration of professional discipline pursuant to the First Florida Order. Among other things, Respondent also agreed to pay the fine within 30 days, to advise the Director of OPMC of any address changes within 30 days, to keep an active, paid registration of his New York medical license, and to respond in a timely manner to each and every request by OPMC to provide written verification of his compliance. In addition, he stipulated that any failure to comply with the order would constitute misconduct under New York State Education Law §6530(29), and that should he be charged with misconduct in the future, the consent agreement and order would be admitted into evidence in such proceeding. (Ex. 6)

4. At no time has Respondent paid the fine or registered with the Education Dept as he agreed to do in the in the Consent Order. (Tr. 11; Ex. 4). Respondent has also failed to keep OPMC abreast of address changes as he agreed to in the Consent Order (see the service of notice discussion, below, and Appendix 2)
5. On June 14, 2005, the Florida Board entered another Final Order revoking Respondent's license based upon his violation of its first order by failing to complete the CME requirement within the time allotted. (Ex. 5)

SERVICE OF THE NOTICE OF HEARING AND STATEMENT OF CHARGES

The efforts of the Department to serve Respondent with the Notice of Hearing and Statement of charges are detailed in Appendix 2, following a recitation of the Department's extensive efforts to serve earlier documents. The Department's difficulties were caused in large part by Respondent's violation of the requirement in the New York Consent Decree that he keep OPMC abreast of any address changes, and by his violation of section

6502(5) of the Education Law, which requires licensees to report all address changes to it within 30 days of each change.

The Administrative Law Judge concluded, after considering the evidence, that the Respondent was properly served as required by Public Health Law §230(10)(d), which requires personal service or, if such service cannot be made after due diligence, service by registered or certified mail sent "...to the licensee's last known address...". (emphasis supplied)

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Florida Board's revocation of Respondent's license constitutes misconduct under New York Education Law §6530(b) and (d), in that the conduct, if committed in New York State would have constituted misconduct under the laws of New York State, pursuant to New York Education Law §6530(29) (violating any term of probation or condition or limitation imposed on the licensee).

However, the Department also charged Respondent with misconduct under the same subsections based upon the issuance of first Florida Order. The Department charged that the actions that led to this order would have constituted misconduct, had it been committed here, under Education Law §6530 subsections 3 (negligence on more than one occasion), 4 (gross negligence), 5 (incompetence on more than one occasion), 6 (gross incompetence) and 32 (failure to maintain adequate records).

It is concluded that the first Florida Order cannot form a basis for current findings of misconduct against Respondent. This is because the very same charges were made in the first New York proceeding, which was disposed of by Consent Order (Ex. 6). In the

consent order, Respondent agreed to discipline "...in full satisfaction of the charges against me." (Censure and Reprimand and imposition of a fine; he did not agree to have the charges reinstated should he not comply with the conditions of the Order). Thus, the matters raised in the first New York charges have already been disposed of and discipline has been imposed. The existence of the first Florida Order cannot be raised again in this proceeding in an attempt to create new findings of misconduct and to impose additional discipline therefor.

Furthermore, even if this were not the case, the Department at the instant hearing presented no documentation from the Florida Board from which meaningful conclusions could be drawn regarding the specific conduct Respondent engaged in that prompted the first Florida Charges. The second Florida Order only mentions Respondent's failure to comply with the disciplinary terms of the first order without setting forth the conduct that led to that order. The only documentation submitted into evidence in the instant proceeding that even mentions the nature of the findings made in the first Florida Order is the content of the Department's allegations in the Statement of Charges for the first New York proceeding (Ex. 6). These statements were mere allegations, and do not constitute evidence as to the specific nature of the initial Florida findings. Furthermore, even if these allegations were taken as evidence, they would, by their very language, be evidence only that Respondent committed one act of negligence (which is not misconduct in New York) and failed to keep adequate records relating to only one patient¹. Even if the Hearing

¹ The charge reads that the Florida Board found that Respondent failed "...to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as acceptable under similar conditions and circumstances and [failed] to keep medical records that justify the course of treatment of the patient". (emphasis supplied) There is nothing in this language that clearly demonstrates that

Committee was inclined to revisit the first Florida findings, it could not do so without any actual evidence.

The Department also charged Respondent, in the instant case, with misconduct under Education Law §6530(29), which prohibits violation of any term of probation or condition or limitation imposed upon the licensee, based upon his violation of the New York Consent Order stemming from the first Florida action. In fact, Respondent stipulated in the Consent Order that any failure to comply with the order would constitute misconduct under New York State Education Law §6530(29), and that should he be charged with misconduct in the future, the consent agreement and order would be admitted into evidence in that proceeding. (Ex. 6) Therefore, this charge is upheld.

VOTE OF THE HEARING COMMITTEE

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.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Florida found negligence on more than one occasion, gross negligence, incompetence on more than one occasion, or gross incompetence.

Respondent violated New York Education Law §6530(9)(d) by having had 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 disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: SUSTAINED (3-0)

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(29) by violating any term of probation or limitation imposed on the licensee.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case establishes that Respondent has ignored requirements placed upon him by both the Florida and New York boards. The Florida CME requirement was obviously imposed in an attempt to ensure that Respondent had the knowledge to practice medicine safely, and the New York requirements were intended to penalize Respondent for his commission of the acts that led to the first Florida order. Respondent has, despite specific knowledge of the requirements he agreed to in the New York Consent Order, taken no steps to comply, and he has obviously failed to keep OPMC apprised of his addresses as required by law.

The Hearing Committee can only conclude that Respondent has no respect for the authority of licensing authorities to impose discipline on him, and his actions suggest that he has abandoned any interest in maintaining his New York license (or his Florida license, for that matter). The only penalty the Hearing Committee feels would be appropriate under

the circumstances, given the failure of the lesser penalties previously imposed in this state to produce results, is revocation of his license.

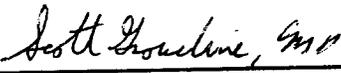
ORDER

IT IS HEREBY ORDERED THAT:

1. The New York medical license of **DAVID BRZOSTOWICKI, M.D.** is **REVOKED**.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Latham, New York
Jan. 30, 2006



SCOTT GROUDINE, M.D.
Chairperson

ALEXANDER M. YVARS, M.D.
WILLIAM McCAFFERTY, ESQ.

APPENDIX 1



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

IN THE MATTER **NOTICE**
OF **OF**
DAVID BRZOSTOWICKI, M.D. **HEARING**
PM-04-08-4205-A

TO: DAVID BRZOSTOWICKI, M.D.
1321 N.W. 14th Street #102
Miami, FL 33125

DAVID BRZOSTOWICKI, M.D.
450 SW 8th Street
Miami, FL 33130

DAVID BRZOSTOWICKI, M.D.
Apt. #801
1325 Portifino Circle
Weston, FL 33326

PLEASE TAKE NOTICE THAT:

A hearing will be held pursuant to the provisions of New York Public Health Law § 230(10)(p) and New York State Administrative Procedure 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 (Committee) on the 19th day of January 2006, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, 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, that is attached. A stenographic record of the hearing will be made and the witnesses at the proceeding 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 (5) 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 New York Public Health Law §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 (10) days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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 proceeding to, and the testimony of, any deaf person.

At the conclusion of the hearing, the committee shall make any 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 8, 2005


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

Inquiries should be addressed to:

**Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828**

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
DAVID BRZOSTOWICKI, M.D.
PM-04-08-4205-A

STATEMENT
OF
CHARGES

DAVID BRZOSTOWICKI, M.D., the Respondent, was authorized to practice medicine in New York state on August 7, 1986, by the issuance of license number 167413 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 27, 2002, the State of Florida, Department of Health, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order 1"), reprimanded Respondent, fined him \$10,000.00, assessed \$12,157.42 in investigative costs, and required him to complete ten (10) hours of CME in the area of operative hysteroscopy, based on failing to practice medicine with that level of care, skill, and treatment which is recognized by a reasonably prudent similar physician as acceptable under similar conditions and circumstances and failing to keep medical records that justify the course of treatment of the patient.

B. The conduct resulting in Florida Order 1 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(3) (negligence on more than one occasion);
2. New York Education Law §6530(4) (gross negligence);
3. New York Education Law §6530(5) (incompetence on more than one occasion);
4. New York Education Law §6530(6) (gross incompetence); and/or
5. New York Education Law §6530(32) (failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

C. On or about October 22, 2003, the State of New York, Department of Health, State Board For Professional Medical Conduct (hereinafter "New York Board"), by a Consent Order (hereinafter "New York Order), issued Respondent a Censure and Reprimand, fined him \$5,000.00, and inter alia, required him to pay the fine within thirty (30) days of the effective date of the New York Order, to maintain active registration of his New York license to practice medicine with the New York State Education Department and pay all registration fees, that he respond in a timely manner to each and every request by OPMC to provide written verification of his compliance with the terms of the New York Order, and that he advise OPMC of any change of his address within thirty (30) days thereof, based on Florida Order 1, set forth in Paragraph A and B, above.

D. On or about June 14, 2005, the Florida Board, by a Final Order (hereinafter "Florida Order 2"), Revoked Respondent's license to practice medicine and required him to pay \$1,037.61 costs, based on violating Florida Order 1, by failing to complete ten (10) hours of CME in operative hysteroscopy.

E. The conduct resulting in Florida Order 2 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) (violating any term of probation or condition or limitation imposed on the licensee).

F. From on or about October 22, 2003, to present Respondent has violated the New York Order, set forth in Paragraph C, above, by failing to pay the \$5,000.00 fine, by failing to maintain active registration of his New York State License to practice medicine with the New York State Education and pay all registration fees, and failed to respond to written requests from the New York State Department of Health, Office of Professional Medical Conduct.

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice of 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, D, and/or E.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having his license revoked or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation and/or other disciplinary action 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, D, and/or E.

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(29) violating any term of probation or condition or limitation imposed on the licensee, in that Petitioner charges:

3. The facts in Paragraphs C and/or F.

DATED: *Dec. 8*, 2005
Albany, New York


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

APPENDIX 2

SERVICE

Service of the New York Consent Order to Respondent at 1321 N.W. 14th St #102, Miami, Florida ("the first Miami address") was initiated by the Department. This was the address he listed as his in the Consent Agreement. (Ex. 6) This address was his practice address at the Cedars Medical Center. (see Ex. 7)

On or about October 6, 2003, Respondent sent a letter from the first Miami address requesting that he be allowed to pay his New York fine in 10 partial payments. (Ex. 7) This demonstrates that Respondent received service of the Consent Order.

On November 7, 2003, OPMC notified Respondent by letter sent to the first Miami address that his request for time payments, which was inconsistent with the Consent Order he had agreed to, was denied. He was also reminded of the registration mandate he had agreed to, and was provided with information on how to comply. (Ex. 8(a)) This letter was signed for by "Blanca [illegible]", presumably a member of Respondent's office staff.

On August 27, 2004, Mr. Irwin wrote to Respondent at the first Miami address to inform him that he was under investigation for possible misconduct based upon his failure to pay the fine he had agreed to in the Consent Order, failure to register with the Education Department, and failure to respond to OPMC, and requesting him to schedule an interview or to respond to decline an interview. (Ex. 9(a)) This letter, sent by Certified Mail, Return Receipt Requested, was returned as unclaimed. (Ex. 9(b))

On October 25, 2004, Mr. Irwin sent another copy of the letter referred to immediately above to Respondent at another address it had since obtained for Respondent, 13740 NW 23rd St. (Pembroke Pines), Hollywood, Florida (Ex. 10(a)). This

letter was also sent by Certified Mail, Return Receipt Requested, but was returned to the Department with a notation "MLNA" (moved left no address) on it. (Ex. 10(b))

On May 2, 2005, the Department sent two more copies of this letter to Respondent at 13106 Majestic Way, Cooper City, Florida, the last address Respondent filed with the State Education Department (Ex.'s 11(a) and 4) and at 450 SW 8th Street, Miami ("the second Miami address; Ex. 12(a)), an address Mr. Irwin obtained through a LexisNexis search (Tr. 7).

On May 12, 2005, the Department received back the return receipt from the second Miami address (Ex. 12(b)), and the signature on the card is very similar to Respondent's signature on the consent order. (Ex. 6) It is presumed that Respondent actually received this communication.

The Department served the Notice of Hearing and Statement of Charges to the first and second Miami addresses and to Apt. #801, 1325 Portofino Circle, Weston, Florida. The latter address was obtained through a LexisNexis search. (Tr. 7) Personal service at the first Miami address failed because "...This suite is vacant and he is not located there." (Ex. 2(C)) Personal service failed at the second Miami address because "Per Mignora Sanchez (Manager), the Defendant [Respondent] no longer works there." (Ex. 2(b)) Personal service at the Weston address failed because, as stated by the process server, "After numerous [attempts at service]...I was unable to make contact with anyone there prior to the court date. Neighbors could not verify if the defendant resided there. There was no tenant directory or leasing office on the premises."

Thereafter, on December 13, 2005, Mr. Bogan mailed the papers to Respondent by Certified Mail, Return Receipt Requested to the same three addresses. The receipt from the Weston address was signed by "Jason [illegible]" (Ex. 3(a)) and the receipt from the

second Miami address was signed by someone whose signature is illegible. (Ex. 3(b))

There is no receipt from the first Miami address.

It is not clear from the foregoing that Respondent actually received any of the mailings of the papers, but that is not dispositive. Public Health Law §230(10)(d) requires service by registered or certified mail to be made "...to the licensee's last known address...". (emphasis supplied) , and that is what the Department did. Any failure of Respondent to receive the documents was occasioned by his own failure to apprise OPMC and the Education Department of his address changes, and/or by his own deliberate attempts to avoid service.

The Administrative Law Judge, based upon the foregoing, ruled that service in this case complied with the statutory standard.