

Public

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

BPMC No. 14-233

IN THE MATTER

OF

GINO NICHOLAS VITIELLO, M.D.
CO-14-02-0803A

**COMMISSIONER'S
SUMMARY
ORDER**

TO: Gino Nicholas Vitiello, M.D.
[REDACTED]

The undersigned, Howard A. Zucker, M.D., J.D., Acting Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that the duly authorized professional disciplinary agency of another jurisdiction, the Florida State Department of Health, has made a finding substantially equivalent to a finding that the practice of medicine by **GINO NICHOLAS VITIELLO, M.D.**, Respondent, New York license number 183332, in that jurisdiction, constitutes an imminent danger to the health of its people, as is more fully set forth in the Order of Emergency Restriction of License and associated Administrative Complaint (henceforth: "predicate action"), attached, hereto, as Appendix "A," and made a part, hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), that effective immediately, **GINO NICHOLAS VITIELLO, M.D.**, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine.

ANY PRACTICE OF MEDICINE IN THE STATE OF NEW YORK IN VIOLATION OF THIS ORDER SHALL CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY DEFINED BY NEW YORK EDUCATION LAW §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within thirty (30) days after the final conclusion of the disciplinary proceeding in Florida.

The hearing will be held pursuant to the provisions of New York Public Health Law §230, and New York State Administrative Procedure 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 a date and at a location to be set forth in a written Notice of Referral Proceeding to be provided to the Respondent after the final conclusion of the Florida proceeding. Said written Notice may be provided in person, by mail, or by other means. If Respondent wishes to be provided said written notice at an address other than that set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth in this Order, and the Director of the Office of Professional Medical Conduct, at the addresses set forth below.

RESPONDENT SHALL NOTIFY THE DIRECTOR OF THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT, NEW YORK STATE DEPARTMENT OF HEALTH, RIVERVIEW CENTER, SUITE 355, 150 BROADWAY, ALBANY, NY 12204, VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OF THE FINAL CONCLUSION OF THE PROCEEDING IMMEDIATELY UPON SUCH

CONCLUSION.

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 FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATE: Albany, New York

16 Sept, 2014


Howard A. Zucker, M.D., J.D.
Acting Commissioner of Health
New York State Department of Health

Inquires should be directed to:

David W. Quist
Associate Attorney
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, New York 12237
(518) 473-4282

Final Order No. DOH-14-0154-~~EP~~MOA
 FILED DATE - 2-5-2014
 Department of Health
 By REDACTED
 Deputy Agency Clerk

**STATE OF FLORIDA
 DEPARTMENT OF HEALTH**

IN RE: The Emergency Restriction of the License of
 Gino Nicholas Vitiello, M.D.
 License Number: ME 62492
 Case Number: 2013-18659

ORDER OF EMERGENCY RESTRICTION OF LICENSE

John H. Armstrong, MD, FACS, State Surgeon General and Secretary of Health, ORDERS the Emergency Restriction of the license of Gino N. Vitiello, M.D. ("Dr. Vitiello"), to practice as a physician in the State of Florida. Dr. Vitiello holds license number ME 62492. His address of record is 9299 SW 152 Street # 202, Palmetto Bay, Florida 33157. The following Findings of Fact and Conclusions of Law support the emergency restriction of Dr. Vitiello's license to practice as a physician in the State of Florida.

FINDINGS OF FACT

1. The Department of Health ("Department") is the state agency charged with regulating the practice of medicine, pursuant to Chapters 20, 456 and 458, Florida Statutes (2013).
2. At all times material to this Order, Dr. Vitiello was licensed to practice medicine in the State of Florida pursuant to Chapter 458, Florida

Statutes. Dr. Vitiello is Board-Certified in Internal Medicine and Cardiovascular Disease.

3. On or about June 3, 2013, Miami-Dade County Police Department arrested Dr. Vitiello for Driving under the Influence (DUI) in Miami-Dade County Case Number 13-2013-CT0006857XDX00.

4. Subsequently, South Miami Hospital (SMH) admitted Dr. Vitiello into its detoxification program and referred him to the Professionals Resource Network (PRN).

5. PRN is a Department-contracted consultant for matters dealing with impaired medical practitioners.

6. Dr. C.L., Medical Director at SMH, evaluated Dr. Vitiello [REDACTED] [REDACTED] Dr. C.L. informed Dr. Vitiello that he was unsafe safe to practice medicine and in need of residential treatment.

7. On or about June 4, 2013, PRN refrained Dr. Vitiello from practicing medicine pending the outcome of a residential treatment program.

8. On or about June 8, 2013, Dr. Vitiello entered into a residential rehabilitation treatment program [REDACTED] [REDACTED]

9. Dr. J.S., consulting psychiatrist at [REDACTED], evaluated Dr. Vitiello and diagnosed him [REDACTED] and in need of extended residential treatment for at least 30 days.

10. On or about September 16, 2013, Dr. Vitiello successfully completed 60 day residential rehabilitation treatment [REDACTED]. PRN sent Dr. Vitiello a monitoring contract and refrained him from practicing medicine until he underwent a "back to work" evaluation with Dr. J.S. Dr. Vitiello failed to return an executed PRN contract.

11. On or about October 31, 2013, Dr. Vitiello tested positive for EtG/EtS¹ during an alcohol drug screening.

12. On or about October 31, 2013, PRN discovered Dr. Vitiello continued to see patients and practice medicine, despite PRN's mandate that he refrain from practice.

13. On or about November 7, 2013, Dr. Vitiello submitted a Voluntary Withdrawal from Practice to PRN.

14. On or about November 11, 2013, Dr. Vitiello underwent a PRN-facilitated evaluation with Dr. T.T. and received the diagnoses [REDACTED].

¹ Ethyl glucuronide (EtG) and ethyl sulfate (EtS) is a laboratory based urine test which detects the presence of alcohol up to 80 hours after consumption.



15. Dr. T.T. formulated that Dr. Vitiello



he is not capable of practicing as a physician at this time.”

16. Dr. T.T. opined that Dr. Vitiello is not capable of practicing medicine in the state of Florida with reasonable skill and safety.

17. Dr. T.T. further recommended that Dr. Vitiello be referred for evaluation at a healthcare specific residential substance abuse treatment center capable of ordering medical and neurologic evaluations as needed to assure his health and well-being.

18. On or about November 20, 2013, an anonymous report filed with the Department indicated that Dr. Vitiello was practicing medicine. DOH investigator A.R. presented to Dr. Vitiello's practice and confirmed this allegation. Dr. Vitiello stated to A.R. that he was "confused" and unsure of when exactly he was supposed to stop practicing.

19. Despite being referred for medical and neurological evaluations at a residential abuse treatment center and submitting a Voluntary Withdrawal from Practice, Dr. Vitiello continues to abuse alcohol and practice medicine.

20. Licensed physicians are required to evaluate the conditions of their patients, identify critical changes in their patients' conditions, and render diagnoses in a competent manner. In order to safely and effectively perform these responsibilities, physicians must possess sound judgment and mental fitness. Physicians who continue to treat patients when an independent medical expert has deemed them to be unfit to practice medicine with reasonable skill and safety, pose a serious danger to the public health, welfare and safety.

21. Dr. Vitiello's diagnoses of: [REDACTED]

[REDACTED]

[REDACTED] gravely affect his ability to make the decisions necessary to safely and effectively practice as a physician. As determined by Dr. T.T., Dr. Vitiello is unable to practice medicine with reasonable skill and safety to patients due to mental conditions and substance abuse. These facts represent a significant likelihood that he will cause harm to patients in the

future. This probability constitutes an immediate serious danger to the health, safety and welfare of the public.

22. Dr. Vitiello's mental condition adversely affects his judgment and ability to practice as a physician in any manner. As such, there is no less restrictive means to protect the public from the danger presented by Dr. Vitiello other than restricting his license to prohibit him from practicing medicine until PRN notifies the Department that Dr. Vitiello is safe to resume practice. No other restriction will ensure that Dr. Vitiello does not treat patients while impaired.

CONCLUSIONS OF LAW

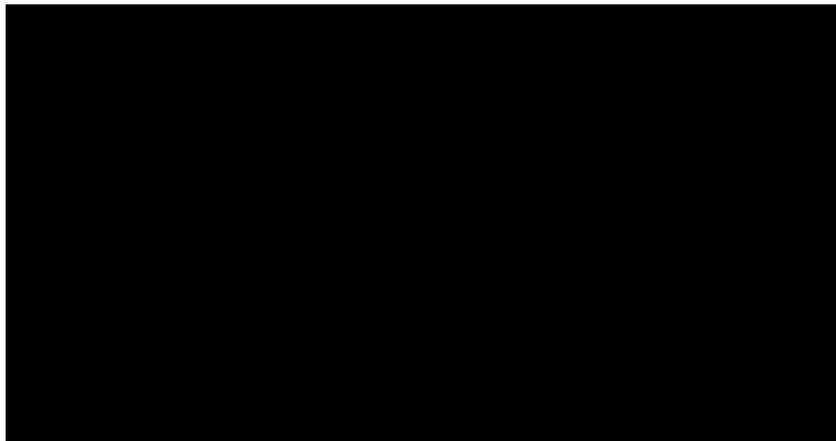
Based on the foregoing Findings of Fact, the State Surgeon General concludes as follows:

1. The State Surgeon General has jurisdiction over this matter pursuant to Sections 20.43 and 456.073(8), Florida Statutes (2013) and Chapter 458, Florida Statutes (2013).

2. Section 458.331(1)(s), Florida Statutes (2013), subjects a physician to discipline, including restriction, for "being unable to practice medicine with reasonable skill and safety to patients by reason of illness or

use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.”

3. Dr. Vitiello violated Section 458.331(1)(s), Florida Statutes (2013) by being unable to practice medicine with reasonable skill and safety to patients due to his diagnoses of:



5. Section 120.60(6), Florida Statutes (2013), authorizes the Department to restrict a physician’s license if the Department finds that the physician presents an immediate, serious danger to the public health, safety or welfare.

6. Dr. Vitiello’s continued practice as a physician constitutes an immediate serious danger to the health, safety, and welfare of the public and this summary procedure is fair, under the circumstances, to adequately protect the public.

In accordance with Section 120.60(6), Florida Statutes (2013), it is

ORDERED THAT:

1. The license of Gino Vitiello, M.D., license number ME 62492, is hereby immediately restricted to prohibit Dr. Vitiello from practicing medicine until PRN notifies the Department that Dr. Vitiello is safe to resume practice.

2. A proceeding seeking formal discipline of the license of Gino Vitiello, M.D., to practice as a physician will be promptly instituted and acted upon in compliance with Sections 120.569 and 120.60(6), Florida Statutes (2013).

DONE and ORDERED this 5th day of February, 2014.



John H. Armstrong, MD, FACS
State Surgeon General and
Secretary of Health

PREPARED BY:
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IN RE: The Emergency Restriction of the License of
Gino Nicholas Vitello, M.D.
License Number: ME 62492
Case Number: 2013-18659

NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to Sections 120.60(6), and 120.68, Florida Statutes, this Order is judicially reviewable. Review proceedings are governed by the Florida Rules of Appellate Procedure. Proceedings are commenced by filing a Petition for Review, in accordance with Florida Rule of Appellate Procedure 9.100, with the District Court of Appeal, accompanied by a filing fee prescribed by law, and a copy of the Petition with the Agency Clerk of the Department within 30 days of the date this Order is filed.

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2013-18659

GINO NICHOLAS VITIELLO, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through undersigned counsel, files this Administrative Complaint before the Board of Medicine against Respondent, Gino Nicholas Vitiello, M.D., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Chapters 20, 456 and 458, Florida Statutes (2013).
2. At all times material to this Order, Respondent was licensed to practice medicine in the State of Florida pursuant to Chapter 458, having been issued license number ME 62492.
3. Respondent's address of record is 9299 SW 152 Street # 202, Palmetto Bay, Florida 33157.

4. On or about June 3, 2013, Miami-Dade County Police Department arrested Respondent for Driving under the Influence (DUI) in Miami-Dade County Case Number 13-2013-CT0006857XDX00.

5. On or about June 3, 2013, South Miami Hospital (SMH) admitted Respondent into its detoxification program and referred him to the Professionals Resource Network (PRN).

6. PRN is a Department-contracted consultant for matters dealing with impaired medical practitioners.

7. Dr. C.L. evaluated Respondent at SMH and diagnosed him with alcohol dependence. Dr. C.L. opined that Respondent was in need of residential treatment.

8. On or about June 8, 2013, Respondent entered into a residential treatment program at [REDACTED]

[REDACTED]. Dr. J.S. evaluated Respondent and diagnosed him as alcohol dependent and in need of extended residential treatment for at least 30 days.

9. On or about September 16, 2013, Respondent completed a 60-day residential rehabilitation treatment program at Behavioral Health.

10. Subsequent to Respondent's treatment, PRN sent Respondent a monitoring contract for Respondent to execute and refrained Respondent

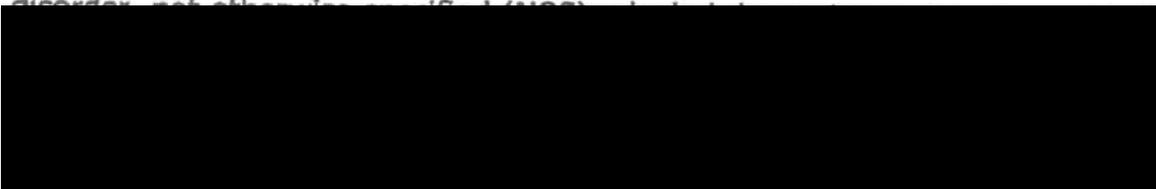
from practicing medicine until he underwent a PRN-facilitated mental and physical evaluation.

11. On or about October 31, 2013, Respondent tested positive for alcohol use during a PRN-facilitated drug screening.

12. On or about October 31, 2013, PRN discovered that Respondent continued to see patients and practice medicine, despite PRN's mandate that he refrain from practice.

13. Respondent did not execute his PRN monitoring contract.

14. On or about November 11, 2013, Respondent underwent a PRN-facilitated evaluation with Dr. T.T. and received the diagnoses of: 

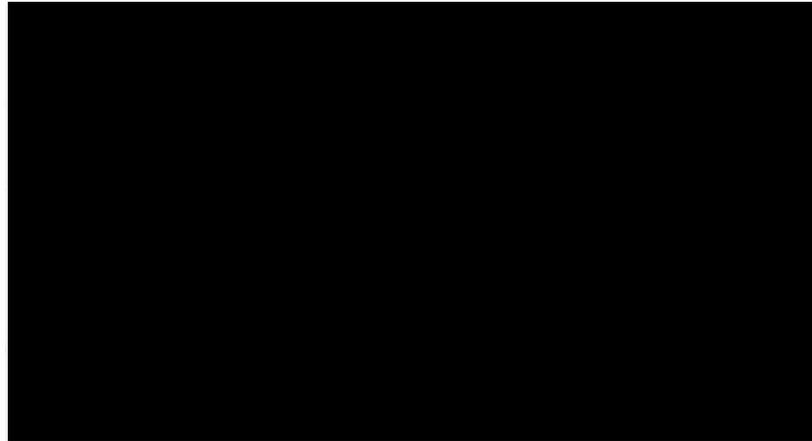


15. Dr. T.T. opined that Respondent is not capable of practicing medicine in the state of Florida with reasonable skill and safety.

16. Section 458.331(1)(s), Florida Statutes (2013), subjects a physician to discipline, including restriction, for "being unable to practice medicine with reasonable skill and safety to patients by reason of illness or

use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.”

17. Respondent violated Section 458.331(1)(s), Florida Statutes (2013) by being unable to practice medicine with reasonable skill and safety to patients due to one or more of the following:



18. Based on the foregoing, Respondent violated Section 458.331(1)(s), Florida Statutes (2013), by being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics or chemicals or any other type of material or as a result of any mental or physical condition.

WHEREFORE, Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of

practice, imposition of an administrative fine, issuance of a reprimand, placement of Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 21st day of February, 2014.

John H. Armstrong, MD, FACS
State Surgeon General and
Secretary of Health

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Bridget Coates*
DATE: 2-25-2014


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PCP: February 21, 2014

PCP Members: Fuad Ashkar, M.D.; Nabil El-Sanadi, M.D.; Ronald Dyches

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition any other discipline imposed.