



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

September 5, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Diana Fisher, M.D.


Jeffrey J. Conklin, Esq.
Associate Counsel
New York Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building- Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Diana Fischer, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 17-253) 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
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

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 (j), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "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
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,



James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: *JFH*
Enclosure

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

COPY

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: IN THE MATTER : DETERMINATION
: OF : AND
: DIANA FISCHER, M.D. : ORDER
: :
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17-253

A hearing was held on August 17, 2017, at the offices of the New York State Department of Health ("Department").¹ Pursuant to § 230(10)(e) of the Public Health Law ("PHL"), C. DEBORAH CROSS, M.D., Chairperson, DEBORAH WHITFIELD, M.A., Ph.D, and ELAINE LOMBARDI WILK, D.O., FACOEP, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter.² DAWN MacKILLOP-SOLLER, ADMINISTRATIVE LAW JUDGE ("ALJ"), served as the Administrative Officer.

The Department appeared by Jeffrey J. Conklin, Esq. A Notice of Referral Proceeding and Statement of Charges dated June 30, 2017, were served upon Diana Fischer, M.D. ("Respondent"), who did not appear at the hearing.³ There were no witnesses at the hearing. The Hearing Committee received and examined documents from the Department, and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee unanimously votes 3-0 to sustain the charges that the Respondent committed professional misconduct,

¹ The location of the hearing was 150 Broadway, Suite 510, Menands, New York. The references in brackets refer to exhibits ["Ex."].

² Deborah Whitfield, M.A., Ph.D., appeared by telephone at the hearing.

³ After several attempts at personal service at both the Respondent's registered address and two additional addresses the Department had for the Respondent, the Department sent the Notice of Hearing and Statement of Charges by certified mail, demonstrating service pursuant to Public Health Law § 230(10)(d)(i). As such, the ALJ determined that jurisdiction was established and the hearing could continue despite the Respondent's absence. [Appendix I; Ex. 2A-2D, 3].

in violation of Education Law ("Educ. Law") §§ 6530(9)(b) and 6530(9)(d), such that the penalty of revocation of the Respondent's medical license is appropriate.

BACKGROUND

The Department brought the case pursuant to PHL § 230(10)(p), which provides for an expedited hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(b), "having been found guilty 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," and § 6530(d), "having (her) license to practice medicine revoked, suspended or having other disciplinary action taken..." where the conduct resulting in the disciplinary action taken against (her) license to practice medicine would, if committed in the state of New York, constitute professional misconduct under the laws of the state of New York.

This case is based on a Final Order of the Florida Medical Board ("Florida Board") dated August 18, 2016, finding the Respondent guilty of professional misconduct resulting from her abandonment of her medical practice without notice to her patients. The Department charges that the Respondent's underlying conduct in Florida, had it occurred in New York, would constitute professional misconduct, specifically practicing the profession with negligence on more than one occasion, abandoning a professional practice and failing to maintain a record of the patient which accurately reflects the evaluation of the patient, as defined in Educ. Law §§ 6530(3), 6530(30), and 6530(32), respectively. [Ex. 1].

FINDINGS OF FACT

Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence. The following findings and conclusions are the unanimous determinations of the Hearing Committee after a review of the record in this matter:

1. Diana Fischer, M.D., the Respondent, was licensed to practice medicine in New York on August 2, 1994, by the issuance of license number 196752 by the Education Department. [Ex. 3].

2. On August 18, 2016, the Florida Board found the Respondent guilty of professional misconduct resulting from her abandonment of her medical practice in May of 2014, without proper notice to her patients, which prevented at least three of them from receiving medical care or copies of their medical records. [Ex. 4A-4C].

3. The Florida Board found the Respondent guilty of professional misconduct and ordered suspension of her medical license, a fine in the amount of \$5,000.00, costs totaling \$9,680.59 and completion of a medical records course. [Ex. 4A].

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

The Hearing Committee determined that the evidence supports sustaining the charge of having committed misconduct under Educ. Law § 6530(9)(b).

VOTE: Sustained (3-0)

SECOND SPECIFICATION

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law § 6530(9)(d).

VOTE: Sustained (3-0)

CONCLUSIONS OF LAW

The Department's evidence established that the Respondent discontinued her medical practice and abruptly closed it without providing any notice to her patients. The Respondent's decision to close left at least three patients without the ability to receive scheduled medical care or to obtain copies of medical records. Like Florida, New York requires physicians to properly notify patients when discontinuing a professional relationship or closing a medical practice. This obligation extends to medical records, which physicians are required to appropriately retain and make available to patients. Fla. Stat. § 456.057(13); 8 NYCRR 29.2(a)(3). Also, like Florida, New York's medical record keeping requirements obligate physicians to document physical assessments, testing results and drug choices. The Hearing Committee considered the purpose in these requirements – to ensure the coordination of future medical care for patients with other providers – and the Respondent's disregard of them when she made herself unavailable to her patients. Respondent's failures, had they occurred in New York, would have constituted negligence on more than one occasion, abandoning a professional practice and a failure to maintain a record for a patient which accurately reflects the evaluation of the patient, as defined in Educ. Law §§ 6530(3), 6530(30) and 6530(32).

The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, and found that the sustained specifications indicate the Respondent's irresponsible use of her medical license to haphazardly close a medical practice without concern for her patients' future medical care. The Hearing Committee also noted the Respondent's continued suspension of her medical license in Florida due to her failure to comply with the Florida Board's directive to provide patients with copies of their medical records. As such, the Hearing Committee

unanimously concluded that the evidence supports revocation of the Respondent's New York medical license.

ORDER

IT IS HEREBY ORDERED THAT:


1. The specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**;
2. The Respondent's license to practice as a physician in New York state is hereby **REVOKED**;
3. This Determination and Order shall be effective upon service on the Respondent. Service shall be either by certified mail upon the Respondent at her last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York
8/27, 2017


C. Deborah Cross, M.D.
Chairperson

Deborah Whitfield, M.A., Ph.D.
Elaine Lombardi Wilk, D.O., FACOEP

TO: Diana Fischer, M.D.


Jeffrey J. Conklin, Esq.
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building – Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

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

IN THE MATTER
OF
DIANA FISCHER, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: Diana Fischer, M.D.

Diana Fischer, M.D.
7809 Massachusetts Avenue
New Port Richey, Florida 34653

[REDACTED]

Diana Fischer, M.D.
Suite 16
3898 Via Poinciana Drive
Lake Worth, Florida 33467

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. 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 August 17, 2017, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.¹

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which 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 or sworn testimony on your behalf. Such evidence 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 which would show that the conviction would not be a crime in New York State. The Committee also 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.

¹ For GPS purposes, enter "Menands", not "Albany".



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 HORAN, 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 twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges at least 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. You may also file a written brief and affidavits with the Committee. All such documents 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, at least ten days prior to the date of the hearing. Should the parties have objection(s) to proposed witnesses or documentary evidence, the party raising the objection(s) shall contact the Bureau of Adjudication at least three days prior to the hearing date to arrange for a pre-hearing conference with the Administrative Law Judge, prior to the hearing date.

Not later than ten days prior to the date of the hearing, you are required to file one copy of your proposed exhibits (if any) with the Bureau of Adjudication at the address indicated above, and a copy of all such documents/exhibits must be served on the same date on the Department of Health attorney indicated below. On the day of the hearing, you are also required to provide the original of such exhibits and three copies, for use by the Committee.

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.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

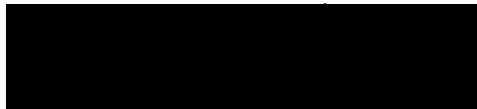
Department attorney: Initial here 

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 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.

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: Albany, New York
June 30, 2017



MICHAEL A. HISER, ESQ.
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Jeffrey J. Conklin, Esq.
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

IN THE MATTER
OF
DIANA FISCHER, M.D.

STATEMENT
OF
CHARGES

DIANA FISCHER, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 2, 1994 by the issuance of license number 196752 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 18, 2016, the Florida Board of Medicine (hereinafter "Florida Board") issued a Final Order which found that the Respondent engaged in unprofessional conduct, pursuant to Florida Statutes §§456.072(1)(dd), 456.072(1)(k), 456.072(12) and 456.072(13), and Florida Administrative Code §64B8-10.002(2). The Respondent was found guilty of abandoning her medical practice without providing adequate notice to her patients, and failing to provide patients with their medical records, despite requests for such records. The Florida Board suspended the Respondent's medical license in Florida until Respondent provided medical records to the patients set forth in the Administrative Complaint, imposed a \$5,000.00 fine and \$9,680.59 administrative fee, and required the Respondent to complete Board approved courses in medical records and law and rules.

B. Respondent's conduct as described above, upon which the disciplinary action in Florida was based would, if committed in New York State, constitute professional misconduct under the laws of the State of New York as follows:

1. New York Education Law §6530(3) (practicing the profession of medicine with negligence on more than one occasion); and/or
2. New York Education Law §6530(30) (abandoning a professional practice); and/or
3. New York Education Law §6530(32) (failing to properly maintain an accurate medical record, and/or retain records).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION
HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in 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 (namely New Education Law §§6530(3), 6530(30); and/or (32) as alleged in the following:

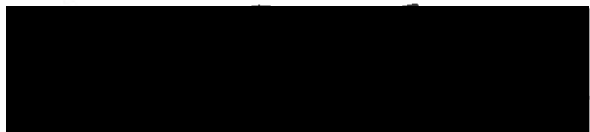
1. The facts of Paragraphs A and B and B.1, A and B and B.2, and/ or A and B and B.3.

SECOND SPECIFICATION
HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in New York Education Law §6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license 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 involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York State (namely New York Education Law §§6530(3), 6530(30); and/or (32) as alleged in the following:

1. The facts of Paragraphs A and B and B.1, A and B and B.2, and/ or A and B and B.3.

DATE: June 30, 2017
Albany, New York



MICHAEL A. HISER, ESQ.
Deputy Counsel
Bureau of Professional Medical Conduct